



**Division of Criminal  
Justice Services**

**State of New York  
Andrew M. Cuomo, Governor**

**Competitive Procurement for:**

**Crime Analysis Centers Staffing Services  
NYSDCJS RFP#CJS2015-03**

CONTRACTING ENTITY	DCJS SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS
<p style="text-align: center;"> <b>State of New York acting by and through the Division of Criminal Justice Services (DCJS) Michael C. Green, Executive Deputy Commissioner On behalf of the State of New York, Division of Criminal Justice Services</b> </p>	<p style="text-align: center;"> <b>Mr. Sanford Fader Procurement Officer, Office of Financial Administration New York State Division of Criminal Justice Services Alfred E. Smith State Office Building 80 South Swan Street, Albany, NY 12210</b> </p> <p>All questions regarding this RFP must be submitted via electronic mail to the designated contact for this RFP at:  <a href="mailto:DCJSprocurement@DCJS.ny.gov">DCJSprocurement@DCJS.ny.gov</a></p> <p><b>Neither phone nor fax inquiries will be accepted (see Section 2.1 for details). Responses to questions will be posted on the DCJS website.</b> If you want to confirm that DCJS received your questions, please call 518- 457- 6105. Please note that DCJS cannot answer substantive questions concerning this RFP in any manner other than the email method.</p>

<b>PROCUREMENT TIMELINE</b>	
<b>Event</b>	<b>Date (Time)</b>
1. RFP Release Date	February 29, 2016
2. Deadline for Submission of Bidder's Questions	March 11, 2016
3. Issuance of DCJS Response to Submitted Questions	On or about March 25, 2016
4. Bid Proposals Due Date	April 15, 2016 4:00 P.M. EST
5. Reference Form Submission Deadline	May 6, 2016
6. Anticipated Notification of Award/Non-Award	On or about May 20, 2016
7. Contract Start Date	On or about October 1, 2016

DCJS reserves the right in its sole discretion to alter the schedule shown above.

**PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP AND ALL QUESTIONS, COMMUNICATIONS AND SUBMISSIONS TO DCJS MUST BE WRITTEN IN THE ENGLISH LANGUAGE WITH QUANTITIES EXPRESSED USING ARABIC NUMERALS. ALL PRICES SHALL BE EXPRESSED, AND ALL PAYMENTS SHALL BE MADE, IN UNITED STATES DOLLARS (\$ USD). ANY PROPOSAL RECEIVED THAT DOES NOT MEET THE ABOVE CRITERIA MAY BE REJECTED AT THE SOLE OPTION OF DCJS.**

**PLEASE NOTE: As used in this Request for Proposals (RFP), the terms “Bidder” and, “Offerer” means any entity submitting applications in connection with this RFP and the terms “Contractor” and “Vendor” means those who have been awarded services under this RFP.**

**Crime Analysis Centers Staffing Services**  
Request for Proposals

**PREAMBLE**

**NOTICE OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING AND CONTACTS**

State Finance Law §139-j(6) requires that a governmental entity incorporate a summary of its policy and prohibitions regarding permissible contacts during a covered procurement. Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal (RFP) includes and imposes certain restrictions on communications between the Division of Criminal Justice Services (DCJS), a governmental entity, and a vendor<sup>1</sup> during the procurement process.

A vendor is restricted from making contacts from the earliest notice of intent to solicit offers including this Request for Proposal through final award and approval of the procurement contract by DCJS and the Office of the State Comptroller (“Restricted Period”) to other than the DCJS staff member who has been designated by DCJS as the sole procurement contact and who has been identified on the cover page of this RFP. There are certain statutory exceptions set forth in State Finance Law §139-j(3)(a).

State Finance Law §139-k(4) obligates every governmental entity during the restricted period of a procurement contract to make a written record of any contacts made. The term “contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the governmental procurement. DCJS is required to make a determination of the responsibility of the vendor pursuant to State Finance Law §§139-j and 139-k. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four (4) year period; the vendor is debarred from obtaining governmental procurement contracts.

Additional information and guidance on the “Restricted Period” and permissible contacts can be found in the guidelines issued by the New York State Advisory Council on Procurement Lobbying, which can be found on the OGS website at:

<http://www.ogs.ny.gov/ACPL/>

Vendors must provide DCJS with a required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. The vendor must agree to the certification and complete the affirmation of such agreement via the included Offerer’s Affirmation of Understanding of an Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b) and Form 3: Offerer’s Certification of Compliance with State Finance Law §139-k(5), which are mandatory submissions.

## **Sole Designated Procurement and Solicitation Contact**

All Vendors are required to comply with Chapter 1 of the Laws of 2005, the Procurement Lobbying Act and subsequent amendments made pursuant to Chapter 4 of the Laws of 2010. All questions regarding this RFP must be submitted via electronic mail to the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFP. Pursuant to the Procurement Lobbying Law, the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFP is designated as the DCJS Solicitation Contact for this procurement. All inquiries, questions, filings and submission of proposals that are submitted to any other individual or physical address shall not be considered as official, binding, or as having been received by the State.

DCJS may at its sole option change the sole designated contact and will make notification of such a change by electronic mail to Offerers who have filed a Bid through its website. The webpage Uniform Resource Locator (URL) is provided on the cover pages of this RFP.

## **Prior Non-responsibility Determination Affirmation**

New York State Finance Law §139-k(2) obligates a governmental entity to obtain specific information regarding all prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any governmental entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity. The terms “Offerer” and “governmental entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions). The Offerer must agree to the certification and complete the affirmation of such agreement, included at Attachment K Form 2: Offerer’s Disclosure of Prior Non-Responsibility.

## **Offerer Certification of Compliance with State Finance Law §139-k(5)**

In addition to any other remedy at law or equity, the Division of Criminal Justice Services reserves the right to terminate any contract in the event it is found that the certification filed by Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of any contract.

## **Public Officers Law Sections 73 and 74**

The New York State Joint Commission on Public Ethics is charged with administering and enforcing the State's ethics and lobbying laws as well as the State's anti-nepotism law and laws pertaining to certain political activities and improper influence. Its mission is to insure compliance with the ethical standards that public officials and lobbyists must observe in order to ensure public trust and confidence in government. More information is available at the Commission’s website at <http://www.jcope.ny.gov>.

The Offerer will ensure that all of its personnel involved in the preparation and submission of the Offerer’s proposal(s) have read the Public Officers Code of Ethics, Sections 73 and 74 of the Public Officers Law, and that the Offerer has advised its personnel of their obligation not to importune any violations of those sections.

For the convenience of the reader certain sections in effect as of the date of release of this RFP are reproduced below. Readers are advised to check official sources.

**Public Officers Law § 73(5)**

5. No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly:

(a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

(b) solicit, accept or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law unless under the circumstances it is not reasonable to infer that the gift was intended to influence him; or

(c) permit the solicitation, acceptance, or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party including a charitable organization, on such official's designation or recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him.

**Public Officers Law §74:**

**Sec. 74. Code of ethics.** 1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

#### **Notification of Award and Opportunity for Debriefing**

The successful Offerer will be advised of selection by DCJS through the issuance of a formal written correspondence indicating a proposed award. All Offerers will be notified of the selection or rejection of their proposals. Once an award has been made, Offerers may submit a written request for a debriefing as to why their proposal did not result in an award. The written request must be received by the DCJS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement.

## **DCJS Contract Award Protest Procedure**

The State of New York strives to assure a fair, open and competitive process to all vendors qualified to respond to this Procurement. In the event that any vendor has a complaint or objection to the RFP requirements, the procurement process or any matter affecting the submission of a vendor's Bid Proposal, the vendor is encouraged to informally contact the DCJS Sole Designated Contact for this procurement, listed on the cover page of this RFP, immediately to resolve the matter.

If the vendor believes that the objection affects the outcome or nature of the proposed award for this Procurement, the vendor must follow the procedures for timely filing a formal protest set forth in the DCJS Contract Award Protest Procedures at Exhibit B of this RFP by the deadline set forth in the procedure. Prior to Contract award, protests which may affect the outcome or nature of the award may only be considered by the State in the context of a formal written protest filed in accordance with the procedure within this document.

## **Freedom of Information Law (FOIL) Requests**

To request access, pursuant to the Freedom of Information Law (FOIL), to a record maintained by the Division of Criminal Justice Services, you must make your request in writing. Please be as specific as possible in describing the record(s) in which you are interested. Within five business days of the receipt of a written request, we will send a written acknowledgement that we have received the request. Please send your inquiry via mailing provider, FAX or e-mail to:

Records Access Office  
NYS Division of Criminal Justice Services  
Alfred E. Smith State Office Building  
80 South Swan Street  
Albany, NY 12210  
FAX: (518) 457-2416  
E-mail: [foil@dcjs.ny.gov](mailto:foil@dcjs.ny.gov)  
Questions or comments: [foil@dcjs.ny.gov](mailto:foil@dcjs.ny.gov)

## **Procurement Record**

DCJS shall maintain a Procurement Record which documents all decisions regarding the procurement process, particularly the quantification of criteria used to determine an award based on best value; or where not quantifiable, the justification which demonstrates that best value will be achieved pursuant to State Finance Law § 163(9)(g). The Procurement Record will be forwarded to the Office of the State Comptroller and as applicable to the Office of the Attorney General (Department of Law) in support of their respective evaluation activity.

# Table of Contents

1.0	Proposal Background.....	1
1.1	Purpose of this request for Proposal.....	1
1.2.	Goals of the Division of Criminal Justice Services.....	1
2.0	Procurement Timeline.....	2
2.1	Deadline for Submission of Initial and Subsequent Questions.....	2
2.2	DCJS Official Responses to Questions.....	2
3.0	Scope of Services.....	3
3.1.	Crime Analysis Centers.....	3
3.2.	Scope of Work.....	3
3.3.	Requests for Staffing Services.....	3
3.4.	Notification Process For Requests of Staffing Services.....	4
4.0	Bidder Eligibility and Mandatory Qualifying Technical Requirements.....	6
4.1.1	Bidder Experience.....	6
4.1.2	Staffing Services.....	6
	A. Longevity.....	6
	B. Capacity.....	6
	C. Experience – Government Clients.....	6
4.2	Bidder Attestation.....	7
4.2.1	Candidate Pre Screening.....	7
4.2.2	Staffing Services and Retention.....	7
4.2.3	Authorized to Do Business in New York State.....	7
4.2.4	Response Requirement .....	8
5.0	Technical Requirements.....	8
5.1	Service Capacity.....	8
5.2	Client References.....	8
5.3	Representative Sample Resumes.....	9
6.0	Financial Requirements.....	9



6.1	Contractor Reimbursement.....	9
6.2	Financial Proposal.....	9
7.0	Administrative Requirements.....	10
7.1	Formal Offer Letter.....	10
7.2	Vendor Responsibility Questionnaire .....	11
7.3	McBride Fair Employment Principles Form.....	11
7.4	Non-Collusive Bidding Practices Certification.....	12
7.5	Consultant Disclosure .....	12
7.6	Procurement Lobbying Laws.....	13
7.7	Encouraging Use of New York State Businesses in Contract Performance .....	15
7.8	Minority and Women-Owned Business Requirements and Equal Employment Opportunities.....	15
7.9	New York State Worker’s Compensation Law.....	15
7.10	Tax Law 5-A Amended April 26, 2006.....	17
7.11	Non-Disclosure Agreements.....	18
7.12	Offerer Proposed Extraneous Terms.....	18
7.13	Request for Exemption from Disclosure.....	19
7.14	Use of Service-Disabled Veteran-Owned Business Enterprises In Contract Performance.....	19
8.0	Other Terms and Conditions.....	19
8.1	Administrative Proposal Conditions.....	19
8.2	Termination of the Agreement.....	20
	8.2.1 For Convenience or Lack of Funding.....	20
	8.2.2 For Cause.....	20
	8.2.3 Termination or Default Notice.....	22
	8.2.4 Termination Date .....	23
9.0	Post Termination Transition Period.....	23
10.0	Reservation of Intellectual Property and Other Rights and Restrictions.....	25
11.0	Force Majeure.....	25
12.0	Standard Legal Language.....	25
13.0	Bidders Proposal Submission.....	42

14.0	Evaluation and Scoring Method.....	45
15.0	Attachments.....	48
15.1	Attachment A – Mandatory Technical Requirements Response Form .....	48
15.2	Attachment B- Firm Information Form and Attestation.....	52
15.3	Attachment C- Staffing Services Placement Experience.....	55
15.4	Attachment D- Client Reference Response Form.....	57
15.5	Attachment E- Financial Response Form Crime Analysis.....	61
15.6	Attachment F- Formal Offer Letter.....	63
15.7	Attachment G- Vendor Responsibility Questionnaire.....	68
15.8	Attachment H- Non-Discrimination in Employment in N. Ireland Statement.....	79
15.9	Attachment I- Non-Collusive Bidding Certification.....	81
15.10	Attachment J- OSC Contractor and Disclosure Forms.....	84
15.11	Attachment K- DCJS Summary of Policy and Prohibitions on Procurement Lobbying .....	90
15.12	Attachment L- Encouraging Use of NYS Business in Contract Performance.....	103
15.13	Attachment M- Contracts, Affiliate and Subcontractor Sales and Compensation Use of Tax Certification.....	105
15.14	Attachment N- DCJS Non-Disclosure Agreement.....	117
15.15	Attachment O- Non-Disclosure for Cyber Security Standards/Policy Agreement.....	120
15.16	Attachment P- Minority/Women-owned Business Enterprise Utilization Plan.....	123
15.17	Attachment Q- Minority/Women-owned Business Enterprise Staffing Plan.....	125
15.18	Attachment R- EEO Policy Statement.....	128
15.19	Attachment S-Questions Template.....	132
15.20	Attachment T- Use of Service-Disabled Veteran-Owned Business Enterprises In Contract Performance.....	134
15.21	Attachment U-Sample Resume Cover Letter.....	137
16.0	Exhibits.....	139
16.1	Exhibit A- Positions, Minimum Qualifications and compensation.....	139
16.2	Exhibit B- DCJS Contract Award Protest Procedure.....	144
16.3	Exhibit C- Participation by Minority Group Members and Women with Respect to State Contracts.....	151

16.4 Exhibit D- Contract.....	156
Appendix A: Standard Clauses for New York State Contracts.....	183
Appendix B: MWBE Requirement and Equal Employment Opportunities.....	191
Appendix C: New York State D.C.J.S Change Request Form.....	195

## **1.0 PROPOSAL BACKGROUND**

### **1.1 Purpose of this Request for Proposal (RFP)**

The Division of Criminal Justice Services (DCJS) is seeking to establish agreements with up to three (3) vendors for the Crime Analysis Centers (CACs) Program to provide experienced law enforcement and qualified crime analysis consulting services on an as needed basis to support numerous active CACs in New York State.

It is estimated that the overall expenditure by DCJS will be approximately \$5,400,000 over a 5 year period. A maximum of three contracts will result from this procurement. DCJS reserves the right to award none, all, or part of this bid. There is no implied guarantee of a minimum amount of consulting services to be utilized under a contractual agreement. It is anticipated that DCJS may utilize other grant or bid competitions for some positions, in lieu of the agreements that result from this procurement.

These agreements will cover a five (5) year period commencing upon approval from the Office of the State Comptroller (OSC).

It should be noted that NYS and DCJS currently have other contract vehicles for certain similar staffing services. DCJS reserves the right to use whichever contract best serves the purposes for any given situation without notification to any of the vendors. Vendors who have been awarded other contracts with State Agencies may also bid on this Request for Proposal (RFP).

Requests for Staffing Services from this procurement will be offered first to the highest ranking vendor (primary vendor). However, if the vendor is unable to provide the requested candidate(s) within the designated response time, or DCJS determines that any candidate is unsatisfactory, or that it would be a conflict of interest or otherwise not in our best interest to procure a candidate from the vendor, DCJS will request candidate(s) of the vendor with the next total highest composite score (secondary vendor); and similarly if the secondary vendor is unable to provide the requested candidate(s) within the designated response time, or DCJS determines that any candidate is unsatisfactory, or that it would be a conflict of interest or not in our best interest to procure a candidate from the vendor, DCJS will request candidate(s) of the vendor with the next total highest composite score (tertiary vendor).

### **1.2 Goals of the Division of Criminal Justice Services**

The principal charge of the CACs is to advance New York State's public safety policies and strategies as they relate to reducing crime and building safe communities in designated counties and regions of the state. The CACs responsibilities include, but are not limited to, providing the tools and resources necessary to promote law enforcement data sharing, conduct crime analysis, provide products to law enforcement command staff, investigators and detectives and work with all levels of law enforcement. To this end, a variety of positions are required and are enumerated herein.

## 2.0 PROCUREMENT TIMELINE

The following is the proposed Calendar of Events for this RFP:

Calendar of Events	
Event	Date (Time)
8. RFP Release Date	February 29, 2016
9. Deadline for Submission of Bidder's Questions	March 11, 2016
10. Issuance of DCJS Response to Submitted Questions	On or about March 25, 2016
11. Bid Proposals Due Date	April 15, 2016 4:00 P.M. EST
12. Reference Form Submission Deadline	May 6, 2016
13. Anticipated Notification of Award/Non-Award	On or about May 20, 2016
14. Contract Start Date	On or about October 1, 2016

### 2.1 Deadline for Submission of Initial and Subsequent Questions

There will be no pre-bid conference held on this project. All questions relating to the content of this RFP shall be directed, in writing by email to the **DCJS Sole Designated Contact for Inquiries and Submissions** at the email address identified on the cover page of this RFP. Only those questions received prior to the deadline shown above will be accepted. Each question shall cite the particular RFP section and paragraph number to which it refers. Offerers are advised that submissions to DCJS including, but not limited to, written questions become part of the procurement record.

***In the event Offerers experience any technical issues, such as email submission communication issues, including any questions submitted before the deadline which were not addressed in DCJS' Official Response to Questions, please contact the Office of Financial Services at (518) 457-6105. Please be aware that the staff who answer the phone will not have any knowledge about the content of this RFP, and any assistance they can provide will be limited to resolving any reported technical issues.*** Please note that DCJS cannot answer substantive questions concerning this RFP in any manner other than the email method.

### 2.2 DCJS Official Responses to Questions

Bidders' questions and DCJS' responses, as well as updates and/or modifications, will be posted to the DCJS website at:

<http://www.criminaljustice.ny.gov/pio/vendor/business.html#solicitations>

Vendors are responsible for checking the website on a regular basis to ascertain whether any new information or notices have been posted. Vendors should contact the DCJS Sole Designated Contact if they experience problems accessing the website.

### 3.0 SCOPE OF SERVICES

#### 3.1 Crime Analysis Centers

Crime Analysis Centers (CACs) currently exist in Albany, Broome, Erie, Franklin, Monroe, Niagara and Onondaga Counties. DCJS is investigating opportunities to open additional CACs in various locations over the next several years. This bid seeks to procure staffing services for all existing and any future CACs.

#### 3.2 Scope of Work

Bidders must qualify and will be evaluated on their ability to provide staffing, as described in this section, for CAC positions. This procurement will solicit bids for recruitment of staffing with specific categories of expertise, as described in this section and **Exhibit A (Positions, Minimum Qualifications and Compensation)**.

CAC staff may be utilized for a variety of purposes, including, but not limited to:

- Directing a CAC.
- Leading the analysis group at a CAC.
- Conducting crime analysis.
- Managing crime analysis tools and resources.
- Providing crime analysis support.
- Providing crime analysis training.
- Specializing in a specific crime analysis area, such as Parole and Probation violators, or robbery and gun violence.
- Support of on-going projects
- Backfill of existing CAC resources;

All candidates for CAC positions must meet the minimum staffing qualifications as described in Exhibit A, which may be modified by DCJS with notice provided to successful vendor(s) from time to time during the life of the contract.

#### 3.3 Requests for Staffing Services

The Contractor must respond rapidly and effectively to Requests for Staffing Services Notifications. Each Request for Services Notification will identify a response time for the Contractor to provide resumes of available candidates to DCJS who will provide resumes to any applicable CAC personnel involved in interviewing and hiring selection. For routine requests, resumes may be required to be made available within 10 business days. Contractor candidates must be available within four weeks from the date of the request. However, DCJS may, from time to time, require the vendor to provide consulting staff on shorter notice, as necessary.

Contractor candidates must be available to work an eight (8) hour day during regular business hours with a minimum unpaid half hour lunch, from Monday to Friday except on state holidays. Most staffing services will occur during normal work hours. However, the CACs are sometimes called on to operate on a 24/7 basis and, therefore, certain staffing services may occur outside of normal work hours. Staffing services outside of normal work hours will be reimbursed at the appropriate agreed upon fixed hourly rate, plus the contractual vendor markup percentage reflected in DCJS' contract with the vendor.

It is anticipated that overtime may be required to meet project timelines during critical periods. Overtime must be authorized by DCJS. Authorized overtime (work hours in excess of 40 per week) will be reimbursed at the candidate's fixed hourly rate, plus the contractual vendor markup percentage reflected in DCJS' contract with the vendor.

Part-time Work Assignments, consisting of work of less than eight (8) hours per day or less than five (5) day per week, are possible but not anticipated at this time. DCJS will notify vendor of any part-time work assignment and the expected hours to be worked when applicable.

Work Assignments could occur within any counties of New York State with an existing or future CAC. The Request for Staffing Services Notification will identify the location of the assigned base for travel purposes of the position. Non-commuting work related travel shall be reimbursed by the State in accordance with the New York State Comptroller Travel Manual, which may change from time to time. See: <http://www.osc.state.ny.us/agencies/travel/manual.pdf> for specific detail. The vendor may not apply any markup to travel reimbursements.

Additional detail relating to payment for travel outside of the assigned base is provided in Section 12.16.1, Payments.

Work assignments may be terminated based on conditions/situations including but not limited to:

- Budget constraints;
- Change in agency priorities;
- Acquisition of additional in-house resources
- Unsatisfactory performance; or
- Best interests of the state.

### **3.4 Notification Process For Requests of Staffing Services**

The following describes the process when DCJS seeks services from successful vendor(s).

- A. DCJS will send a "Request for Staffing Services Notification" Form to the primary vendor awarded based on highest composite score.
- B. The Request for Staffing Services Notification will include a description of the services desired, define skills required for the title(s) requested, the number of staff resumes per position requested, the estimated duration of time for the services, location and the anticipated start date of the services. The notification will also give a response time for the vendor to reply to the request for services and provide resumes of available candidates and references.
- C. Vendors should note that the scope of services and duration for completion of these services may be increased or decreased depending on the needs of DCJS.
- D. If the vendor decides appropriate candidates can be provided as requested, a response with the individual resumes of candidates offered must be provided by the response date indicated. For critical requests resumes and references may be required to be made available (by fax, electronic mail or US mail) to DCJS within Five (5) business days, or DCJS can deem the vendor is not responsive for that request and has the option to request candidates of the vendor with the next total highest composite score. If the vendor is unable to provide the requested candidates within the designated response time, DCJS will request resources of the vendor with the next total highest composite score.

- E. If DCJS determines that it would be a conflict of interest to procure candidate from a vendor, DCJS will request candidates of the vendor with the next total highest composite score.
- F. The vendor may utilize subcontractors upon approval by DCJS to broaden the candidate base under this Agreement. The vendor shall remain responsible for all acts and omissions of the subcontractors and shall assume full responsibility for all services.
- G. After candidate resumes are submitted, DCJS will review, identify an interview panel to conduct interviews, if necessary, and determine whether any candidates satisfy the level of expertise and skill sets stipulated in the Request for Staffing Services Notification, check references, and determine whether any candidates are available for the duration of the services needed.
- H. DCJS will notify the vendor of approval or disapproval of the candidate(s) offered, and the hourly rate offered.
- I. Should a vendor decline to respond, or provide unsatisfactory candidate(s), or if DCJS otherwise rejects the candidate(s) submitted by the vendor, it may go to the next ranking vendor and if the second vendor declines to respond or if DCJS rejects the candidate(s) submitted by the second ranking vendor, then the agency may go to the third ranking vendor.
- J. Upon acceptance of a candidate, he/she will be expected to be available to perform the services as requested or when otherwise mutually agreed to by the vendor and DCJS. The vendor shall ensure that all selected individuals submit to DCJS approved timesheet records for approval on a weekly basis.
- K. Once the individual(s) have accepted an assignment with DCJS, the vendor may not unilaterally remove the individual except for exceptional circumstances. Any such circumstance will be reviewed in advance with DCJS and a mutually acceptable transition plan must be agreed upon. If agreed, any replacement individual(s) with comparable skills will be provided at the same or lower hourly rate. DCJS reserves the right to reject recommended replacement candidates.
- L. If DCJS determines that a vendor has persistent inability to provide acceptable candidate staff that DCJS finds unacceptable because the staff person(s) did not meet the specific work assignment requirements, DCJS reserves the right to terminate the Contractor. If a winning vendor is unable to provide qualified candidates for at least 75% of the Requests for Services Notifications resulting from the contract, DCJS reserve the right to terminate that vendor's services for the remainder of the contract, and make an award to the next highest ranking vendor. Termination of staff shall be in accordance with Post-Termination provisions or terms and conditions of any other ensuing contract. DCJS Finance shall be notified in the event that DCJS becomes aware of unsatisfactory contract performance by any vendor.
- M. In the event a vendor submits unqualified candidates on a recurring basis in the sole opinion of DCJS, DCJS reserves the right to terminate the Contractor from this Contract. Current individuals will stay until their assignment is completed.
- N. DCJS projects may require a work assignment to extend beyond the contract end date for completion of the specific assignment. The terms of the Contract shall survive Contract expiration and apply through the completion of the specific assignment.



#### **4.0 BIDDER ELIGIBILITY AND MANDATORY QUALIFYING TECHNICAL REQUIREMENTS (PASS/FAIL)**

Only Bidders who meet the following qualifications may submit a proposal in response to this RFP. To qualify, a Bidder must meet **all of the Mandatory Qualifying Technical Requirements, outlined in this Section**. Bidders not meeting these mandatory qualifying requirements should not submit a proposal.

The Offerer is required to serve as the Contractor when engaged to provide services hereunder. [The Offerer as the Contractor must be a separate and distinct legal entity. Unless a bona fide partnership business structure exists as a legal entity, “partners” other than the Offerer will be considered subcontractors.] The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, Exhibits, and any subsequent amendments mutually agreed to in writing between the Parties.

The Offerer is required to provide client references in their bid submission, regardless of whether the individuals placed were directly from the Prime Contractor or obtained from the Prime Contractor via a subcontractor.

#### **4.1 Bidder Experience**

##### **4.1.1 Staffing Services**

- a Longevity** – The Bidder must currently be in the business of providing individuals to government and must have provided such for a minimum of two (2) years, within the last five (5) years from the date of issuance of the RFP. For the purpose of this bid, a government client means a recognized political subdivision such as a state, province, city, county, town or agency of the United States or Canadian government. If the Bidder has merged with another business, then one of the merging businesses must have been in the business of providing staffing services for at least two (2) years within the last five (5) years, from the date of issuance of the RFP. Please specify which entity performed the services at the time the services were rendered.
- b Capacity** – The Bidder must have provided, at a minimum, twenty (20) distinct resources to one or more customers within the last two (2) years from the date of issuance of the RFP. Do not count the same staff placed multiple times unless it was for a different engagement. Engagements are separate and distinct projects or agreements.
- c Experience – Government Clients** Bidders must have provided individuals to a minimum of two (2) government clients (as defined in 1.a. above) within the last three (3) years from the date of issuance of the RFP

#### **Response Requirement**

Bidder must complete **Attachment A (Mandatory Technical Requirements Response Form)**.

## **4.2 Bidder Attestation**

### **4.2.1 Candidate Pre-Screening**

DCJS conducts interviews prior to offering proposed candidates a position to ensure individuals provided by the Contractor have the skills and experience required. The same commitment is required of the Contractor.

DCJS will require winning Bidders to provide a candidate screening process to insure candidates have the experience, education and skills required prior to submitting a candidate resume for consideration. Pre-screening requirements will minimally include:

- verification of candidates' experience
- verification of candidates' skills
- verification of candidates' education
- reference checks

The Bidder must affirm they will provide pre-screening processes as indicated above. DCJS may or will perform additional background checks including, but not limited to, fingerprinting and criminal history checks with (any) costs associated being the responsibility of the Contractor or selected candidate. Candidates must be acceptable to DCJS and must continue to be acceptable for the duration of any assignment.

### **4.2.2 Staffing Services and Retention**

Bidders must also attest that:

2. The Bidder can respond rapidly and effectively to Requests for Services Notification as described in Section 3.3; and
3. Individuals assigned will not be unilaterally removed except for exceptional circumstances and that such circumstances must be reviewed in advance by DCJS and a mutually acceptable transition plan will be established.

