



**Division of Criminal  
Justice Services**

**State of New York  
Kathy Hochul, Governor**

**Competitive Procurement for:**

**Law Enforcement Strategic Assistance Unit Staffing Services  
NYSDCJS RFP# CJS 2022-03**

<b>CONTRACTING ENTITY</b>	<b>DCJS SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS</b>
<p><b>State of New York acting by and through the Division of Criminal Justice Services (DCJS) Rossana Rosado, Commissioner On behalf of the State of New York, Division of Criminal Justice Services</b></p>	<p><b>Procurement Officer, Office of Financial Services 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 n. 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- 485- 1016. 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	02/01/2023
2. Deadline for Submission of Bidder's Questions	02/08/2023
3. Issuance of DCJS Response to Submitted Questions	On or about 02/15/2023
4. Bid Proposals Due Date	03/01/2023 4:00 P.M. EST
5. Anticipated Notification of Award/Non-Award	On or about 03/08/2023
6. Anticipated Contract Start Date	06/01/2023

NYS reserves the right, in its sole discretion, to alter the information and schedule shown above. In such an event, NYS will e-mail notice to vendors who have submitted a Bid and publish the notification on its website at:  
<http://www.criminaljustice.ny.gov/pio/vendor/business.html>

**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.**

**Law Enforcement Strategic Assistance Unit 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.

<sup>1</sup> Please note that in this RFP, the term “vendor”, “Offerer”, “Offerer/Bidder”, or “Bidder” or similar wording are used interchangeably.

## **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 Offerer's 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 Appendix F 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.icope.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)**

1. 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 Bidders will be notified of the selection or rejection of their proposals. Once an award has been made, Bidders 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 Appendix Q 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.

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## 1.0 PROPOSAL BACKGROUND

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

The Division of Criminal Justice Services (DCJS) is seeking to establish an agreement with a single vendor for the Law Enforcement Strategic Assistance Unit (LESAU) Program to provide experienced law enforcement and qualified hands-on strategic advising to NYS law enforcement agencies focusing on evidence-based policing practices, community trust building and the implementation of reform and reinvention collaboratives staffing services on an as needed basis to support law enforcement agencies in New York State.

A single contract 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 staffing 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.

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

Any contract resulting from this RFP must be approved by the Office of the Attorney General (AG) and the Office of the State Comptroller (OSC).

It should be noted that NYS and DCJS may have other contracts for similar 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).

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

The Division of Criminal Justice Services' mission is to enhance public safety by providing resources and services that inform decision making and improve the quality of the criminal justice system.

The principal charge of the Law Enforcement Strategic Assistance Unit (LESAU) is to provide hands-on strategic advising to NYS law enforcement agencies focusing on evidence-based policing practices, community trust building and the implementation of reform and reinvention collaboratives. The Field Advisor is responsible for providing this strategic advising to law enforcement jurisdictions, guiding them in implementing the core elements of identified strategies effectively, and working with them to innovate in pursuit of effective violence reduction and public safety outcomes.

## 2.0 DEADLINE FOR SUBMISSION OF INITIAL AND SUBSEQUENT QUESTIONS

There will be no pre-bid conference held for this procurement. All questions relating to the content of this RFP shall be directed, by email utilizing **Attachment G** (Questions Template) 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 date found in the timeline shown above will be accepted. Each question shall cite the RFP section and paragraph number to which it refers. Bidders are advised that submissions to DCJS including, but not limited to, written questions become part of the procurement record.

***In the event Bidders experience any technical issues, such as email submission communication issues, including any questions submitted before the deadline that were not addressed in DCJS' Official Response to Questions, please contact the Office of Financial Services at (518) 485-1016 and***

*indicate that the question is regarding RFP 2022-03. 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.

## **2.1 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:

<https://www.criminaljustice.ny.gov/pio/vendor/business.html>

Responses to all submitted questions will be posted on this website. Vendors are responsible for checking the website on a regular basis for the responses and 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 Law Enforcement Strategic Assistance Unit (LESAU)**

The Law Enforcement Strategic Assistance Unit (LESAU) will expand the strategic advisement of the current LESAU Initiative jurisdictions in NYS which include Albany, Broome, Chautauqua, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Rensselaer, Rockland, Schenectady, Suffolk, Ulster, and Westchester counties to include eligible NYS law enforcement agencies that request these services.

