



# Division of Criminal Justice Services

## REQUEST FOR APPLICATIONS (RFA) CJS 2020-02 Provision of Ignition Interlock Services In New York State

Issued: January 20, 2021

CONTRACTING ENTITY	DCJS SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS
<p style="text-align: center;">State of New York acting by and through the Division of Criminal Justice Services (DCJS) Michael C. Green, Executive Deputy Commissioner, On behalf of: the State of New York, Division of Criminal Justice Services</p>	<p style="text-align: center;">Mr. Sandy Fader Assistant Director/Procurement Officer</p> <p style="text-align: center;">New York State Division of Criminal Justice Services 80 South Swan Street – 10<sup>th</sup> Floor Albany, New York 12210-8001</p> <p>All questions regarding this RFA must be submitted via electronic mail to the designated contact for this RFA <a href="mailto:DCJSProcurement@dcjs.ny.gov">DCJSProcurement@dcjs.ny.gov</a> Neither phone nor fax inquires will be accepted</p>

Calendar of Events	
Event	Date
1. RFA release date	January 20, 2021
2. Deadline for Submission of Bidder's Questions	January 29, 2021
3. Issuance of DCJS Response to Submitted Questions	On or about February 5, 2021
4. APPLICATION DUE DATE (EXTENDED)	March 5, 2021 @ 12:00 P.M. (EST)
5. Anticipated Notification of Award	On or about March 19, 2021
6. Services Start Date	On or about August 14, 2021

**Request for Applications**  
**CJS2020-02**  
**Provision of Ignition Interlock Services**  
**In New York State**

**TABLE OF CONTENTS**

<u>TOPIC</u>	<u>PAGE</u>
APPLICATION HIGHLIGHTS	6
I. INTRODUCTION	7
II. DEFINITIONS	8
III. SCOPE OF WORK	8
IV. QUALIFICATION OF MANUFACTURERS AND INSTALLATION/SERVICE PROVIDERS	9
V. FEES	12
VI. NYS IGNITION INTERLOCK CLASSIFICATION SYSTEM	13
VII. CANCELLATION, SUSPENSION AND REVOCATION OF MANUFACTURERS, INSTALLATION/SERVICE PROVIDERS, AND CERTIFIED IGNITION INTERLOCK DEVICES	14
VIII. IGNITION INTERLOCK DEVICE SPECIFICATIONS	15
IX. IGNITION INTERLOCK DEVICE INSTALLATION	15
X. SERVICE VISITS	17
XI. IGNITION INTERLOCK DEVICE REMOVAL	18
XII. RECORDS AND REPORTING	19
XIII. APPLICATION REQUIREMENTS AND THE REVIEW PROCESS	19
XIV. ADMINISTRATIVE CRITERIA AND CONDITIONS	20
XV. CHECKLIST OF REQUIRED DOCUMENTS AND ATTACHMENTS	28
ATTACHMENT A: DCJS' IGNITION INTERLOCK RULE- 9 NYCRR PART 358	29
ATTACHMENT B: DEVICE CLASSIFICATION AND FEE STRUCTURE	59
ATTACHMENT C: IGNITION INTERLOCK MANUFACTURER'S APPLICATION AND CERTIFICATION	63
ATTACHMENT D: IGNITION INTERLOCK RFA-RELATED DEFINITIONS	81
ATTACHMENT E: MAP OF IGNITION INTERLOCK SERVICE REGIONS	85

ATTACHMENT F: STANDBY LETTER OF CREDIT FORM	87
ATTACHMENT G: INDEMNIFICATION/HARMLESS STATEMENT	90
APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS	92
APPENDIX C: ENCOURAGING BUSINESS IN NYS FORM	99
APPENDIX D: NON-COLLUSIVE BIDDING CERTIFICATION	101
APPENDIX E: DCJS PROCUREMENT LOBBYING GUIDELINES	105
APPENDIX F: ATTACHMENT 1: OFFERER'S AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j (3) AND §139-j (6) (b)	
ATTACHMENT 2: OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS	
FORM 4: OFFERER'S CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW §139-k(5)	112
APPENDIX G: USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES	118
APPENDIX H: CONTRACTOR, AFFILIATE AND SUBCONTRACTOR SALES AND COMPENSATION USE TAX CERTIFICATION	120
APPENDIX I: MWBE REQUIREMENTS AND EQUAL EMPLOYMENT OPPORTUNITIES	136
APPENDIX K: VENDOR RESPONSIBILITY QUESTIONNAIRE	142
APPENDIX M: EO 177 CERTIFICATION	153
APPENDIX O: EEO POLICY STATEMENT	155
APPENDIX P: SEXUAL HARRASSMENT PREVENTION CERTIFICATION	160

**ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFA 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.**

**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 Applications (RFA) includes and imposes certain restrictions on communications between the Division of Criminal Justice Services (DCJS), a governmental entity and a vendor during the procurement process.

A vendor is restricted from making contacts from the earliest notice of intent to solicit offers including this Request for Application through final award and approval of the procurement Contract by DCJS and the Office of the State Comptroller (“Restricted Period”). Contact is prohibited 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 RFA. 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 shall 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 of a 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/>

Applicants must provide DCJS with an 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 by completing the Offerer's Affirmation of Understanding of an Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b), and Offerer's Certification of Compliance with State Finance Law §139-k(5) found in Appendix E and Appendix F.

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

All Applicants shall comply with Chapter 1 of the Laws of 2005, the Procurement Lobbying Act, as amended by Chapter 4 of the Laws of 2010. All questions regarding this RFA must be submitted via electronic mail to the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFA. Pursuant to the Procurement Lobbying Law the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFA 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 vendors who have voluntarily filed a Notice of Intent to Bid and through its website. The webpage Uniform Resource Locator (URL) is provided on the beginning pages of this RFP.

**NYS Division of Criminal Justice Services  
Provision of Ignition Interlock Services  
In New York State  
REQUEST FOR APPLICATIONS**

**APPLICATION HIGHLIGHTS**

1. Manufacturers seeking to do business or continue to doing business on or before August 14, 2021 to provide ignition interlock service in New York State shall submit a complete response to this RFA that conforms to the format and content requirements as set forth in this RFA and the attached application. Interested manufacturers, and/or distributors, shall submit a complete response to this RFA that conforms to the format and content requirements as set forth in this RFA and the attached application. No company whose services have been suspended, terminated, revoked, or cancelled, in whole or in part, by any state, territory, the District of Columbia, or any other country, within twelve (12) months of the RFA's submission deadline is eligible to apply under this RFA. **NOTE: All applicants must ensure their application and all documents reflect their exact business name as reflected in their Tax Identification number with the IRS. Further, information submitted to the NYS Department of Health for purposes of IID certification should reflect the exact business name of the manufacturer and any distributor.** The applicant must furnish three (3) completed original signed applications, and five (5) additional hard copies. Your response should be enclosed in one mailing envelope or box with the notation "CJS2020-02 Ignition Interlock Program Application" clearly visible on the front. Fax or e-mail transmittals will not be accepted.

**Send Applications to:  
Mr. Sandy Fader  
Assistant Director/Procurement Officer, Office of Financial Administration  
NYS Division of Criminal Justice Services (DCJS)  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan Street  
Albany, New York 122010**

All inquiries concerning this RFA must be directed, via e-mail to the aforementioned DCJS Procurement Officer at: [DCJSprocurement@DCJS.ny.gov](mailto:DCJSprocurement@DCJS.ny.gov) by January 29, 2021. Neither phone nor fax inquiries will be accepted. Responses to inquiries will be posted on the DCJS public website at: <http://www.criminaljustice.ny.gov/pio/vendor/business.html#solicitations> on or about February 5, 2021. Please note that DCJS cannot answer substantive questions concerning this RFA in any manner other than by email.