### **4.2.3 Authorized to Do Business in New York State**

4. The Bidder shall represent and warrant that it is duly organized, validly existing, and authorized to do business in the State of New York.
5. The Bidder shall represent and warrant that, as of the date of submission of its Proposal, the Bidder has completed, obtained, or performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the Services and that Bidder will, in order to perform said Services during the term of the Contract, if any, comply with any requirements imposed upon it by law during said Contract term. For details concerning this requirement, refer to: [http://www.dos.ny.gov/cnsi/do\\_bus.html](http://www.dos.ny.gov/cnsi/do_bus.html).

To register with the Secretary of State, contact:  
<http://www.dos.ny.gov/corps/corpwww.html>

Bidder/Contractor shall notify DCJS in advance in the event that there is any proposed future change in the above corporate status.

#### **4.2.4 Response Requirement**

Bidder must complete **Attachment B (Firm Information Form)**

### **5.0 TECHNICAL REQUIREMENTS**

Certain requirements are considered critical to successful contract implementation. This section outlines specific requirements the Bidder must address to receive technical evaluation points in response to this proposal. The Bidder must provide all information requested and must be as specific as possible to ensure DCJS can score the Bidder's response appropriately. Incomplete or vague responses will negatively impact the technical score.

The Bidder is solely responsible for providing references that are readily available to be contacted by DCJS and will respond to reference questions. If DCJS is unable to contact any reference, the Bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded. The Bidder may receive a reduced technical score if DCJS is unable to verify required references.

#### **5.1 Service Capacity**

It is preferable that the Bidder have recent experience placing candidates with categories of expertise and skills most commonly expected to be used by DCJS. DCJS will evaluate and award points on the depth and breadth of the Bidder's experience in providing such candidates.

##### **Response Requirement**

The Bidder must complete **Attachment C (Staffing Services Placement Experience)** for all individuals placed within the last two (2) years from the date of issuance of the RFP.

Note: Candidates for different engagements may be counted multiple times. Engagements are separate and distinct projects or agreements.

#### **5.2 Client References**

DCJS may contact client references to ensure the Bidder has prior experience with providing individuals similar to those required.

Bidders must provide references for three (3) clients who have obtained individuals from the Bidder for the same and/or similar titles listed in Exhibit A. Only client references for companies based in the United States and Canada are acceptable.

##### **Response Requirement**

Complete **Attachment D (Client Reference Response Form)**. DCJS requires

at least three (3) client references who meet the requirements of Section 5.2. If the Bidder provides more than three (3) references, the Bidder must indicate in which order DCJS should contact references in case that a reference is not reachable.

The client contacts provided on the Attachment D submissions may be contacted by DCJS via email and asked to complete a questionnaire. The questions on the questionnaire cover a range of vendor performance measures and may require client contact to seek input from other representatives of their organization to provide a full assessment of the Bidder's performance.

### **5.3 Representative Sample Resumes**

DCJS will evaluate and award points based on the quality of individuals available through the bidder, as illustrated by the representative sample resumes.

#### **Response Requirement**

Please submit one representative sample resume for each title listed in Exhibit A. Please attach **Attachment U (Sample Resume Cover Letter)** to the front of every representative sample resume in order to identify for which title a resume is being submitted. In the event that a resume is not provided for a title, a vendor will score 0 points for any missing resumes.

## **6.0 FINANCIAL REQUIREMENTS**

### **6.1 Contractor Reimbursement**

The Contractor will be reimbursed monthly, upon receipt of a proper invoice in accordance with the New York State Finance Law. Reimbursement for each individual will be based on the hourly rate offered/accepted at the time of the assignment, or as subsequently modified, plus a vendor markup percentage. Contractor will be required to submit weekly time sheets, signed by candidate and his/her supervisor in a manner prescribed by DCJS, accounting for all hours worked. The Contractor's invoice must indicate the period and number of hours, by candidate and must reconcile with reported time sheets. Authorized overtime (work hours in excess of 40 per week) will be reimbursed at the candidate's fixed hourly rate plus the contractual vendor markup percentage which will ultimately be reflected in DCJS' contract with the vendor.

### **6.2 Financial Proposal**

#### **Vendor markup percentage**

DCJS intends to compensate vendors for their services by allowing a percentage markup rate, to be applied to candidate service costs. In response to this RFP, the Bidder must provide a vendor markup percentage, which will be applied to the hourly salary offered to each candidate resource. To the extent necessary, office space, equipment and supplies for on-site work will be provided by the State. Such expenses must not be included in the Bidder's proposal. Cell phones will not be provided by the State. DCJS may perform additional background checks including, but not limited to, fingerprinting and criminal history checks with (any) costs associated being the responsibility of the Contractor or selected candidate. All pricing is INCLUSIVE of all auxiliary costs. Contractors are responsible to provide their own secretarial support –

the State will not provide any such support or associated materials.

Exhibit A indicates the titles most commonly used, the minimum title experience requirements and discussion regarding compensation. DCJS reserves the right to modify Exhibit A titles and related information from time to time.

## Response Requirement

Bidders must submit a completed **Attachment E (Financial Response Form: Crime Analysis Centers Services)** which requests a vendor markup percentage to be applied to candidate services.

## 7.0 ADMINISTRATIVE REQUIREMENTS

Bidders must provide the following administrative information in response to this RFP.

### 7.1 Formal Offer Letter

A formal offer letter must be included in the proposal and must be signed by an official authorized to bind the Bidder to its provisions.

#### Response Requirement

Each Offerer must submit a formal offer in the form of a Formal Offer Letter as set forth in **Attachment F (Formal Offer Letter)**. The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offerer in its offer to the State. The Offerer must accept all of the terms and conditions set forth in this RFP, including all amendments, appendices and attachments, and must agree to enter a contractual agreement contained in Exhibit D, or similar contract established by DCJS.

The Formal Offer Letter must include a statement affirming that the Bid Proposal is firm and binding for a period of at least one (1) year from the Bid Proposal Due date, or until such time as a Contract resulting from this RFP is approved by the NYS Comptroller. An Offerer's Bid Proposal may be withdrawn from consideration by the Offerer on written notice to DCJS if a Contract has not been approved by the NYS Comptroller after one (1) year following the submission of the Bid Proposal to DCJS.

Each Offerer's Formal Offer Letter must include a Conflict of Interest Disclosure, in the form set forth in Attachment F, stating that the Offerer knows of no factors existing at time of bid submission or which are anticipated to arise thereafter, which would constitute a potential conflict of interest in successfully meeting the contractual obligations set forth herein, including but not limited to:

1. No potential for conflict of interest on the part of the Offerer due to prior, current or proposed contracts, engagements, or affiliations; and
2. No potential conflicts in the sequence or timing of the proposed award under this RFP relative to the timeframe for service delivery, or personnel or financial resource commitments of Offerer to other projects.

The formal offer letter submitted must also include:

- the complete name and address of the Bidder;
- the name, address, phone number and e-mail address of the Bidder's Contract Administrator; and
- any restrictions under which the Bidder's primary negotiators will operate during contract negotiations.

Offerers must also complete and submit the Vendor Responsibility affirmation provided on Attachment F (Formal Offer Letter).

## **7.2 Vendor Responsibility Questionnaire**

Section 163(4)(d) of the State Finance Law requires that service contracts shall be awarded on the basis of best value to a responsive and responsible Offerer. Upon identification of the Bidder(s) with the highest score, the Bidder(s) Responsibility Questionnaire will be analyzed to ensure that the Bidder(s) is responsible. Either DCJS or the Office of the State Comptroller may seek additional information from an Offerer to support this evaluation. In the event that a Bidder is found to be not responsible, the Bidder may be disqualified.

### **Response Requirement**

Each Bidder must complete and submit the **Attachment G (NYS Standard Vendor Responsibility Questionnaire)**, however Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System maintained by the Office of the State Comptroller (OSC). To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire may also download the appropriate questionnaire from the VendRep website <http://www.osc.state.ny.us/vendrep>.

## **7.3 MacBride Fair Employment Principles Form**

In accordance with Chapter 807 of the Laws of 1992 and in accordance with Section 165 of the State Finance Law, the Bidder, by submission of this bid, certifies that it or any individual or legal entity in which the Bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Bidder, either have no business operations in Northern Ireland, or that such individuals or entities shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.

### **Response Requirement**

Each Bidder must complete and submit the **Attachment H (Non-Discrimination in Employment in Northern Ireland Statement)**.

#### 7.4 Non-Collusive Bidding Practices Certification

A bid shall not be considered for award nor shall any award be made where the conditions of the Non-Collusive Bidding Certification have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where the above conditions have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determine that such disclosure was not made for the purpose of restricting competition (Section 139-d of the State Finance Law).

#### Response Requirement

The Bidder is responsible for reading, signing and submitting **Attachment I (Non-Collusive Bidding Certification)**.

#### 7.5 Consultant Disclosure

Consultant Disclosure Law – State Finance Law §163(4)(g) requires the selected Prime Contractor to complete and submit an initial planned employment data report and an annual employment report regarding the number of persons employed to provide services under the contract, the number of hours worked and the amount paid to the Prime Contractor by the State. It includes all employees providing services whether employed by the Prime Contractor or a subcontractor. Form A – Prime Contractor’s Planned Employment From Contract Start Date Through The End Of The Contract Term Form B – Prime Contractor’s Annual Employment Report are attached for your reference. See **Attachment J (Consultant Disclosure Forms)**.

Form A – Contractor’s Planned Employment Form must be submitted as part of any winning Offerer’s bid response before it can be submitted to the Office of the State Comptroller for approval. Each bidder must submit a completed Attachment J (Form A - Contractor’s Planned Employment From Contract Start Date Through The End Of The Contract Term).

Form B – Contractor’s Annual Employment Report. Offerer agrees to annually submit Form B each year that the contract is in effect and will detail employment data for the most recent concluded State fiscal year (April 1 – March 31). Instructions for these forms follow. Form B must be submitted by May 15<sup>th</sup> of each year to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service. Under the timeline schedule provided herein, the first Form B must be submitted by May 15, 2016. The Offerer agrees to simultaneously report such information to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service as designated below:

NYS Division of Criminal Justice Services  
Attn: Office of Financial Services  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210

NYS Office of the State Comptroller  
Bureau of Contracts  
Attn: Consultant Reporting  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

NYS Department of Civil Service  
Attn: Consultant Reporting  
Swan Street Building #1  
Albany, NY 12239

## **Response Requirement**

The Bidder is responsible for submitting a completed **Attachment J (Form A – Contractor’s Planned Employment From Contract Start Date Through The End Of The Contract Term)**. The Bidder is also responsible for reading, signing and submitting **Attachment J (Addendum)** agreement to comply with the annual Form B reporting requirement pursuant to State Finance Law §163(4)(g). Each Bidder’s **Attachment J (Addendum)** must be properly completed, signed by the Prime Contractor’s authorized representative and notarized.

## **7.6 Procurement Lobbying Laws**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DCJS and an Offerer/Bidder during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DCJS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. DCJS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/Bidder may be debarred from obtaining New York State Procurement Contracts.

### **1. Offerer Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed



requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

### **Response Requirement**

The Bidder is responsible for the completion and submission of **Attachment K Form 2 (Offerer's Disclosure of Prior Non Responsibility Determinations)**.

## **2. Offerer's Certification of Compliance with State Finance Law 139-k(5)**

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

In addition to any other remedy at law or equity, the Division of Criminal Justice Services reserves the right to terminate this contract in the event it is found 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 Governmental Entity may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

### **Response Requirement**

The Bidder is responsible for the completion and submission of **Attachment K Forms 1 and 3**

## **7.7 Encouraging Use of New York State Businesses in Contract Performance**

New York State businesses have substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, applicants for this solicitation are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract resulting from this RFP. Such partnering with New York State businesses may be as subcontractors, suppliers, protégés or other supporting roles.

To assist in demonstrating commitment to the use of New York State businesses in the performance of the Contract, all applicants must complete the form provided in RFP identified as Attachment L (Encouraging Use of New York State Businesses in Contract performance) and submit the completed form as an attachment to their proposal. There are no points attributable to this component of the application.

### **Response Requirement**

The Bidder is responsible for the completion and submission of **Attachment L**

## **7.8 Minority and Women-Owned Business Requirements and Equal-Employment Opportunities**

Pursuant to Appendix B, bidders are expected to meet certain requirements for business participation opportunities for New York State certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group members and women.

### **Response Requirement**

The Bidder is responsible for the completion and submission of **Attachments P and Q; as well as Attachment R or similar EEO Policy Statement**

## **7.9 New York State Worker's Compensation Law**

### **Workers' Compensation Requirements:**

Sections §57 and §220(8) of the Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. Contractor hereby acknowledges and agrees to be bound by the terms of the New York Workers' Compensation Law.

To comply with the coverage provisions of the Workers' Compensation Law, businesses must either:

- A) be legally exempt from obtaining workers' compensation insurance coverage; **OR**
- B) obtain such coverage from insurance carriers; **OR**
- C) be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

**CONTRACTOR MUST PROVIDE ONE** of the following forms to the DCJS prior to execution of the Contract. DCJS cannot submit the Contract to the Office of the State Comptroller for review and approval without one of the following, **EITHER**

- A) Form CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage;

*Note: Form CE-200 can be filled out electronically on the Workers' Compensation Board's website under the heading "Forms." Applicants filing electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. **OR***

- B) Form C-105.2 – Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the government entity upon request) **PLEASE NOTE:** The State Insurance Fund provides its own version of this form, the U-26.3; **OR**

- C) Form SI-12 – Certificate of Workers' Compensation Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247), **OR** GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self-Insurance (the business's Group Self-Insurance Administrator will send this form to the government entity upon request).

For more information please see <http://www.wcb.ny.gov>

**Disability Benefits Requirements:**

To comply with the coverage provisions of the Disability Benefits Law, businesses must:

- A) be legally exempt from obtaining disability benefits insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- C) be self-insured.

To verify your compliance with the above, the State must receive one of the following properly executed Workers' Compensation Board forms from the Contractor, the Contractor's insurance carrier or the Workers' Compensation Board, depending on which form is appropriate:

- a. CE-200 Business Does Not Require Workers' Compensation and/or Disability Benefits Coverage, or
- b. DB-120.1 Certificate of Disability Benefits Insurance Coverage or the DB-820/829 Certificate/Cancellation of Insurance, or

c. DB-155 Certificate of Disability Benefits Self-Insurance.

DCJS will coordinate with the winning Offerer(s) to obtain the above-mentioned documentation.

### **Response Requirement**

Submit the appropriate Workers Compensation and Disability Insurance forms as proof of compliance.

## **7.10 Tax Law 5-A Amended April 26, 2006**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and Contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a Contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid as **Attachment M (Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification)**. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed and submitted to DCJS as the procuring covered agency certifying that the Contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render a vendor non-responsive and non-responsible. Vendors shall take the necessary steps to provide properly certified forms with the bid response to ensure compliance with the law. The winning Offerer(s) must complete the **Attachment M (N.Y.S. Department of Taxation and Finance Contractor Certification to Covered Agency Form ST-220-CA)**. Additionally, Winning Offerer's must complete **Attachment M (N.Y.S. Department of Taxation and Finance Contractor Certification Form ST-220-TD)** and submit the completed certification directly to the NYS Department of Taxation and Finance.

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov>

### **Response Requirement**

Submit Attachment M, Form ST-220-CA

## **7.11 Non-Disclosure Agreements**

DCJS requires the winning Offerer(s) to complete Non-Disclosure Agreements.

### **Response Requirement**

Attachment N (DCJS Non-Disclosure Agreement) and Attachment O (Non-Disclosure for Cyber Security Standards/Policy Agreement).

## **7.12 Offerer Proposed Extraneous Terms**

New York State Law prohibits the State from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in this RFP. Therefore, extraneous terms and conditions are proposed solely at the Bidder's risk as they may be deemed material deviations by the State and may render the Proposal non-responsive, resulting in its rejection.

### **Response Requirement**

Proposed additional, supplemental, "or equal," or alternative terms (Extraneous Term(s)) shall be included in Volume 2 of Bidder's proposal and may only be considered by the State to the extent that such Extraneous Term(s) constitute non-material deviations from the requirements set forth in the RFP. If the Bidder proposes to include Extraneous Terms in its official Proposal, the Bidder shall meet all of the following requirements:

1. Each proposed Extraneous Term shall be specifically enumerated in a separate section of the applicable submission (Administrative/Financial or Technical) labeled "Additional/Extraneous Terms";
2. The "Extraneous Terms" section shall be prepared by the Bidder and may not include any pre-printed literature or vendor forms;
3. The writing shall identify by part, section, and title the particular RFP requirement (if any) affected by the Extraneous Term; and
4. The Bidder shall specify the proposed Extraneous Term and the reasons therefore.
5. Only those terms meeting the above requirements (1) through (5) shall be considered as having been submitted as part of the formal offer.

Extraneous Term(s) submitted on standard, pre-printed forms (including, but not limited to: product literature, order forms, manufacturer's license agreements, standard contracts, or other preprinted documents) that are physically attached or summarily referenced in the Proposal, or that, in the State's sole judgment, have not been submitted in compliance with the above requirements (1) through (5), will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Bidder for informational or promotional purposes only.

Absent the State's express written acceptance and incorporation of an Extraneous Term, acceptance and/or processing of the Proposal shall not constitute the State's acceptance of Extraneous Term(s) or be deemed a waiver of the State's rights set forth in this section.

### **7.13 Request for Exemption from Disclosure**

#### **NOTICE TO BIDDER'S LEGAL COUNSEL:**

Proposals submitted to DCJS in response to this RFP are subject to the Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to §87(2)(d) of FOIL, records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise" may be exempt from disclosure.

#### **Response Requirement**

A Bidder shall notify DCJS upon submission of its Proposal if it intends to seek an exemption from disclosure under FOIL of either or both types of material. Where such claimed material is embedded in the Proposal, the Bidder is required to submit two (2) additional copies of their proposal with claimed material clearly labeled and a footnote on every page indicating "REDACTED VERSION." Claimed material must not be indicated on any other copies of the Bidder's proposal.

### **7.14 USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE**

Article 17-B of the Executive Law, provides for more meaningful participation in public procurement by Service-Disabled Veteran-Owned Businesses (SDVOBs). New York State agencies are authorized to use discretionary purchasing authority for procurements from SDVOBs. DCJS has a 6% goal with respect to agency procurements. Accordingly, Bidders shall complete and submit Attachment T with their bid submission.

## **8.0 OTHER TERMS AND CONDITIONS**

This section outlines the administrative conditions concerning the Request for Proposal, the Bidder's response and conditions related to any awarded contract.

### **8.1 Administrative Proposal Conditions**

With the submission of a response to this Request for Proposal, the Bidder agrees to the proposal conditions outlined in this section.

### **8.2 Termination of the Agreement**

The following highlights certain grounds for termination which are more fully described in Exhibit D (Contract) Termination

### **8.2.1 For Convenience or Lack of Funding**

The State hereby reserves the right to terminate this Contract for convenience, or in the event that necessary and lawful appropriations are not provided or continued for the funding of this Contract by the Legislature subject to and in accordance with the following provisions:

1. The State shall have the right to unilaterally terminate this Contract, in whole or in part, for convenience provided that prior notice of such termination is given. Such option may be exercised upon thirty (30) calendar days advance written notice to the Prime Contractor as indicated in this RFP.

In the event that the State exercises this option, the Contract shall terminate as to the portion(s) of work being deleted as of the termination date with obligations of the Parties as follows:

- a. The Prime Contractor shall deliver to the possession of the State within such thirty (30) day notice period all drawings, documentation, reports or other required Contract deliverables or information, as applicable, to date related to the portion(s) of work subject to the termination, whether preliminary or final, in the form and format set forth in this agreement. The State's receipt of such deliverables and/or documentation, reports, or information shall be a condition precedent to the obligation of the State to make payments to the Prime Contractor.
- b. Upon receipt of such deliverables, reports, information, or other information, the State shall be obligated to pay the Prime Contractor the amounts then due and owing calculated as of the termination date, such payment to be tendered to Prime Contractor within ninety (90) days of receipt of the deliverables. The State shall not be liable to Prime Contractor for lost profits, administrative or other expenses, however denominated.

2. In the event the State determines that necessary and lawful appropriations are not provided or continued for the funding of this Contract, the State shall deem the Contract terminated upon thirty (30) calendar days advance written notice.

### **8.2.2 For Cause**

1. Notice

If either Party fails to comply with any provision of the Contract the other Party shall so notify the Party in default as provided below. The notification shall specify in reasonable detail the nature of the default.

2. Cure Period

Where timeframes for performance are otherwise set forth in this Contract, the specific time period stated shall govern. For all other instances constituting default, the Party in default shall have thirty (30) calendar days from the date of receipt of notice to correct the default ("cure period"). During the cure period, the Party in default shall work diligently to resolve and cure any default. The Parties may, upon mutual written agreement, agree to extend the timeframe for cure.

Because of the public safety nature of the Crime Analysis Center(s), the State may, upon written notice to the Prime Contractor, shorten the thirty (30) day cure period

as it deems necessary in the event that the Prime Contractor's breach threatens or has the potential to threaten the ongoing operation of the Crime Analysis Center(s), or the health, safety or welfare of those served by the Crime Analysis Center(s).

### 3. Default

If the Party in default is unable to cure the default within the cure period, in addition to availing itself of specific remedies set forth in the Contract, the aggrieved Party may pursue all legal and equitable remedies for breach including but not limited to setoff of any amount determined by DCJS to be due and owing. A delay or failure in declaring a material breach under this paragraph shall not be deemed a waiver of the right to subsequently declare a default.

### 4. Additional State Rights & Remedies

- a. In the event of Prime Contractor's default, in addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:
  - i. terminate the Contract, in whole or in part;
  - ii. proceed against any Insurance furnished by Prime Contractor, in accordance with the terms thereof;
  - iii. suspend, in whole or in part, payments due Prime Contractor under this or any other New York State Contract;
  - iv. pursue equitable remedies to compel Contractor to perform; and/or
  - v. all rights set forth under b, below.
  
- b. It is expressly understood between the Parties that the State is contracting with Prime Contractor for the personal services of Prime Contractor with respect to operation of Crime Analysis Center(s) and operated and maintained by the State for the health, safety and welfare of the citizens of New York.

Therefore, in the event of termination of this Contract in whole or in part based upon the Prime Contractor's default or abandonment, the State shall, in its sole judgment, among other factors, pursue any remedies as it deems advisable in completing that mission, with sole reference to the best interests of the State, including, but not limited to:

- a) procuring from any third Party, upon such terms and in such manner as the State deems appropriate, either:
  - (1) alternate resource (s) to sufficiently operate and maintain staffing at Crime Analysis Center(s), and/or
  - (2) pursuing any other action(s) provided at law or in equity as the State deems necessary to enable the State to complete the above mission.

The Prime Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for administrative costs incurred by the State in procuring alternate services.

### 5. Non-Responsibility



The Contractor shall at all times during the contractual term remain responsible. The Contractor agrees, if requested by the Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contractual activity may resume at such time as the Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency officials or staff, the Agreement may be terminated by the Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee at the Contractor's expense where the Contractor is determined by the Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee to be non-responsible. In such event, the Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

## 6. Transition

In the event that the any Crime Analysis Center(s) or arrangement for associated services is operational at the point that a termination for cause is issued, the Prime Contractor shall provide and comply with the requirements for transition set forth in the RFP, below.

## 7. Cumulative Remedies

The rights and remedies provided in this paragraph are cumulative to and in addition to any other rights and remedies provided by law, at equity, or under the Contract.

### **8.2.3 Termination or Default Notices**

Written Notices required herein by either Party shall be delivered to the other Party in writing, by certified mail, return receipt requested. The date of notice shall be deemed the date of delivery set forth on the return receipt. ("date of return receipt notice") Such notice shall be addressed as follows:

***State of New York:***

Executive Deputy Commissioner  
State of New York  
Division of Criminal Justice Services

Alfred E. Smith Office Building, 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210-8001

With a copy to:

Title: Deputy Commissioner, Office of Public Safety  
Current Incumbent: Michael R. Wood  
Mailing Address: Alfred E. Smith Office Building, 3rd Floor  
80 South Swan Street  
Albany, NY 12210

AND

John M. Czajka, Esq.  
Deputy Commissioner and General Counsel  
Division of Criminal Justice Services  
Alfred E. Smith Office Building, 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210-8001  
**Prime Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### **8.2.4 Termination Date**

Contract termination dates shall be determined as follows:

In the event a notice of termination is issued for convenience or in the event that necessary and lawful appropriations are not provided or continued for the funding of this Contract, or for cause, the Contract termination date shall be deemed thirty (30) calendar days from the date of delivery set forth on the return receipt notice.

Subject to the State's right to shorten any thirty (30) day cure period, in the event a notice of termination is issued for cause, the Contract termination date shall be thirty (30) days from the date of the return receipt notice, or such other extended period of time as has been mutually agreed in writing by the Parties.

#### **8.2.5 Mitigation of Costs**

The Prime Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice of a termination notice without the prior written approval of the State. In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible after receiving notice of termination.

### **9.0 POST TERMINATION TRANSITION**

Because of the public safety interests of the State, the State may require the Prime Contractor to provide uninterrupted services after Contract termination as the State deems reasonable and necessary for the continued safe operation of the Crime Analysis Center(s) and/or as necessary for the State to comply with all legal requirements for establishing a new Contract to continue safe operation of the Crime Analysis Center(s) ("transition period"). Transition services shall be governed as follows:

### **9.1. Post Termination Transition Period**

The post termination transition period shall be determined by the State, and set forth in writing, return receipt notice, to the Contractor. The State shall consult with the Prime Contractor prior to making such determination. The State reserves the right to subsequently amend the post termination transition period upon thirty (30) days advance written notice to the Contractor.

### **9.2. No Interruption in Service**

At all times during the post termination transition period and unless waived by the State, the Contractor shall continue all Contractual obligations set forth in the Contract until such time as the State (i) has approved the Contractor's proposed post termination transition plan, and (ii) an orderly post termination transition to the State or a new Contractor has been completed pursuant to the approved post termination transition plan. The Contractor shall be required to meet its Contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause by either Party.

### **9.3. Post Termination Transition Plan**

Within fifteen (15) days of receipt of a notice of termination as set forth elsewhere in the Contract or twelve (12) months prior to the end of the term of the Agreement, whichever event occurs first, the Prime Contractor shall provide for approval by DCJS a detailed written plan for Post Termination Transition (Post Termination Transition Plan) which outlines, at a minimum, the tasks, milestones and deliverables associated with the smooth transition of the Crime Analysis Center(s) and Services Plan to a successor Contractor. Furthermore, the Post Termination Transition Plan must be amended by Prime Contractor to include all other information deemed essential by the State, including development of specifications necessary for preparation of a competitive solicitation for the successor Contract.

### **9.4. Prime Contractor Post Termination Transition Services**

"Post termination transition services" shall be deemed to include Contractor's responsibility for all tasks and services outlined in the Contract, and for transferring in a planned manner specified in the Post Termination Transition Plan all tasks and services to the State or successor Contractor. It is expressly agreed between the Parties that the level of service during the post termination transition period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the post termination transition period, tasks or services are transitioned to or assumed by the State or the successor Contractor, Contractor shall not be held responsible for the acts or omissions of the State or successor Contractor or for service degradation resulting from the acts or omissions of the State or successor Contractor.

### **9.5. Compensation for Post Termination Transition Services**

Contractor shall be reimbursed for services performed during the post termination transition period at the rates previously set forth in the Contract; provided, however, that in the event the State has terminated for cause, the Contractor shall be entitled to reimbursement during the post termination transition period at the rates set forth in the Contract less Contractor's profit margin.

### **9.6 State Responsibilities for Post Termination Transition**

The State shall assume responsibility for post termination transition project management. A project manager responsible for coordinating post termination transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed. Periodic project review meetings shall be held with representatives of the State, the Contractor, and the success or Contractor.

## **10.0 RESERVATION OF INTELLECTUAL PROPERTY AND OTHER RIGHTS AND RESTRICTIONS**

1. If DCJS releases to the Contractor any idea, method or other product of this engagement for whatever purpose, in no event shall the Contractor resell any such idea, method or other product or any direct derivative of them, to DCJS, or any other agency, instrumentality or municipality of the State of New York.
2. Contractor agrees to execute such documents as may be required to confirm or reflect DCJS's rights, Contractor's obligations and/or restrictions, as set forth in this Agreement. The Contractor's obligation to execute such documents shall survive termination of the Agreement.
3. All documents produced for the State become the property of the State of New York.

## **11.0 FORCE MAJEURE**

In the event of a service disruption caused by a Force Majeure which is outside of the control of either Party, e.g., natural disaster, act of God, war, terrorism, civil disturbance, court order or labor dispute, ("force majeure") or any other acts beyond the reasonable control of either Party, the Party that has been so affected shall immediately give notice to the other Party, and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the State and Prime Contractor.