### **3.2 Scope of Work**

Bidders must qualify and will be evaluated on their ability to provide staffing, as described in this section, for Law Enforcement Strategic Assistance Unit (LESAU) Field Advisor positions. This procurement will solicit bids for recruitment of staffing with a specific category of expertise, as described below (Position and Minimum Qualifications).

Law Enforcement Strategic Assistance Unit (LESAU) staff may be utilized for a variety of purposes, including, but not limited to the following job description:

Law Enforcement Strategic Assistance Unit (LESAU) provides hands-on strategic advising to NYS law enforcement agencies focusing on evidence-based policing practices, community trust building and the implementation of reform and reinvention collaboratives. The Field Advisor is responsible for providing this strategic advising to law enforcement jurisdictions, guiding them in implementing the core elements of identified strategies effectively, and working with them to innovate in pursuit of effective violence reduction and public safety outcomes.

#### **Responsibilities:**

- a) Provide direct day-to-day strategic advising to partner law enforcement agencies in the implementation of the evidence based policing practices through regular strategic advising calls, semi-regular site visits, training sessions, and ongoing online communication.
  - i. Provide guidance on the tenets of Problem Oriented Policing (POP).

- ii. Assist in the development and distribution of both internal and external surveys that address Procedural Justice.
  - iii. Provide guidance on how to implement Trust Building initiatives.
- b) Design portfolio-specific collaborative learning opportunities, taking into consideration local culture, legislation, and priorities, to foster peer learning partnerships across agencies.
    - i. Develop training programs and curriculum for both the law enforcement agency and the community.
  - c) Continuously review operational data to achieve desired public safety outcomes by incorporating the best available evidence.
  - d) Build and manage strong, functional relationships with high-level government, community, and law enforcement leaders; partner organizations; and academics.
  - e) Build the technical capacity of local stakeholders to implement, measure, and sustain strategies.
    - i. Coordinate research partnerships with the Research Consortium.
  - f) Design and execute collaborative learning opportunities including peer exchanges and working sessions to further implementation in the law enforcement community.
  - g) Report outcomes, challenges, and innovation opportunities to program manager and participate in ongoing development and refinement of the evidence-based practices.
  - h) Collaborate and coordinate within DCJS across units for extended learning within the office and future projects for partnership.
  - i) Develop a reporting process to track the progress, quantitative, and qualitative performance of program implementation.
  - j) Maintain up-to-date, accurate site-specific information (contact information for key partners, high-level implementation summary, call and meeting notes, etc.) in the DCJS contact folder.

### **Preferred Qualifications**

Associate degree or 60 semester credits and five (5) years of qualifying experience as a police or peace officer in a local, state, or federal police agency; or a bachelor's degree and three (3) years of qualifying experience as a police officer in a local, state, or federal law enforcement agency; or seven (7) years of qualifying experience as, a police or peace officer in a local, state, or federal law enforcement agency. All qualifying experience must have been gained after basic/recruit training.

\*Qualifying experience is defined as: Local, state, or federal experience as a police officer, peace officer, probation officer, parole officer, correction officer, or military police officer in any branch of the armed forces. Military police officer candidates must have received an honorable discharge. All qualifying experience must have been gained after basic/recruit training. Time served for basic/recruit training will NOT count towards the qualifying experience.

Telecommuting allowed. Travel 50%, mostly day trips

Final billing rate will include base rate, fringe (including health insurance and leave) and vendor markup.

Note: Billing calculation

- Fringe rates will be set at 45%;
- The fringe rate shall be calculated using the hourly rate not including markup
- The markup rate, to be proposed for this RFP, shall be calculated using the hourly rate not including fringe
- Final calculation = hourly rate + fringe + mark up when invoicing.

Salary increases through the life of the contract will be set at 3% annually to be added on or about the first pay period of the second month of contract start, to be determined in any final contract, for any staff the has no less than 12 months of employment in through this RFP and its resulting contract.

### **3.2.1 Position and Rates**

Below is the position title, along with the offered salary.

LES AU Field Advisor  
Offered Salary: \$79,325 plus approved fringe

There are currently LES AU staff hired through an existing staffing contract in the title of GIVE Field Representative; DCJS requires that these individuals be given the option to onboard with the winning vendor(s) resulting from this RFP, but staff may not remain on any previous contract.

## **4.0 REQUESTS FOR STAFFING SERVICES**

The Contractor(s) must respond rapidly to DCJS Requests for Staffing Services Notifications. Each Request for Staffing Services Notification will identify a response time for the Contractor to provide resumes to DCJS. For staffing requests, resumes may be required to be made available within 10 business days. Candidates must be available within four weeks from the date of the request.