**Applications must be received by DCJS by: February 19, 2021 @ 12:00 P.M.  
(Eastern Standard Time)**

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

This is an evaluative process. All manufacturers, and/or distributors, evaluated as meeting the minimum stated criteria herein will be selected to join the already qualified manufacturers in providing ignition interlock services in New York State and be deemed “qualified” to do business in New York State. Notification of approved applications is expected on or about March 5, 2021.

**Request for Applications  
Ignition Interlock Program  
In New York State**

**I. INTRODUCTION**

The New York State (NYS) Division of Criminal Justice Services (DCJS), specifically its Office of Probation and Correctional Alternatives (OPCA), has responsibility to exercise general supervision over the administration of probation and alternative to incarceration services throughout New York State. OPCA promotes public safety and offender accountability in probation and other community corrections programming services through funding and oversight. OPCA is also statutorily authorized to collect statistical and other information in order to promote coordination between, and the most effective use of correctional alternative programs and probation services. DCJS has broad rulemaking authority with respect to such service delivery.

On November 18, 2009, Chapter 496 of the Laws of 2009, commonly referred to as “Leandra’s Law”, was signed into law. In general, the law was groundbreaking in that it strengthened various laws relative to driving while intoxicated (DWI) or while impaired by drugs to achieve greater offender accountability, promote public, especially child safety, and deter unsafe driving. It increased criminal sanctions for individuals convicted of DWI or under the influence of drugs with children (under the age of 16) in a motor vehicle, while also increasing penalties associated with other DWI related crimes. Among key provisions relevant to this RFA was the requirement that the court, in addition to any other criminal disposition (including a fine, local or state imprisonment), must also impose upon a defendant convicted of a Vehicle and Traffic Law (VTL) §1192(2), (2-a), and/or (3) crime or any Penal Law or VTL crime in which any aforementioned alcohol-related provision of VTL §1192 is an essential element, a sentence of probation or conditional discharge AND order as a condition that he/she install and maintain a functioning ignition interlock device in any motor vehicle owned or operated by such person during the term of probation or conditional discharge for a period of no less than six (6) months. Monitoring of the IID condition by either the local probation department or another County monitoring entity was further required and DCJS was empowered with certain rulemaking authority in this area. With respect to the cost of an IID, the law established it was to be borne by the operator subject to such condition, unless the court has determined that he/she is financially unable to afford such cost, whereupon the court may impose a payment plan (reduced payment) or waive the cost in its entirety. In the event of any court waiver of the IID cost, the law established the cost shall be borne in accordance with regulations issued by DCJS pursuant to such other agreement as may be entered into for provision of the IID.

Subsequently, on November 1, 2013, “Leandra’s Law” was amended through Chapter 169 of the Laws of 2013, to expand the minimum period of installation of an IID imposed from six months to one year and allowing the operator upon a showing to the court that he/she successfully maintained the device in the vehicle for a minimum of 6 months

to request of the court, that the IID be de-installed. This 2013 Chapter also clarified the law's applicability to Youthful Offenders and recognized the authority for courts to order the installation of IIDs in advance of sentencing.

Pursuant to its statutory authority, DCJS promulgated regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices in vehicles they own or operate. DCJS Rule 9 NYCRR Part 358, entitled "Handling of Ignition Interlock Cases Involving Certain Criminal Offenders" sets forth minimum standards for the usage and monitoring of IID devices imposed as a result of "Leandra's Law" and among its provisions establishes specific responsibilities of IID manufacturers, and their installation/service providers, which includes, but is not limited to, clarifying the need of manufacturers to have their IIDs certified by the NYS Department of Health (DOH), entering into contracts with DCJS for a specified period, specific administrative, operational performance, and reporting requirements. For full detail of this Rule, see Attachment A.

The NYS Department of Motor Vehicles (DMV) has since adopted regulations to review the driving records of operators it identifies as a "problem driver" and to require them to install an IID. This is done administratively by DMV, and the condition is not monitored by a probation officer or conditional discharge monitor. The DMV administrative process is implemented through DMV regulations and is not associated with DCJS regulations. For convenience and consistency, DMV does utilize the same list of qualified manufacturers as DCJS, ensuring that IID manufacturers can serve operators statewide and that their IIDs are similarly approved by the NYS DOH. As a result of DMV regulations, there are additional operators subject to IID installation, for further information, please contact DMV directly.

DCJS is requesting submission of applications from interested eligible applicants who desire to commence providing ignition interlock services, in New York State in accordance with statutory and regulatory requirements.

## **II. DEFINITIONS**

DCJS' above-referenced Ignition Interlock Regulation contains and defines numerous terms. Contracts resulting from this RFA will require adherence to them and where applicable other contractual definitional terms or modifications. These definitional terms are attached hereto as Attachment D and are subject to further regulatory change by DCJS.

## **III. SCOPE OF WORK**

The purpose of NYS' ignition interlock program is to hold offenders accountable subject to "Leandra's Law" and its statutory amendments, and to change their driving behavior, thereby increasing public safety. An ignition interlock program is currently in place in New York State with qualified manufacturers providing approximately 70,000 IID's between August 2010 and June 2020. Qualified manufacturers must be able to provide service within the parameters specified within this RFA, as well as in DCJS regulations 9 NYCRR Part 358 and the NYS DOH regulations 10 NYCRR Part 59 in order to be certified and eligible to participate in NYS' ignition interlock program. Attachment A contains the current DCJS Part 358 rule. Applicants who are newly approved by DCJS as Qualified manufacturers resulting from this RFP will be required to enter into DCJS contractual agreements for a period commencing on or about August 14, 2021 and continuing through August 14, 2024 with a DCJS option of up to 2 one year extensions, setting forth the requirements of the qualified manufacturer and all of its installation/service

providers consistent with DCJS' existing IID rule and any amendments to its regulatory provisions and the approved application submission.

#### **IV. QUALIFICATION OF MANUFACTURERS AND INSTALLATION/SERVICE PROVIDERS**

The goal of NYS in continuing its ignition interlock program is to provide the best products and services at competitive prices. Each manufacturer and/or distributor seeking to join existing DCJS approved qualified manufacturers in delivering IID services in NYS shall provide the following information in its application:

1. A narrative demonstrating a record of providing IID services in New York State and/or other states. The manufacturer must be well-versed in the installation and maintenance of IID's and must supply and train all installers/service providers to ensure quality customer service and compliance with all contract requirements. A company whose services have been terminated, revoked, or cancelled, in whole or in part, by any state, territory, the District of Columbia, or any other country, within twelve (12) months of the RFA's submission deadline may be reviewed for eligibility to apply under this RFA at the discretion of the agency.

2. a certification that it will establish, maintain and distribute to OPCA, probation departments and other monitoring agencies in any county where it does business, a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance, prior to doing business in the state. Provide an up-to-date listing of NYS installation/service providers to OPCA, and necessary updates to such list in a timely manner.

3. a certification that it will provide immediate notice to DCJS and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;

4. a certification that it will provide proof of compliance with the NYS Department of Health (DOH) Regulations set forth in 10 NYCRR PART 59-Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

5. a certification that it will provide immediate notice to DCJS and DOH upon receipt of verbal and/or written notification or communication of disapproval, suspension in whole or in part, revocation, or cancellation of a manufacturer's device, services, and/or operations by another state or jurisdiction;

6. a certification that prior to commencing business in NYS it will provide written certification to DCJS in a format prescribed by OPCA that all installation/service providers:

- i. have been trained in advance as to installation, maintenance, troubleshooting, set point requirement of .025 percent BAC, and recalibration of such manufacturer's devices;
- ii. have instructions as to installation and usage and agreed to comply with applicable provisions of DCJS' regulation 9 NYCRR Part 358, including where approved by the court, the need for IIDs to be set for a reduced air capacity;
- iii. have agreed to comply with their manufacturer's service agreements;

- iv. have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an IID is being installed, with a valid driver's license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the operator;
- v. have been informed of NYS law governing circumvention of IIDs and penalties associated therewith;
- vi. have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order; and
- vii. have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified). An installation/service provider may be reinstated by DCJS upon satisfactory proof from the qualified manufacturer of corrective action.