In the event of a service disruption caused by a State Disaster Emergency, as defined in section 20(2)(b) of the Executive Law or other emergency situation or occurrence that the Executive Deputy Commissioner or Commissioner of the Division of Criminal Justice Services, in his or her sole discretion, has determined poses a risk to health and public safety or the conservation of public resources, the Contractor shall be notified that DCJS is invoking this provision and that notwithstanding any other provision in the Contract, during a State disaster emergency or other emergency situation, unless the Contractor's performance would be excused pursuant to the *Force Majeure* provisions of the Contract, the Contractor shall provide the necessary Services to the State on a time-is-of-the-essence basis, working on a twenty-four (24) hour a day, seven (7) day a week basis, to restore and/or recover State operations and Services that are critical to the public safety, health, and welfare of the State, to be determined at the sole discretion of the State. Except as provided in this section, all other provisions of the RFP and Contract remain in full force and effect during a state disaster emergency or other emergency situation.

## **12.0 STANDARD LEGAL LANGUAGE**

### **12.1 Issuing Agency**

This RFP is issued by the New York State Division of Criminal Justice Services.

### **12.2 Solicitation**

This RFP is a solicitation to bid, not an offer of a contract.

### **12.3 Liability**

The State of New York and DCJS are not liable for any cost incurred by an Offerer in preparation for, or prior to, the approval of an executed contract by the Attorney General and the Office of the State Comptroller. No cost will be incurred by DCJS for the Offerer's or prospective Offerer's participation in any pre-contract award activity. Submission of response to this RFP shall not be construed as a commitment by the State to proceed with this project.

### **12.4 Proposal Ownership**

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Division reserves the right to use any portions of the Bidder's proposal not specifically noted as proprietary.

### **12.5 Proposal Security**

Each Bidder's proposal will be held in strict confidence by the Division staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain the approvals of those agencies for the final contract and except as otherwise required by law.

Public inspection of the bids is regulated by the Freedom of Information Law. Following the final approval of a contract by the Comptroller, bids are presumptively available for public inspection. Offerers who have included sensitive material within their proposals should note the provisions of Section 7.13 herein above – Request for Exemption from Disclosure. Note that requests for exemption of the entire contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Requests should be limited to exemption from disclosure of bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm. The Bidder should point out those sections of the proposal that are trade secrets and explain the reasons therefore.

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 or she acquires during the course of his or her official duties. These standards control the confidentiality of a Bidder's proposal unless the Division grants records access in accordance with the Freedom of Information Law. Offerers are advised that determinations of the Division or of the Office of the Attorney General or of the Office of the State Comptroller including agreements to shield or redact information are subject to review by Courts of Competent Jurisdiction.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by the Division or the Bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure agreement for Division employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the code of ethics.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful Bidder.

## **12.6 Ethics Compliance**

All Bidders/Contractors and their employees must comply with the requirements of §73 and § 74 of the Public Officers Law, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing the bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

## **12.7 Timely Submission**

The Bidders are solely responsible for timely delivery and submission of their proposal to the location set forth herein. DCJS is not responsible for delays in receipt, including but not limited to those due to third-party carriers.

## **12.8 Proposal Effective Period**

The Bidder's proposal must be firm and binding for a period of at least one (1) year following the bid proposal due date.

## **12.9 Bidder Proposal Clarification**

The Division reserves the right to require a Bidder to provide clarification and validation of its proposal, to the satisfaction of the Division, through any means the Division deems necessary. Failure of a Bidder to cooperate with the Division's request to clarify a proposal within the time indicated by the Division may result in the proposal being deemed non-responsive and given no further consideration.

The Division reserves the right to use information submitted by the Bidder in response to the Division's request for clarifying information in the course of evaluation and selection under this RFP.

The Division may from time to time and in its sole discretion communicate clarifications and subsequent information whether such clarifications and information result from Bidder inquiry or is released by the Division. In such event the Division will disseminate such information by posting the information to the Division's website at the internet address identified on the face page of this RFP.

## **12.10 Award Notification**

The Commissioner of the Division of Criminal Justice Services, or staff designated for such purpose, will select the successful Contractor(s) based on recommendations submitted by evaluation teams. The successful Bidder(s) will be advised of selection by the Division through the issuance of an award notification letter. Bidders whose bids have not been selected in response to this RFP shall be notified.

### **12.11 Proposal Review and Contract Approval**

Any contracts resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

### **12.12 Disclosure of Contract Awards**

Public Announcements or news releases pertaining to contracts shall not be made prior to contract award. Requests concerning the evaluation of a bid submitted will be considered under the Freedom of Information Law (FOIL) only after contract negotiations are complete and the contract is released by the State Attorney General's Office and the Office of the State Comptroller.

### **12.13 Debriefing Sessions**

Unsuccessful Bidders will be notified in writing and may request the opportunity for a debriefing session. Once an award has been made, Offerers may then submit a written request for a debriefing as to why their proposal did not result in an award. Such sessions will be limited to discussions of evaluation results as they apply to the Bidder receiving the debriefing. The written request must be received by the DCJS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement.

### **12.14 Bid Protest Policy**

The State of New York strives to assure a fair, open and competitive process to all potential Offerers qualified to respond to this Procurement. In the event that any prospective Offerer has a complaint or objection to the RFP requirements, the procurement process or any matter affecting the submission of a prospective Offerer's Bid Proposal, the Offerer is encouraged to informally contact the DCJS Sole Designated Contact for this procurement, listed on the cover page of this RFP, immediately to determine if the matter can be resolved.

Offerers desiring to initiate a bid protest must follow the procedures for timely filing a formal protest set forth in the DCJS Contract Award Protest Procedure at **Exhibit B (DCJS Contract Award Protest Procedure)** of this RFP by the deadline set forth in the procedure. Take Notice that contacts with DCJS do not constitute the filing or initiation of a Bid Protest or extend the time in which to file a Bid Protest under the DCJS Contract Award Protest Procedure. Bid Protests must be identified as such and filed in accordance with the procedures provided in the DCJS Contract Award Protest Procedure. Prior to Contract award, protests which may affect the outcome or nature of the award may only be considered by the State in the context of a formal written protest filed in accordance with the procedure at **Exhibit B**.

### **12.15 Reserved Rights**

The Division of Criminal Justice Services reserves the right to exercise any of the following actions:

- a Change any of the scheduled dates and times stated herein.

- b Amend RFP specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Bidders.
- c Withdraw the RFP, at its sole discretion.
- d Disqualify a Bidder from receiving an award if such Bidder has previously failed to perform satisfactorily in connection with public bidding or contracts(s) or is deemed otherwise not responsible.
- e Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
- f Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Division's considered judgment, the best interests of the Division will be served. In the event compliant bids are not received, the Division reserves the right to consider late or non-conforming bids as offers.
- g Require the Bidder to provide proof of or otherwise demonstrate, to the satisfaction of the Division, any information presented as a part of their proposal.
- h Use information obtained through the Division'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 Division's request for clarifying information in the course of evaluation and selection under this RFP.
- i Determine a tie breaking mechanism for award of the contract to serve the best interests of the Division.
- j Negotiate with the successful Bidder(s) within the scope of the RFP to serve the best interests of the Division and the State.
- k The Division may agree to extend the time period established by Section 112 of the State Finance Law for approval of contracts by the Comptroller of the State of New York and in such an event the successful Offerer agrees to maintain its offer for the duration of the extension.
- l In the event the Division terminates a Contract resulting from this procurement, the Division reserves the right, with the approval of the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submissions.
- m It is understood and agreed that the Contractor ranked number one by DCJS will be first requested to provide qualified candidates for position(s) sought. However, if the highest ranking Contractor is unable to provide suitable candidates to DCJS within the designated response time to timely hire as needed, DCJS will request resources of the vendor ranked second, and if such vendor is unable to provide suitable candidates to DCJS within the designated response time to timely hire as needed,



DCJS will request resources of the vendor ranked third. Nothing herein, guarantees that DCJS will hire a specific number of candidates from any ranked vendor.

- n Reject any or all proposals received in response to the RFP.
- o Withdraw the RFP at any time, at the agency's sole discretion.
- p Make an award under the RFP in whole or in part.
- q Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
- r Seek clarifications and revisions of proposals.
- s 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 RFP.
- t Prior to the **bid opening**, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- u Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments.
- v Waive any requirements that are not material.
- w Negotiate with the successful bidder within the scope of the IFB/RFP in the best interests of the State.
- x Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder.
- y Utilize any and all ideas submitted in the proposals received.
- z 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.\*

## **12.16 Administrative Contract Conditions**

### **12.16.1 Payments**

All payments will be made in accordance with Section 11-a of the New York State Finance Law. The Contractor will be reimbursed monthly for services provided based on submissions required from the Contractor's

staff by DCJS including properly completed time sheets and invoices. Contractor's staff will be required to submit weekly time sheets, in a manner prescribed by DCJS, accounting for all hours worked. Contractor will be reimbursed at the hourly rate offered to each individual for each work assignment, plus the contractual vendor markup percentage reflected in DCJS' contract with the vendor.

### **Assignment Related Travel**

Contractors will be notified of any DCJS work assignments which may require travel outside of the assigned work area. The Requests for Services Notification will identify the location of the assigned base for travel purposes of the position. The purpose of an assigned base is to establish when the resource is in travel status and eligible for state reimbursement of travel expenses. Individuals are in travel status when they are more than 35 miles from their assigned base. Travel between the resource's home and assigned base is considered commuting and is not reimbursable by the State. The individual's home is considered to be in the city or town in which the resource primarily resides when working at his or her assigned base.

Non-commuting related travel shall be reimbursed by the State in accordance with the New York State Comptroller Travel Manual. See <http://osc.state.ny.us/agencies/travel/travel.htm> for specific detail. The vendor percentage markup rate cannot be applied to travel costs.

### **12.16.2 Taxes**

Unless otherwise specified in the RFP, the quoted bid rates shall include all taxes applicable to the transaction. Purchases made by the State of New York are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, invoices issued by the Contractor pursuant to the Contract shall reference the Contract in order to be considered sufficient evidence that the sale by Contractor was made to the State, an exempt organization under § 1116 (a) (1) of the Tax Law. No person, firm, or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Contractor.

### **12.16.3 Mandatory Requirement – Price Protection**

The Offerer agrees that all of the prices, terms, warranties and benefits provided under this procurement are comparable to or better than the equivalent terms being offered by the vendor to other customers using similar scope and volume of services. If the Offerer shall, during the term of this Agreement, enter into arrangements with any other customer providing greater benefits or more favorable terms, the Contract shall thereupon be deemed amended to provide the same to the State. DCJS reserves the right to reasonably adjust candidate rates at any time during the duration of the Contract.

#### **12.16.4 Procurement Record**

DCJS shall maintain a Procurement Record which documents all decisions regarding the procurement process, particularly the quantification of criteria used to determine an award based on best value; or where not quantifiable, the justification which demonstrates that best value will be achieved pursuant to State Finance Law § 163(9)(g). The Procurement Record will be forwarded to the Office of the State Comptroller and as applicable to the Office of the Attorney General (Department of Law) in support of their respective evaluation and approval activity.

#### **12.16.5 Mandatory Requirement – Appendix A (Standard Clauses for New York State Contracts)**

##### **Appendix A (Standard Clauses for New York State Contracts)**

annexed hereto at Appendix A is incorporated herein by reference and made a part of this agreement as though fully set forth in its entirety.

#### **12.16.6 Mandatory Requirement for Contracts Estimated to be \$1,000,000 or More**

- a. Subsequent to the award of procurement contracts in an amount estimated to be \$1,000,000 or more, Contractors will be required to document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors by showing they have (i) solicited bids in a timely and adequate manner from New York State business enterprises including certified minority-owned businesses, (ii) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in Offerer/Bidder outreach conferences. If the Contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, the Contractor shall provide a statement verifying such.
- b. Subsequent to the award of procurement contracts in the amount estimated to be \$1,000,000 or more, Contractors 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, or providing for such notifications in a manner as is consistent with existing collective bargaining contracts or agreements.
- c. Offerers located in a foreign country are notified that the State may assign or otherwise transfer offset credits created by any procurement contract of \$1,000,000 or more to third Parties located in New York State, and that 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.

#### **12.16.7 Mandatory Requirement – Discriminatory Jurisdictions**

Offerers are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principal place of business is located in a discriminatory jurisdiction. Discriminatory jurisdiction is defined as a state or political subdivision which 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 the New York State Department of Economic Development.

#### **12.16.8 Public Announcements**

Public announcements or news releases relating to this RFP or the resulting agreement shall not be made by any Offerer or its agent without the prior approval of the Division. Such approval shall not be considered until an executed contract is in place.

#### **12.16.9 Contract Term**

Contracts resulting from awards under this procurement shall take effect on the date they are approved by the Comptroller of the State of New York or staff designated for such purpose (“Effective Date”) and shall continue in effect for an initial term of five years with the possibility of two 1 year extensions.

The State shall have the right to renegotiate the terms of Contracts resulting from this procurement at any time in the event that a change in applicable laws, codes, ordinances, statutes, rules and regulations or applicability thereof requires that the terms of the Contract be modified so that it conforms with the requirements of any applicable statute, law, ordinance, codes, rules or regulation then in effect. In addition, DCJS may elect to reasonably adjust candidate resource hourly rates at any point in time throughout the duration of the contract, except that markup rates shall remain fixed throughout the Contract.

#### **12.16.10 Time is of the Essence**

Time is of the essence in contract formation and time is of the essence in the resulting Contract and will be a substantial and a material term of any agreement resulting from this RFP.

#### **12.16.11 Contract Formation**

The Contract will incorporate this RFP, all Exhibits, all Appendices, all Attachments, all submissions, the Offerer’s Bid Proposal, clarifications and additional information issued by DCJS during the course of this procurement and additional terms agreed to by the Parties in writing into

a Master Agreement. Execution by the successful Offerer shall not be deemed final until the execution of the Contract. The Contract will be deemed executed upon, and will not be considered fully executed and binding until receipt of approval by the Attorney General of the State of New York and the Comptroller of the State of New York or members of their staff designated by them for that purpose.

A successful applicant will be required to timely enter into a contract with NYS related to service delivery within ten (10) business days of notification and receipt of the final contract. Exhibit D is a draft contract of terms and conditions, some of which cannot be changed (.e.g. *Appendix A: Standard Clauses for New York State Contracts*). The final contract may contain new or amended contractual provisions. NYS reserves the right to negotiate minor terms and conditions relative to the RFP and the applicant's response to meet agency program requirements consistent with the solicitation. During contract negotiations, the State expects to have direct access to Offerer personnel who have full authority to make commitments on behalf of the Offerer. Any negotiated contract must conform to the laws of New York State.

#### **12.16.12 Negotiations with the Next Highest Offerer**

In the event that DCJS should be unsuccessful in negotiating a contract within thirty (30) business days following the date of the notice of award with the selected Offerer(s), DCJS may at any time following thirtieth business day at its option begin negotiations with the next highest scored Offerer(s), as applicable.

#### **12.16.13 Cancellation Clause**

DCJS is responsible for monitoring and enforcing the Contractor's performance. Performance requirements include Contractor's conformance with scheduling requirements and provision of personnel with the requisite skill level to complete the assignment. DCJS will provide written notice to the Contractor of such failure and if, within 30 calendar days thereafter, the Contractor does not remedy the problem to DCJS's satisfaction, DCJS may terminate the contract consistent with this provision.

#### **12.16.14 Contractor**

Offerer is required to serve as the Contractor when selected to provide and staffing services pursuant to this RFP hereunder. The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, Exhibits, and any subsequent amendments mutually agreed to in writing between the Parties. The Contractor is responsible for payment of all subcontractors and suppliers, including all third-party equipment and service providers contracted by or through the Contractor in performance of the agreement. Where services are supplied by or through the Contractor under the Contract, Contractor must assume full integration responsibility for performance of such services.

## 12.17 Qualified to Work in the United States

All personnel employed by the Contractor must be legally authorized to work in the United States. Personnel and candidates provided to DCJS by any Offerer must be legally authorized to work in the United States.

## 12.18 Indemnification & Limitation of Liability

- a. Offerer as a Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors of the Offerer and shall fully indemnify and save harmless the State of New York and DCJS, from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Offerer, its agents, employees, partners or subcontractors of the Offerer, *without limitation*; provided, however, that the Offerer shall not indemnify for that portion of any claim, loss or damage arising from the negligence of the State and/or its employees.
- b. Offerer will indemnify, defend and hold the State of New York, DCJS, and entities which have been authorized by DCJS to participate (“Authorized participating Users” or “Authorized Users”), where applicable, and with whom the Contractor and DCJS has agreed to install or place products or provide services as defined in the Master Agreement harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys’ fees), claims, judgments, liabilities and costs which may be finally assessed against the State, DCJS, and its Authorized Participating Users in any action for infringement of any copyright, trademark, trade secret or intellectual property right, provided that DCJS shall give the Offerer: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Offerer’s sole expense, and (iii) assistance in the defense of any such action at the expense of Offerer. Where a dispute or claim arises relative to a real or anticipated infringement, the State of New York and/or DCJS may require Offerer, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State of New York and/or DCJS shall require. If the Offerer has an opportunity to terminate any such infringement suit by a third-party Offerer, the Offerer shall obtain the consent of the State and the Attorney General of the State of New York to the settlement if such settlement will alter any financial or performance terms of the Agreement.
  - i. If principles of governmental or public law are involved, DCJS and/or the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Offerer without the Offerer’s written consent.
  - ii. If in the Offerer’s opinion the equipment, materials, or information mentioned above, are likely to or do become the subject of a claim of infringement of a United States patent or copyright, then without diminishing the Offerer’s

obligation to satisfy any final award, Offerer may, with DCJS and/or any other contracting State agency, where applicable, and the State's written consent, substitute other equally suitable materials and information or, at Offerer's option and expense, obtain the right for the State to continue the use of such materials and information.

- c. The Offerer will indemnify the DCJS and the State without limitation against any claim(s) brought against the State and/or DCJS by reason of a wrongful disclosure of confidential information attributed to the Offerer or any Offerer employee and will cooperate fully with DCJS, the State, and the Attorney General in defense of any claim(s).
- d. The Offerer shall not be obligated to indemnify that portion of a claim or dispute based upon: i) the State's unauthorized modification or alteration of a product; ii) the State's use of the product in combination with other products not furnished by Offerer; iii) the State's use in other than the specified operating conditions and environment.
- e. Neither Party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. All Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract and shall immediately resume performance upon termination of the force majeure.
- f. Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Offerer is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.
- g. Indemnification for Direct Damage: For all other claims against the Offerer by DCJS and the State of New York where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Offerer's liability under this Contract for direct damages shall be two (2) times the charges rendered by the Offerer under the Contract.
- h. DCJS, and the State may, in addition to other remedies available to them at law, in equity, or under the Contract, and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the Contractor, as applicable, as may be necessary to satisfy any claim for damages, costs and the like asserted by or against them

## 12.19 Compliance with Laws

The Contractor shall comply with all present and future applicable laws, codes, ordinances, statutes, rules and regulations with respect to any of the duties or responsibilities of the Contractor, DCJS, the State of New York and all Authorized Users arising from the Contract, including but not limited to the Americans with Disabilities Act (42 USC Section 1202, et seq).

The Contractor, including its agents, successors and/or assigns and Contractors and subcontractors shall obtain all necessary licenses, certificates and other approvals required by law to fulfill the Contractor's obligations under the Contract at its sole expense. The Contractor shall furnish copies of such documentation to the State upon request.

Although covered by the general compliance mandated by this provision, it is specifically understood that the Contractor shall be responsible for compliance with all applicable federal laws, rules and regulations to the extent that any Authorized User is the recipient of any federally funded monies relating to the procurement of services or products under this Contract, including but not the following provisions set forth at Chapter XXX of 7 CFR or Appendix A (Standard Clauses for New York State Contracts) to 45 CFR Part 74, relating to:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60.
- b. Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/subgrants greater than \$2,000 must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit Contractors or Subrecipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 U.S.C. 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies,



materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

- e. Rights to Inventions Made under a Contract or Agreement- Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.
- f. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)- Contracts and subgrants in excess of \$100,000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- g. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- which requires that every Contractor under a contract for more than \$100,000 and every tier of Contractors or subcontractors there under shall file certification, as required, that said Contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)
- h. Debarment and Suspension. (Federal E.O.s 12549 and 12689)- Certain contracts shall not be awarded to Parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

## **12.20 Security, Information Security, Breach and Notification Act**

The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Contract. Contractor shall ensure that its personnel, agents, officers and any subcontractors are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. Disclosure of Crime Analysis Center(s) information developed by the State, the Offerer or their employees, subcontractors, partners or its agents is strictly prohibited. The Contract may be terminated by the State for cause for a material breach of this section.

### **12.20.1 Security Procedures & Employee Dishonesty**

Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State in performance of the Contract. Contractor shall hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors of such security procedures or resulting from any criminal acts committed by such officers, agents, employees, and subcontractors while providing services under the Contract.

#### **12.20.2 Information Security Breach and Notification Act, Indemnification of DCJS and Authorized Users for Breach of Security**

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures have been taken subject to approval of DCJS or such other applicable State agency to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation.

*State entities subject to Section 208 of the State Technology Law that experience breaches of computerized data which includes private information must file notices with the New York Attorney General; Department of State's Division of Consumer Protection; and the Office of Information Technology Services' Enterprise Information Security Office.*

*Section 899-aa of the General Business Law provides that persons or businesses conducting business in New York must disclose any breaches of computerized data which includes private information by notifying the offices of the New York Attorney General; the NYS Division of State Police; and the Department of State's Division of Consumer Protection.*

Information relative to the law and the notification process is available at: <http://its.ny.gov/eiso/breach-notification>

The New York State General Business Law § 899-aa provides in part that:

6. (a) whenever the attorney general shall believe from evidence satisfactory to him that there is a violation of this article he may bring an action in the name and on behalf of the people of the state of New York, in a court of justice having jurisdiction to issue an injunction, to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under article sixty-three of the civil practice law and rules. In such action the court may award damages for actual costs or losses incurred by a person entitled to notice pursuant to this article, if notification was not provided to such person pursuant to this article, including consequential financial losses. Whenever the court shall

determine in such action that a person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to ten dollars per instance of failed notification, provided that the latter amount shall not exceed one hundred fifty thousand dollars.

The remedies in Section 6(a) are in addition to any other lawful remedy and in addition to any other remedy available under the terms of the Contract executed between DCJS and the Contractor.

Offerers must agree to indemnify DCJS without limitation against any claims brought against DCJS by reason of a wrongful disclosure of confidential information attributed to the Offerer or any Offerer employee and will cooperate fully with DCJS and the Attorney General in defense of the claim.

The Contract executed between DCJS and the Contractor may be terminated by the State for cause for a material breach of this section, and the provisions of The New York State General Business Law § 899-aa shall survive the termination of this Agreement.

## **12.21 User Data is the Property of State of New York**

In the course of performance of its obligations pursuant to this RFP and any resulting Contract certain Contractor or Subcontractor personnel may be approved by appropriate authorities to have access to or come into possession of data and information which is the property of the State of New York or a CAC and data and information which is processed by or stored within DCJS or another Participating Agency of a CAC for the benefit of other entities. Such data may include fingerprint cards, criminal history information, employee and license application information, biometric identifiers, social security numbers, personally identifying information, photographs, palm prints and other data and information stored in electronic, optical or physical form including data and information concerning individuals and data and information concerning operations, processes, procedures and policies of DCJS, any Participating Agency of a CAC and other governmental entities.

All information concerning DCJS or other Participating Agency CAC or other governmental entities operations, procedures and policies shall be kept confidential by Contractor and any Subcontractor personnel and Contractor, and Subcontractor personnel shall comply with DCJS and State of New York administrative procedures and regulations concerning this requirement, or any CAC procedures in this area. Contractor shall ensure that Contractor and Subcontractor personnel take all steps required by DCJS or other Participating Agency of a CAC and the State of New York to protect confidential information. This may include execution of Non-Disclosure agreements as necessary by Contractor or Subcontractor personnel. It will require fingerprint and background checks of any selected candidates and any other Contractor or Subcontractor personnel with access to such information. The Contractor shall be responsible for assuring DCJS that it notifies its Contractor and Subcontractor personnel involved with the Contract of the provisions of this Section, and the Contractor shall require compliance with the provisions of this section by any Contractor or Subcontractor personnel performing or providing services to the Contractor in connection with this RFP and the resulting Contract.

The use of information obtained by Contractor and Subcontractor personnel in the performance of its duties under this Agreement shall be limited to purposes

directly connected with such duties. The Contractor and Subcontractor personnel do not acquire any ownership, right to use, title or any interest in any data or information which remains the property of DCJS or other Participating Agency of any CAC or the property of the entities for which DCJS or other Participating Agency of any CAC is processing or storing the data or information.

Contractor or any Subcontractor personnel, shall never remove any work papers or product from the DCJS premises except with the written consent of DCJS or any Participating Agency of a CAC. Contractor or any Subcontractor personnel shall never disclose, sell, publish, archive, make available in any form or summary any information of any kind obtained in connection with performance under this RFP and any resulting Master Agreement.

The provisions of this section shall survive the termination of this Agreement

## **12.22 Nondisclosure & Confidentiality**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its and Subcontractor, and any of their respective personnel shall maintain strict confidence with respect to any Confidential Information to which the Contractor Subcontractor, or any of their respective personnel have access. This representation shall survive termination of the Contract. For purposes of the Contract, all State or CAC information of which Contractor, Subcontractor, or their respective personnel becomes aware during the course of performing services for the State or any CAC shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- a. Information that is previously rightfully known to the receiving Party without restriction on disclosure;
- b. Information that becomes, from no act or failure to act on the part of the receiving Party, generally known in the relevant industry or is in the public domain; and
- c. Information that is independently developed by Contractor without use of Confidential Information of the State or any CAC.

Contractor shall hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, Subcontractor, or any of their respective personnel of such confidential information.

Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. If Contractor is intending to seek an exemption from disclosure of these materials under the Freedom of Information Law, the Contractor must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission, and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Offerer, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to Public Officers Law § 87(2). Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

### **12.23 Confidentiality of Criminal History Information**

- a. New York State law protects the privacy of criminal history records and other confidential information. The Contractor shall take all steps required by the State to protect confidential information. This may include, but not be limited to, execution of a Non-Disclosure Agreements as necessary and will require fingerprint and background checks of any selected candidates. The Contractor shall replace any personnel assigned to a CAC at the discretion of DCJS.
- b. The Contractor shall be responsible for assuring that it notifies its officers, agents and employees involved with the Contract of the provisions of this subsection. The Contractor shall be responsible for assuring that any Subcontracting agreement contains a provision that conforms to the provisions of this subsection.
- c. All oral or written public representations pertaining to the award of this Contract and also verbal or written public representations involving the State made by the Contractor during the life of the Agreement shall not be made without the prior written approval of an authorized representative of the State.
- d. The Contractor shall comply with administrative procedures and regulations concerning DCJS operations, procedures, and policies.
- e. The Contractor shall not send or permit to be sent to any location outside of the United States of America, any data and/or personal information about individuals obtained from work assignments involving any CAC or any data or information obtained from a participating law enforcement agency of any CAC or DCJS even if that data or information cannot be uniquely linked to a single person (e.g., DOB).

### **12.24 NYS Cyber Security Policy P03-002**

All information concerning DCJS' and CAC operations, procedures and policies shall be kept confidential by the Contractor and the Contractor shall comply with administrative procedures and regulations concerning these rules. The Contractor shall take all steps required by DCJS and the any CAC to protect confidential information.

Contractor must abide by the conditions set forth in the DCJS Non-Disclosure Agreement, Exhibit O.

As a result of the security issues associated with the services to be performed by the Contractor, the Contractor and any associates and/or subcontractors will be required to insure that all work is performed within the continental United States.

### **13.0 BIDDERS PROPOSAL SUBMISSION**

The Bidder must provide a response that clearly and precisely provides all of the information required by the Division on which to base the evaluation. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and to completeness and clarity of the content.

Proposals that do not comply with these instructions, or do not meet the full intent of all of the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed as non-responsive.