When the request specifies, 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.

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.

Some 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. 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 county of New York State. The Request for Staffing Services Notification will identify the location of the assigned base for travel purposes of the position. 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.

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.

#### **4.1 Notification Process For Requests for Staffing Services**

The following describes the process for requesting services from the 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 description of the services as outlined in section 3.2 of this RFP, 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 less than ten (10) 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 that 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, if there is one.
- e) 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.
- f) After candidate resumes are submitted by the vendor, DCJS will determine whether any candidates satisfy the level of expertise and skill sets stipulated in the Request for Staffing Services Notification.
- g) DCJS will notify the vendor of approval or disapproval of the candidate(s) offered.
- h) Should a vendor decline to respond, or provide unsatisfactory candidate(s), or if DCJS otherwise rejects the candidate(s) submitted by the vendor, DCJS reserves the right to utilize an alternate method to hire required staff.
- i) Upon acceptance of a candidate, they 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.

- j) 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.
- k) 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 the terms of any executed contract.
- l) 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.

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

A Bidder must meet **all of the Mandatory Qualifying Technical Requirements, outlined in this section.** Bidders not meeting these mandatory qualifying requirements will be removed from further consideration.

### **5.1 Bidder Attestation- (Attachment A)**

#### **5.1.1 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 ensure candidates have the experience, education and skills required prior to submitting a candidate's resume for consideration. Pre-screening requirements will minimally include:

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

- a) The Bidder must affirm they will provide pre-screening processes as indicated above. 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.

Candidates must be acceptable to DCJS and must continue to be acceptable for the duration of any assignment.

#### **5.1.2 Staffing Services and Retention**

Bidders must also attest that:

- a) The Bidder can respond rapidly and effectively to Requests for Staffing Services Notification as described in Section 4.1; and
- b) 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.

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

- a) The Bidder shall represent and warrant that it is authorized to do business in the State of New York.
- b) 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: <https://dos.ny.gov/existing-corporations-and-businesses> [NYS Procurement Guidelines](#) To register with the Secretary of State, contact: [State Register | Department of State \(ny.gov\)](#)

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

### **5.1.4 Response Requirement**

Bidder must complete **Attachment A (Firm Information and Attestation Form)**

## **5.2 Bidder Experience- (Attachment B)**

### **5.2.1 Staffing Services**

**Experience and Longevity – Government Clients-** Bidders must have provided individuals to a minimum of two (2) government clients for a period of two (2) years within the last three (3) years from the date of issuance of this 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.

**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.

### **5.2.2 Response Requirement**

Bidder must complete **Attachment B (Bidder Experience Mandatory Requirements Form)**.

## **6.0 TECHNICAL REQUIREMENTS**

This section outlines specific requirements the Bidder should address to receive technical evaluation points in response to this proposal. The Bidder should 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.

### **6.1 Service Capacity- (Attachment C)**

It is preferable that the Bidder has 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 extent of the Bidder's experience in providing such candidates.

#### **6.1.1 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.

### **6.2 Client References- (Attachment D)**

DCJS will contact client references listed on **Attachment D (Client Reference Response Form)** to ensure the Bidder has prior experience with providing such candidates.

Bidders must provide references for two (2) primary and one (1) alternate client who have obtained individuals from the Bidder for the same and/or similar title listed in section 3.2.1 of this RFP.

#### **6.2.1 Response Requirement**

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

The client contacts provided on the **Attachment D** submissions will be contacted by DCJS via email and asked to complete a questionnaire. The questions on the questionnaire cover a range of vendor performance measures. DCJS reserves the right to contact references for clarification purposes.

## **7.0 FINANCIAL REQUIREMENTS**

## 7.1 Vendor Payment

The Contractor will be reimbursed monthly, upon receipt of a single proper invoice for all staff hired through any resulting contract 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 fringe (including health insurance and leave) and vendor markup percentage (see calculation below). 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.

- Note: Billing calculation
  - Fringe rates will be set at 45%
  - The fringe rate shall be calculated using the hourly rate not including markup
  - The markup rate, to be proposed for this RFP, shall be calculated using the hourly rate not including fringe
  - Final calculation = hourly rate + fringe + mark up when invoicing

## 7.2 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 rate, not including fringe, 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 and computer equipment will 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.

Section 3.2 indicates the title information most commonly used and the minimum title experience requirements for this position. DCJS reserves the right to modify this title and related information based on need.