7. a certification that it will conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide OPCA with yearly sworn statements that such audits have been conducted. Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude OPCA and/or its representative from conducting random audits and quality assurance audits or reviews.

8. a certification that it will take all reasonable steps necessary to prevent tampering or circumvention of the IID and promptly notify OPCA, the applicable county's monitor and district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an IID of any operator or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;

9. a certification that it will submit reports, as requested and in such format as determined by DCJS, for each model or type of certified device, including, but not limited to:

- (i) operator and other vehicular user operation error;
- (ii) faulty automotive equipment that directly impacts successful implementation and use of the device;
- (iii) apparent misuse or attempts to circumvent or tamper/bypass a device;
- (iv) device malfunctions, including action taken by the manufacturer to correct such malfunctions;
- (v) deficiencies in device calibration stability;
- (vi) operator, vehicular user, and installation/service provider complaints; and

- (vii) any other information determined by DCJS to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction;

10. designation of the region or regions, up to and including all four regions, within NYS in which it will provide ignition interlock services if so authorized. Only a qualified manufacturer may conduct business in New York State with respect to any operator. If a manufacturer is authorized to provide services in a region, it must certify that it will adhere to and comply with all applicable provisions specified in 9 NYCRR Part 358, with respect to service delivery. The manufacturer must certify that installer/service providers will be available to service every county within a region and that there shall be an installation/service provider within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest. Any manufacturer shall also certify that repair or replacement of a defective IID shall be made available within the same 50-mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated. The four regions of the state by counties for purposes of 9 NYCRR Part 358 are as follows (See Attachment E for map of regions):

- (i) Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;
- (ii) Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;
- (iii) Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and
- (iv) Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester;

11. documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total. The manufacturer shall provide a signed statement holding harmless the State of New York, DCJS, every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the manufacturer or their installation/service provider relating to the installation, service, repair, use and/or removal of an IID; and

12. a certification of commitment to obtain, provide documentation and verification of and maintain a requisite Standby Letter of Credit (SLOC) if approved for a RFA award consistent with RFA and contractual requirements. A SLOC is required of all approved Qualified Manufacturers entering into contracts with DCJS. The amount of the SLOC may change throughout the contractual period. DCJS has established a graduated SLOC which is required

for all successful applicants and a copy which must be submitted upon execution and return of the contract to DCJS for final contractual processing. A SLOC will be required in the amount of \$100,000 of any Contractor/IID Manufacturer that maintains fewer than 500 IID's in the field at any given time (the IID base); and \$200,000 if the Contractor/IID Manufacturer maintains 500 or more IID's in the field at any given time (the IID base). IID Manufacturers which are newly approved and qualified by DCJS to do business in New York State will be required to provide an initial SLOC in the amount of \$100,000. IID Manufacturers with existing contracts that submit an application pursuant to this RFA, and which is approved by DCJS, will be required to amend/update the SLOC. See Attachment F for a copy of the content of the SLOC. Any new or amended SLOC will be required to reflect the new contract number and contractual term. A SLOC in the appropriate amount must be maintained throughout the contractual term, contract extension, and post transition period.

## **V. FEES**

Every applicant seeking approval to provide ignition interlock services in NYS shall provide a thorough description of each IID intended for use in NYS, and the maximum fee structure associated with each specific IID. The proposed fee structure should take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by sentencing courts due to operator unaffordability. Descriptive information about the device should include, but not be limited to: make and model of device, special features of the device such as camera, reporting capabilities, removable head, Global Positioning Systems capability, Emergency Notification, and real-time or next day reporting. Fee structure information *shall include any and all fees charged to the operator*, including, but not limited to, installation, monthly use, any special service, shipping and de-installation fees. These fees will be maximum fees and manufacturers will only be able to charge fees approved in their contracts. Manufacturers are required to further advise DCJS (OPCA), in writing of any reduction or elimination of fees charged for ignition interlock services.

An operator shall pay the cost of installing and maintaining the IID unless the operator has been determined to be financially unable to afford the cost of the IID by the sentencing court, whereupon such cost may be imposed pursuant to a payment plan (which may include partial payment) or waived. As part of this application, manufacturers must certify that they agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the IID where a payment plan is so ordered, and provide a device free of fee/charge to the operator where all costs and fees, including lockout fees are waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the operator's sentence or release has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with DCJS. As stated above, manufacturers should base their fee structure on an anticipated ten percent (10%) unaffordability rate. On or about February 15, of each year, DCJS shall review requests by qualified manufacturers for rate adjustments pursuant to the State's unaffordability rate and shall consider information submitted by manufacturers involving unaffordability rates granted by the Courts and at its discretion approve rate adjustments where appropriate.

Also, as part of this application, manufacturers and/or distributors must certify that they agree to adhere to the same maximum fee schedule for every operator sanctioned administratively under the DMV regulations. In such cases, manufacturers will not be required to offer a payment plan or offer a waiver of fees to such administratively sanctioned operator.

DCJS will classify all certified IIDs into categories based upon features of the IIDs and provide the list to every county. **The classification system and any subsequent device classification are subject to change by DCJS as new information and technology become available.** Every newly qualified manufacturer shall enter into a contractual agreement commencing on or about August 14, 2021 and continuing through August 14, 2024 with a DCJS option of up to 2 one year extensions setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with DCJS regulations 9 NYCRR Part 358 and the application submission approved by DCJS. Currently DCJS classifies IIDs as described in Section VI below.

## **VI. NEW YORK STATE IGNITION INTERLOCK DEVICE CLASSIFICATION SYSTEM**

CLASS I: This CLASS contains the following minimum features:

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Reporting capabilities
- Capabilities for storage of data
- Programmable Re-Test Sequences
- Data download, inspection and re-calibration service and
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of operator will be taken every time operator is prompted to take a test
- Infra-red or other low light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or Visual Instruction

Optional Features for consideration under Class I:

- Keys enabling service codes to be entered
- Early recall system if a fuel cell fails-uses split cell technology
- Restricted drive time capabilities
- Unlock code to minimize towing due to lockouts

CLASS II: This CLASS has all the minimum, required features of CLASS I and contains the following additional features:

- Global Positioning System location of vehicle
- Real Time data reporting

CLASS III: This CLASS has all the minimum, required features of CLASSES I and II and contains the following additional feature:

- Emergency Notification Program (e.g. for interception of a targeted vehicle during a Rolling Re-Test Failure)

## **VII. CANCELLATION, SUSPENSION AND REVOCATION OF QUALIFIED MANUFACTURERS, DISTRIBUTORS, INSTALLATION/SERVICE PROVIDERS, AND CERTIFIED IGNITION INTERLOCK DEVICES**

The applicant must certify that it understands that any of the following reasons may result in revocation of a certified ignition interlock device or removal of a qualified manufacturer/distributor or installation/service provider:

- (1) When there is a voluntary request by a manufacturer to cancel certification of a device;
- (2) When notified by the department of health that a device no longer meets their regulatory standards;
- (3) When a device is discontinued by the manufacturer;
- (4) When the manufacturer's liability insurance is terminated or cancelled;
- (5) When the manufacturer or installation/service provider conceals or attempts to conceal its true ownership;
- (6) When materially false or inaccurate information is provided relating to a device's performance standards;
- (7) When there are defects in design, materials, or workmanship causing repeated failures of a device;
- (8) When the manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;
- (9) When a manufacturer or installation/service provider assists users with circumventing or tampering with a device;
- (10) When service or the submission of required reports is not provided in a timely manner as required in 9 NYCRR Part 358;
- (11) When the manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;
- (12) When there is a pattern of substandard customer service;
- (13) When a manufacturer or installation/service provider interferes with or obstructs a review or investigation by the division or any designee;
- (14) When there are any other violations of the provisions contained in 9 NYCRR Part 358, including DCJS and department of health regulations, or any ignition interlock contractual agreement;
- (15) Upon verbal and/or written notification or communication of disapproval, suspension, revocation, or cancellation of a manufacturer's device services, and/or operations by another state or jurisdiction,
- (16) When a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business,
- (17) When a manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by DCJS;
- (18) When a device fails to function pursuant to the minimum requirements of its class;
- (19) When there is a failure to comply with any manufacturer or installation/service provider requirements indicated in 9 NYCRR Part 358 or this Agreement; and
- (20) where the manufacturer's operation or current financial state including, but not limited to, sufficient free cash flow is insufficient to sustain continuing operations for the duration of this AGREEMENT and any continuing obligations arising out of this AGREEMENT which may continue beyond the termination of this AGREEMENT such that a Vendor Responsibility (Vend Rep) Review conducted by the Comptroller or staff designated for such purpose or by the DIVISION would be less than adequate to secure initial contract approval, provided that nothing

herein shall prevent the DIVISION or OSC from allowing the Vendor to implement a plan to restore its Vendor Responsibility status to a satisfactory level within a timeframe solely determined by the DIVISION or by OSC except that approval to implement such a plan is solely at the discretion of OSC or the DIVISION; the Vendor is not entitled thereto and no application of estoppel or laches shall result in such entitlement which is in all events at the sole discretion of OSC or the DIVISION.

## **VIII. IGNITION INTERLOCK DEVICE SPECIFICATIONS**

All ignition interlock devices used in New York State pursuant to “Leandra’s Law” and its statutory amendments must meet New York State Department of Health (DOH) regulatory standards contained in 10 NYCRR Part 59. The manufacturer shall provide proof of such certification for each device intended for use in New York State. The manufacturer shall certify that any devices utilized in New York State will be calibrated at a set point of .025 percent BAC and have the capacity to require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a failed or missed rolling test. An ignition interlock device shall enter into a lockout mode upon the following events: one failed start-up re-test, one missed start-up re-test, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit.

## **IX. IGNITION INTERLOCK DEVICE INSTALLATION**

Applicants shall certify that its installation/service providers will comply with the following requirements:

- (1) the ignition interlock device shall be installed in any vehicle(s) owned or operated by the operator within seven (7) business days of the operator’s request for installation of the device;
- (2) provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device;
- (3) record the odometer reading of the motor vehicle in which the ignition interlock device is installed and during all service visits;
- (4) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as

authorized pursuant to section 358.7 of this Part. Where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. Where the device includes direct exchange method of servicing, the qualified manufacturer shall report to the monitor before removal is made. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;

(5) installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to section 358.5(c) (12);

(6) installation shall be performed according to the manufacturer's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation;

(7) at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device;

(8) be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal;

(9) perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and installation, data download, transmission, or recalibration instructions;

(10) maintain records of installation and maintenance work performed on the devices;

(11) screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, untuned engine, and frequent stalling;

(12) prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) day installation period in paragraph one shall commence when repairs or adjustments are completed;

(13) prior to installation of the ignition interlock device, obtain and record the following information from every operator:

(i) photo identification;

(ii) the name and policy number of his/her automobile insurance;

(iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and

(iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;

(14) if, during the installation, the operator fails to pass the initial breath test, the installation will be halted, and the monitor notified;

(15) after installation during any service visit, recalibrate as necessary or required in this Part and check the device and vehicle to ensure proper operation;

(16) notify the monitor and county probation department when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation;

(17) complete the following with respect to service visits:

(i) document photo identification from the operator during all required in-person services;

(ii) provide service/monitoring of the ignition interlock device as required herein;

(iii) recalibrate as necessary the ignition interlock device at each service visit;

(iv) check for signs of circumvention or tampering; and

(18) adhere to any other applicable state or federal requirement.

## **X. SERVICE VISITS**

Applicants shall certify that the manufacturer or its authorized installation/service providers will complete the following with respect to service visits:

1. Conduct service visits within thirty (30) calendar days of initial installation(s) and subsequent service visits every thirty (30) calendar days where the device does not automatically transmit data directly to the monitor; and submit to service visits within thirty (30) calendar days of initial installation(s) and subsequent service visits every sixty (60) calendar days where the device automatically transmits data directly to the monitor or the device head is required to be sent to the qualified manufacturer every thirty (30) calendar days. However, an operator shall never remove the device head or any of the component parts of an ignition interlock device.
2. Only issue an unlock code to an operator whose car has become inoperable within two (2) hours of a confirmed appointment for service.
3. obtain and record photo identification from the operator during all required in-person services.
4. provide service/monitoring of the ignition interlock device as required in 9 NYCRR Part 358.
5. recalibrate as necessary the ignition interlock device at each service visit.
6. check for signs of circumvention or tampering.
7. installation/service provider or the manufacturer shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such

format as determined by the division. Further guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor, in a manner designated by the Division, within three (3) business days of knowledge or receipt of data, indicating:

- (i) installation of a device on an operator's vehicle(s);
  - (ii) report of a failed start-up re-test;
  - (iii) report of a missed start-up re-test;
  - (iv) report of a failed rolling re-test;
  - (v) report of a missed rolling re-test;
  - (vi) report of the device entering lockout mode;
  - (vii) failure of an operator to appear at a scheduled service visit; or
  - (viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;
  - (ix) adhere to real time reporting and emergency notification program requirements, where such is required in any county plan. Where real time reporting is utilized, such reports provided to the monitor as required above must occur contemporaneously as the event occurs or as soon as cellular reception permits. Where an emergency notification program is utilized, immediate report notification as required above must be transmitted to the appropriate monitor and any other law enforcement specified by the county;
8. agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized by division regulation, by law, or court order. Record retention and disposition of all records of any qualified manufacturer, and installation/service provider with respect to 9 NYCRR Part 358 shall be in accordance with the applicable Records Retention and Disposition schedule promulgated by the State Education Department.
9. provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope;

## **XI. IGNITION INTERLOCK DEVICE REMOVAL**

Applicants shall certify that its installation/service providers will comply with the following requirements related to the removal of the IID:

1. remove an IID and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized by 9 NYCRR Part 358. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;
2. where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made.

## **XII. RECORDS AND REPORTING**

The applicant shall certify that their business and its installation/service providers will comply with DCJS and other regulatory reporting requirements in providing information and reports as may be necessary with respect to an operator's use of the ignition interlock device. The applicant shall also certify that it will provide, no more than monthly, to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. Such request shall be in writing and provide either an email address or self-addressed stamped envelope.

## **XIII. APPLICATION REQUIREMENTS AND THE REVIEW PROCESS**

Applicants shall submit a complete response to this RFA that conforms to the format and content requirements as set forth in this RFA and the attached application.

Every applicant must furnish three (3) completed original signed applications, and five (5) additional hard copies. Applications should be enclosed in one mailing envelope or box with the notation "CJS-2020-02 Ignition Interlock Program Application" clearly visible on the front. Fax or email transmittals will not be accepted.

### **Send Applications to:**

**Mr. Sandy Fader  
Assistant Director/Procurement Officer  
Office of Financial Administration  
NYS Division of Criminal Justice Services  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan Street Albany, New York 12210**

All applications will become the property of DCJS and will be considered public documents once awards are granted, with the exception of any information deemed proprietary by DCJS upon review of such request from a manufacturer.