### 13.1. Organization of Proposal

To facilitate the evaluation process, the Bidder must organize its proposal into two distinct volumes as follows:

- Volume One – Technical Proposal
- Volume Two – Administrative/Financial Proposal

#### **1. Volume One – Technical Proposal Format**

Volume One should contain a table of contents with page numbers and each section should be tabbed as follows and include the below referenced documents properly completed, signed and notarized, where appropriate:

Tab 1 Attachment A - Mandatory Technical Requirements Response Form

Tab 2 Attachment B – Firm Information Form and Attestations (signed)

Tab 3 Attachment C - Staffing Services Placement Experience

Tab 4 Attachment D - Client Reference Response Form  
Bidders should submit a total of 3 references

Tab 5 Representative Sample Resumes  
Bidders should provide 1 representative sample resume for each title listed in Exhibit A

#### **2. Volume Two – Administrative/Financial Proposal Format**

Volume Two should contain a table of contents with page numbers and each section should be tabbed as follows and include the below referenced documents properly completed, signed and notarized, where appropriate:

##### Tab 1 Administrative Requirements

Attachment B	Firm Information Form (signed)
Attachment F	Formal Offer Letter – (signed and notarized)
Attachment G	Vendor Responsibility Questionnaire or file the Vendor Responsibility Questionnaire online via the New York State VendRep System (signed and notarized)
Attachment H	Non-Discrimination in Employment in Northern Ireland Statement (signed)
Attachment I	Non-Collusive Bidding Certification (signed)
Attachment J	Form A – Prime Contractor’s Planned Employment From Contract Start Date Through The End Of The Contract Term (signed)
Attachment J	Addendum Acknowledging Form B Reporting Requirements (signed and notarized)
Attachment K	Procurement Lobbying Forms 1, 2 and 3 (signed)
Attachment L	Encouraging Use of New York State Businesses in Contract Performance
Attachment M	ST-220-CA (signed and notarized)
Attachment N	DCJS Non-Disclosure Agreement (signed and notarized)

- Attachment O Non-Disclosure for Cyber Security Standards/Policy Agreement (signed and notarized)
- Attachment P MWBE Utilization Plan (signed)
- Attachment Q MWBE Staffing Plan (signed)
- Attachment R EEO Policy Statement (signed and notarized)
- Attachment T Use of Service-Disabled Veteran- Owned Business Enterprise in Contract Performance
- Offerer's Proposed Extraneous Terms, if any
- Offerer's request for Exemption from Disclosure, if any

Tab 2 Financial Requirements

- Attachment E Financial Response Form: Crime Analysis Centers Services

**13.2 Submission of Proposals**

The Bidder must submit six (6) bound paper copies, one (1) of which must contain original notarized signatures and be marked as "ORIGINAL", of Volume One and two (2) bound paper copies, one (1) of which must contain original notarized signatures and be marked as "ORIGINAL", of Volume Two. All volumes must be bound separately and clearly identified. To facilitate requests for information under the Freedom of Information Law, one (1) electronic copy of each submission shall also be submitted on a PC Compatible Windows Readable CD-ROM saved as Microsoft Word documents or Excel Spreadsheets. Separate CD-ROM submissions must be made for the Technical and for the Financial/Administrative Proposals. In the event of a discrepancy, the "ORIGINAL" hard copy shall govern.

Proposals must be received no later than the due date and time listed in the Calendar of Events. The Technical and the Administrative/Financial Volumes must be bound separately and clearly identified as such. All bids are to be packaged, sealed and submitted to the following:

**Mr. Sanford Fader  
Procurement Officer  
Office of Financial Administration  
New York State Division of Criminal Justice Services  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan St,  
Albany, NY 12210-8001**

All proposals must have a label on the outside of the package or shipping container outlining the following information:

**BID ENCLOSED**

Crime Analysis Consulting Services RFP#CJS2015-03 Bid Submission

Do not open until after 4:00 P.M. on , 2016

Label: "Administrative/Financial Proposal" or "Technical Proposal" (as applicable)

In the event that a package is not labeled properly as described in this section, the Division reserves the right to inspect the contents of the package(s) to determine the contents. The Bidder shall have no claim against the Division arising from such inspection and such inspection shall not affect the validity of the procurement. Notwithstanding, the Division's right to inspect the contents of the package(s), the Bidder assumes all risk of late delivery

associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

**Faxed or electronically transmitted proposals will not be accepted. Proposals received by the State after the proposal due date and time will be rejected.**

#### **14.0 EVALUATION AND SCORING METHOD**

Pursuant to Article XI of the New York State Finance Law, the basis for this contract Award is **best value**. A best value optimizes quality, cost and efficiency among responsive and responsible Bidders and is consistent with the best interests of the State of New York.

The Division evaluates proposals for goods and services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Throughout this process, the Division identifies Contractors who will best meet our needs and will be cost effective. The Division further intends that all proposals will be evaluated uniformly and consistently, ensuring Bidders an equal opportunity to be considered.

The State reserves the right to verify information presented in the proposal through the clarification process as well as interviews with key staff, including technical reference checks. The State reserves the right to reduce technical scores or to disqualify, as non-responsive, any firm based upon information brought to the attention of the State through such interviews or clarification process.

##### **14.1 Proposal Clarification**

The Division reserves the right to require a Bidder to provide clarification and validation of its proposal through any means the Division deems necessary. Failure of a Bidder to cooperate with the Division's effort to clarify or validate proposal information may result in the proposal being labeled as non-responsive and given no further consideration.

##### **14.2 References**

The Bidder is solely responsible for providing references who are readily available to be contacted by DCJS and will respond to reference questions. If DCJS is unable to contact any reference, the Bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded.

##### **14.3 Evaluation Process**

Proposals will be evaluated independently throughout all phases of the evaluation process. The Bidder's proposal will be evaluated as follows:

1. **Completeness Review**

After the bid opening, each proposal will be screened for completeness and conformance with requirements for bid submission as specified in Section 13.0 of this RFP. Proposals that do not meet the requirements as set forth in this RFP may be deemed nonresponsive and denied further consideration. Proposals meeting the requirements will proceed to the Mandatory Qualifying Technical Requirements Evaluation.



2. Mandatory Qualifying Technical Requirements Evaluation (Pass/Fail)

Bidder information provided on Attachments A and B will be reviewed to determine if the Bidder meets the mandatory qualifying technical requirements criteria as identified in Section 4.0 of this RFP.

3. Technical Evaluation (65 Points)

The Bidder is required to demonstrate quantitative and qualitative experience supplying resources. The technical evaluation will proceed concurrently and separately from the financial evaluation.

i. Resource Capacity

Bidder information provided on **Attachment C (Staffing Services Placement Experience)** will be evaluated and awarded points based on the depth and breadth of experience the Bidder has in providing resources in the categories of expertise and the skill sets required. DCJS prefers bidders with demonstrated experience supplying government or CAC staffing services.

ii. References

This part of the technical evaluation will be based on the Client Reference Questionnaire submissions obtained from the Bidder client references identified on the Bidder's **Attachment D**.

iii. Representative Sample Resumes

This part of the technical evaluation will be based on the representative sample resumes submitted for each title listed in Exhibit A. DCJS will evaluate and award points based on the quality of resources available through the bidder, as illustrated by the representative sample resumes.

4. Financial Evaluation (35 Points)

The Financial Evaluation will be evaluated independently by the Financial Evaluation Team and separately from the Technical Evaluation. The Financial Evaluation will be based on the Bidder's financial response provided on Attachment E (Financial Response Form, Crime Analysis Centers Services). For evaluation purposes, the bidder's score will be calculated by dividing the lowest Vendor Markup Rate of all bidders by the Vendor Markup Rate provided by the bidder being evaluated, and multiplying by 35.

5. Final Ranking/Contract Award

Contracts will be awarded to Bidders whose proposal(s) obtain the highest aggregate scores. The Division will award up to three (3) contracts. Bidder's scores from the Technical Evaluation and the Financial Evaluation will be totaled to produce a combined score. The proposals will be ranked based on the combined scores.

In the event that Bidders receive the same final score, the Division will use the following scores, in the order listed, to determine final ranking:

- The Bidder's Resource Capacity score.
- The Bidder's Reference score.
- The Bidder's Financial score.
- Determination by the Commissioner.

**DCJS reserves the right to award fewer than three (3) awards. The approved bid award(s) between the State and the successful Bidder(s) will not be binding until it has been approved in accordance with New York State's contract approval process.**

**ATTACHMENT A**

**Mandatory Technical Requirements Response Form**

Bidder's Name: \_\_\_\_\_

Complete this form as outlined in Section 4.1

**1. Staffing Services Placement**

- a. Longevity - In accordance with the qualifying criteria outlined in Section 4.1.1, your organization must currently be in the business of providing staffing services (as described in RFP Exhibit A) and must have provided such resources for a minimum of two (2) years within the last five (5) years from the date of issuance of the RFP. Provide the dates (in MM/YYYY format) your organization has been in the business of providing staffing services to meet this requirement:

\_\_\_\_\_  
Vendor Response: \_\_\_\_\_

- b. Capacity - Provide the number of individual staff placed (as described in RFP Exhibit A, within the last two (2) years from the date of issuance of the RFP: \_\_\_\_\_

(Do not count the same resource placed multiple times *unless* it was for a different engagement. Engagements are separate and distinct projects or agreements.)

Vendor Response: \_\_\_\_\_

**2. Experience – Government Clients**

- a. Provide two (2) government client references for whom the bidder provided resources within the last three (3) years from the date of issuance of the RFP. A government client means a recognized political subdivision such as a state, province, city, county, town, or an agency of the United States or Canadian government. Bidders that provide government clients from other jurisdictions or non-government clients will be disqualified.

**Government Client #1**

**1. Firm Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Dates Resources Provided (in MM/DD/YYYY format):**

\_\_\_\_\_

**Client Contact Name:**

\_\_\_\_\_

**Phone #** \_\_\_\_\_

**Fax #** \_\_\_\_\_

**E-mail address:**

\_\_\_\_\_

**Alternate Contact Name:**

\_\_\_\_\_

**Alternate Phone #** \_\_\_\_\_ **Fax**

**#** \_\_\_\_\_

**Alternate e-mail address:**

\_\_\_\_\_

**Type of Government entity:**

\_\_\_\_\_

**Government Client #2**

**1. Firm Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Dates Resources Provided (in MM/DD/YYYY format):**

\_\_\_\_\_

**Client Contact Name:**

\_\_\_\_\_

**Phone #** \_\_\_\_\_

**Fax #** \_\_\_\_\_

**E-mail address:**

\_\_\_\_\_

**Alternate Contact Name:**

\_\_\_\_\_

**Alternate Phone #** \_\_\_\_\_ **Fax**

**#** \_\_\_\_\_

**Alternate e-mail address:**

\_\_\_\_\_

**Type of Government entity:**

\_\_\_\_\_

**ATTACHMENT B**

**Firm Information Form and Attestations**

**Information Regarding the Firm**

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone #: \_\_\_\_\_ Web Address: \_\_\_\_\_

Federal ID number \_\_\_\_\_

**Primary Contact Concerning the Proposal Information**

Name: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

The contact person provided is expected to have responsibility for communications with the State, regarding the information provided in the bid. Any change in this designation must be submitted in writing to the State.

**Attestations**

The Bidder agrees to the following as outlined in RFP Section 4.2:

**1. Bidder assures pre-screening process is in place to ensure that only qualified candidates will be submitted.**

Yes  No

**2. The Bidder can respond rapidly and effectively to work assignment notification requests as stipulated in RFP Section 3.4; and**

Yes  No

**3. Resources assigned will not be unilaterally removed except for exceptional circumstances and that such circumstances will be reviewed by DCJS and a mutually acceptable transition plan will be agreed to.**

Yes  No

**4. The Bidder represents and warrants, that it is duly organized, validly existing, and authorized to do business in the State of New York.**

Yes  No



5. The Bidder represents and warrants that, as of the date of submission of its Proposal, the Bidder has completed, obtained, or performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the Services and that Bidder will, in order to perform said Services during the term of the Contract, if any, comply with any requirements imposed upon it by law during said Contract term. Bidder shall notify DCJS immediately in the event that there is any change in the above corporate status during the term of the Contract, if any.

Yes

No

**By signing this letter, I certify that I am authorized to bind the firm contractually.**

Name of Authorized Representative of the Firm:

\_\_\_\_\_

Title/Position of Authorized  
Representative of the Firm:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Date:

\_\_\_\_\_

**ATTACHMENT C**

**Staffing Services Placement Experience**

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**ATTACHMENT C: Staffing Services Placement Experience**

**Bidder's Name:** \_\_\_\_\_

**Please note that the Categories of Expertise and Skill Areas listed are not all-inclusive, but intended to demonstrate a vendor's experience with providing diverse Categories of Expertise and skill areas.**

A. Provide information in the following chart as required in Section 5.1. (Do not count the same staff placed multiple times unless it was for a different

<i>See explanations by number below</i>	1	2	3	4
	<b># Customers</b>	<b># Engagements</b>	<b># Staff placed with DCJS</b>	<b># Staff placed with government</b>
<b>Staff who meet the qualifications of the titles listed in Exhibit A</b>				

engagement.)

Explanations for Staffing Services Placement Experience

1. Provide the total number of customers within the last two (2) years, prior to the date of issuance of this RFP. Customers are companies, firms, or clients and not individuals.
2. Provide the total number of agreements/projects with customers within the last two (2) years prior to the date of issuance of this RFP.
3. Provide the aggregate # of staff placed with DCJS for all engagements within the last two (2) years prior to the date of issuance of this RFP. (Do not count the same staff placed multiple times unless it was for a different engagement.)
4. Provide the aggregate # of staff placed with government for all engagements within the last two (2) years prior to the date of issuance of this RFP. (Do not count the same staff placed multiple times unless it was for a different engagement. Also, do not count staff that was placed with DCJS.)

**ATTACHMENT D**

**Client Reference Response Form**

**Bidder's Name:** \_\_\_\_\_

Complete this form as requested in Section 5.2. Bidders must provide at least three (3) client references, who meet the requirements of Section 5.2.

**Client Reference #1**

**1. Firm Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Web Address** \_\_\_\_\_

**e-mail address:** \_\_\_\_\_

**Project/Services Description:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Description of Your Firm's Role and Responsibility on the Engagement:**  
\_\_\_\_\_  
\_\_\_\_\_

**Client Reference #2**

**2. Firm Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

\_\_\_\_\_

**Contact Name:**

\_\_\_\_\_

**Phone Number:**

\_\_\_\_\_

**Web Address**

\_\_\_\_\_

**e-mail address:**

\_\_\_\_\_

**Project/Services Description:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Description of Your Firm's Role and Responsibility on the Engagement:**

\_\_\_\_\_

\_\_\_\_\_

**Client Reference #3**

**3. Firm Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

\_\_\_\_\_

**Contact Name:**

\_\_\_\_\_

**Phone Number:**

\_\_\_\_\_

**Web Address**

\_\_\_\_\_

**e-mail address:**

\_\_\_\_\_

**Project/Services Description:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Description of Your Firm's Role and Responsibility on the Engagement:**

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT E**

**Financial Response Form  
Crime Analysis Centers Services**



**Bidder's Name:** \_\_\_\_\_

**Vendor markup percentage**

DCJS intends to compensate vendors for their services by allowing a percentage markup rate, to be applied to staffing service costs only-

In response to this RFP, the Bidder must propose a vendor markup percentage, which will be applied to the hourly salary offered to each staff.

\*Please refer to Exhibit A for the titles and proposed salary ranges, as well as the estimated 40% Fringe Benefit costs.

Vendor's Markup Rate \_\_\_\_\_%  
(express as a percentage, please use 2 decimal places) e.g: 10.25

**Important Note to Bidders: FOR DEMONSTRATION PURPOSES ONLY**

In order to ensure bidders are familiar with the calculation methodology to be used, the following examples are provided:

***If the invoice is for services plus markup, it would be calculated as:***

Staff Services	\$100/hr * 10 hours	= \$1,000
Vendor Markup percentage @ 1%		= \$ <u>10</u>
Total Invoice		= \$1,010

***If the invoice involved travel costs, it would be calculated as:***

Staff Services	\$100/hr * 10 hours	= \$1,000
Vendor Markup percentage @ 1%		= \$ <u>10</u>
Subtotal Invoice		= \$1,010
Travel Costs (itemized below):		
Lodging		= \$ 100
Transportation		= \$ <u>300</u>
Subtotal Travel		= \$ 400

Total Invoice (services, markup plus travel): = \$1,410

**ATTACHMENT F**

**Formal Offer Letter**

[TO BE COMPLETED ON OFFERER'S LETTERHEAD]

Date

Mr. Sanford Fader  
Procurement Officer, Office of Financial Administration  
New York State Division of Criminal Justice Services  
Alfred E. Smith Office Building 10<sup>th</sup> Floor  
80 S. Swan St,  
Albany, New York 12210

Dear Mr. Fader:

**RE: Crime Analysis Consulting Services RFP #CJS2015-03**  
**Formal Offer to the State of New York**

**[INSERT OFFERER NAME]** hereby submits this firm and binding offer to the State of New York in response to New York State Request for Proposals (RFP) #CJS2015-03 by the New York State Division of Criminal Justice Services for Crime Analysis Centers Staffing Services. The Bid Proposal hereby submitted meets or exceeds all terms, conditions and requirements set forth in the above-referenced RFP. This formal offer will remain firm and non-revocable for a minimum period of one (1) year from the date proposals are due to be received by the State, or until a Contract is approved by the NYS Comptroller and executed by the State.

**[INSERT OFFERER NAME]**'s complete offer is set forth in two, separately bound volumes as follows:

Technical Proposal: Total of 6 hard copy volumes, with 1 electronic copy on PC Compatible Windows Readable CD-ROMs saved as Microsoft Word documents or Excel Spreadsheets.

Financial/Administrative Proposal: Total of 2 hard copy volumes, with 1 electronic copy on PC Compatible Windows Readable CD-ROMs saved as Microsoft Word documents or Excel Spreadsheets.

**[INSERT OFFERER NAME]** hereby affirms that, at the time of bid submission, Offerer knows of no factors existing at time of bid submission or which are anticipated to arise during the procurement or Contract term, which would constitute a potential conflict of interest in successfully meeting the contractual obligations set forth in the above-referenced RFP and the Bid Proposal hereby submitted, including but not limited to:

1. No potential for conflict of interest on the part of the Offerer or any Subcontractor due to prior, current, or proposed contracts, engagements, or affiliations; and
2. No potential conflicts in the sequence or timing of the proposed award under this procurement relative to the timeframe for service delivery, or personnel or financial staffing commitments of Offerer or proposed subcontractors to other projects.

To comply with the Vendor Responsibility Requirements outlined in Section 7.2 of the above-referenced RFP, **[INSERT OFFERER NAME]** hereby affirms that () (check one of the lines below):

- ↑ An on-line Vendor Responsibility Questionnaire has been updated or created within the last six months, at the Office of the State Comptroller's website:

<https://portal.osc.state.ny.us/wps/portal>

- ↑ A hard copy Vendor Responsibility Questionnaire is included with this proposal and is dated within the last six months.
- ↑ A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental agencies, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

By signing, the undersigned individual affirms and represents that he has the legal authority and capacity to sign and make this offer on behalf of, and has signed using that authority to legally bind **[INSERT OFFERER NAME]** to the offer, and possesses the legal capacity to act on behalf of Offerer to execute a Contract with the State of New York.

---

Signature  
**[INSERT OFFERER NAME]**  
**[INSERT TITLE]**  
**[INSERT COMPANY NAME]**

Corporate Seal

**CORPORATE ACKNOWLEDGEMENT**

<b>STATE OF</b>	}
	<b>:ss.:</b>
<b>COUNTY OF</b>	}
On the _____ day of _____ in the year 20__ , before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.	
<b>Signature and Office of Person Taking Acknowledgement</b>	

**PARTNERSHIP ACKNOWLEDGEMENT**

<b>STATE OF</b>	}
	<b>:ss.:</b>
<b>COUNTY OF</b>	}
On the _____ day of _____ in the year 20__ , before me personally came: _____ to me known, who, being by me duly sworn, did depose and say that he reside(s) in _____; that he is _____ (the General/Managing Partner or other officer or attorney in fact duly appointed) of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.	
<b>Signature and Office of Person Taking Acknowledgement</b>	

**INDIVIDUAL ACKNOWLEDGEMENT**

**STATE OF**

}

:ss.:

**COUNTY OF**

}

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_ , before  
me personally appeared:

\_\_\_\_\_, known to me to be  
the person who executed the foregoing instrument, who, being duly sworn by me did depose  
and say that \_he resides at \_\_\_\_\_, Town  
of \_\_\_\_\_,  
County of \_\_\_\_\_, State of \_\_\_\_\_; and that \_he  
executed the foregoing instrument in his/her name and on his/her own behalf.

\_\_\_\_\_  
**Notary Public**

**ATTACHMENT G**

**Vendor Responsibility Questionnaire**

You have selected the For-Profit Non-Construction questionnaire, which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

### COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

### NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us) or call 866-370-4672.

### DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at [www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf). These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

### RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

### REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

### ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

### STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.



I. LEGAL BUSINESS ENTITY INFORMATION			
Legal Business Entity Name <sup>a</sup>		EIN	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		New York State Vendor Identification Number	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , <u>Other Identity</u> , or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u> )		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u> )		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No,' indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate</u>			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," Enter <u>DUNS</u> Number			

<sup>a</sup> All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at [www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf).

**I. LEGAL BUSINESS ENTITY INFORMATION**

1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?  
(Select "N/A," if Principal Place of Business is in New York State.)

Yes    No  
 N/A

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?  
If "Yes," check all that apply:

Yes    No

New York State certified Minority-Owned Business Enterprise (MBE)  
 New York State certified Women-Owned Business Enterprise (WBE)  
 New York State Small Business (SB)  
 Federally certified Disadvantaged Business Enterprise (DBE)

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership (Enter 0% if not applicable)

**II. REPORTING ENTITY INFORMATION**

2.0 The Reporting Entity for this questionnaire is:  
 Note: Select only one.  
 Legal Business Entity  
*Note: If selecting this option, "Reporting Entity" refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*  
 Organizational Unit within and operating under the authority of the Legal Business Entity  
 SEE DEFINITIONS OF "REPORTING ENTITY" AND "ORGANIZATIONAL UNIT" FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.  
*Note: If selecting this option, "Reporting Entity" refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the <u>Primary Place of Business</u> (street, city, state, zip code)	Telephone  ext.
---	-----------------------

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?  Yes  No

If "Yes," enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.  
*For each person, include name and title. Attach additional pages if necessary.*

Name	Title

## INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

<b>III. LEADERSHIP INTEGRITY</b> <i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” explain:	

<b>IV. INTEGRITY – CONTRACT BIDDING</b> <i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise</u> or <u>Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

**V. INTEGRITY – CONTRACT AWARD***Within the past five (5) years, has the reporting entity:*

5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes," explain:	

**VI. CERTIFICATIONS/LICENSES***Within the past five (5) years, has the reporting entity:*

6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes," explain:	

**VII. LEGAL PROCEEDINGS***Within the past five (5) years, has the reporting entity:*

7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes," explain:	

## VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens or judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**IX. ASSOCIATED ENTITIES**

***This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.***

***(See definition of “associated entity” for additional information to complete this section.)***

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> <li>- An <u>Organizational Unit</u>; or</li> <li>- The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies).</li> </ul> <p>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> <li>a) Any business-related activity; or</li> <li>b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?</li> </ul>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the <u>Associated Entity</u>, his/her relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s).</p>	
<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$50,000?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>If “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity’s</u> name(s), <u>EIN(s)</u>, primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government contract</u>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u>, New York State, New York City, or</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

**IX. ASSOCIATED ENTITIES**

***This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.***

***(See definition of “associated entity” for additional information to complete this section.)***

For each “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

Yes  No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

If “Yes,” indicate the question number(s) and explain the basis for the claim.

**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone ext.	Fax
Title	Email	



## Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

is knowledgeable about the submitting Business Entity's business and operations;  
has read and understands all of the questions contained in the questionnaire;  
has not altered the content of the questionnaire in any manner;  
has reviewed and/or supplied full and complete responses to each question;  
to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;  
understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity;  
and is under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

\_\_\_\_\_ Notary Public

**ATTACHMENT H**

**Non-Discrimination in Employment in Northern Ireland Statement**

State Finance Law §165 requires that before entering into certain State contracts, persons or entities must certify that they either have no business operations in Northern Ireland or that such business operations will be conducted in accordance with the MacBride Fair Employment Principles. Please answer the following questions and return form with your bid or contract.

1. Does the Offerer or any individual or legal entity in which the Offerer holds a 10 percent or greater ownership interest, or any individual or legal entity that holds a 10 percent or greater ownership interest in the Offerer, have any business operations in Northern Ireland?

No

Yes

2. If yes, does the Offerer certify that it shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles, relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and that it shall permit independent monitoring of their compliance with such Principles?

No

Yes

By: \_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Title (Please print)

\_\_\_\_\_  
Offerer

\_\_\_\_\_  
Date

**ATTACHMENT I**

**Non-Collusive Bidding Certification**

**REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

**BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

(1) The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

(3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE (1), (2), AND (3) ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ as the act and deed of said corporation or partnership

**IF BIDDER(S) IS (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**IF BIDDER(S) IS (ARE) A CORPORATION, COMPLETE THE FOLLOWING:**

NAME

LEGAL RESIDENCE

\_\_\_\_\_  
President:

\_\_\_\_\_  
Secretary:

\_\_\_\_\_  
Treasurer:

**IDENTIFYING DATA:**

Potential  
Contractor

Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Title

**If applicable, Responsible Corporate Officer**

Name

Title

Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant**

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By

\_\_\_\_\_  
Name

By

\_\_\_\_\_  
Name

Title

Title

Address

Address

\_\_\_\_\_  
City

State

Zip

\_\_\_\_\_  
City

State

Zip

**ATTACHMENT J:  
OSC Contractor and Consultant Disclosure Forms**

**Form A:  
State Consultant Services –Contractor’s Planned Employment**

**Addendum Acknowledging Form B**

**Form B:  
Contractor’s Annual Employment Record**

## Consultant Disclosure Forms

State Finance Law §163(4)(g) requires the selected Offerer to complete and submit an initial planned employment data report and an annual employment report regarding the number of persons employed to provide services under the contract, the number of hours worked and the amount paid to the Contractor by the State. It includes all employees providing services whether employed by the Prime Contractor or a subcontractor. Form A – Contractor’s Planned Employment From Contract Start Date Through The End Of The Contract Term and Form B – Contractor’s Annual Employment Report are attached for you reference.

Form A captures planned employment information. Form B will be submitted each year that the contract is in effect and will detail employment data for the most recent concluded State fiscal year (April 1 – March 31). The first Form B must be submitted by the ensuing May 15<sup>th</sup> following the current State fiscal year ending March 31, to the Division of Criminal Justice Systems, the NYS Office of the State Comptroller and the NYS Department of Civil Service. Instructions and addresses are attached.



## Instructions

### State Consultant Services

Form A: Contractor's Planned Employment

And

Form B: Contractor's Annual Employment Report

Form A - Contractor's Planned Employment Form must be submitted as part of any winning Offerer's bid response before it can be submitted to the Office of the State Comptroller for approval. DCJS will coordinate with the winning Offerer(s) to complete this form.

Form B - Contractor's Annual Employment Report. Offerer/ Contractor agrees to annually submit Form B each year that the contract is in effect and will detail employment data for the most recent concluded State fiscal year (April 1 – March 31). Instructions for these forms follow. Form B must be submitted by May 15<sup>th</sup> of each year to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service. The Offerer/ Contractor agrees to simultaneously report such information to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service as designated below:

NYS Division of Criminal Justice Services  
Attn: Office of Financial Services, 10<sup>th</sup> Floor  
Alfred E. Smith Office Building  
80 South Swan Street  
Albany, NY 12210-8001

NYS Office of the State Comptroller  
Bureau of Contracts  
Attn: Consultant Reporting  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

NYS Department of Civil Service  
Attn: Consultant Reporting  
Empire State Plaza  
Swan Street Bldg. 1  
Albany, NY 12210

## INSTRUCTIONS FOR COMPLETING FORM A AND B

**Form A** - Contractor's Planned Employment Form (available from and submitted to DCJS, the contracting issuing agency, as necessary)

**Form B** - Contractor's Annual Employment Report (To be completed by May 15th of each year for each consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the Department of Civil Service, Office of the State Comptroller and procuring agency.)

- **Scope of Contract:** choose a general classification of the single category that best fits the predominate nature of the services provided under the contract.

**Employment Category:** enter the specific occupation(s), as listed in the O\*NET occupational classification system, which best describes the employees providing services under the contract. (*Note*

*Access the O\*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.*)

- **Number of Employees:** enter the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- **Number of Hours:** enter the total number of hours worked during the report period by the employees in the employment category.

- **Amount Payable under the Contract:** enter the total amount paid by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the report period.

**FORM A**

<b>OSC Use Only:</b> Reporting Code: Category Code: Date Contract Approved:
--

<b>State Consultant Services - Contractor's Planned Employment</b> From Contract Start Date Through The End Of The Contract Term
---

State Agency Name: <u>Division of Criminal Justice Services</u> Agency Code: <u>01490</u>
Contractor Name: _____ Contract Number: _____
Contract Start Date: _____ Contract End Date: _____

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract

Name of person who prepared this report: _____
Title: _____ Phone #: _____
Preparer's Signature: _____
Date Prepared: _____

(Use additional pages, if necessary) Page of

**ADDENDUM ACKNOWLEDGING FORM B**

Pursuant to State Finance Law §163(4)(g), Vendor agrees to annually submit Form B, State Consultant Services Contractor’s Annual Employment Report to DCJS, the NYS Office of the Comptroller and NYS Department of Civil Service. A copy of Form B and instructions are attached.