### 7.2.1 Response Requirement

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

## 8.0 ADMINISTRATIVE REQUIREMENTS

Bidders must provide the following administrative information in response to this RFP. Please note Appendices not required for submission by this RFP are intentionally not included.

## 8.1 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.

### 8.1.1 Response Requirement

Each Bidder 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 Bidder in its offer to the State. The Bidder 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 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. A Bidder's Proposal may be withdrawn from consideration by the Bidder 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 Bidder's Formal Offer Letter must include a Conflict-of-Interest Disclosure, in the form set forth in Attachment F, stating that the Bidder 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:

- a. No potential for conflict of interest on the part of the Bidder due to prior, current, or proposed contracts, engagements, or affiliations; and
- b. 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 Bidder 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.

## 8.2 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).

### **8.2.1 Response Requirement**

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

### **8.3 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.

#### **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.

### **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.

#### **8.3.1 Response Requirement**

The Bidder is responsible for the review of **Appendix E- Procurement Lobbying Guidelines and the completion of Appendix F- Attachment 1, 2 and Form 4.**

### **8.4 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 Appendix C (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.

#### **8.4.1 Response Requirement**

The Bidder is responsible for the completion and submission of **Appendix C (Encouraging Use Of New York State Businesses in Contract Performance).**

### **8.5 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.

**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**

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.

### **8.5.1 Response Requirement**

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

## **8.6 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.

### **8.6.1 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:

- a) Each proposed Extraneous Term shall be specifically enumerated in a separate section of the applicable submission (Administrative/Financial or Technical) labeled "Additional/Extraneous Terms".
- b) The "Extraneous Terms" section shall be prepared by the Bidder and may not include any pre-printed literature or vendor forms;
- c) The writing shall identify by part, section, and title the particular RFP requirement (if any) affected by the Extraneous Term; and
- d) The Bidder shall specify the proposed Extraneous Term and the reasons therefore.
- e) 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.

## **8.7 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.

#### **8.7.1 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.

## **8.8 EO 177 Certification, NYS Human Rights Law, Article 15 of Executive Law**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

In accordance with Executive Order No. 177, the Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

#### **8.8.1 Response Requirement**

The Bidder is responsible for the completion and submission of **Appendix M (EO 177 Certification, NYS Human Rights Law, Article 15 of Executive Law)**.

## **8.9 Sexual Harassment Prevention Certification**

Pursuant to State Finance Law §139-I Bidder must certify that by submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the Bidder has and has implemented

a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Bidders that do not certify will not be considered for award; provided however, that if the Bidder cannot make the certification, the Bidder provides a signed statement with their bid detailing the reasons why the certification cannot be made.

### **8.9.1 Response Requirement**

The Bidder is responsible for the completion and submission of **Appendix P (Sexual Harassment Prevention Certification)**.

## **9.0 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.

### **9.1 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.

### **9.2 Termination of the Agreement**

The following highlights certain grounds for termination of any contract resulting from this RFP.

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

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

- a) The State shall have the right to unilaterally terminate any Contract resulting from this RFP, 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 vendor as indicated in this RFP.
- b) In the event the State determines that necessary and lawful appropriations are not provided or continued for the funding of any Contract resulting from this RFP, the State shall deem the Contract terminated upon thirty (30) calendar days advance written notice.

#### **9.2.2 For Cause**

- a) Notice

DCJS reserves the right to cancel any contract resulting from this RFP within 30 days. 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.

b) Additional State Rights & Remedies

- i. In the event of Vendor'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:
  - 1. terminate the Contract in whole or in part;
  - 2. suspend, in whole or in part, payments due Vendor under any New York State Contract;
  - 3. pursue equitable remedies to compel Vendor to perform.

The Vendor 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.

c) Non-Responsibility

The Vendor shall at all times during the contractual term remain responsible. The Vendor 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.

**9.2.3 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:

Deputy Commissioner/Director, Office of Public Safety  
Alfred E. Smith Office Building, 3rd Floor  
80 South Swan Street  
Albany, NY 12210

AND

Lead Counsel

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

#### **9.2.4 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 any Contract resulting from this RFP, 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.

### **10.0 STANDARD LEGAL LANGUAGE**

#### **10.1 Issuing Agency**

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

#### **10.2 Solicitation**

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

#### **10.3 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.

#### **10.4 Proposal Ownership**

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

#### **10.5 Proposal Security**

Each Bidder's proposal will be held in strict confidence by DCJS 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. Bidders 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 DCJS grants records access in accordance with the Freedom of Information Law. Bidders are advised that determinations of DCJS 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 DCJS 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.