Disclosure of items related to this RFA and any future Contract shall be permitted consistent with the laws of the State of New York and specifically, Article 6 of the Public Officers Law, commonly referred to as the Freedom of Information Law (FOIL). The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets or critical infrastructure information, for purposes of FOIL, must be clearly marked and identified as such upon submission. If the Applicant intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Applicant; or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State. For further detail, see Section XIV(F) and §§87 and 89 of FOIL.

## **Review and Selection Process**

The review and selection process will begin upon receipt of the application. Award/Approval decisions will be made by DCJS, based on a review of responses to the requirements delineated in this RFA and contained in the application. A team consisting of at least 2 DCJS employees will conduct the review process and make recommendations to the Executive Deputy Commissioner of DCJS. Upon a thorough review by OPCA, applications will be recommended for award based upon certification of compliance with all (100%) of the elements contained in this RFA. There will be no limit to the number of awards issued. Every application meeting the criteria contained in this RFA will be awarded approval to contract with DCJS to provide IID services in New York State. All vendors must register for Vendor Responsibility with the Office of the State Comptroller and are required to complete a Vendor Responsibility Questionnaire (See Section XIV-L-5). Results of the Vendor Responsibility Questionnaire will be used by the State Comptroller in the course of the contract process. (See State Finance Law Section 112) The final decision to grant an award rests with the Commissioner/Executive Deputy Commissioner of DCJS in consultation with the Director of Probation and Correctional Alternatives.

### **XIV. ADMINISTRATIVE CRITERIA AND CONDITIONS**

#### **A. Cost Incurred Prior to Contract Approval**

The State of New York is not liable for any cost incurred by an applicant manufacturer, and/or installation/service provider in preparation for, or prior to, the approval of an executed contract by the State of New York. Additionally, no cost will be incurred by the State for any participation in any pre-contract award activity.

#### **B. Commitment**

Submission of response to this RFA shall not be construed as a commitment by the State to proceed with this project.

#### **C. Certain State's Rights**

The State reserves the right to:

1.
  - a Change any of the scheduled dates and times stated herein;
  - b Amend RFA specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Applicants;
  - c Withdraw the RFA, at its sole discretion;
  - d Disqualify an Applicant from receiving an award if such Applicant has previously failed to perform satisfactorily in connection with public bidding or contracts(s) or is deemed otherwise not responsible;

- e Eliminate a mandatory requirement when all Applicants cannot meet such requirement;
- f Evaluate, accept and/or reject any and all applications, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Division's considered judgment, the best interests of the Division will be served;
- g Require the Applicant to provide proof of or otherwise demonstrate, to the satisfaction of the Division, any information presented as a part of their application;
- h Use information obtained through the Division's investigation of an Applicant's qualifications, experience, ability or financial standing, and any material or information submitted by the Applicant in response to the Division's request for clarifying information in the course of evaluation and selection under this RFA;
- i Negotiate with successful Applicants within the scope of the RFA to serve the best interests of the Division and the State.
- j Make an award under the RFA in whole or in part;
- k Disqualify any Applicant whose conduct and/or application fails to conform to the requirements of the RFA;
- l Seek clarifications and revisions of any applications;
- m Prior to application opening, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- n Prior to the application opening, direct applicants to submit application modifications addressing subsequent RFA amendments;
- o Waive any requirements that are not material;
- p Utilize any and all ideas submitted in the proposals received; and/or
- q Require clarification at any time during the application procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and

complete understanding of an applicant's application and/or to determine an applicant's compliance with the requirements of the solicitation;.

**D. Contract Negotiations**

During contract negotiations, the State expects to have direct access to applicant personnel who have full authority to make commitments on behalf of the applicant.

**E. Executed Contracts**

Any negotiated contract must conform to the laws of New York State and will be subject to approval by the Department of Law and the Office of the State Comptroller. A successful applicant must timely enter into a contract with NYS related to service delivery within ten (10) business days of notification and receipt of the final contract. The Contract, including the SLOC, must be promptly forwarded to DCJS within such time period. NYS reserves the right to negotiate minor terms and conditions relative to the RFA 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 Applicant's personnel who have full authority to make commitments on behalf of the Applicant. Any negotiated contract must conform to the laws of New York State.

**F. Proposal Security**

Public inspection of the application is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The applications are presumptively available for public inspection. 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.

If this would be unacceptable to an applicant, the applicant should apply to the State for trade secret protection of its application. In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire application as such. An Applicant shall notify DCJS upon submission of its Application 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 Application, the Applicant is required to submit two (2) additional copies of their application 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 Applicant's application. (see also Section XIII)

**G. State Property**

All proposals and any accompanying documentation become the property of the State of New York and will not be returned.

**H. Proposal Certifications**

The following certification (Bidding Practices) must be included:

## 1. Bidding Practices

a. Each applicant shall submit, as part of the application, a completed copy of the Non-Collusive Bidding Certification. This submission will certify that, to the best of the applicant's knowledge and belief:

i. The prices in the application have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other applicant or with any competitor;

ii. Unless otherwise required by law, the prices which have been quoted in the application have not been knowingly disclosed by the applicant and will not knowingly be disclosed by the applicant, directly or indirectly, to any other applicant or to any competitor prior to completion of the selection process; and

iii. No attempt has been made or will be made by the applicant to induce any other person, partnership or corporation to submit or not to submit an application for the purpose of restricting competition.

b. In accordance with NYS Finance Law §139-d, an application shall not be considered for award nor shall any award be made where the above conditions have not been complied with; provided, however, that if in any case the applicant cannot make the foregoing certification, the applicant shall so state and shall furnish with the application a signed statement which sets forth, in detail, the reasons therefore. Where the above conditions have not been complied with, the application shall not be considered for award nor shall any award be made unless the head of the purchasing unit of DCJS determines that such disclosure was not made for the purpose of restricting competition.

c. The fact that an applicant has published price lists, rates, or tariffs covering items or services being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning stated above.

## 2. Vendor Responsibility

New York State Procurement Laws and Guidelines require the award of State contracts to responsible vendors. Accordingly, the Vendor Responsibility Questionnaire form must be certified for non-governmental agencies. Vendor Responsibility filing requirements can be found in Section XIV-L (5).

### **I. Announcements or Releases**

Public announcements or news releases pertaining to the selection of the applicant or award of a contract must not be made without prior written approval from DCJS.

### **J. Debriefing Sessions**

Unsuccessful applicants will be notified in writing and will be offered an opportunity to be debriefed. A debriefing, if any, will be scheduled for all unsuccessful applicants, upon request of those applicants, at a date and time convenient to both DCJS and the applicants concerned.

### **K. Contract Provisions**

## 1. Standard Clauses for All New York State Contracts

The applicant must agree to abide by all of the provisions of Appendix A, Standard Clauses for New York State Contracts, contained herein, which has precedence over the Contract entered into with the successful applicant and the RFA and its other attachments and any other Appendices.

### **L. Miscellaneous Requirements**

1. In general, all approved applicants, referred herein as "CONTRACTORS" as part of contractual terms and conditions must specifically agree to comply with New York State's "Information Security Breach and Notification Act" as set forth in State Technology Law (STL) §208 and General Business Law (GBL)§899-aa. The CONTRACTOR shall promptly notify DCJS and specifically OPCA where there is reasonable belief of breach of security, unauthorized access or unauthorized release of personal computer data containing personal information and take appropriate action with respect to notification of affected individuals and to other required state agencies consistent with such Act. CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors. Personal information means any information concerning a person which because of name, number, personal mark, or other identifier, can be used to identify such person. Specific details are as follows:

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

STL§208 and GBL§899-aa 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 STL §208 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.*

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

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

GBL: §899-aa (6)(a) provides in part that:

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 GBL§899-aa(6)(a) and STL§208 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.

Successful Applicants 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 Applicant or any Applicant employee and will cooperate fully with DCJS and the Attorney General in defense of the claim.