The State Consultant Services Contractor’s Annual Employment Report (Form B) must be submitted each year the contract is in effect and will capture actual employment data for the most recently concluded fiscal year April 1, 20\_\_ to March 31, 20\_\_. The first report is due May 15, 2016\_\_ and thereafter May 15<sup>th</sup> of each year.

The Vendor agrees to simultaneously report such information to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service as designated below:

NYS Division of Criminal Justice Services Attn: Office of Financial Services, 10 <sup>th</sup> Floor Alfred E. Smith Building 80 South Swan Street Albany, NY 12210-8001	Office of the State Comptroller Bureau of Contracts 110 State Street, 11 <sup>th</sup> Floor Albany, NY 12236 Attn: Consultant Reporting  By fax: (518) 474-8030 or (518) 473-8808	NYS Department of Civil Service Attn: Consultant Reporting Empire State Plaza Swan Street Bldg. 1 Albany, NY 12210
--	---	--

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name (Please print)

\_\_\_\_\_  
 Title (Please print)

**ACKNOWLEDGEMENT CLAUSE**

State of New York)  
 ) ss.:  
 County of Albany)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who being duly sworn, deposes and says that (s)he is the \_\_\_\_\_ of the \_\_\_\_\_, the entity which executed the instrument; that (s)he was authorized by and did execute the same at the direction of said entity and that (s)he signed his/her name thereto.

\_\_\_\_\_  
 Notary Public

**ATTACHMENT K**

**Division of Criminal Justice Services Summary of Policy and Prohibitions on  
Procurement Lobbying**

**Division of Criminal Justice Services Procurement Lobbying Guidelines**

**Procurement Lobbying Submissions**

**Form 1: Offerer's Affirmation of Understanding of an Agreement Pursuant to  
State Finance Law §139-j (3) and §139-j (6) (b)**

**Form 2: Offerer's Disclosure of Prior Non-Responsibility Determinations**

**Form 3: Offerer's Certification of Compliance with State Finance Law §139-k  
(5)**

## **Attachment K**

### **Division of Criminal Justice Services Summary of Policy and Prohibitions on Procurement Lobbying**

#### **Background:**

State Finance Law §139-j(6) requires that a Governmental Entity incorporate a summary of its policy and prohibitions regarding permissible Contacts during a covered procurement.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. DCJS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at the OGS website:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

#### **Mandatory Submissions:**

The Division of Criminal Justice Services’ Procurement Lobbying Guidelines are attached. The Offerer/Bidder must affirm that it understands and agrees to comply with DCJS’ procedures relative to the State Finance Law § 139-j (3) and § 139-j (6) (b) by completing and submitting Form 1 to the DCJS Procurement Lobbying Guidelines.

The Offerer/Bidder must also complete and submit Form 2 to the DCJS Procurement Lobbying Guidelines, the “Offerer Disclosure of Prior Non-Responsibility Determinations” and Form 4, “Offerer’s Certification of Compliance with State Finance Law §139-k (5).

## I. INTRODUCTION

These Guidelines, which have been issued pursuant to the New York State Finance Law, apply to all Division of Criminal Justice Services' ("DCJS") procurement contracts and limit certain types of communications between Offerers and DCJS during the Restricted Period of a Governmental Procurement. During the Restricted Period, an Offerer may communicate only with the person or persons designated by DCJS to receive communications regarding such Governmental Procurement.

## II. STATUTORY DEFINITIONS

### Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, or the purchase, sale or lease of real property or an acquisition or granting of an interest in real property that is the subject of a governmental procurement.

### Contact

Any oral, written or electronic communication with DCJS under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement.

### Governmental Entity

Includes New York State agencies, public benefit corporations, public authorities of which at least one member is appointed by the Governor, both houses of the New York State Assembly and Senate, the Unified Court System, and certain Industrial Development Agencies.

### Governmental Procurement

(i) the preparation of terms of the specifications, bid documents, requests for proposals, or evaluations criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Offerer.

### Offerer

The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that contacts DCJS about a **Governmental Procurement**.

### Procurement Contract

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, Article Eleven-B State Finance Law Contracts, Intergovernmental Agreements, Railroad and Utility Force Accounts, Utility Relocation Project Agreements or Orders of Eminent Domain Transactions shall not be deemed **Procurement Contracts** in these Guidelines.

## **Restricted Period**

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with DCJS and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

## **III. EXEMPTIONS**

While an **Offerer** shall only contact the person or persons who may be contacted by **Offerers** as designated by the governmental entity relative to the government procurement during the restricted period, certain communications are exempt from these Guidelines. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

## **IV. NEW YORK STATE LEGISLATURE OR LEGISLATIVE STAFF**

Any communication received by DCJS from members of the New York State Legislature or legislative staff, when acting in their official capacity, shall not be considered a **Contact**.

## **V. VIOLATIONS**

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by DCJS to receive communications for the particular **Governmental Procurement**. This includes instances where the **Offerer Contacts** DCJS regarding **Governmental Procurements** of other **Governmental Entities**.

Attempts by an **Offerer** to influence a **Governmental Procurement** in a manner that would result in a violation of the Public Officers Law or Penal Law also shall also be a violation of these Guidelines.



## VI. PROCEDURES

### A. Notifying Vendors of Procurement Lobbying Guidelines

1. For each **Procurement Contract**, the DCJS Finance Office will designate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.
2. The DCJS Finance Office will incorporate a summary of the policy and prohibitions regarding permissible communications during a **Governmental Procurement** in its documents relating to the **Procurement Contract** and provide a copy of these Guidelines in such documents.
3. The DCJS Finance Office shall seek written affirmation from all **Offerers** as to the **Offerer's** understanding of and agreement to comply with these Guidelines (Form 1).

### B. Making Determinations of Responsibility

1. Prior to award of a **Procurement Contract**, DCJS must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**. The **Offerer** must disclose, using the **Offerer** Disclosure of Prior Non-Responsibility Determinations Form (Form 2), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law §139-j; or (2) the intentional provision of false, inaccurate or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to DCJS is complete, true and accurate.
2. Any **Procurement Contract** award shall contain a certification by the **Offerer** that all information provided to DCJS is complete, true and accurate. Each DCJS contract shall contain a provision authorizing DCJS to terminate the contract in the event the certification is found to be intentionally false, intentionally incomplete, or intentionally inaccurate. DCJS will include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by DCJS. DCJS shall include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision. DCJS can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Articles of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

C. Recording of **Contacts**

1. All DCJS employees must record any **Contact**. As defined, a **Contact** is one from any person or entity that is intended to influence procurement. However, any communication received by DCJS from members of the New York State Legislature, or the Legislative Staffs, when acting in their official capacity, shall not be recorded.
2. Upon any **Contact** during the restricted period, DCJS shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and inquire and record whether the person or organization making such contact was the **Offerer** or was retained, employed or designated by or on behalf of the offerer to appear before or contact DCJS about the governmental procurement. **Contact** may be initiated by parties with an interest in the procurement that are not necessarily connected directly to the **Offerer**. **Contact** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Procurement Contact Form (Attachment 3) should be used to record **Contacts**. The form is available on the DCJS Intranet homepage under "Policies and Procedures," "Record of Procurement Contact." The form should be completed by the DCJS employee and e-mailed to "dcjs.sm.procurement.law" an e-mail account on the DCJS internal e-mail system. This e-mail account will send the form to both the DCJS Finance Office and the DCJS Ethics Officer.
3. The exempted communications set forth in Article III need not be reported unless a reasonable person would infer that the communications were intended to influence the procurement.
4. If a DCJS employee is in doubt about whether a communication was intended to influence the **Governmental Procurement**, he or she should record the communication on the Record of Procurement Contact Form and submit it to dcjs.sm.procurement.law for further investigation.
5. The DCJS Finance Office will be required to include all Records of Procurement Contact in the procurement record for the related **Procurement Contract**.

D. Investigation of Contacts/ Penalties for Violations

1. All reported Contacts will be immediately investigated by the DCJS Ethics Officer, or his or her designee. If the DCJS Ethics Officer finds sufficient cause to believe that an Offerer has violated these Guidelines, the Offerer will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the Governmental Procurement.

2. If the DCJS Ethics Officer should find at the conclusion of the investigation that the Offerer knowingly and willfully made prohibited Contact in violation of these Guidelines, then the Offerer shall be disqualified as non-responsible, unless DCJS makes a finding that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health or safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

## **Procurement Lobbying Submissions**

- Form 1: Offerer's Affirmation of Understanding of an Agreement Pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**
- Form 2: Offerer's Disclosure of Prior Non-Responsibility Determinations**
- Form 3: Offerer's Certification of Compliance with State Finance Law §139-k (5)**

**Background:**

State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

**Instructions:**

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts during the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. This affirmation shall be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid.

I hereby affirm that I have read, understand and agree to comply with the Division of Criminal Justice Services' procedures related to permissible Contacts during a Governmental Procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ (Please print)

Title: \_\_\_\_\_ (Please print)

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Background:**

New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

**Instructions:**

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

As an alternative to this form, the Governmental Entity may elect to incorporate this disclosure question into its procurement questionnaire, such as the New York State Standard Vendor Responsibility Questionnaire set out at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>.

**Name of Individual or Entity Seeking to Enter into the Procurement Contract:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Name and Title of Person Submitting this Form:**

\_\_\_\_\_

**Contract Procurement Number:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

\_\_\_\_\_

Date of Finding of Non-responsibility:

\_\_\_\_\_

Basis of Finding of Non-Responsibility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract:

\_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_ (Please print)

Title: \_\_\_\_\_ (Please print)



**Background:**

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

**Instructions:**

A Governmental Entity must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity

The Offerer/Bidder shall submit the following certification with its bid.

Offerer Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ (Please print)

Title: \_\_\_\_\_ (Please print)

Offerer's Name:  
\_\_\_\_\_

Offerer's Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT L**

**Encouraging Use of New York State Businesses in Contract  
Performance**

**ENCOURAGING USE OF  
NEW YORK STATE BUSINESSES IN  
CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this Contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State Contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its Contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this Contract? Yes No

If yes, identify New York State businesses that will be used and attach identifying information

**ATTACHMENT M**

**Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification**

**Questions and Answers  
Concerning  
Tax Law Section 5-a  
(as amended, effective April 26, 2006)**

**Contractor, Affiliate and  
Subcontractor Sales and  
Compensating Use Tax  
Certification**

*Note: Although accurate, some of the definitions given in this publication have been simplified. If there is any discrepancy between the definitions of the terms in this publication and applicable New York law or regulations, then the law and regulations will govern.*

1) Q: What does Tax Law section 5-a require?

A: The statute requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring state entity that they filed the certification with the Tax Department and that it is correct and complete.

2) Q: What is the purpose of section 5-a?

A: The statute's aim is to ensure that contractors do not get state work unless they, their affiliates and their subcontractors are, when required by section 5-a, registered to collect New York State and local sales and compensating use taxes. Included within the statute's scope are out-of-state businesses making sales of more than \$300,000 into New York but having no physical presence in the state. Other businesses, if affiliated with, or subcontractors of, a bidder for a state contract, would similarly have to consent to registration as a condition of the contractor's obtaining state work, providing the affiliate's or subcontractor's sales exceed the \$300,000 sales threshold.

3) Q: Under what circumstances does section 5-a apply?

A: A contract is covered by section 5-a if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Q & A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Q & A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000, and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Q & A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

If all of the above criteria are met, amended section 5-a is applicable and, as general matter, two certifications (Forms ST-220-CA and ST-220-TD) are required to be filed. These forms are available at [www.nystax.gov](http://www.nystax.gov).

If any of the above criteria are not met, amended section 5-a is not applicable and no certifications (no forms) are required to be filed.

4) Q: Are any contracts expressly exempted from application of section 5-a?

A: Yes. A contract will be exempted from application of section 5-a if the procuring covered agency and OSC, or other contract reviewer if OSC is not required to approve the contract, find in writing that the contract is necessary to:

- (a) address an emergency, within the meaning of Article 11 of the State Finance Law<sup>1</sup>; or
- (b) ensure the public health, safety, or welfare when an urgent event with a compelling public purpose arises.

In addition, the agency's and contract reviewer's written finding must explain the reasons supporting the determination.

5) Q: What governmental entities are *covered agencies* for purposes of Tax Law section 5-a?

A: Tax Law section 5-a defines a *covered agency* to mean:

- a *state agency* for purposes of Article 11 of the New York State Finance Law; or
- a public authority or public benefit corporation at least one of whose members is appointed by the Governor.

For purposes of Article 11 of the New York State Finance Law, the term *state agency* includes all state departments, boards, commissions, offices or institutions. As such, the Department of Law, Office of the State Comptroller and the Education Department are included. Local government entities are **not** covered agencies for purposes of section 5-a.

<sup>1</sup> An *emergency* within the meaning of the State Finance Law is "an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk."

6) Q: Who is a *contractor* for purposes of section 5-a?

A: The statute defines a *contractor* as a person awarded a contract by a covered agency. The term *person* is defined as an individual, partnership, limited liability company, society, association, joint stock company or corporation.

The term *person* does **not** include a public corporation or an education corporation, as such terms are defined in section 66 of the New York State General Construction Law, a not-for-profit corporation whose contracts are subject to approval in accordance with Article 11-B of the New York State Finance Law, a board of cooperative educational services created pursuant to Article 40 of the New York State Education Law, or a soil and water conservation district created pursuant to section 5 of the New York State Soil and Water Conservation Districts Law.

As defined in the New York State General Construction Law:

- The term *public corporation* includes a municipal corporation, a district corporation and a public benefit corporation.
- A *municipal corporation* includes a county, city, town, village and school district.
- A *district corporation* includes any territorial division of the state, other than a municipal corporation, established by law, which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.
- A *public benefit corporation* is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of New York State or other states, or to the people thereof.
- As defined in the New York State General Construction Law and the New York State Education Law, the term *education corporation* means a corporation
  - chartered or incorporated by the Board of Regents of the University of the State of New York or otherwise formed under the New York State Education Law, or
  - formed by a special act of New York State with its principal purpose an education purpose and which is a member of the University of the State of New York, or
  - formed under laws other than the statutes of New York State which, if it were to be formed currently under the laws of New York State, might be chartered by the Board of Regents of the University of the State of New York, and which has been authorized to conduct its activities in this state by the Regents or as an authorized foreign education corporation with the consent of the New York State Commissioner of Education.

7) Q: When does award of a contract occur for purposes of section 5-a?

A: A contract is awarded when the procuring covered agency notifies a person either orally or in writing that the person has been selected to provide the commodities or perform the services being procured. The certifications required by section 5-a are only required to be filed by the person awarded a contract.

8) Q: What contracts let by covered agencies are subject to section 5-a?

A: The statute defines the term *contract* as an agreement between a contractor and a covered agency for the purchase by the covered agency, pursuant to Article 11 of the New York State Finance Law, of commodities or services having a value in excess of \$100,000. The statute also expressly includes within the definition of *contract* centralized contracts with values in excess of \$100,000.

The definition of *contract* in section 5-a is broad enough to include, but is not limited to, the following types of contracts:

- backdrop contracts;
- single source contracts;
- sole source contracts;
- multiple award contracts;
- piggybacking contracts;
- strategic partnership procurement contracts; and
- contracts for the state.

#### Definitions

The term *commodities* has the meaning given by Article 11 of the New York State Finance Law, and includes (other than with respect to contracts for state printing) material goods, supplies, products, construction items, or other standard articles of commerce, other than technology, which are the subject of any purchase or other exchange.

The term *services* has the meaning given by Article 11 of the New York State Finance Law. *Services* means (other than with respect to contracts for state printing) the performance of a task or tasks, and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For Article 11 purposes, *services* includes technology.<sup>2</sup> The term *services* does **not** apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article 11-B of the New York State Finance Law.

9) Q: Is a contract for information technology (IT) services subject to Tax Law Section 5-a?

A: Yes, assuming the criteria identified in Q & A 3 are met. When an IT service contract is awarded to a contractor, the section 5-a certifications must be made on Forms ST-220-CA and ST-220-TD irrespective as to whether the contractor is providing (1) only custom software, (2) only hardware and pre written off-the-shelf software, or (3) a combination of (1) and (2).

On Form ST-220-TD, a certification is made by the contractor as to whether the contractor, an affiliate(s) and/or subcontractor(s) made sales in New York State of *tangible personal property* (TPP) or *taxable services*, as set forth under the Tax Law, that exceeded \$300,000 over a certain look-back test period. If such sales threshold is met, then a certification is made that the contractor, affiliate(s) and/or subcontractor(s) is (are) registered to collect sales tax in New York. If the threshold is not met, then the contractor marks the box on Form ST-220-TD indicating that fact.

Pre written computer software (including software delivered electronically) and computer hardware constitute TPP for sales tax purposes, and therefore, are counted towards the \$300,000 New York sales threshold. In contrast, custom software (which is computer software designed to the specifications of a specific purchaser) is **neither** TPP nor a taxable service. Thus, the amount of sales derived from custom software is **not** counted towards this \$300,000 sales tax threshold.

**Example:**

*A contractor made sales in New York State valued at \$1,000,000 during the test period specified in section 5-a of only custom software, which is neither TPP nor a taxable service. Under such circumstances the contractor would certify on Form ST-220-TD that it did not meet the \$300,000 sales threshold by marking the bottom box in Section 1 of the form. Although total sales exceeded \$300,000, custom software does not fit the criteria of being TPP or taxable services and cannot be counted toward the \$300,000 sales threshold.*

*However, if the contractor also made sales of pre-written computer software (TPP) in the amount of \$500,000 during the same look-back test period, then the contractor must certify that it was registered to collect sales tax in New York. Accordingly, the contractor must mark the first box in Section 1 on Form ST-220-TD.*

Under both scenarios above, the contractor must also certify to the procuring agency on Form ST-220-CA that it also filed Form ST-220-TD with the Tax Department.

10) Q: What contract types are excluded from the definition of *contract* under section 5-a?

A: The following are not included within the definition of *contract* in section 5-a:

- contracts based on formal mini-bid solicitations pursuant to centralized contracts;
- grants;
- revenue contracts;
- intergovernmental agreements; and
- contracts with preferred sources as defined in Article 11 of the New York State Finance Law.

11) Q: Is the more than \$100,000 threshold determined based on total contract value, or on an annualized basis?

A: The more than \$100,000 threshold is determined based on the value (estimated, if necessary) of the contract over its full term, excluding possible renewal terms.

Also, multiple purchases of commodities or services by a covered agency from the same contractor during a state fiscal year are not to be aggregated for purposes of determining whether the more than \$100,000 threshold has been met.

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<sup>2</sup> The term *technology* is defined by Article 11 of the New York State Finance Law as either a good or a service or a combination of the two, that results in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used.



- 12) Q: If a contract is not let pursuant to Article 11 of the State Finance Law, is it subject to section 5-a?
- A: Contracts not let pursuant to Article 11 of the State Finance Law are **not** subject to section 5-a.
- 13) Q: Does Tax Law section 5-a apply to an agency accessing a centralized contract through issuance of a purchase order?
- A: Assuming all criteria identified in Q&A 3 are met, Tax Law section 5-a applies to award of the centralized contract and not to covered agency access to the centralized contract through issuance of a purchase order. However, the requirements of Tax Law section 5-a do apply to covered agency purchases using **all-copy purchase orders**. For information regarding all-copy purchase orders, contact the Office of the State Comptroller, Bureau of Contracts at (518) 474-4622.
- 14) Q: Is a mini-bid contract, which is let by a covered agency from a backdrop contract, subject to Tax Law Section 5-a?
- A: No. A backdrop contract is one in which a procuring agency selects a pool of qualified vendors that are deemed eligible to bid on a procurement via a mini-bid. A mini-bid is an abbreviated process during which contract users solicit final pricing from the pool of pre-selected back-drop contractors.
- A state agency backdrop procurement is deemed awarded to a contractor at the point in time when the vendor is selected to be included in the pool of contractors eligible to participate in a mini-bid process. In view of that, a contractor is required to submit the Tax Law section 5-a forms when selected as a backdrop vendor by a state agency. During a mini-bid process, additional section 5-a certifications by a backdrop contractor are not required unless there are changes necessitating a new filing. For instance, if during a mini bid, a contractor hires a new subcontractor which was not previously reported on its Form ST-220-TD, then the contractor should report the new subcontractor by filing of a new Form ST-220-TD (assuming the subcontractor meets the more than \$300,000 sales in New York State threshold).
- 15) Q: Who is an *affiliate* for purposes of Tax Law section 5-a?
- A: Section 5-a defines an *affiliate* as a person which directly, indirectly or constructively controls another person; is controlled by another person; or is, along with another person, under the control of a common parent. *Control* means possession of the power to direct, or cause the direction of, the management and policies of another person. Determining whether control exists is a factual inquiry to be based upon the circumstances in each case. Responsibility for determining whether a person is an affiliate rests with the contractor.
- 16) Q: Who is a *subcontractor* for purposes of Tax Law section 5-a?
- A: A *subcontractor* is a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.
- 17) Q: Which contractors, affiliates and subcontractors must be certified as registered to collect New York State and local sales and compensating use taxes pursuant to section 5-a prior to a contract taking effect?
- A: Those contractors, affiliates and subcontractors making sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during a specified period must be certified as registered to collect New York State and local sales and compensating use taxes.
- All sales of tangible personal property or taxable services within New York State during the specified period (not merely sales to covered agencies) are taken into account in determining whether the more than \$300,000 cumulative sales threshold has been met. This also includes the amount of any sales made which are exempt from sales tax (see Q & A 20).
- 18) Q: Over what period must the more than \$300,000 cumulative sales threshold occur so as to require a contractor, affiliate, or subcontractor to be certified under Tax Law section 5-a as registered with the Tax Department to collect sales and compensating use taxes?
- A: The registration requirement applies if the person made a cumulative total of more than \$300,000 in sales in New York State during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June-August, September-November, December-February and March-May.
- If a person has not closed its books for the sales tax quarter immediately preceding the sales tax quarter in which the certification is being made, such person should use its sales information from the four most recent sales tax quarters for which such information is available to determine whether the more than \$300,000 cumulative sales threshold has been met.

Application of the above rule is illustrated by the following example:

**Example:** Contractor A is awarded a \$150,000 contract by covered agency B in June, 2006. Contractor A would determine whether the more than \$300,000 threshold was met by examining its sales of tangible personal property or taxable services within New York State during the June, 2005-August, 2005; September, 2005-November, 2005, December, 2005-February, 2006 and March, 2006-May, 2006 sales tax quarters. If Contractor A has not completed its accounting for the March, 2006-May, 2006 sales tax quarter, then it should, in lieu of that sales tax quarter, use data from the March, 2005-May, 2005 sales tax quarter.

19) Q: How are the terms *sale*, *tangible personal property* and *taxable services* defined for purposes of determining whether the more than \$300,000 cumulative sales threshold has been met?

A: *Sale* has the meaning given for New York State and local sales and compensating use tax law purposes, and includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

*Tangible personal property* has the meaning given for New York State and local sales and compensating use tax purposes. For such purposes, the term means corporeal personal property of any nature having a material existence and perceptible to the human senses. Tangible personal property includes, but is not limited to:

- raw materials, such as wood, metal, rubber and minerals;
- manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, clothing, motor vehicles, appliances, boats, yachts, lighting fixtures, building materials;
- computers and pre-written (canned/off-the-shelf/standard) software;
- artistic items, such as sketches, paintings, photographs, moving picture films and recordings;
- animals, trees, shrubs, plants and seeds;
- bottled water, soda, beer;
- candy and confections;
- cigarettes and tobacco products;
- cosmetics and toiletries;
- coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange;
- postage stamps, when purchased for purposes other than mailing; and
- precious metals in the form of bullion, ingots, wafers and other forms.

Tangible personal property does **not** include real property or intangible personal property.

*Taxable services* means services, the receipts from the sale of which are taxable for New York State and local sales and compensating use tax purposes. The term includes those services specifically enumerated in New York State and local sales and compensating use tax law as taxable. Taxable services are determined without regard to exemptions provided for in the sales and compensating use tax law. The term includes, but is not limited to:

- providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons;
- processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale;
- installing tangible personal property, or maintaining, servicing or repairing tangible personal property that is not held for sale by the purchaser of the service;
- storing tangible personal property that is not being held for sale, and the rental of safe deposit boxes or similar space;
- maintaining, servicing or repairing real property, whether inside or outside buildings;
- providing parking, garaging or storing for motor vehicles;
- interior decorating and designing services;
- protective and detective services; and
- furnishing entertainment or information services by means of telephony or telegraphy.

- 20) Q:** Are exempt sales taken into account in determining whether the more than \$300,000 sales threshold of section 5-a is met?  
**A:** Yes. In determining whether more than \$300,000 in sales of tangible personal property or taxable services were made during the specified period, contractors must count exempt sales of tangible personal property or taxable services. Contractors should determine whether sales are of tangible personal property or taxable services with reference to Articles 28 and 29 of the New York State Tax Law, disregarding relevant exemptions provided for therein, including, but not limited to, the exemption for sales to exempt organizations.

**Example:**

*During the four specified sales tax quarterly periods, an out-of-state contractor made \$400,000 in sales of tangible personal property into New York State. The entire \$400,000 in sales during such periods was made to exempt state agencies. The contractor has exceeded the \$300,000 threshold and must be certified as registered for New York State and local sales and compensating use tax purposes.*

- 21) Q:** Who is responsible for making the certifications required by section 5-a?  
**A:** The contractor is responsible for making the certifications required by the statute. The contractor's certification must include whether its affiliates and/or subcontractors whose sales exceeded the \$300,000 threshold during the specified period, are registered for New York State sales and compensating use tax purposes. The contractor's certification must be made to the best of its knowledge.

- 22) Q:** How does a contractor make the certifications required by the statute?  
**A:** The contractor must file a properly completed Form ST-220-CA (with the procuring covered agency) and Form ST-220-TD (with the Tax Department). The covered agency must include Form ST-220-CA in the procurement record for the contract. These requirements must be met before a contract may take effect.

**Renewals:** In addition, after a contract has taken effect, a Form ST-220-CA must be filed again with a covered agency if a contract, which by its terms may be renewed, is being renewed. In this case, the Form ST-220-CA must be filed with the contracting covered agency prior to the commencement date of the renewal term(s). In addition, a new Form ST-220-TD may be required to be filed with the Tax Department. A new Form ST-220-TD would be required to be filed with the Tax Department if no previous Form ST-220-TD has been filed by the contractor with the Tax Department or, if a previously filed Form ST-220-TD is no longer correct and complete.