#### **10.6 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.

#### **10.7 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.

#### **10.8 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.

#### **10.9 Bidder Proposal Clarification**

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

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

DCJS 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 DCJS. In such event DCJS will disseminate such information by posting the information to DCJS's website at the internet address identified on the face page of this RFP.

#### **10.10 Award Notification**

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

#### **10.11 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.

#### **10.12 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.

#### **10.13 Debriefing Sessions**

Unsuccessful Bidders will be notified in writing and may request the opportunity for a debriefing session. Once an award has been made, Bidders 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.

#### **10.14 Bid Protest Policy**

The State of New York strives to assure a fair, open and competitive process to all potential Bidders qualified to respond to this Procurement. In the event that any prospective Bidder has a complaint or objection to the RFP requirements, the procurement process or any matter affecting the submission of a prospective Bidder's Bid Proposal, the Bidder 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.

Bidders 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 **Appendix Q (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 **Appendix Q**.

### **10.15 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) 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.
- d) Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
- e) Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in DCJS's considered judgment, the best interests of DCJS will be served. In the event compliant bids are not received, DCJS reserves the right to consider late or non-conforming bids as offers.
- f) Require the Bidder to provide proof of or otherwise demonstrate, to the satisfaction of DCJS, any information presented as a part of their proposal.
- g) Use information obtained through DCJS's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to DCJS's request for clarifying information in the course of evaluation and selection under this RFP.
- h) Determine a tie breaking mechanism for award of the contract to serve the best interests of DCJS.
- i) Negotiate with the successful Bidder(s) within the scope of the RFP to serve the best interests of DCJS and the State.
- j) DCJS 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.
- k) In the event DCJS terminates a Contract resulting from this procurement, DCJS 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.
- l) Reject any or all proposals received in response to the RFP.
- m) Withdraw the RFP at any time, at the agency's sole discretion.
- n) Make an award under the RFP in whole or in part.

- o) Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
- p) Seek clarifications and revisions of proposals.
- q) 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.
- r) Prior to the **bid opening**, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- s) Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments.
- t) Waive any requirements that are not material.
- u) Negotiate with the successful Bidder within the scope of the IFB/RFP in the best interests of the State.
- v) Conduct contract negotiations with the next responsible Bidder, should the agency be unsuccessful in negotiating with the selected Bidder.
- w) Utilize any and all ideas submitted in the proposals received.
- x) 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.

## **10.16 Administrative Contract Conditions**

### **10.16.1 Payments**

All payments will be made in accordance with Section 11-a of the New York State Finance Law. The Vendor will be compensated for services provided based on submissions required from the Vendor's staff by DCJS including properly completed invoices detailing hours worked that includes times and locations and may include additional detail at time of contracting. Vendor will be compensated based on the hourly rate plus markup plus fringe (including health insurance and leave) as defined in and submitted as a response to this RFP.

### **10.16.2 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 Vendor pursuant to the Contract shall reference the Contract in order to be considered sufficient

evidence that the sale by Vendor 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 Vendor.

#### **10.16.3 Mandatory Requirement – Price Protection**

The Bidder 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 Bidder 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.

#### **10.16.4 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.

#### **10.16.5 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.

#### **10.16.6 Mandatory Requirement – Discriminatory Jurisdictions**

Bidders 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.

#### **10.16.7 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 DCJS. Such approval shall not be considered until an executed contract is in place.

#### **10.16.8 Contract Term**

The contract resulting from an award under this procurement shall take effect upon approval by the New York State Attorney General and the Office of the State Comptroller of New York or staff designated for such purpose (“Effective Date”) and anticipated for a term of five years.

#### **10.16.9 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.

#### **10.16.10 Contract Formation**

A successful applicant will be required to timely enter into a contract with NYS. 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.

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.

The State shall have the right to renegotiate the terms of the contract 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.

#### **10.16.11 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, DCJS may at any time following thirtieth business day at its option begin negotiations with the next highest scored Offerer, as applicable.

#### **10.16.12 Cancellation Clause**

DCJS is responsible for monitoring and enforcing the Vendor’s performance. Performance requirements include Vendor’s conformance with scheduling requirements. DCJS will provide written notice to the Vendor in the event the Vendor does not comply with the Contract’s performance requirements. DCJS may terminate the contract consistent with this provision.