The Contract executed between DCJS and the Applicant/Contractor may be terminated by the State for cause for a material breach of this section, and the provisions of GBL§899-aa and STL§208 shall survive the termination of this Agreement.

## 2. Minority & Women Owned Business Enterprises

The Offerer agrees to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) and women-owned business enterprises (WBE) as subcontractors and suppliers on this project for the provision of services and materials. See description of the requirements of Article 15-A.

Executive Law Article 15-A:

DCJS is required to implement the provisions of Executive Law Article 15-A for all of its contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for contracts in excess of \$100,000 for real property renovation and construction. For purposes of this contract, DCJS hereby establishes a goal of (25)% for minority business enterprises (MBE) participation and (5)% for women-owned business enterprises (WBE) participation. MBE and WBE goals are for goods and services in support of the actual services to be provided.

3. Workers' Compensation and Disability Benefits Compliance: New York State law requires that all state agencies receive written documentation that any funded agency has both workers' compensation and disability benefits insurance coverage, or where applicable has received a disability exemption. Accordingly, it is necessary that you include such written documentation of

coverage and/or exemption in application material returned to OPCA. If you think you are exempt from the requirement to carry New York State Workers' Compensation and/or Disability Benefits, this should be verified with the Workers' Compensation Board, Bureau of Compliance, which can be reached at 518-486-6307 or toll-free at 866-298-7830, prior to filing form CE-200 (Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.) For more information as to this requirement and to obtain any necessary forms, please refer to the instructional manual which is available on-line at the Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/EmployerHandbook.pdf>

4. Procurement Lobbying Guidelines are attached as Appendix E. The Offerer/Bidder must affirm that it understands and agrees to comply with DCJS' procedures relative to the "Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)", "Offerer Disclosure of Non-Responsibility Determination" and "Offerer's Certification of Compliance with State Finance Law §139-k(5) by completing and submitting the forms found in Appendix F.

5. Vendor Responsibility – VendRep System process change (*July 2011*)

The New York State Division of Criminal Justice Services recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State Vend Rep System, see the Vend Rep System Instructions available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [itservicedesk@osc.state.ny.us](mailto:itservicedesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the New York State Division of Criminal Justice Services or the Office of the State Comptroller's Help Desk for a copy of the paper form. Attached as Appendix K is a copy of the paper form for for-profit non-construction vendors.

6. Tax Law 5-A Amended April 26, 2006

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

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving

agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid under Appendix H. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed and submitted to DCJS as the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms with their bid submission. Failure to make either of these filings may render a vendor non-responsive and non-responsible. Vendors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

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

<http://www.tax.ny.gov>

The Offerer/Bidder must also complete and submit to DCJS the Procurement Lobbying Guidelines found in Appendix E and Appendix F; specifically forms entitled "Offerer Disclosure of Prior Non-Responsibility Determinations", and "Offerer's Certification of Compliance with State Finance Law §139-k (5)"

**Following please find a checklist to assist with your completion and submission of this application.**

Checklist of <u>Required</u> Documents and Attachments	Submitted with Application Yes/No
Transmittal Letter signed by the individual authorized to make contractual commitments on the organization's behalf and must contain ALL of the following: (1) A statement attesting to the accuracy and truthfulness of all information contained in the application and (2) A statement that the applicant has read, understands, and is able and willing to comply with all standards and participation requirements described in the RFA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Application and Certification (Attachment C both part 1 and part 2)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Word document clearly labeled as Attachment C, Part 2 Narrative Response	<input type="checkbox"/> Yes <input type="checkbox"/> No
Copies of NYS Department of Health (DOH) certifications approving the use of the manufacturer's/distributor's device(s) in this state.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Device(s) Classification and Fee/Charge Schedule for each device proposed to be used in this state (Attachment B).	<input type="checkbox"/> Yes <input type="checkbox"/> No
A current list of installation/service providers in this state as described in item 11 of the Application/Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
Copy of most recent annual financial audit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total.	<input type="checkbox"/> Yes <input type="checkbox"/> No
A signed statement that the qualified manufacturer or its representative will indemnify and hold harmless the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents as described in this RFA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Certification of commitment to obtain, provide documentation and verification of and maintain a requisite Standby Letter of Credit (SLOC) as described in this RFA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Vendor Responsibility Questionnaire with signed and notarized certification - (or filed electronically)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Workers' Compensation and Disability Benefits Compliance documentation as referenced in this RFA	<input type="checkbox"/> Yes <input type="checkbox"/> No
Non-Collusive Bidding Certification dated and completed including street addresses and signed.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Lobby Law Forms	<input type="checkbox"/> Yes <input type="checkbox"/> No
Encouraging Business in NYS Form	<input type="checkbox"/> Yes <input type="checkbox"/> No
Minority and Women-Owned Business Enterprise (MWBE) and Equal Opportunities Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No
ST-220 Forms (ST220-CA and ST-220 TD)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed EO 177 Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed EEO Policy Statement	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Sexual Harassment Prevention Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No

**ATTACHMENT A**

**DCJS' IGNITION INTERLOCK RULE-9 NYCRR PART 358**

## **ATTACHMENT A: RULE TEXT**

### RULE TEXT

A revised Title 9 NYCRR Part 358 effective November 15, 2017 reads as follows:

Part 358 - Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

Section 358.1 - Objective.

Section 358.2 - Applicability.

Section 358.3 - Definitions.

Section 358.4 - County Ignition Interlock Program Plan.

Section 358.5 - Approval Process and Responsibilities of Qualified Manufacturers.

Section 358.6 - Cancellation, suspension, and revocation of qualified manufacturers, and installation/service providers, and certified ignition interlock devices.

Section 358.7 - Monitoring.

Section 358.8 - Costs and maintenance.

Section 358.9 - Record Retention and Disposition.

Section 358.10 - Liability.

Section 358.1 - Objective.

This Part's objective is to promote public/traffic safety, offender accountability, and quality assurance through the establishment of minimum standards for the usage and monitoring of ignition interlock devices imposed by a criminal court involving a felony or misdemeanor charge or conviction under the Vehicle and Traffic Law or Penal Law or arising from a youthful offender adjudication replacing any such conviction.

Section 358.2 Applicability.

This Part shall be applicable to every county, monitor, and operator, and shall govern qualified manufacturers and installation/service providers as to use, installation, and reporting with respect to ignition interlock devices imposed upon the aforementioned criminal court population within New York State.

Section 358.3 Definitions.

When used in this Part:

- (a) The term “blood alcohol concentration” or “BAC” shall mean the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/ 100 ml. blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.
- (b) The term “certificate of completion” shall mean a document issued by the monitor after the conclusion of the ignition interlock period set by the criminal court, including any extensions or modifications as may have subsequently occurred which shows either satisfactory completion of the ignition interlock condition or a change by the court in a pre-sentence order no longer requiring the need for a device, or a change in the conditions of probation or conditional discharge no longer requiring the need for a device after completion of the minimum ignition interlock period.
- (c) The term “circumvent” shall mean to request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges is so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.
- (d) The term “county” shall mean every county outside of the city of New York, and the City of New York as a whole.
- (e) The term “county executive” shall mean a county administrator, county manager, county director or county president and in cities with a population of one million or more, the mayor.
- (f) The term “division” shall mean the division of criminal justice services.
- (g) The term “drinking driver program” shall mean an alcohol and drug rehabilitation program established pursuant to section 1196 of the Vehicle and Traffic Law.
- (h) The term “Emergency Notification Program” shall mean a protocol that utilizes real time data reporting and provides timely notification to law enforcement agencies regarding at minimum failed or missed rolling re-tests.