**Example:**

*Contractor A is awarded a contract by Covered Agency B. The contract is Contractor A's first with a covered agency, and is subject to the requirements of section 5-a. Contractor A has one affiliate and one subcontractor, and all three entities exceeded the \$300,000 threshold during the specified period. Contractor A must file Form ST-220-TD with the Tax Department, certifying that all three entities are registered for New York State and local sales and compensating use tax purposes. In addition, Contractor A must file Form ST-220-CA with Covered Agency B, certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete.*

*During the term of its contract with Covered Agency B, Contractor A acquires two new affiliates and one additional subcontractor. One of the affiliates, as well as the subcontractor, exceeded the \$300,000 threshold during the specified sales tax quarters. Contractor A must, as soon as possible after learning of the changed circumstances, file a new Form ST-220-TD with the Tax Department, certifying that the affiliate and the subcontractor exceeding the \$300,000 threshold are registered for New York State and local sales and compensating use tax purposes. If Contractor A does not file the new Form ST-220-TD with the Tax Department, then the consequences specified in Q&A 29 below could apply.*

*Contractor A's contract with Covered Agency B provides that the contract may be renewed for one additional two-year term, at the option of the parties. The parties agree to renew the contract. Thus, Contractor A must, prior to the commencement date of the renewal term, file a new Form ST-220-CA with Covered Agency B certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete. If Contractor A cannot make such certification to Covered Agency B because information shown on the current Form ST-220-TD filed with the Tax Department is not correct and complete, then it must immediately file a new Form ST-220-TD with the Tax Department reflecting current information. Contractor A must then file Form ST-220-CA with Covered Agency B before the commencement date of the renewal term.*

*Following commencement of Contractor A's renewal term with Covered Agency B, Contractor A is awarded a new contract by Covered Agency C. The new contract is covered by section 5-a. If the information shown on Contractor A's last filed*

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Publication 223 (5/07)

*Form ST-220-TD is correct and complete, it need not file a new Form ST-220-TD with the Tax Department. However, Contractor A must file Form ST-220-CA with Covered Agency C certifying that it has previously filed Form ST-220-TD with the Tax Department, and that it is correct and complete as of the date of the new certification (Form ST-220-CA) filing with Covered Agency C.*

- 23) Q: If the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contract has, since April 26, 2006, been amended, extended, renewed or assigned, must a Form ST-220-TD be filed with the Tax Department?
- A: Yes, if the contract meets the criteria set forth in Q & A 3.
- 24) Q: Must Form ST-220-TD be filed with the Tax Department if the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contractor is then awarded another contract after that date?
- A: Yes, if the contract meets the criteria set forth in Q & A 3.
- 25) Q: When is a contractor, affiliate or subcontractor required to be listed in Schedule A of Form ST-220-TD?
- A: A contractor, affiliate or subcontractor is required to be listed in Schedule A of Form ST-220-TD when such contractor, affiliate or subcontractor has exceeded the more than \$300,000 cumulative sales threshold during the specified period as discussed in Q & A 18.
- 26) Q: When is a contractor who previously filed Form ST-220-TD with the Tax Department required to file a new Form ST-220-TD certification with the Tax Department?
- A: If a contractor or an affiliate or subcontractor, is not registered with the Tax Department for sales and compensating use tax purposes on the contractor's original certification, and such contractor, affiliate, or subcontractor makes sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during any consecutive four sales tax quarters which follow the sales tax quarter in which the contractor's original certification was made, then the contractor shall, as soon as possible after such occurrence, file a new Form ST-220-TD with the Tax Department certifying that it, and/or its affiliates and/or subcontractors, as applicable, are registered for sales and compensating use tax purposes.
- 27) Q: If a contractor, affiliate or subcontractor is required by section 5-a to be registered with the Tax Department to collect New York State and local sales and compensating use taxes, and such person is not registered, what must such person do to register?
- A: The contractor, affiliate or subcontractor must complete Form DTF-17, *Application for Registration as a Sales Tax Vendor*, to register. Upon registration, the Tax Department will issue a certificate of authority, which authorizes the recipient to collect New York State and local sales and compensating use taxes. Form DTF-17 is available on the Tax Department's Web site, [www.nystax.gov](http://www.nystax.gov), or may be obtained by calling the Sales Tax Information Center at 1 800 698-2909. For additional information regarding registration, see Publication 750, *A Guide to Sales Tax in New York State*.
- 28) Q: If a contractor, affiliate or subcontractor has submitted Form DTF-17, to register to collect New York State sales and compensating use taxes at the time of filing the certifications required under section 5-a, but has not yet received its certificate of authority from the Tax Department, how should the contractor complete the certifications?
- A: The contractor should complete the certifications as required. The column on Schedule A asking whether the person listed is in the process of registering should be checked. If there is a problem with the registration (see Tax Law section 1134(a)(4)(B) for reasons why registration may be denied), the Tax Department will notify the applicant.
- 29) Q: Who is responsible for signing Forms ST-220-TD and ST-220-CA?
- A: An individual authorized to sign on behalf of the contractor may execute the certifications.
- 30) Q: Can Form ST-220-TD be provided to the Tax Department electronically?
- A: Form ST-220-TD **cannot** be provided electronically to the Tax Department at this time. If the Tax Department later determines that electronic submission is feasible, instructions will be issued as to how to electronically sign and file Form ST-220-TD.

- 31) Q: What are the consequences if Form ST-220-TD and/or Form ST-220-CA are not provided, or if provided, are determined to be false?
- A: If a contractor fails to make the certifications required by section 5-a, by law, the contract cannot take effect. If during the term of the contract, the Tax Department or the covered agency discovers that a certification is false, then such false certification may subject the contractor to civil or criminal sanctions, and a finding of nonresponsibility for future procurements. Under certain circumstances, the statute provides that the contract shall be subject to termination if the covered agency determines that termination of the contract is in the best interests of New York State.
- 32) Q: What is the effect of registering with the Tax Department to collect New York State and local sales and compensating use taxes?
- A: Once registered, a person is a *vendor* within the meaning of New York State and local sales and compensating use tax law, and must file returns and collect and pay, or pay over, tax. Failure to file returns and collect and pay, or pay over, tax will result in imposition of penalty and interest charges.

Need help?	
	<b>Internet access:</b> <a href="http://www.nystax.gov">www.nystax.gov</a> (for information, forms, and publications)
	<b>Fax-on-demand forms:</b> Forms are available 24 hours a day, 7 days a week. 1 800 748-3676
	<b>Telephone assistance</b> is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931 To order forms and publications: 1 800 462-8100 From areas outside the U.S. and outside Canada: (518) 485-6800
	<b>Hotline for the hearing and speech impaired:</b> If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.
	<b>Persons with disabilities:</b> In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.



New York State Department of Taxation and Finance

# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description
Contractor's principal place of business	City State ZIP code	
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number	Covered agency name	\$
Covered agency address		Covered agency telephone number

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2006, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

**New York State Division of Criminal Justice Services  
Request for Proposal (RFP) CJS2009-02  
Information Technology Services**

**Appendix F – Non-Disclosure for Cyber-Security Standards/Policy Agreement**



New York State Department of Taxation and Finance

**Contractor Certification**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

**ST-220-TD**

(5/07)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )	
Covered agency or state agency	Contract number or description	Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address		Covered agency telephone number	

**General information**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

**Need help?**

Internet access: <a href="http://www.nystax.gov">www.nystax.gov</a> (for information, forms, and publications)	
Fax-on-demand forms:	1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.	
To order forms and publications:	1 800 462-8100
Sales Tax Information Center:	1 800 698-2909
From areas outside the U.S. and outside Canada:	(518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our tollbooths, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.	

**ATTACHMENT N**  
**DCJS Non-Disclosure Agreement**



**New York State Division of Criminal Justice Service**

**Confidentiality Agreement**

This is an Agreement by and between the New York State Division of Criminal Justice Services (DCJS) and \_\_\_\_\_, the VENDOR (\_\_\_\_\_.), regarding the services to be performed for DCJS by the VENDOR, under \_\_\_\_\_ Contract, \_\_\_\_\_.

VENDOR shall insure that s/he shall abide by all reasonable noninvasive security policies and procedures of DCJS. DCJS reserves the right to conduct a security background check on VENDOR, as s/he will have access to confidential information.

New York State law protects the privacy of criminal history records and other confidential information. As a criminal justice agency, there exist site security issues with respect to DCJS. VENDOR shall take all reasonable steps required by DCJS to protect confidential information.

VENDOR specifically agrees to comply with the "Information Security Breach and Notification Act" as set forth in State Technology Law Section 208 and General Business Law Article 39-F. The VENDOR shall promptly notify the DCJS where there is a reasonable belief of a breach of security, unauthorized access or unauthorized release of personal computer data containing personal information, and take appropriate action with respect to notification of affected individuals and to other required state agencies consistent with the New York State Information Security Breach and Notification Act.

Further, all other information concerning DCJS' operations, procedures and policies shall be kept confidential by VENDOR and VENDOR shall comply with the administrative procedures and regulations concerning these rules.

The use of information obtained by VENDOR in the performance of his duties described herein shall be limited to purposes directly connected with such duties.

The VENDOR shall not remove any work papers or product from DCJS relating to DCJS.

VENDOR shall not be required to keep confidential any such material which is publicly available through no fault of VENDOR, independently developed by VENDOR without reliance on confidential information of DCJS, or otherwise obtained under the Freedom of Information Law or New York State laws or regulations.

The prohibition against disclosure shall survive the termination of this Agreement, the termination of the SOW or the completion of the SOW.

This Agreement is made and will be construed in accordance with the State of New York.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date indicated below.

	<b><u>NYS Division of Criminal Justice Services</u></b>
Signature:	Signature:
Name (Please Print)	Name (Please Print)
Title:	Title:
Date:	Date:

ACKNOWLEDGEMENT CLAUSE

State of \_\_\_\_\_)

) ss.:

County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, depose and say that s/he is the \_\_\_\_\_ of the entity which executed the above instrument; that s/he was authorized by and did execute the same at the direction of said entity and that s/he signed his/her name thereto.

Notary Public: \_\_\_\_\_

**ATTACHMENT O**

**Non-Disclosure for Cyber Security Standards/Policy Agreement**

NON-DISCLOSURE AGREEMENT Between New York State Division of Criminal Justice Services (DCJS) and \_\_\_\_\_ (company) for the receipt and use of Cyber Security Standard S05-001 and Cyber Security Policy P03-002 for the benefit of the State of New York

**THIS AGREEMENT** is between DCJS, having its principal place of business at Alfred E. Smith Office Building, 80 So. Swan Street, Albany, NY 12210 and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_.

**WITNESSETH**

**WHEREAS**, \_\_\_\_\_ is an anticipated respondent to the DCJS Crime Analysis Center (CAC) Staffing Services Request for Proposal (RFP) for CAC staffing services, on an as needed basis, to support numerous active projects for New York criminal justice systems integration.

**WHEREAS**, Respondent acknowledges that it is in the interest of all parties that discussions and information exchanged be carried on in a controlled environment and that confidential or proprietary information must be protected from further disclosure until the State approves of its release and that any such confidential or proprietary information be protected from disclosure to third parties and/or commercial use; and

**WHEREAS**, Cyber Security Standards S05-001 and Cyber Security Policy P03-002 are being released to this company as an anticipated Respondent to the DCJS Information Technology Services Request for Proposal (RFP) and it is being issued on a need to know basis.

**NOW THEREFORE**, in furtherance of Respondent's participation in the RFP process and regarding maintenance of confidentiality by Respondent and its employees as to the use of Cyber Security Standards S05-001 and Cyber Security Policy P03-002, Respondent agrees to the following:

- I. This Cyber Security Standards S05-001 and Cyber Security Policy P03-002 must be treated as confidential information. All use and distribution of the restricted parts of the Cyber Security Standard S05-001 and Cyber Security Policy P03-002 must be consistent with the copyright provisions specified on page six (6) of the policies. Such restricted use includes that the restricted portions of the policy not be released to persons or entities outside the company and that no part of the ISO/IEC 17799:2000 material be made available on the Internet, a public network, by satellite or otherwise without the prior written consent of the American National Standards Institute.
- II. No confidential information shall be disclosed, divulged or communicated in any fashion, form or manner, either directly or indirectly, prior to, during or subsequent to the RFP correspondence process and any confidential information received, obtained, acquired directly or indirectly, or developed or created as a result of the RFP correspondence process or any contractual obligations that may arise thereto shall also not be disclosed, divulged or communicated in any fashion, form or manner to any person or entity not authorized by DCJS to obtain such information.
- III. Any confidential information shall be provided only to those individuals approved by DCJS in writing except that such information may be provided to employees on a need-to-know basis.

- IV. Respondent agrees to be bound by applicable Federal and State laws governing confidentiality and/or privacy of information.
- V. Respondent agrees that nothing in this non-disclosure agreement either limits, supersedes or will be limited or superseded by previous or subsequent non-disclosure agreements related to matters other than the Cyber Security Standard S05-001 and Cyber Security Policy P03-002.
- VI. Respondent agrees that if they breach, or threaten to breach this Agreement, DCJS shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorneys' fees) for losses or damages resulting from such breach. Respondent acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information as defined in this Agreement. Respondent further understands and agrees that the terms of this Non-Disclosure Agreement shall survive the RFP correspondence process and any subsequent term of engagement, and Respondent will abide by the terms of this Non-Disclosure Agreement in perpetuity or until terminated by DCJS.
- VII. Respondent agrees to return Cyber Security Standards S05-001 and Cyber Security Policy P03-002, accompanied by a written certification of the Respondent that Respondent, the Project Team and all personnel associated with the foregoing have not violated the terms of this Non-Disclosure Agreement, upon demand of DCJS.

**IN WITNESS WHEREOF**, Respondent has caused this Non-Disclosure Agreement to be signed as of the date set forth below.

(Respondent)  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Name (Please Print): \_\_\_\_\_  
 Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being duly sworn by me, did depose and say that (s)he resides in \_\_\_\_\_; that(s)he is the \_\_\_\_\_ (the President, principal or other officer or director or attorney-in-fact duly appointed) of \_\_\_\_\_, the business described in and which executed the above instrument; and that (s)he signed her/his name thereto by authority of the board of directors of said business.

\_\_\_\_\_  
 Notary Public

**ATTACHMENT P**

**Minority/Women-Owned Business Enterprise  
Utilization Plan**

# MWBE Utilization Plan

Contractor		Contact Person					
Address		Telephone No.					
State	Zip Code	Email Address					
Proposed Contract Amt.                    \$							
Project Name/Bid Title							
<b>Participation Goals Anticipated:</b> (Enter anticipated total % of dollar amount to be spent with identified MBEs and/or WBEs at the start of the contract) <table style="float: right; margin-left: 20px;"> <tr> <td style="text-align: right;">MBE</td> <td style="text-align: center;">%</td> <td style="text-align: right;">WBE</td> <td style="text-align: center;">%</td> </tr> </table>				MBE	%	WBE	%
MBE	%	WBE	%				

In the section below please list the Certified M/WBE Subcontractors/Suppliers your firm proposes to use.

Subcontractor Name and Address	Description of Services	Amount	Date of Subcontract	Identify whether MBE or WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE

<b>Contractors Agreement:</b> My firm proposes to use the MWBEs listed above.		
_____ (Signature of Contractor)	_____ (Printed Name)	_____ (Date)
Name of MWBE Liaison: _____		

**ATTACHMENT Q**

**Minority/Women-Owned Business Enterprise  
Staffing Plan**



### STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
Bidder / Applicant Name:		<input type="checkbox"/> Bidder / Applicant <input type="checkbox"/> Subcontractor
Bidder / Applicant Address:		Subcontractor's name _____  EEO Goal: MBE (Minority) _____% WBE (Women) _____%

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by race/Ethnic Identification								Disabled		Veteran	
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)	(M)	(F)	(M)	(F)			
Officials/Administrators															
Professionals															
Technicians															
Sales Workers															
Office/Clerical															
Craft Workers															
Laborers															
Service Workers															
Temporary/Apprentices															
Totals															

PREPARED BY (Signature):	TELEPHONE NO.:	DATE:
	EMAIL ADDRESS:	

NAME AND TITLE OF PREPARER (Print or Type):	Submit this completed form with your bid/proposal or program application. MWBE Liaison: _____
---	--

**General instructions:** All Bidders/applicants and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offerer shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Bidder shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the applicant.
2. Check off the appropriate box to indicate if the applicant completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the bidder/applicant's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** > (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** > A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** > A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** > A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** > A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** > Any person who: has a physical or mental impairment that substantially limits one or more major life activity(ies)has a record of such an impairment; or is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** > A veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** > Male or Female

**ATTACHMENT R**  
**EEO Policy Statement**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/Contractor) \_\_\_\_\_ agree to adopt the following Minority and Women-Owned Business Enterprises and Equal Employment Opportunity policies with respect to the Crime Analysis Centers Staffing Services rendered for the New York Division of Criminal Justice Services.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (M/WBE)**

This organization will and will cause its Contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE Contractor associations;
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly;
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs;
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE Contractors to enhance their participation;
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals; and
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

- (1) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (2) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (3) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (4) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim

status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

- (5) This organization will include the provisions of Sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

**M/WBE Contract Goals**

30% Minority and Women's Business Enterprise Participation

25% Minority Business Enterprise Participation

5% Women's Business Enterprise Participation

**EEO Contract Goals**

25% Minority Labor Force Participation

5% Female Labor Force Participation

\_\_\_\_\_ is designated by \_\_\_\_\_ as the Designated Liaison responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**CONTRACTOR**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_ day of \_\_\_\_\_ in the year 2016, before me personally appeared, \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at \_\_\_\_\_, Town/City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that he/she is \_\_\_\_\_ a duly authorized officer of \_\_\_\_\_; that s/he is authorized to execute the foregoing instrument on behalf of [CONTRACTOR] for purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said company as the act and deed of said company.

\_\_\_\_\_  
Notary Public

**ATTACHMENT S**  
**Questions Template**

## Attachment S Questions Template

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Vendor Name:	
Address:	
Contact Person Name:	
Telephone #:	
e-Mail Address	

Question Number	RFP Page Number	RFP Part, Section & Paragraph Reference	Question



**ATTACHMENT T**

**Use of Service-Disabled Veteran-Owned Business Enterprises  
in Contract Performance**

**Attachment T**  
**USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES**  
**IN CONTRACT PERFORMANCE**

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below and including the responses with their bid/proposal:

---

Are you a bidder/proposer that is a NYS certified SDVOB?            Yes \_\_\_            No \_\_\_

If yes, what is your DSDVBD Control #? \_\_\_\_\_

Will NYS certified SDVOBs be used in the performance of this contract?

Yes \_\_\_            No \_\_\_

If yes, identify the NYS certified SDVOBs that will be used below. (If additional space is required, please add to the table below).

SDVOB Name	SDVOB Address	DSDVBD Control #	Contract #
Nature of Participation	% of Total Work Performed	\$ Amount	

Contractor will report on **actual** participation by each SDVOB during the term of the contract to the contracting agency/authority on a quarterly basis according to policies and procedures set by the contracting agency/authority.

---

*NOTE: Information about set asides for SDVOB participation in public procurement can be found <http://www.ogs.ny.gov/Core/SDVOBA.asp> which provides guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.*

**ATTACHMENT U**  
**Sample Resume Cover Letter**

Bidder's name: \_\_\_\_\_

Attached please find the required sample resume for the position of:  
(Check the appropriate box below)

Crime Analysis Center Director

Lead Crime Analyst

Crime Analyst

Crime Analysis Technical Training Coordinator

**EXHIBIT A**

**Positions, Minimum Qualifications and Compensation**

**Exhibit A**  
**Positions, Minimum Qualifications and Compensation**

Below please find the four (4) titles, job descriptions and compensation requirements for the positions included in this RFP.

Titles:

1. Crime Analysis Center Director
2. Lead Crime Analyst
3. Crime Analyst
4. Crime Analysis Technical Training Coordinator

**1. Crime Analysis Center Director**

**Duties**

The Crime Analysis Center Director is responsible for managing and directing a Crime Analysis Center (CAC), location to be determined by DCJS. The incumbent is responsible for managing both the physical aspects of the space as well as the staffing of the CAC and providing direction to the multi-agency staff assigned to the particular CAC. The primary function is to analyze crime within the area, and to provide this information to local law enforcement to assist in selecting more effective tactics and formulating strategies to significantly reduce crime, with an emphasis on violent crime and gun related crime. Activities include:

- Overseeing a CAC including space, technology, equipment and staffing.
- Managing the participation of designated agencies, through assignment of staff to CAC, as well as communication and consultation with representatives at all participating agencies.
- Soliciting and encouraging additional participation as the CAC expands its role within the county by reaching out to new agencies as appropriate.
- Collaborating with DCJS in preparation and implementation of any Memoranda of Understanding to confirm agreements and establish parameters.
- Overseeing the provision of training to participating agency staff, by assessing existing gaps. This includes both the provision of training in various crime analysis methods, such as how to analyze data and early recognition of crime patterns, as well as determining what software tools would enhance analysis and offering related training to participating entities.
- Maximizing all information and intelligence sharing opportunities by facilitating the participation of various law enforcement and criminal justice agencies as directed by the CAC Board and/or DCJS. Continue to collaborate with these agencies to create technology links to facilitate agency authorized sharing of information and data, such as correctional facility phone and visitor records, in order to identify connections and possible locations of fugitives who have been previously incarcerated.
- Collaborating with law enforcement agencies as directed by CAC Board to create links that will facilitate applicable sharing of information.
- Encouraging and recommending to DCJS and CAC Board that the CAC be equipped with cutting-edge technology, seeking input from designated information technology staff.

**Minimum Qualifications**

A Bachelor's degree and fifteen years of experience in a law enforcement entity in the area within which the crime analysis center is located. At least four years of this experience must have included executive level management AND two years in crime analysis. This crime analysis experience must have included using strategic, tactical and administrative analysis, which includes resource deployment, crime mapping, pattern identification and emerging trend recognition.

**Compensation**

DCJS will offer a compensation rate commensurate with the education and experience of the candidate. For recruitment purposes, compensation for this position will be approximately \$105,000,

varying by approximately 10% in either direction, plus 40% to accommodate the cost of fringe benefits such as health insurance and leave time, calculated as follows:

Offered Salary:	\$105,000
40% fringe benefits	<u>42,000</u>
Total Annual Rate	\$147,000
Divided by 2,000 hours/yr.	
<b>= Total Hourly Rate</b>	<b>\$73.50</b>

## **2. Lead Crime Analyst**

### **Duties**

The Lead Crime Analyst will work on-site at a designated NY Crime Analysis Center (CAC), location to be determined by DCJS. The Center is staffed with a team of crime analysts and sworn law enforcement members who support area law enforcement agencies in their efforts to track and reduce Part I Crime. Activities include:

- Supervising, directing, assigning tasks and evaluating performance of crime analysts who may be assigned to report to the Lead Analyst, when applicable. Identifying, organizing and completing projects that enhance overall Center operations, efficiencies and services.
- Coordinating and addressing routine information technology-related service issues and working with support vendors to derive solutions and operational improvements to the CAC.
- Reviewing crime analysts' and CAC operations to identify processes where efficiency can be improved.
- Assisting and coordinating analysts in development of crime analysis products, bulletins, and pattern analysis.
- Independently performing a variety of research and analytical tasks.
- Collecting, compiling, validating, interpreting and analyzing data and trends using standard practices and techniques of crime and/or law enforcement intelligence analysis.
- Performing statistical, spatial, and/or qualitative analyses, making use of standard software packages.
- Preparing and delivering reports and presentations of analytic results.
- Conducting routine audits to ensure accuracy and confidentiality.

### **Minimum Qualifications**

- A Bachelor's Degree from an accredited college or university in Criminal Justice, Criminology or a related field plus (2) years' experience with Geographic Information Systems, crime analysis, database management and related research, OR
- A Bachelor's Degree in Information Technology, Geographic Information Systems or a related field plus (2) two years' experience in crime analysis, research, and interpretation of law enforcement data.

### **Compensation**

DCJS will offer a compensation rate commensurate with the education and experience of the candidate. For recruitment purposes, compensation for this position will be approximately \$60,000, varying by approximately 10% in either direction, plus 40% to accommodate the cost of fringe benefits such as health insurance and leave time, calculated as follows:

Offered Salary:	\$ 60,000
40% fringe benefits	<u>24,000</u>
Total Annual Rate	\$ 84,000
Divided by 2,000 hours/yr.	
<b>= Total Hourly Rate</b>	<b>\$42.00</b>



### **3. Crime Analyst**

#### **Duties**

The Crime Analyst will work on-site at a designated NY Crime Analysis Center (CAC), location to be determined by DCJS. The CAC is staffed with a team of crime analysts and sworn law enforcement members who support area law enforcement agencies in their efforts to track and reduce Part I Crime. Activities include:

- Performing a variety of research and analytical tasks.
- Collecting, compiling, validating, interpreting and analysing data and trends using standard practices and techniques of crime and/or law enforcement intelligence analysis.
- Performing as needed statistical, spatial, and/or qualitative analyses, making use of standard software packages.
- Working on assignments that are moderately complex under direct or indirect supervision, where there is latitude for independent action and decision-making.
- Preparing and delivering reports and presentations of analytic results.

#### **Minimum Qualifications**

- A Bachelor's Degree from an accredited college or university in Criminal Justice, Criminology, Public Administration, or a related field plus 0-1 year experience in the field of criminology, criminal justice research, or criminal justice policy

#### **Compensation**

DCJS will offer a compensation rate commensurate with the education and experience of the candidate. For recruitment purposes, compensation for this position will be approximately \$44,000, varying by approximately 10% in either direction, plus 40% to accommodate the cost of fringe benefits such as health insurance and leave time, calculated as follows:

Offered Salary:	\$ 44,000
40% fringe benefits	<u>18,000</u>
Total Annual Rate	\$ 62,000
Divided by 2,000 hours/yr.	
<b>= Total Hourly Rate</b>	<b>\$31.00</b>

### **4. Crime Analysis Technical Training Coordinator**

#### **Duties:**

The incumbent will be responsible for ensuring the training of crime analysts in law enforcement agencies participating in current or future Operation IMPACT jurisdictions within New York State, as well as those assigned to the multi-jurisdictional Crime Analysis Centers (CACs) located in Albany, Syracuse, Rochester and Buffalo. In addition to identifying and coordinating training opportunities at direction of DCJS, the incumbent would be responsible for providing direct technical assistance and on-site training statewide of CAC crime analysts. The incumbent would also be expected to facilitate collaboration and best practices among crime analysts at direction of DCJS. The incumbent would also be the lead person to identify and recommend analytical best practices and related tools and products to DCJS, such as analytic software and appropriate hardware, to ensure appropriate tools and practices are in place in each of the CACs to assist command staff in developing intelligence-led crime reduction strategies. The incumbent would maintain and expand the multi-level certification program for crime analysts employed in New York State to ensure a standard of training and proficiency among analysts, including recommendations for testing analysts which will assist DCJS in proposing future development of an annual exam with the NYS Department of Civil Service. Extensive travel is required – approximately 50%.

**Minimum Qualifications:** Eight years of crime analysis experience, five years of which must have included the supervision of staff within a law enforcement crime analysis unit responsible for the

creation of comprehensive analytical products. This experience must have involved querying and extracting data from law enforcement information systems; the use of one or more geographic information systems (GIS) and statistical software packages; and experience training, lecturing, and/or teaching subject matter directly related to crime analysis and crime mapping to law enforcement agencies. A Bachelor's Degree may be substituted for four years of experience; a Master's or higher-level degree may be substituted for one additional year of experience; and a certificate in crime analysis or GIS may be substituted for one year of experience.

**Compensation**

DCJS will offer a compensation rate commensurate with the education and experience of the candidate. For recruitment purposes, compensation for this position will be approximately \$82,000, varying by approximately 10% in either direction, plus 40% to accommodate the cost of fringe benefits such as health insurance and leave time, calculated as follows:

Offered Salary:	\$ 82,000
40% fringe benefits	<u>32,800</u>
Total Annual Rate	\$114,800
Divided by 2,000 hours/yr.	
<b>= Total Hourly Rate</b>	<b>\$57.40</b>

**EXHIBIT B**

**DCJS Contract Award Protest Procedure**

**CONTRACT AWARD PROTEST PROCEDURE**  
**FOR CONTRACTS AWARDED BY**  
**THE DIVISION OF CRIMINAL JUSTICE SERVICES**

Section 1	Applicability
Section 2	Definitions
Section 3	General Requirements
Section 4	Protest Procedure
Section 5	Appeals

### **1. Applicability**

Consistent with the provisions of the Procurement Lobbying Law (State Finance Law §139-j), it is the policy of the Division of Criminal Justice Services (DCJS) to identify a sole Procurement Contact to receive all inquiries during an identified procurement period. DCJS will attempt to resolve inquiries submitted to the identified sole Procurement Contact, and will advise parties initiating such inquiries of the existence of this formal protest policy should the informal process fail to resolve the matter. **Final agency determinations or recommendations for award will not be reconsidered by DCJS unless a formal written protest is timely filed according to the procedures specified below. The procedures below must be used** which set forth the procedure to be utilized when an interested party challenges a contract award by DCJS. These guidelines apply to all contract awards by DCJS, including sole source procurements, single source procurements, emergency procurements and procurements awarded after a mini-bid process.

### **2. Definitions**

(a) "Offerer" mean an individual or entity who has submitted an offer in response to a solicitation for commodities or services issued by DCJS.

(b) "Responsive Offerer" means a Bidder or Offerer meeting all of the minimum specifications and requirements as prescribed in a solicitation for commodities or services by DCJS.

(c) "Successful Offerer" means the responsive Bidder or Offerer which receives written notification from DCJS indicating that its bid or offer has been accepted.

(d) "Interested party" means a participant in the procurement process and those who would be bona fide participants but whose participation in the procurement process has been foreclosed by the actions of DCJS.

(e) "Contract award" is a written determination from DCJS to an Offerer indicating that the DCJS has accepted its bid or offer (see State Finance Law §163(10)(a)).

(f) "Emergency" means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk (see State Finance Law §163(1)(b)).

(g) "Mini-bid process" is an abbreviated bid and selection process for individual agency projects utilizing a list of prequalified vendors on a back drop contract

(h) "Back drop contract" means a contract consisting of a pool of prequalified vendors who are eligible to participate in a secondary mini-bid award process, or other specified selection process.

(i) "Single source" means a procurement in which although two or more Offerers can supply the required commodities or services, DCJS, upon written findings setting forth the material and substantial reasons therefor, awards the contract to one Offerer over the other (see State Finance Law §163(1)(h)).

(j) "Sole source" means a procurement in which only one Offerer is capable of supplying the required commodities or services (see, State Finance Law §163(1)(g)).

(k) "Protest" means a written challenge to a contract award by DCJS.

(l) "Comptroller" means the Comptroller of the State of New York, as well as his or her designee.

(m) "Commissioner" means the Commissioner of the Division of Criminal Justice Services, an agency of the State of New York, as well as his or her designee.