#### **10.16.13 Contractor**

Offerer is required to serve as the Contractor when selected to provide evidence based strategic advisement 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.

#### **10.17 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.

#### **10.18 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.
- c) 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.

- d) 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.
- e) 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).
- f) 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.
- g) 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.
- h) 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.
- i) 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.
- j) 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

### **10.19 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 limited to 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/sub grants 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 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) 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 sub grants 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 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.

## **10.20 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. The Contract may be terminated by the State for cause for a material breach of this section.

### **10.20.1 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.

### **10.20.2 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:  
<https://its.ny.gov/breach-notification-and-incident-reporting>

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.

Bidders 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.

#### **10.21 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.

#### **11.0 BIDDERS PROPOSAL SUBMISSION**

The Bidder must provide a response that clearly and precisely provides all of the information required by DCJS on which to base the evaluation.

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.

### 11.1 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

#### **a. 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:

Attachment B	Bidder Experience Mandatory Requirements Form
Attachment C	Staffing Services Placement Experience
Attachment D	Client Reference Response Form

#### **b. 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 A	Firm Information Form and Attestation (signed)
Attachment F	Formal Offer Letter (signed and notarized)
Appendix C	Encouraging Use of New York State Businesses in Contract Performance
Appendix D	Non-Collusive Bidding Certification (signed)
Appendix E	Procurement Lobbying Attachments 1 and 2; and Form 4 (signed)
Appendix M	EO 177 Certification (signed)
Appendix P	Sexual Harassment Prevention Certification (signed)
	Proof of coverage for NYS Workers Compensation and Disability coverage or exemption from such as defined in section 8.5 of this RFP
	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: **Law Enforcement Strategic Assistance Unit (LESAU) Staffing Services**

**11.2 Submission of Proposals**

The Bidder must submit one (1) bound paper copy which must contain original (wet/ink) notarized signatures and be marked as "ORIGINAL" of Volume One (1) and Two (2), all volumes must be bound separately and clearly identified as well as one complete copy of entire proposal organized in the same manner. Additionally, One (1) separate electronic copy of Volume One (1) and one (1) electronic copy of Volume Two (2) shall be submitted on individual USB Drives. These USB Drives must be clearly labeled to indicate whether they contain Volume One or Volume Two. 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 Procurement Timeline. All bids are to be packaged, sealed and submitted to the following:

**Procurement Officer  
Office of Financial Services  
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  
Law Enforcement Strategic Assistance Unit Staffing Services  
NYSDCJS RFP# CJS 2022-03  
Bid Submission  
Do not open until after 4:00 P.M. on 2/28/2023  
Label: "Administrative/Financial Proposal" or "Technical Proposal" (as applicable)**

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

**12.0 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.

DCJS evaluates proposals for goods and services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Throughout this process, DCJS identifies Contractors who will best meet our needs and will be cost effective. DCJS 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.

### **12.1 Proposal Clarification**

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

### **12.2 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.

### **12.3 Evaluation Process**

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

#### **a) Completeness Review**

- i. After the bid opening, each proposal will be screened for completeness and conformance with requirements for bid submission as specified in Section 11 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. Missing or erred administrative non- substantiative information may be requested following bid opening.

#### **b) Mandatory Qualifying Requirements Evaluation (Pass/Fail)**

- i. Bidder information provided on Attachment B, will be reviewed to determine if the Bidder meets the mandatory qualifying requirements criteria as identified in Section 5.0 of this RFP.

#### **c) Technical Evaluation (70 Points)**

- i. The Bidder is required to demonstrate quantitative and qualitative experience providing evidence based strategic advisement services to law enforcement. The

technical evaluation will proceed concurrently and separately from the financial evaluation.

ii. Resource Capacity

1. 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 LESAU staffing services.

d) Client References

This part of the technical evaluation will be based on the Client Reference Questionnaire submissions obtained from the Bidder identified on **Attachment D (Client Reference Response Form)**.

References will be contacted by DCJS and will be asked a series of questions that will be evaluated and scored.

e) Financial Evaluation (30 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: Law Enforcement Strategic Assistance Unit Services)**. For evaluation purposes, the vendor submitting the proposal with the lowest markup percentage will automatically receive 20 points. All remaining Bidders' score will be calculated by dividing the lowest proposed cost of all Bidders by the proposed cost provided by the Bidder being evaluated and multiplying by 20.

f) Final Ranking/Contract Award

DCJS will award a single contract;

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

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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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**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 \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 (2 NYCRR § 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 Part 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 clause. 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 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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.