- (i) The term “failed tasks” shall mean failure to install the ignition interlock device or failure to comply with a service visit or any requirement resulting therefrom as prescribed by this Part.
- (j) The term “failed tests” shall mean a start-up re-test or rolling re-test at or above the set point, or a missed rolling re-test.
- (k) The term “failure report recipients” shall mean all persons or entities required to receive a report from the monitor of an operator’s failed tasks or failed tests pursuant to a county’s plan which may include, but is not limited to the applicable court, district attorney, operator’s alcohol treatment provider, and the drinking driver program, where applicable.
- (l) The term “ignition interlock device” shall mean any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator’s equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the department of health in Section 59.10 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- (m) The term “installation/service provider” shall mean an entity located in New York State approved by a qualified manufacturer that installs, services, and/or removes an ignition interlock device.
- (n) The term “lockout mode” shall mean circumstances enumerated in this Part which trigger the ignition interlock device to cause the operator’s vehicle to become inoperable if not serviced within five (5) calendar days.
- (o) The term “monitor” shall mean the local probation department where the operator is under interim probation supervision or probation or any person(s) or entity (ies) designated in the county’s ignition interlock program plan for any operator granted conditional discharge or otherwise required to install an ignition interlock device and undergo monitoring in advance of sentencing pursuant to court order.
- (p) The term “operator” shall mean a person who is subject to installation of an ignition interlock device arising from a felony or misdemeanor charge or conviction under the Vehicle and Traffic Law or the Penal Law or arising from a youthful adjudication of any such crime.

- (q) The term “qualified manufacturer” shall mean a manufacturer or distributor of an ignition interlock device certified by the New York State department of health which has satisfied the specific operational requirements herein and has been approved as an eligible vendor by the division in the designated region where the county is located.
- (r) The term “real time reporting” shall mean the contemporaneous transmission of data of particular events, as defined in Section 358.5(c) (6), to a specified monitoring entity as the event occurs or as soon as cellular reception permits.
- (s) The term “region” shall mean counties comprising an area within New York State designated by the division where a qualified manufacturer is authorized and has agreed to service.
- (t) The term “start-up test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration prior to starting the vehicle’s ignition.
- (u) The term “start-up re-test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration required within five (5) to fifteen (15) minutes of a failed start-up test.
- (v) The term “rolling test” shall mean a breath test, administered at random intervals, taken by the operator while the vehicle is running.
- (w) The term “rolling re-test” shall mean a breath test, taken by the operator while the vehicle is running, within one (1) to three (3) minutes after a failed or missed rolling test.
  - (1) The term “failed rolling re-test” shall mean a rolling re-test in which the operator’s BAC is at or above the set point.
  - (2) The term “missed rolling re-test” shall mean failure to take the rolling re-test within the time period allotted to do so.
- (x) The term “service period” shall mean the length of time between service visits.
- (y) The term “service visit” shall mean a visit by the operator or another driver of the subject vehicle to or with the installation/service provider for purposes of having the ignition interlock device inspected for repair, defect, and detection of tampering and/or circumvention, downloaded, recalibrated, or maintained as authorized by this Part.

- (z) The term “set point” shall mean a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.
- (aa) The term “STOP–DWI” shall mean special traffic options program–driving while intoxicated.
- (bb) The term “tamper” shall mean to alter, disconnect, physically disable, remove, deface, or destroy an ignition interlock device or any of its component seals in any way not authorized by this Part.

#### Section 358.4 County Ignition Interlock Program Plan.

- (a) Every county shall establish a county ignition interlock program plan with respect to usage of ignition interlock devices and monitoring the compliance of an operator subject to installation of an ignition interlock device with monitoring as directed by a criminal court. Such plan shall be approved by the county executive. A county may submit an amended plan on its own initiative, which shall be approved by the county executive. Where a plan has been amended by the county, in whole or in part, it shall be promptly filed with the division in advance of its effective date. The division may also require modification or updates of any county plan or amended plan as it deems necessary to be consistent with law or regulatory provisions.
- (b) Every county shall develop a plan in consultation with the county’s probation director, district attorney, and in New York City the district attorney from each of the five boroughs, sheriff or Police Commissioner where applicable, STOP–DWI Coordinator, a representative of its drinking driver program where applicable and where more than one program exists in the county, a representative designated by the county executive, a superior and local criminal court judge designated by the administrative judge for the county, and in New York City a superior and local criminal court judge designated by the deputy chief administrative judge, a representative of an agency providing legal services to those unable to afford counsel in criminal cases designated by the county executive. Nothing herein shall prohibit a county from consulting with other persons or entities as the county executive deems appropriate with respect to development of its plan.
- (c) Every plan shall specify monitoring by the probation department where the operator is subject to a period of either interim probation supervision or probation and may designate one or more

alternative persons or entities, in lieu of the probation department, responsible for monitoring where an ignition interlock device has been:

- (i) imposed pursuant to a conditional discharge or
- (ii) imposed by court order in advance of sentencing requiring monitoring.

An alternative person or entity may include but is not limited to the sheriff, police commissioner, district attorney, STOP-DWI coordinator, traffic safety board representative, drinking driver program, treatment alternative for safer communities program, or any other similar individual, agency, or organization. Nothing shall preclude a county from sharing monitoring resources, including equipment, with another county to effectuate the provisions of this Part.

(d) Every plan at a minimum shall:

- (1) designate the persons or entities, or combination thereof, responsible for monitoring an operator's compliance with an ignition interlock requirement in cases where an operator does not receive either a period of interim probation supervision or probation; establish that where an operator is under either interim probation supervision or probation, the probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. The operator may select the model of the ignition interlock device, meeting the specific class and features selected by the probation department from a qualified manufacturer in the operator's region of residence;
- (2) establish that where an operator has received a sentence of conditional discharge, the monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence;
- (3) establish that where an operator has been court ordered to install an ignition interlock device in advance of sentencing with monitoring, other than interim probation supervision, the monitor shall select the class and features of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator

may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence;

- (4) in the event more than one qualified manufacturer does business within its region, the county shall establish an equitable procedure for manufacturers to provide ignition interlock devices without costs where an operator has been determined financially unable to afford the costs and has received a waiver from the sentencing court. The equitable procedure should be based upon proportion of ignition interlock devices paid to each qualified manufacturer by operators in the county;
- (5) through any available funding earmarked for such purpose, establish a distribution formula for probation supervision and/or monitoring purposes associated with this Part;
- (6) establish a procedure whereby the probation department and any other monitor will be notified no later than five (5) business days from the date an ignition interlock condition is imposed by the criminal court, any court approval authorizing reduction in breath sample as authorized by section 358.5, any waiver of the cost of the device granted by the criminal court, and of any intrastate transfer of probation or interstate transfer of any case which either has responsibility to monitor. Such procedure shall also establish a mechanism for advance notification as to date of release where local or state imprisonment is imposed; and
- (7) establish a procedure governing failure report recipients, including method and timeframe with respect to specific notification and circumstances. At a minimum the procedure shall be consistent with the provisions of section 358.7(d) with respect to applicable criminal court and district attorney notification of specific failed tasks and failed tests reports.

#### Section 358.5 Approval Process and Responsibilities of Qualified Manufacturers.

- (a) (1) Only a qualified manufacturer may conduct business in New York State with respect to any operator. An interested manufacturer of a certified ignition interlock device seeking to conduct business within New York State shall apply to the division to become a qualified manufacturer in one or more designated regions of New York State.

- (2) The four regions of the state by counties for purposes of this Part are as follows:
- (i) Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;
  - (ii) Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;
  - (iii) Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and
  - (iv) Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.
- (b) (1) The format and content of any application shall be established by the division. The application deadline for any contractual period of any manufacturer seeking approval of the division as a qualified manufacturer to conduct business in New York State shall be set by the division. Nothing shall preclude the division from establishing an open application process for any interested manufacturers seeking to conduct business on or after such deadline and filing an application to the division for approval. However, where approved, the contractual end date shall be consistent with other qualified manufacturer agreements. The application shall require at a minimum that the manufacturer submit relevant information, reports, and other documents requested by the division with respect to competitive pricing, service performance, select one or more regions in which it shall agree to conduct business, and certify that it will comply with all applicable provisions specified in this Part with respect to service delivery. In addition, the manufacturer or its representative shall provide a signed statement that the manufacturer or its representative will indemnify and hold harmless the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents from all claims, demands and actions as a result of

property damage and/or injury or death to persons which arise, directly or indirectly, out of any act or omission by the manufacturer, its representative, or installation/service providers relating to the installation, service, inspection, maintenance, repair, use and/or removal of the ignition interlock device.