### **3. General Requirements**

(a) Any solicitation issued by DCJS with respect to a contract award subject to these guidelines, including an Invitation for Bid, a Request for Proposal, or other similar document, shall provide notice that any interested party may protest the contract award. Such notice shall indicate that a protest of a contract award is to be filed with the DCJS Director of Financial Administration at:

**Director, Financial Administration  
New York State Division of Criminal Justice Services  
Alfred E. Smith Office Building, 10th Floor  
80 South Swan Street  
Albany, NY 12210**

The solicitation must include a copy of these guidelines, or advise Offerers that a copy of these guidelines will be provided to the Offerer upon request.

(b) All Offerers shall be given written notice of the contract award or of a proposed award. Any unsuccessful Offerer, upon request, must be afforded an opportunity for a debriefing at least five business days prior to the date by which any protest must be filed. Notwithstanding the foregoing, in any case where DCJS has reduced the time period for the filing of a protest in accordance with section 4(a) of these guidelines, DCJS shall provide in the solicitation for a reasonable and appropriate method

to debrief the Offerers in a timely manner. An Offerer's failure to request a debriefing in a timely fashion shall not cause an extension of the time period within which a protest must be filed.

(c) A protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the DCJS. A formal protest must include:

- (i) a statement of all legal and/or factual grounds for disagreement with a DCJS specification or purchasing determination;
- (ii) a description of all remedies or relief requested; and
- (iii) copies of all applicable supporting documentation

(d) Any interested party will be given the opportunity to participate in the protest procedure.

(e) The DCJS Director of Financial Administration may, in his or her sole discretion, waive any deadline or requirement set forth in these guidelines, or consider any materials, submitted in writing, beyond the time periods set forth in these guidelines.

(f) Where the DCJS Director of Financial Administration deems appropriate, the DCJS Director of Financial Administration may require the protesting party, the procuring Division of DCJS, DCJS staff involved in the procurement, the successful Offerer, or any other interested party, to address and/or submit further information with respect to additional issues raised by the DCJS Director of Financial Administration review of the procurement.

(g) Nothing herein shall preclude the DCJS Director of Financial Administration from obtaining information relevant to the procurement from any other source, as he or she deems appropriate.

#### **4. Protest Procedure**

(a) Any interested party may file a protest with the DCJS Director of Financial Administration within ten business days from the date of the notice by DCJS of the contract award, except that:

- (i) any protest concerning the terms and conditions of the solicitation or other matters that would be apparent to an interested party prior to the date set in the solicitation for the receipt of bids including but not limited to matters concerning errors, omissions or prejudice in the bid specifications or documents must be filed on or before the date set in the solicitation for the receipt of bids or proposals; and
- (ii) where DCJS determines that sufficient circumstances exist DCJS may set forth a different time period for filing protests in the solicitation.

Any filing deadlines may be waived by the DCJS Director of Financial Administration pursuant to section 3(e) of these guidelines. A formal protest must be submitted in writing to DCJS, by surface mail addressed to the DCJS Director of Financial Administration pursuant to section 3(a) above, or, where permitted in the solicitation, by facsimile or e-mail transmission. The following statement must

be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: "Bid Protest of DCJS Solicitation (Reference Number)".

(b) The DCJS Director of Financial Administration shall refer any protest either to an individual employee or group of employees of DCJS, or to an independent hearing officer who is not an employee of DCJS. The decision regarding to whom the bid protests is referred shall be in the sole discretion of the DCJS Director of Financial Administration. Where the protest is referred to a DCJS employee or a group of DCJS employees, no such employee may have been actively involved in the procurement process being protested.

(c) The DCJS Director of Financial Administration will provide a copy of any protest filed to the successful Offerer.

(d) The DCJS Director of Financial Administration may summarily deny a protest that fails to contain specific factual or legal allegations, or raises only issues of law that have already been decided by the Courts or by the Comptroller of the State of New York.

(e) Except where the DCJS Director of Financial Administration summarily denies the protest, the procuring Division of DCJS shall file an answer to the protest within seven business days of the filing of the protest. The answer to the protest should address all the factual and legal allegations contained in the protest. A copy of the answer filed by the procuring Division of DCJS shall be delivered to the protester and the successful Offerer. The successful Offerer may, but shall not be required to, file an answer to the protest. Any answer by the successful Offerer must be filed with the DCJS Director of Financial Administration no later than the date that the procuring Division of DCJS is required to file its answer. If the successful Offerer chooses to file an answer, it must deliver a copy of such answer to the procuring Division of DCJS and the protester, and its answer must contain an affirmation as to such delivery.

(f) The protesting party may, but is not required to, file a reply to the answer of the procuring Division of DCJS and the successful Offerer. Such reply shall be filed with the DCJS Director of Financial Administration no later than five business days after the date that the procuring Division of DCJS answer is filed. A copy of such reply shall also be delivered to the successful Offerer, and the protester's reply must contain an affirmation as to such delivery.

(g) Upon the DCJS Director of Financial Administration's own initiative, or upon request of any participant in the protest process, the DCJS Director of Financial Administration may in his or her sole discretion act on an expedited basis, upon written notification to the interested parties, in which case the DCJS Director of Financial Administration will advise all participants of filing deadlines.

(h) During the time period in which a protest may be filed, or during the resolution of a pending protest, DCJS may negotiate terms and conditions of the contract with the successful Offerer. However, a contract will not be approved by the Office of the State Comptroller Bureau of Contracts before the expiration of the time period for filing a protest, or, if a protest has been filed, before the resolution of the protest.

(i) The person or persons designated by the DCJS Director of Financial Administration to consider the protest shall review all of the filings submitted by the parties, and the procurement record, and shall prepare a written recommendation to the DCJS Director of Financial Administration, or his or her designee, addressing all of the issues that have been raised by the protest.

(j) The person or persons designated by the DCJS Director of Financial Administration to consider the protest shall determine whether, in addition to the review of the filings submitted by the parties and the procurement record, it is necessary to conduct a fact finding hearing. The person or persons so designated shall decide the level of formality of such a hearing.

(k) The DCJS Director of Financial Administration, or his or her designee, may accept, modify or reject such recommendation.

(l) In making his or her determination with regard to the protest, the DCJS Director of Financial Administration, or his or her designee, may, in his or her sole discretion, consider any additional material and relevant information from any source relating to the allegations set forth in the protest.

(m) All parties that have participated in the protest, as well as the original successful Offerer, shall be provided with a copy of the final determination of the DCJS Director of Financial Administration, or his or her designee. The determination shall be made part of the procurement record.



## **5. Appeals**

(a) The protest determination of the DCJS Director of Financial Administration shall be deemed a final and conclusive agency determination unless a written notice of appeal is received no more than five business days after the date the final protest decision is sent to the Offerer. Such notice of appeal must be filed in writing at the address set forth below:

**Commissioner**  
**New York State Division of Criminal Justice Services**  
**Reference: Bid Protest of DCJS Solicitation (provide procurement reference number)**  
**Alfred E. Smith Office Building, 8<sup>th</sup> Floor**  
**80 South Swan Street**  
**Albany, NY 12210**

(b) The Commissioner shall hear and make a final written determination on all appeals within ten business days of the date the Appeal is received. The Commissioner may designate a person or persons to act on his or her behalf.

(c) A formal protest appeal may not introduce new facts unless responding to issues newly raised as a result of the final protest determination.

**EXHIBIT C**

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE  
CONTRACTS: REQUIREMENTS AND PROCEDURES**

## Exhibit C

### PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

#### **I. General Provisions**

- A. The Division of Criminal Justice Services is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Division of Criminal Justice Services (the “Division of Criminal Justice Services”), to fully comply and cooperate with the Division of Criminal Justice Services in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Exhibit or enforcement proceedings as allowed by the Contract.

#### **II. Contract Goals**

- A. For purposes of this procurement, the Division of Criminal Justice Services hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 25% for New York State certified minority-owned business enterprises (“MBE”) participation and 5% for New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is

found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Division of Criminal Justice Services for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and subcontractor performing work on the Contract ("Subcontractor") shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the Division of Criminal Justice Services within seventy two (72) hours after the date of the notice by Division of Criminal Justice Services to award the Contract to the Contractor.
3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the Division of Criminal Justice Services may provide the Contractor or Subcontractor a model statement (see Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

C. - Staffing Plan

With respect to contractual services in excess of \$250,000, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

**D. Workforce Employment Utilization Report (“Workforce Report”)**

1. Once a contract has been awarded and during the term of Contract, the Contractor is responsible for updating and providing notice to the Division of Criminal Justice Services of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any Subcontractor.
3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to Division of Criminal Justice Services, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Exhibit.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Division of Criminal Justice Services shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

**V. Waivers**

- A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to Division of Criminal Justice Services.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Division of Criminal Justice Services shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Division of Criminal Justice Services, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Division of Criminal Justice Services may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the Division of Criminal Justice Services by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where Division of Criminal Justice Services determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Division of Criminal Justice Services liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Division of Criminal Justice Services, the Contractor shall pay such liquidated damages to the Division of Criminal Justice Services within sixty (60) days after they are assessed by the Division of Criminal Justice Services unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Division of Criminal Justice Services.

**EXHIBIT D:**

**CONTRACT**

**DRAFT CONTRACT WITH MANDATORY TERMS AND CONDITIONS**

The New York State Division of Criminal Justice Services (DCJS)

-and-

**(ENTER OFFICIAL CONTRACTOR NAME)**

For the Provision of Crime Analysis Center Consultant Services

**New York State Comptroller's Contract Number \_\_\_\_\_**

**THIS AGREEMENT** (hereinafter "Master Agreement", "Agreement", or "Contract") is made this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the State of New York (hereinafter "State"), acting through the New York State Division of Criminal Justice Services (hereinafter "DCJS"), an Executive Agency of the State of New York, with offices located at the Alfred E. Smith Office Building, 80 South Swan Street, Albany, NY 12210, and \_\_\_\_\_, (hereinafter "Contractor"), with offices at \_\_\_\_\_. The Contractor and the State are collectively referred to hereinafter as the "Parties."

**WHEREAS**, to support the activities of Crime Analysis Centers, the Division of Criminal Justice Services (DCJS) released a Request For Proposals, specifically NYSDCJS RFP #CJS2015-03 (RFP), and conducted a procurement for the purpose of establishing a pool of up to three available vendors capable of supplying staffing resources from which to hire certain personnel on an as need basis to Crime Analysis Centers in New York State; and

**WHEREAS**, to accomplish this objective DCJS solicited proposals by publication of its competitive procurement for NYSDCJS RFP #CJS2015-03 which DCJS published on its public website and in the New York State Economic Opportunities Newsletter-the Contract Reporter which required Offerers to submit proposals by \_PM \_\_\_\_\_, 2016; and

**WHEREAS**, in response to the RFP requirements, Contractor timely submitted its proposal pursuant to the DCJS RFP and which was subsequently evaluated by DCJS in accordance with the State Finance Law and which proposal was determined to be based upon best value of receiving a contract award pursuant to the DCJS RFP; and

**WHEREAS**, Contractor submitted a proposal addressing the RFP requirements and was determined to be ranked number [designate #1-3 as applicable], and therefore eligible for award pursuant to the terms of the RFP; and

**WHEREAS**, DCJS notified the Contractor by letter that Contractor was selected as one of three successful bidders based upon best value and ranked number [designate #1-3 as applicable]; and

**WHEREAS**, the Parties now wish to execute a contract to effect these purposes;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the Parties do agree as follows:

## **1. INCORPORATION, MERGER AND ORDER OF PRECEDENCE**

This Agreement includes the following documents which are incorporated into the terms of this Agreement, collectively entitled the "Master Agreement", as now executed or as may be hereafter amended, modified, or extended upon mutual agreement of the Parties. To the extent that documents conflict with the terms hereof, all prior agreements, representations, statements, negotiations and undertakings are superseded by the Master Agreement. In the event that any dispute may arise in



connection with the interpretation or application of the Master Agreement, the following shall be the order of precedence of application for the resolution of such dispute:

### **MASTER AGREEMENT**

New York State Comptroller's Contract Number \_\_\_\_\_

- 1) Appendix A (Standard Clauses for all NYS Contracts, dated January 2014-annexed hereto);
- 2) Amendments to this Contract (as may be executed upon mutual agreement of the Parties);
- 3) Any Change Request Orders, which may be entered into with respect to services during the term of this Contract upon mutual agreement of the Parties;
- 4) This Contract including its Appendices;
- 5) DCJS Response to submitted RFP questions, published on \_\_\_\_\_, 2016 by DCJS on its public website and by email to Offerers;
- 6) DCJS Request for Proposal CJS 2015-03 and its Appendices (other than Appendix A (Standard Clauses for NYS Contracts)) and any Attachments;
- 7) Contractor's RFP Submission and all Attachments/Appendices related thereto and Contractor's Clarification (where applicable), including any supporting material and any subsequent Contractor responses to inquiries in connection with services and costs under the Project, including but not limited to the following submissions filed therewith:
  - OSC Consultant Services Form A and Form B Addendum;
  - MacBride Fair Employment – Northern Ireland Non-Discrimination;
  - Non-Collusive Bidding Certification (Section 139-d);
  - NYS Standard Vendor Responsibility Questionnaire;
  - Appendix B Minority and Women-Owned Business Enterprise (MWBE) and Equal Opportunities Requirements;
  - DCJS Procurement Lobbying Guidelines (incorporated);
  - Affirmation of Understanding and Agreement pursuant to State Finance Law Section 139-j and 139-k;
  - DCJS Non-Disclosure Agreement;
  - NYS Tax and Finance Contractor Certification;
  - Proof of Disability Benefits Insurance OR Form CE-200 from Workers Compensation demonstrating relief from Workers Compensation/Disability (see [www.wcb.ny.gov](http://www.wcb.ny.gov));and
  - Encouraging New York State Businesses Vendor Response Form.
- 8) Any Statement of Work (SOW) which may be entered into between the Parties.

Only the documents expressly enumerated above or contained within those documents enumerated above shall be deemed a part of the Master Agreement, and references contained in those documents to additional Contractor documents not enumerated above or included in any enumerated document shall be of no force and effect.

## **2. TERM AND AMENDMENTS**

The Master Agreement shall not be deemed executed until signed by both Parties and approved by the New York Office of the Attorney General (OAG) and the New York Office of the State Comptroller (OSC) or their respective staff designated for that purpose. The Master Agreement shall commence after full execution by the State Comptroller ("Effective Date") and shall continue for a period of five(5) years, with the possibility of two (2) one (1) year extensions.

The Master Agreement will be subject to amendment only upon mutual written agreement of the Parties, which agreement may necessitate approval by the Attorney General and the Comptroller of the State of New York. DCJS shall have the right to renegotiate the terms and conditions of the Master Agreement in the event applicable State or Federal law, policy, rules, regulations and guidelines are altered from those existing at the time of the original contractual agreement--in order to be in continuous compliance therewith.

It is further understood and agreed that the Parties may implement certain changes between them in the details of the Master Agreement by executing a Change Request Order Form, a copy which is annexed herein as part of the Master Agreement. The Change Request Order Form must be mutually agreed to and executed by both Parties, subject to approval by the OSC and any applicable control agency, if required, and when so executed shall be incorporated into the Master Agreement.

### **3. NOTICES/CONTACTS**

#### **A. Level One – Primary Administrative and Project Manager Contact.**

For purposes of administrative notification and other communications regarding the day-to-day deliverables, operational processes or administrative procedures in connection with the Master Agreement, the following contacts designated by Title with the name of the current incumbent are designated as each Party's primary authorized administrative and operational contact person:

#### **Contractor:**

##### ***Primary Administrative Contact***

Contact Title: \_\_\_\_\_  
Current Incumbent: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

##### ***Project Manager***

Contact Title: \_\_\_\_\_  
Current Incumbent: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**DCJS:**

***Primary Administrative Contact***

Contact Title: Deputy Commissioner, Office of Public Safety  
Current Incumbent: Michael Woods  
Mailing Address: NYS Division of Criminal Justice Services  
Alfred E. Smith Office Building, 3<sup>rd</sup> Floor  
80 South Swan Street  
Albany, New York 12210  
  
Telephone: (518) 485-7610  
Email: Michael.Wood@dcjs.ny.gov

***Project Manager***

Contact Title: Project Manager  
Current Incumbent: Mark Heller  
Mailing Address: NYS Division of Criminal Justice Services  
Alfred E. Smith Office Building  
80 South Swan Street  
Albany, New York 12210  
  
Telephone: (518) 485-5419  
Email: Mark.Heller@dcjs.ny.gov

**B. Level Two – Primary Master Agreement/Legal Notice Contact.**

For purposes of legal notice concerning the Master Agreement, and for escalation of issues and resolution of disputes in connection with the Master Agreement, the following contacts are designated by Title with the name of the current incumbent are designated as each Party’s primary authorized legal notice contact person:

**Contractor:**

Contact Title: \_\_\_\_\_  
Current Incumbent: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**DCJS:**

Executive Deputy Commissioner  
State of New York  
Division of Criminal Justice Services  
Alfred E. Smith Office Building, 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210-8001

**With a copy to:**

Title: Deputy Commissioner, Office of Public Safety  
Current Incumbent: Michael R. Wood  
Mailing Address: Alfred E. Smith Office Building, 3rd Floor  
80 South Swan Street  
Albany, NY 12210

AND

Deputy Commissioner and Counsel  
Current Incumbent: John M. Czajka  
Mailing Address: Alfred E. Smith Office Building, 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210

**4. FINGERPRINT AND SECURITY REQUIREMENTS**

The Contractor shall ensure compliance with all fingerprint and security measures, including all measures included within this Contract, the RFP, and any and all appendices. All fingerprint identification and security measures are required and no deviations from any portions of the contract, the RFP, or any appendices which concern such or security measures are permitted without prior written authorization from DCJS.

Any Fingerprint and Security Requirements included in this contract are not the exclusive and/or exhaustive requirements as identified in the RFP- and/or its appendices.

The Commissioner or Executive Deputy Commissioner of DCJS expressly reserves the right to amend, supplement, modify, or eliminate any security provision at any time upon written notice to Contractor as provided for in the RFP and Section 3 of this Contract.

#### **4.01 Project Scope Overview**

The Contractor shall provide individuals, as requested via Requests for Services Notification, on an as needed basis to support various Crime Analysis Centers in New York State.

#### **4.05 Subcontractors**

All subcontractors engaged by the Contractor must be acceptable to DCJS. The Contractor shall remain the single point of contact for DCJS and all agencies and entities participating in the Crime Analysis Centers. DCJS reserves the right to require fingerprint and security background checks of subcontractor and subcontractor personnel providing services to the Contractor in connection with this Master Agreement.

Any personnel employed by subcontractor, including owners, executive staff, employees who perform personnel services under this RFP, or any managerial employee who exerts control or influence over such employees with access to confidential Crime Analysis Center information must be fingerprinted for the purpose of a DCJS criminal record review and must be acceptable to DCJS following a DCJS criminal history and background check.

#### **4.06 NYS Cyber Security Policy P03-002**

- a. All information concerning DCJS' or Crime Analysis Center operations, procedures and policies shall be kept confidential by the Contractor and the Contractor shall comply with administrative procedures and regulations concerning these rules. The Contractor shall take all steps required by DCJS to protect confidential information. This will include fingerprint and background checks of Contractor personnel and subcontractor and subcontractor personnel with access to such information and a requirement that the Contractor replace personnel or subcontractors at the discretion of DCJS.
- b. The Contractor must abide by the conditions set forth in the DCJS Non-Disclosure Agreement.
- c. As a result of the security issues associated with the services to be performed by the Contractor, the Contractor and any associates and/or subcontractors shall ensure that all work is performed within the continental United States.

### **5. REQUESTS FOR STAFFING SERVICES**

Requests for Staffing Services will be offered first to the highest ranking RFP vendor (Primary vendor). However, if the vendor is unable to provide the requested candidate(s) within the designated response time, or DCJS determines that any candidates unsatisfactory, or that it would be a conflict of interest or otherwise not in our best interest to procure a candidate from the vendor, DCJS will request candidate(s) of the vendor with the next total highest composite score (Secondary vendor); and similarly if the secondary vendor is unable to provide the requested candidate(s) within the designated response time, or DCJS determines that any candidate is unsatisfactory, or that it would be a conflict of interest or not in our best interest to procure a candidate from the vendor, DCJS will request candidate(s) of the vendor with the next total highest composite score (Tertiary vendor).

#### **5.01 Personnel Services Requested and Delivered**

The Parties mutually agree that throughout the Contract term, DCJS may request of the Contractor personnel services for one or more Crime Analysis Centers which the Contractor has been approved to service. It is understood and agreed that the Contractor ranked number one by DCJS will be requested to provide qualified candidates for position(s) sought. However, if the highest ranking Contractor is unable to provide suitable candidates to DCJS within the designated response time to timely hire as needed, DCJS will request resources of the vendor ranked second, and if such vendor is unable to provide suitable candidates to DCJS within the designated response time to timely hire as needed, DCJS will request resources of the vendor ranked third. Nothing herein, guarantees that DCJS will hire a specific number of candidates from any ranked vendor.

## **5.02 Statement of Work**

Any Statement of Work (SOW) which shall contain a requirement of deliverables, and/or any sub-deliverables, are subject to the specified completion date(s). SOW terms are subject to modification at the discretion of DCJS, after consultation with the Contractor regarding reasonable service delivery performance. All such SOW provisions shall be signed by the Parties and take effect as indicated in such respective SOW.

## **5.03 Informal Dispute Resolution Process**

The Parties agree to resolve disputes between them through the dispute resolution process provided below.

### **A. First Level**

In the event of any dispute arising pursuant to the Agreement, other than a failure to materially comply, the complaining Party shall first notify the other Party's Administrative Contacts identified herein, in writing, of the dispute and the Parties shall make a good faith effort to resolve the dispute within ten (10) business days, and shall adhere to the Order of Precedence of application of Contract documents set forth above herein.

### **B. Second Level**

In the event that a dispute cannot be satisfactorily resolved by good faith efforts at the First Level, then the Parties shall refer the matter to the Second Level Primary Contacts set forth herein above for resolution. The Second Level Contacts will make a good faith effort to resolve the dispute within ten (10) business days of receipt of Second Level Notifications. If the dispute cannot be resolved at the Second Level, then the Parties shall refer the dispute to both the Executive Deputy Commissioner of DCJS and the Chief Executive Officer of the Contractor for a thirty (30) day resolution period. If this action fails to resolve the dispute, the Parties may then pursue any remedy available to them under the Agreement, or otherwise available.

#### **5.04 Failure to Materially Comply**

In the event of a dispute based upon an allegation of the failure to materially comply with any provision of the Agreement, the Parties may pursue any remedy available to them under this Agreement, or otherwise, without pursuing the informal dispute resolution process set forth herein.

The phrase "failure to materially comply with any provision of the Agreement" shall be defined to mean: any deficiency of either Party's performance which, either as a stand alone event, or as an aggregation of multiple events over time that constitutes a substantial and/or continuing violation of the provisions of this Agreement including those required by the RFP and those contained in Contractor's Offering; and/or that threatens the public safety of those individuals and entities served by the State and/or Crime Analysis Center(s) which Contractor services.

#### **5.05 Obligations of the Parties to Disclose**

Each Party has a mutual affirmative obligation to immediately notify the other Party in writing at any time that a potential or actual material defect or breach in performance becomes known to the Party. This affirmative obligation to disclose includes that Party's own non-compliance as well as non-compliance of the other Party. The notice shall specify in reasonable detail the nature and evidence of the alleged failure to materially comply. The provision of this notice by either Party shall not diminish either Party's right(s) to pursue legal or equitable remedies available. Failure to disclose shall constitute a failure to materially comply hereunder.

#### **5.06 Not Employees of the State**

The Parties agree that the Contractor is an independent Contractor, and the Contractor, employees of the Contractor, and the Contractor's agents, officers, subcontractors, and subcontractor's employees, in the performance of the Agreement, shall act in an independent capacity and not as officers or employees of the State or DCJS. Social security, unemployment insurance, and like taxes for the Contractor's or subcontractor's employees remain the responsibility of the Contractor and subcontractor, respectively. The Parties agree that Contractor's staff are not employees of the State of New York and/or DCJS and are not governed by Civil Service rules and regulations.

#### **5.07 Indemnification and Limitation of Liability**

- a. Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the State of New York and DCJS from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors, *without limitation*; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligence of the State and/or its employees.
- b. Contractor will indemnify, defend and hold the State of New York, DCJS and entities who have been authorized by DCJS to participate ("Authorized Participating Users" or "Authorized Users"), where applicable, and with whom the Contractor and DCJS has agreed to install or place products or provide services as defined in the Master Agreement harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities and costs which may be finally assessed against the State of New York, DCJS, and its Authorized Participating Users in any action for infringement of a Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that DCJS shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii)

assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State of New York and/or DCJS may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State of New York and/or DCJS shall require. If the Contractor has an opportunity to terminate any such infringement suit by a third-party, the Contractor shall obtain State consent from DCJS, any other contracting State agency, and the Attorney General of the State of New York to the settlement if such settlement will alter any financial or performance terms of the Agreement.

(i) If principles of governmental or public law are involved, DCJS and the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

(ii) If in the Contractor's opinion the equipment, materials, or information mentioned above are likely to or do become the subject of a claim of infringement of a United States patent or copyright then without diminishing the Contractor's obligation to satisfy any final award. Contractor may, with DCJS and/or any other contracting State agency, where applicable, and the State's written consent, substitute other equally suitable equipment, materials, and information or, at Contractor's option and expense, obtain the right for the State to continue the use of such equipment, materials, and information.

- c. The Contractor will indemnify the State of New York and DCJS *without limitation* against any claim(s) brought against the State of New York and/or DCJS by reason of a wrongful disclosure of confidential information attributed to the Contractor or any of its agents, employees, and/or subcontractors and will cooperate fully with DCJS, the State, and the Attorney General of the State of New York in defense of any claim(s).
- d. The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) the State's unauthorized modification or alteration of a product; ii) the State's use of the product in combination with other products not furnished by Contractor; and/or iii) the State's use of the product in other than the specified operating conditions and environment.
- e. Neither Party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. All Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract and shall immediately resume performance upon termination of the force majeure.
- f. Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.
- g. Indemnification for Direct Damage: For all other claims against the Contractor by DCJS and the State of New York where liability is not otherwise set forth in the Contract as being "without limitation" and regardless of the basis on which the claim is made, Contractor's liability under this Contract for direct damages shall be two (2) times the charges rendered by the Contractor under the Contract.
- h. DCJS, and the State may, in addition to other remedies available to them at law, in equity, or under the Contract, and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the Contractor, as applicable, as may be necessary to satisfy any claim for damages, costs and the like asserted by or against them



- i. Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State in performance of the Contract. Contractor shall hold the State and DCJS harmless from any loss or damage to the State resulting from the violation by the Contractor, employees, and subcontractors of such security procedures or resulting from any criminal acts committed by such, employees, and subcontractors while providing services under the Contract.
  
- j. Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. A disclosure of any breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures have been taken subject to approval of DCJS or such other applicable State agency to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation.

State entities subject to Section 208 of the State Technology Law that experience breaches of computerized data which includes private information must file notices with the New York Attorney General; Department of State's Division of Consumer Protection; and the Office of Information Technology Services' Enterprise Information Security Office.

Section 899-aa of the General Business Law provides that persons or businesses conducting business in New York must disclose any breaches of computerized data which includes private information by notifying the offices of the New York Attorney General; the NYS Division of State Police; and the Department of State's Division of Consumer Protection. Information relative to the law and the notification process is available at: <http://its.ny.gov/eiso/breach-notification>

#### Indemnification of New York State and Authorized Users for Breach of Security

The Contractor will indemnify DCJS and the State *without limitation* against any claims brought against DCJS and/or the State by reason of a wrongful disclosure of confidential information attributed to the Contractor or any of its agents, employees, and/or subcontractors and will cooperate fully with DCJS, the State, and the Attorney General in defense of any claims(s). GBL §899-aa provides in part that:

(a) whenever the Attorney General shall believe from evidence satisfactory to him/her that there is a violation of this article he/she may bring an action in the name and on behalf of the people of the state of New York, in a court of justice having jurisdiction to issue an injunction, to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under article sixty-three of the Civil Practice Law and Rules (CPLR). In such action the court may award damages for actual costs or losses incurred by a person entitled to notice pursuant to this article, if notification was not provided to such person pursuant to this article, including consequential financial losses. Whenever the court shall determine in such action that a person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to ten dollars per instance of failed notification, provided that the latter amount shall not exceed one hundred fifty thousand dollars.

The remedies in GBL§899-aa(6)(a) are in addition to any other lawful remedy and in addition to any other remedy available under the terms of the Contract executed between the State and the Contractor. The Contract executed between the State and the Contractor may be terminated by the State for cause for a material breach of this section, and the provisions of GBL§ 899-aa shall survive the termination of the Master Agreement.

Contractor personnel performing under this project, and all Contractor equipment used to process or store State data or to connect to network, must comply with the requirements contained in:

- a) The NYS Information Security Policy (P03-002), located at: <https://www.its.ny.gov/document/information-security-policy>
- b) NYS information technology policies, standards and best practice guidelines, located at: <http://www.its.ny.gov/tables/technologypolicyindex>
- k. The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) DCJS' unauthorized modification or alteration of a product; ii) DCJS' use of a product in combination with other products not furnished by Contractor unless such use has been approved by the Contractor in writing; and/or iii) DCJS' use in other than the specified operating conditions and environment.
- l. Unless otherwise specifically enumerated herein neither Party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.

#### **5.08 Taxation/Exempt Status**

- a. DCJS is an Executive Agency of the State of New York and is exempt from payment of sales, use and other taxes-

#### **5.09 Payment of Outstanding New York State Liabilities**

All outstanding tax warrants against the Contractor in favor of the State of New York must be satisfied prior to contract execution or a payment schedule acceptable to the State of New York arranged for speedy satisfaction.

## **5.10 Confidentiality**

Contractor agrees to maintain the confidentiality of all information concerning any Crime Analysis Center operations, procedures, policies, and systems. The Contractor and any authorized Subcontractor and the individuals assigned to work on this project, must sign a Non-Disclosure Agreement with DCJS, and/or any other participating Crime Analysis Center entity which may be required and to abide by all of the requirements therein.

DCJS or the State will comply with reasonable additional safeguards against improper disclosure, duplication, or use of Contractor's confidential information that Contractor may request from time to time, provided that these safeguards do not interfere with or increase the cost of DCJS or the State's use of the services hereunder.

Contractor acknowledges that DCJS and the State are subject to public disclosure laws and that the Master Agreement is a public record. Any specific information that is claimed by Contractor to be confidential or proprietary, shall be clearly identified as such by Contractor, and to the extent consistent with State public records laws, DCJS and the State shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DCJS or any other State agency procuring project services must notify Contractor of the request and of the date that such records will be released to allow Contractor to obtain a Court Order enjoining that disclosure. If Contractor fails to obtain a court order enjoining disclosure, DCJS or the State may release the requested information on the date previously specified.

## **5.11 User Data is the Property of New York State**

In the course of performance of its obligations pursuant to this Contract, the Contractor, its personnel, agents, officers, and any Subcontractors may have access to or come into possession of data and information which is the property of DCJS, one or more Crime Analysis Center(s) or a participating Crime Analysis Center entity and data and information which is processed by or stored within DCJS or the Crime Analysis Center, or another participating entity for the benefit of itself or other entities. Such data includes, but is not limited to, name, address, criminal history record, license application information, social security numbers, personally identifying information, photographs, and other data and information stored in electronic, optical or physical form, including data and information concerning individuals and data and information concerning operations, processes, procedures and policies of DCJS, Crime Analysis Centers, and other governmental entities.

All information concerning such aforementioned applicant's personally identifying information, State operations, procedures and policies shall be kept confidential by the Contractor, its personnel, agents, officers, and any Subcontractors, and the Contractor shall ensure that it and any such individuals or entities comply with DCJS, Crime Analysis Center(s) and/or other participating law enforcement administrative policies/procedures, regulations or requirements and take all steps required by DCJS and any other State agency to protect confidential information. Under no circumstances shall the Contractor, its personnel, agents, officers, Subcontractors or employees of Subcontractors remove any personally identifying information or confidential information from Contractor or Subcontractor owned property in a manner inconsistent and/or outside the scope of the execution of this Contract.

The Contractor shall be responsible for assuring the State that it has notified all such individuals involved with the Contract of the provisions of this section, and the Contractor shall require compliance with the provisions of this section by performing or providing necessary notification in connection with this Contract. The use of information obtained by Contractor and/or Subcontractor, or their respective personnel, in the performance of its duties under the r Agreement shall be limited to purposes directly connected with such duties with the understanding that none acquire any ownership, right to use, title or any interest in any data or information which remains the property of DCJS, the State, the Crime Analysis Center(s), and participating law enforcements entities, as applicable.

The Contractor shall take appropriate precautions to ensure that Contractor's personnel, agents, and officers and the employees of any of its subcontractors never disclose, sell, publish, archive, make available, in any form or summary, any information of any kind obtained in connection with performance under the Agreement. The provisions of this section shall survive the termination of the Agreement.

#### **5.12 Headings are for Convenience and are of no Legal Consequence**

The Parties agree that headings, sectional division, page numbers and spacing contained within the Master Agreement are of no legal significance and are provided merely as a reference for ease of reference and review.

#### **5.13 Pricing available to DCJS Authorized Participating Users**

The Contractor agrees that all of the prices, terms, warranties and benefits established in the Agreement and amendments thereto are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope, volume, and category of services. In the event that it is later determined that Contractor has not afforded the State, its Agencies, Commissions and Authorities and Authorized Participating Users of the Agreement comparable or equivalent pricing and terms as set forth herein, Contractor shall retroactively adjust the account of the user therefore.

#### **5.14 Participation by Minority Group Members and Women**

The Contractor agrees, in addition to any other nondiscrimination provisions of the Master Agreement and at no additional cost to DCJS, to fully comply and cooperate with DCJS in the implementation of New York State Executive Law Article 15-A, incorporated herein and annexed hereto as Appendix "B". These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBES"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

#### **5.15 Encouraging Use of New York State Businesses and Service Disabled Veteran-Owned Business Enterprises in Contract Performance**

New York State businesses have substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, the Contractor is strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of this Agreement. Such partnering with New York State businesses may be as subcontractors, suppliers, protégés or other supporting roles. To assist in demonstrating commitment to the use of New York State businesses in the performance of the Contract, the Contractor shall have completed the form provided in RFP Attachment L (Encouraging Use of New York State Businesses in Contract performance).

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, any Contractor for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

DCJS strongly encourages the Contractor to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Additionally, the Contractor must continue to utilize small, minority and women-owned businesses consistent with current State law. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects any Contractor to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers. DCJS has established an agency goal of 6% SDVOBs with respect to agency procurements. The Contractor must report to DCJS on a quarterly basis on actual participation by any SDVOB during the term of the contract consistent with any DCJS policies and procedures in this area.

#### **5.16 Termination**

In addition to termination provisions heretofore specified in the RFP, the following termination provisions shall apply:

- a) The Agreement may be terminated by mutual written agreement of the Parties.
- b) The Agreement, may be terminated by DCJS or the State, upon written notice if: Key Employees leave the employment of Contractor; the Contractor is adjudged bankrupt; the Contractor makes a general assignment for the benefit of creditors; a receiver is appointed due to the Contractor's insolvency; a petition in bankruptcy or insolvency is filed, by or against the Contractor; or the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.
- c) The Agreement may be terminated by DCJS or the State for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, provided DCJS or the State gives the Contractor not less than thirty (30) calendar day's written notice and an opportunity to cure all items not in compliance with the terms and conditions of the Agreement, including the attachments hereto. The Termination date shall be thirty (30) calendar days from receipt of such written notice, or such other extended period of time as has been mutually agreed in writing by the Parties. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination. Termination for cause shall create a liability upon the Contractor for legal damages.
- d) The Agreement may be terminated without cause, for convenience or as may be determined by DCJS or the State to be in the best interest of the State, for reasons, including, but not limited to, changes in law or program administration and budgetary constraints. DCJS or the State shall give written notice to the Contractor not less than thirty (30) calendar days prior to the date upon which termination shall become effective. Such written notice shall be provided via registered or certified mail, return receipt requested or hand-delivered to the other Party. The date of such notice will be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt of notice in the case of hand delivery. In the case of termination under this subsection, DCJS or the State agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. The Contractor agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

- e) DCJS or the State reserves the right to terminate this Contract in the event it is found that any of the certifications filed by the Contractor with the State of New York were intentionally false or intentionally incomplete. Upon such finding, DCJS or the State may exercise its termination right by providing written notification to Contractor.
- f) If DCJS or the State determines that funds are unavailable through lack of appropriation therefore, DCJS or the State shall deem the Agreement terminated upon thirty (30) days written notice. DCJS or the State agrees to give timely notice to the Contractor in the event of termination under this paragraph. If the initial notice is oral notification, DCJS or the State shall follow this up immediately with written notice. DCJS or the State will be obligated to pay the Contractor only for costs of pro rata services performed by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from DCJS or the State, or for other costs of pro rata services performed as otherwise mutually agreed by both Parties.
- g) In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible.
- h) Termination under any provision of the Master Agreement shall not relieve the Contractor of any liability to DCJS or the State which it has under the Agreement, or for damages sustained by DCJS or the State by reason of any breach of the Agreement. DCJS or the State may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due DCJS or the State from the Contractor is determined.
- i) Termination of the Agreement, with or without cause, shall not create any liability on the part of DCJS or the State for payment of any penalty, or any other liability.
- j) General Responsibility Language:  
The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or Executive Deputy Commissioner of DCJS or his/her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- k) Suspension of Work (for Non-Responsibility):  
The Commissioner or Executive Deputy Commissioner of DCJS or his or her designee, in his/her-sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he/she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or Executive Deputy Commissioner of DCJS or his/ her designee issues a written notice authorizing a resumption of performance under the Contract.
- l) Termination (for Non-Responsibility):  
Upon written notice to the Contractor, and a reasonable opportunity to be heard with the Commissioner or Executive Deputy Commissioner of DCJS or his/her designee, the Contract may be terminated by the Commissioner or Executive Deputy Commissioner of DCJS or his/ her designee at the Contractor's expense where the Contractor is determined by the Commissioner or Executive Deputy Commissioner or his/her designee to be non-responsible. In such event, the Commissioner or Executive Deputy Commissioner of DCJS or his/her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach. In addition to the

termination language related to responsibility above, the Commissioner or Executive Deputy Commissioner in his/her sole discretion or such designee reserves the right to terminate the Agreement, with or without cause, at any time, for convenience or as may be in the best interests of the State. Termination of the Master Agreement, with or without cause, shall not create any liability on the part of DCJS or the State for payment of any penalty, or any other liability.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of Appendix B or enforcement proceedings as allowed by the Contract.

### **5.17 Third-Party Beneficiary Requirement**

Unless waived by the State, all subcontracts between the Contractor and any subcontractor performing any work with respect to the Agreement shall expressly name the State of New York as an intended third-party beneficiary of such contracts.

### **5.18 Contractor Certification of Insurance**

#### **a) General:**

The Contractor shall file with DCJS, Certificates of Insurance evidencing compliance with all requirements contained therein no more than thirty (30) calendar days after receipt of "Notice of Contract Award" from the State and annually thereafter to DCJS and any other contracting State agency. Such Certificates of Insurance shall be of form and substance acceptable to the State. Acceptance and/or approval of the State of the Certificates of Insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities under the Master Agreement. All insurance required by the Contract shall be for the performance of the Contractor's obligations during the term of this Contract, and shall be obtained at the sole cost and expense of the Contractor, and shall be maintained with insurance carriers licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. In addition, all such insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to DCJS and/or the State of New York for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by DCJS or the State of New York shall be in excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in DCJS' or the State's own policy of insurance. Further, Contractor's insurance policies, unless otherwise mutually agreed by the State, shall be endorsed to provide that written notice must be given to any contracting State agency at least thirty (30) calendar days prior to cancellation, non-renewal, or material alteration of such policy or policies, which notice, evidenced by return receipt of United States Certified Mail shall be sent to the applicable State agency Project Manager. The insurance policies shall name the State of New York, its Officers, agents and employees as additional insureds thereunder.

#### **b) Payment of Premium & Deductible:**

The Contractor shall be solely responsible for the payment of all premiums and deductibles to which all such policies are subject, and the State shall have the right, in the event of a default or other failure by the Contractor to make a premium or deductible payment associated with the coverage's set forth in this section, to pay the required premium(s) or to settle the outstanding balance due with a carrier and to deduct the cost therefore from any sums otherwise due the Contractor under the Agreement.

c) Carrier(s):

Insurance shall be maintained with insurance carriers licensed to do business in New York State. Each insurance carrier must be rated with an A.M. Best Company rating of "A-" Class "VII" or better in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII," the insurance must be replaced no later than thirty (30) calendar days from the date of the negative rating change or the renewal date of the policy, whichever occurs sooner, with an insurer acceptable to the State and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

d) Coverage Term:

The Contractor shall cause all insurance to be in full force and effect as of the date that the Contract is approved by the Office of the State Comptroller and to remain in full force and effect throughout the term of the Contract, and as otherwise required by the terms and conditions of the Agreement. The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverage's during the period of time such coverage's are required to be in effect. Not less than thirty (30) calendar days prior to the expiration or renewal date of insurance policies, the Contractor shall supply the State updated replacement Certificates of Insurance, and amendatory endorsements.

e) Form of Insurance:

The required insurance certificates shall: (1) name the People of the State of New York, its officers and agents as additional insureds, (2) be in a form and substance acceptable to the State; (3) be obtained at the sole cost and expense of the Contractor; (4) be maintained with insurance carriers licensed or otherwise authorized to do business in New York who are acceptable to State; (5) be primary and non-contributing to any insurance or self-insurance maintained by the State; (6) contain the standard ISO separation-of-insured's provision, or a substantially similar clause; (7) be endorsed to provide written notice to the State at least 30 calendar days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail sent to the attention of:

Sanford Fader, Procurement Officer  
Division of Criminal Justice Services  
Office of Financial Administration  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210

In no event shall any certificate form's cancellation provision, contain the words "endeavor to" and/or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or similar language within its provisions.

f) Subcontractor Insurance:

Additionally, the Contractor shall require all of its subcontractors performing work in connection with the Contract, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of their contractual services, the applicable insurance requirements of this section. Satisfactory proof thereof shall be supplied by the Contractor to DCJS or where applicable to such other State official or employee designated by the State upon request.

g) Right to Make Claim:



The failure of: (1) the Contractor to furnish certificates that comply with the requirements of the Contract, or (2) the State to demand such certificate or other evidence of full compliance with these insurance requirements, or (3) the State to identify a deficiency from evidence that is provided to the State, or (4) the State to make payment on behalf of the Contractor in order to maintain required coverage's, shall not be construed as a waiver of the State's rights to enforce the provisions of this section, or as a waiver of the Contractor's liability for failure to meet the insurance requirements set forth herein. In addition to any other legal or equitable remedies that may be available to the State, failure to maintain the required insurance may, in the State's sole judgment, be grounds for a termination of the Agreement for cause. By requiring insurance, the State does not represent that coverage and limits will necessarily be adequate to protect the State and such coverage and limits shall not be deemed as a limitation on the Contractor's liability to the State under the Contract.

h) Commercial General Liability & Umbrella Liability Insurance:

The Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than two million dollars annually if the highest ranking vendor, and one million dollars if the second or third ranking vendor, for each occurrence which shall be effective as of the date of approval of the contract by the New York State Comptroller. Such liability shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover applicable liability arising from premises, operations, independent Contractors, subcontractors, all product (including any equipment and system components) completed operations during the contract period, broad form property damage, personal injury, defense and/or indemnifications obligations, including obligations under any resulting Contract, cross liability coverage and liability assumed in a contract (including the tort liability of another assumed in a contract). The State shall be included as an insured under the CGL, using ISO additional-insured endorsement (General Liability Additional-Insured Endorsement shall be on Insurance Service Office's (ISO's) form number CG 20 10 11 85) or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the State. The Contractor shall submit insurance verification information acceptable to the State upon request.

i) Comprehensive Professional Liability Insurance:

If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintains errors and omissions liability insurance with a limit of not less than one million dollars per loss annually. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and may not exclude bodily injury, property damage, testing, monitoring, measuring, or laboratory analyses, where applicable. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained throughout the term of the Contract.

j) Liability Insurance Policies/State Designation:

Any aforementioned Insurance Policies issued must be in the name of "The People of the State of New York", with appropriate dollar coverage.

k) New York State Worker's Compensation Law:

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the State shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the State, any successful Contractor will be required to verify for the State, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at 1-866-298-7830. Failure to provide verification of either of these types of insurance coverage throughout the contract term to the State is grounds for termination of the Contract.

**Workers' Compensation Requirements under WCL § 57:**

To assist state and municipal entities in enforcing WCL §57, businesses requesting permits, licenses or seeking to enter into contracts must provide ONE of the following forms to the entity issuing the permit or entering into a contract:

- Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage (CE-200); or
- Certificate of Workers' Compensation Insurance (C-105.2) (the business' insurance carrier will send this form to the government entity upon request) Please Note: The State Insurance Fund provides its own version of this form, the U-26.3; or
- Certificate of Worker's Compensation Self-Insurance (SI-12) (the business calls the Board's Self- Insurance Office at 518-402-0247); or
- Certificate of Group Worker's Compensation Self-Insurance (GSI-105.2) (the business' Group Self- Insurance Administrator will send this form to the government entity upon request).

Effective September 9, 2007, all out-of-state employers with employees or subcontractors working in New York State are required to carry a full, statutory New York State workers' compensation insurance policy.

An employer has a full, statutory New York State workers' compensation insurance policy when New York is listed in Item "3A" on the Information Page of the employer's workers' compensation insurance policy. Please contact the Board's Bureau of Compliance at 1-866-298-7830 if you have any questions regarding these requirements.

**Disability Benefits Requirements under WCL § 220(8):**

To assist state and municipal entities in enforcing Sec. 220(8) of the New York State Disability Benefits Law, businesses requesting permits, licenses or seeking to enter into contracts must provide one of the following forms to the government entity issuing the permit, license or entering into a contract:

- Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage (CE-200); or
- Certificate of NYS Disability Benefits Insurance (DB-120.1) (the business' disability benefits carrier will send this form to the government entity upon request);

- Certificate of NYS Disability Benefits Self-Insurance. (DB-155) (Businesses that are self-insured in NYS for disability benefits insurance should call the Workers' Compensation Board's Self-Insurance Office at (518) 402-0247 to obtain this form.)

**Please note:** New York State statutory disability benefits (DB) insurance coverage is totally different from and is not included in New York State workers' compensation insurance coverage. Statutory New York State disability benefits insurance covers employees for an off-the-job accident, injury or illness and pays half an employee's weekly wage, up to \$170 per week, for up to 26 weeks.

An out-of-state employer needs a New York State disability benefits insurance policy if the employer employs one or more individuals on each of at least 30 days in a calendar year in New York State. To be eligible for a disability benefits exemption using Form CE-200, an out-of-state employer must not have one or more individuals working on each of at least 30 days in a calendar year in New York. (Independent contractors are not considered to be employees under the Disability Benefits Law.)

If you have any additional questions regarding workers' compensation coverage requirements, please call the Bureau of Compliance at (866) 298-7830.

**Obtaining Workers' Compensation and Disability Benefits Insurance**

In addition, a workers' compensation policy may be obtained from the NYS Insurance Fund by calling 1-888-875-5790 and a disability benefits insurance policy may be obtained from the NYS Insurance Fund by calling 1-866-697-4332.

## **5.19 Jurisdiction and Continuity**

- a. The Agreement shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.
- b. Pending conclusion of any dispute, the construction placed upon the Master Agreement by DCJS shall govern operation hereunder and the Contractor shall continue to perform under the Agreement.
- c. All legal proceedings and actions brought against DCJS by the Contractor shall be pursued in the New York State court system and the venue shall be in Albany, New York.

## **5.20 Discriminatory Jurisdiction**

The Contractor has been notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principal place of business is located in a discriminatory jurisdiction. Discriminatory jurisdiction is defined as a state or political subdivision which 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 the New York State Department of Economic Development. For further information, see: <http://esd.ny.gov/eblast/procurement/OPARrequirements2013.pdf>

## **5.21 Compliance with Other Miscellaneous Laws**

To the extent that DCJS and/or the State is the recipient of any federally funded monies relating to the procurement of Services under the Agreement, Contractor agrees to comply with all applicable federal laws, rules and regulations including, but not limited to the following areas as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95 relating to:

- a) Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84 and 90, and 7 CFR Parts 15, 15b and 15d.
- b) Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/subgrants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit contractors or sub recipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.
- c) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.
- d) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 U.S.C. 327-333 as supplemented by

USDOL Regulations 29 CFR 5 when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

- e) Rights to Inventions Made under a Contract or Agreement -Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.
- f) Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation, provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).
- g) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.), which require Contracts and subgrants in excess of \$100,000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- h) Byrd-Anti-Lobbying Amendment (31 U.S.C. 1352)- which requires that every contractor under a contract for more than \$100,000 and every tier of contractors or subcontractors thereunder shall file certification, as required, that said contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by such Amendment. A contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)
- i) Debarment and Suspension. (Federal E.O.s 12549 and 12689)- Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- j) Contractor shall make positive efforts to assure that small businesses and minority and women owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall (1) include qualified small businesses and M/WBEs on solicitation lists; (2) assure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs, and; (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100, or its Website at <http://www.esd.ny.gov/> , the U.S Small Business Administration, the Office of

Minority Business Enterprise of the US Department of Commerce and the U.S. Community Services Administration, as appropriate.

- k) Contractor shall ensure that the contract provisions specified in 45 CFR 74.48 are included in all subcontracts. In addition, the State shall adhere to and the Contractor and any of its subcontractors shall abide by Chapter 22 of the Laws of 2014, the Service-Disabled Veteran-Owned Business Act, and any regulations and/or applicable directives which may be adopted or implemented.

## **5.22 Rescale of Project**

The State reserves the right to terminate or modify the Agreement in the event of loss or change of funding streams or appropriations. The State reserves the option to rescale the contractual requirements in order to serve the best interests of the State. If the State exercises the option to reduce the scope, any proposed modifications to insure the performance or interoperability of the modified network will be subject to the Change Order provisions set forth below. If the State exercises the option to scale back the project, the State shall be entitled to a corresponding adjustment in fees due the Contractor with no further compensation due Contractor for any deleted scope.

## **5.23 Process for Change Orders**

At any time during the term of this Contract, the State may make changes, subtractions or additions in any of the Documentation, Services and/or other Deliverables within the general scope of work set forth in the Agreement, consistent with pricing established under the terms of the Agreement. Such changes will be subject to the unit costs itemized in the Contract or such other costs as may be mutually agreed between the Parties. All such changes shall be reduced to a written Change Order Request, Exhibit B to the RFP, executed by both Parties, and shall otherwise be in accordance with the terms and conditions of this Contract. The Change Order shall be accepted and agreed to by both the State and the Contractor as evidenced by the written signatures of the appropriate representatives of both Parties. If any such change causes an increase or decrease in pricing or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Comptroller and any applicable control agency, if required.

## **5.24 Access to & Audit of Records**

At all times during the contractual term and for a period of seven (7) years thereafter, the Contractor shall provide the NYS Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as any other agencies or entities involved in this contract, with full access to the supporting documentation that pertains to services performed and determination of amounts payable under the Contract. Access shall be granted within five (5) business days. The Contractor will also make the appropriate individuals with knowledge of the supporting documentation of financial records related to the Contract (including the Contractor's independent public auditors) available to State representatives to answer questions and provide additional documentation where necessary. State representatives shall be permitted to examine, audit and copy such records at the site at which they are located. The Contractor shall be responsible for assuring that the provisions of this section shall apply to any subcontract related to performance under the Contract.

## **5.25 Non-Assignment Clause**

In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant

to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

#### **5.26 Entire Agreement and Survival**

This Agreement constitutes the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained or referenced herein shall be binding or valid. The terms, provisions, representations and warranties contained in the Master Agreement shall survive performance hereunder. The Agreement shall not be changed, modified or altered in any manner, other than as provided in the Master Agreement, except by a written instrument executed by the Parties and approved by the Attorney General and OSC. The terms, provisions, representations and warranties contained in the Contract shall survive performance hereunder.

#### **5.27 Required Approvals**

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Office of the NYS Attorney General and the NYS Office of the State Comptroller.

Contract Number \_\_\_\_\_

**5.28 Agency Certification by DCJS**

In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract.

**IN WITNESS WHEREOF**, the Parties therefore hereby execute their mutual Agreement to the terms of this Agreement, bearing New York State Comptroller's Contract Number \_\_\_\_\_. This Agreement constitutes a binding Agreement between the Parties as of the day and year indicated below that the approval of the Comptroller of the State of New York or staff of the Office of the State Comptroller (OSC) designated for such purpose was received. The Parties further agree that, where Contractor is asked to execute any original copies of this signature page along with a complete original copy of this Agreement, that the approved signature page will be affixed by DCJS upon its receipt of final approval of the Comptroller of the State of New York or staff of the Office of the State Comptroller (OSC) designated for such purpose, to additional copies of this Agreement which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

DIVISION OF CRIMINAL JUSTICE  
SERVICES

\_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Eric T. Schneiderman, Attorney General

Thomas DiNapoli, State Comptroller

By: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_



**CONTRACTOR ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2016, before me personally appeared,  
\_\_\_\_\_, known to me to be the person who executed the  
foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at  
\_\_\_\_\_, Town/City of \_\_\_\_\_, County of \_\_\_\_\_, State of  
\_\_\_\_\_; and further that he/she is \_\_\_\_\_ a  
duly authorized officer of \_\_\_\_\_; that s/he is authorized to execute the foregoing  
instrument on behalf of [CONTRACTOR] for purposes set forth therein; and that, pursuant to that  
authority, s/he executed the foregoing instrument in the name of and on behalf of said company as the  
act and deed of said company.

\_\_\_\_\_  
Notary Public

**APPENDIX A**  
**(January 2014)**

**STANDARD CLAUSES FOR NEW YORK STATE  
CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

## TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	

## STANDARD CLAUSES FOR NYS CONTRACTS

The Parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any Party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other Party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or

provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes

and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 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 Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested.

Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

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

A directory of certified minority and women-owned business enterprises is available from:

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

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State

Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:  
<http://www.ogs.ny.gov/about/reg/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a



responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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**APPENDIX B**

**MWBE Requirements and Equal Employment Opportunities**

## **APPENDIX B**

### **MWBE Requirements and Equal Employment Opportunities**

#### **Contractor Responsibilities Under Executive Law Article 15-A**

In July of 1988, Article 15-A of the Executive Law was enacted by the New York State Legislature. This Article provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

DCJS is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, Equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, DCJS hereby establishes a goal of 25% for minority business enterprises (MBE) participation and 5% for women-owned business enterprises (WBE) participation.

In order to be awarded a DCJS Contract, every Bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

#### **Policy and Provisions**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

#### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§ 140-145 DCJS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of DCJS Contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement Contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that DCJS establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State Contracts.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, DCJS hereby establishes an overall goal of 30% for MWBE participation, 25% for New York State certified minority-owned business enterprises ("MBE")

participation and 5% for New York State certified women-owned business enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A Contractor (“Contractor”) on the subject Contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that DCJS may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how DCJS will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and DCJS may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A Contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan (Attachment Q) with their bid or proposal. Any modifications or changes to the 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 DCJS.

DCJS will review the submitted MWBE Utilization Plan and advise the Bidder of DCJS acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to [DCJSProcurement@dcjs.ny.gov](mailto:DCJSProcurement@dcjs.ny.gov) a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DCJS to be inadequate, DCJS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DCJS may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If DCJS determines that the Bidder has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DCJS, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the DCJS, by the tenth (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.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor 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 Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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 Contractor, 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 Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Attachment R, to DCJS with their bid.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Attachment R) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting: [DCJSProcurement@dcjs.ny.gov](mailto:DCJSProcurement@dcjs.ny.gov).

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

## **APPENDIX C**

### **Change Request Form**

## APPENDIX C

### NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES CHANGE REQUEST FORM

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<b>1. Description of Requested Change:</b>
<b>2. Reason/Justification for Change:</b>
<b>3. Additional Tasks or Deliverables Required by Change:</b>
<b>4. Additional Cost and/or Timeframes Required by Change:</b>

The signatures below represent that the New York State Division of Criminal Justice Services, and <Vendor Name> are in agreement with the above changes.

<b>New York State Division of Criminal Justice Services Approval</b>	<b>Vendor Name</b>
<b>Name (Print):</b>	<b>Name (Print):</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Title:</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>

# CONTRACTOR ACKNOWLEDGEMENT

**STATE OF \_\_\_\_\_}**  
**COUNTY OF \_\_\_\_\_}**

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2016, before me personally appeared,  
\_\_\_\_\_, known to me to be the person who executed the  
foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at \_\_\_\_,  
Town of \_\_\_\_\_, County \_\_\_\_\_ of  
\_\_\_\_\_ State of \_\_\_\_\_;  
and further that he/she is \_\_\_\_\_ a duly authorized officer of \_\_\_\_\_ -  
\_\_\_\_\_; that s/he is authorized to execute the foregoing instrument on behalf of -  
\_\_\_\_\_ for purposes set forth therein; and that, pursuant to that authority,  
s/he executed the foregoing instrument in the name of and on behalf of said company as the act and  
deed of said company.

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## Notary Public

Printed Name: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

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Office of the Attorney General

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Office of the State Comptroller



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