- (2) Every manufacturer who applies shall provide a thorough description of each device intended for use in New York State, provide proof of such certification by the department of health for each device intended for use in New York State, and the fee structure associated with that specific device. Descriptive information about the device shall include but not be limited to: make and model of device, special features of the device such as camera, reporting capabilities, removable head, global positioning system, and real-time reporting. Fee structure information shall include any and all fees charged to the operator, including but not limited to installation fee, monthly fee, any special service fees, and de-installation fee. The proposed fee structure shall take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by criminal courts due to operator unaffordability. Annually, on or about February 15th of each year, the division shall review requests by qualified manufacturers for rate adjustments which shall include information submitted by qualified manufacturers involving unaffordability waivers granted by courts. At its discretion, the division shall approve rate adjustments where appropriate.
- (3) Every qualified manufacturer with a certified device who wants any operational modification to the device must submit in advance necessary documentation to the department of health and obtain departmental approval before releasing the modified device. The manufacturer shall notify the division in writing of their intent of any operational modification and also any subsequent approval and provide a written summary of any requested or approved modification. Operational modification means any change to the product design or function that would or could affect the devices anti-

circumvention, anti-tampering or analytical features as determined by the department of health.

- (4) The division shall classify all certified ignition interlock devices into categories based upon features and provide such list to every county. This classification system and subsequent device classification is subject to change by the division as new information becomes available. Upon review of a manufacturer's application, the division shall make a determination whether the manufacturer satisfies all requirements to be designated a qualified manufacturer and provide notification to the applicant and every county within the region that the qualified manufacturer may conduct business. Every qualified manufacturer shall enter into a contractual agreement for a minimum period of three years with the division setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with this Part and the application submission approved by the division. However, where a qualified manufacturer enters into a contractual agreement with the division after the regular term of division contracts with other qualified manufacturers, the expiration date shall be consistent with other contracts in this area.
- (c) Every qualified manufacturer shall:
- (1) adhere to all regulatory provisions of the department of health with respect to certification, testing, labeling, reporting and any additional requirements, and shall also specifically adhere to its responsibilities contained in this Part;
  - (2) agree that an ignition interlock device shall conform to the national highway traffic safety administration (NHTSA) and department of health specifications, be calibrated at a set point of .025 BAC percent, and also require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a

failed or missed rolling test. An ignition interlock device shall enter into a lockout mode upon the following events: one failed start-up retest, one missed start-up re-test, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit;

- (3) agree to any reduced breath sample volume as permitted by NHTSA from 1.5 liters to 1.2 liters, or any subsequent NHTSA reduced volume sample standards, where an individual has submitted sufficient documentation from a physician of a condition which prevents regular operation at normal breath volume levels and such proof authorizing reduction in the breath sample volume has been approved by the applicable criminal court and notification has been provided to the qualified manufacturer by the applicable monitor.
- (4) agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the ignition interlock device where a payment plan is so ordered, and provide a device free of fee/charge to the operator where the cost is waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the sentence has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with the division;
- (5) agree to service every county within a region and ensure that there shall be an installation/service provider located in New York State within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest and ensure repair or replacement of a defective ignition interlock device shall be made available within the same 50 mile radius by a fixed or mobile installation/service

provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday.

Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated;

- (6) guarantee that an installation/service provider or the manufacturer shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days of initial installation(s) and during subsequent service visits every thirty (30) calendar days where the device does not automatically transmit data directly to the monitor; and within thirty (30) calendar days of initial installation(s) and during subsequent service visits every sixty (60) calendar days where the device automatically transmits data directly to the monitor; or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the division. Further guarantee that the installation/service provider, unless the manufacturer provides such notification, shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data indicating:
- (i) installation of a device on an operator's vehicle(s);
  - (ii) report of a failed start-up re-test;
  - (iii) report of a missed start-up re-test;
  - (iv) report of a failed rolling re-test;
  - (v) report of a missed rolling re-test;
  - (vi) report of the device entering lockout mode;
  - (vii) failure of an operator to appear at a scheduled service visit; or
  - (viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;

- (7) adhere to real time reporting and Emergency Notification Program requirements, where such is required in any county plan. Where real time reporting is utilized, such reports provided to the monitor as required above must occur contemporaneously as the event occurs or as soon as cellular reception permits. Where an emergency notification program is utilized, immediate report notification as required above must be transmitted to the appropriate monitor and any other law enforcement specified by the county;
- (8) provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope;
- (9) agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order. All records maintained by the manufacturer and any of its installation/service providers with respect to ignition interlock devices in New York State shall be retained in accordance with section 358.9;
- (10) ensure that the manufacturer and/or the installation/service provider, where applicable, complies with reporting requirements established by the division in providing information and reports to the division, and on a case –by- case basis to localities as may be necessary with respect to an operator's use of the ignition interlock device;
- (11) establish and distribute to the division, its installation/service providers, and any county where it does business a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance. Distribute an up-to-date listing of New York State installation/service providers to the division;

- (12) provide written certification to the division in a format prescribed by the division that all installation/service providers:
- (i) have been trained in advance as to installation, maintenance, troubleshooting, set point requirement of .025 BAC percent, and recalibration of such manufacturer's devices;
  - (ii) have instructions as to installation and usage of such manufacturer's devices;
  - (iii) have agreed to comply with their manufacturer's service agreements;
  - (iv) have agreed to comply with the provisions of section 358.5(c) and (d);
  - (v) have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an ignition interlock device is being installed, with a valid driver's license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the operator;
  - (vi) have been informed of New York State law governing circumvention of ignition interlock devices and penalties associated therewith;
  - (vii) have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or court order; and
  - (viii) have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified in section 358.5(c) (9). An installation/service provider may be reinstated by the division, at its discretion, upon satisfactory proof from the qualified manufacturer of corrective action;
- (13) conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide the division with yearly sworn statements that such audits have been conducted, as well as a copy of the findings of such annual quality assurance audits.

Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude the division and/or its representative from conducting random audits and quality assurance audits or reviews;

- (14) take all reasonable steps necessary to prevent tampering or circumvention of the ignition interlock device and promptly notify the division, the applicable county's monitor and district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an ignition interlock device of any operator or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;
- (15) provide immediate written notice to the division and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;
- (16) provide immediate written notice to the division and the department of health whenever the manufacturer's device, services, and/or operations has been compromised or does not function as intended in New York State or any other state or jurisdiction in which the manufacturer does business, or disapproved, suspended in whole or in part, revoked, or otherwise cancelled by another state or jurisdiction, or has received notice or communication from another state or jurisdiction that any such actions are imminent;
- (17) submit such reports, as requested and in such format and timeframes as determined by the division, for each model or type of certified device, including, but not limited to:
  - (i) operator and other vehicular user operation error;
  - (ii) faulty automotive equipment that directly impact successful implementation and use of the device;
  - (iii) apparent misuse or attempts to circumvent or tamper/bypass a device;
  - (iv) device malfunctions, including proposed and follow-up action taken by the manufacturer to correct such malfunctions;

- (v) deficiencies in device calibration stability;
  - (vi) deficiencies in device reporting or information transmission as a result of any reason, including but not limited to service outages or downtimes of any nature;
  - (vii) any proposed operational modification or other proposed operational and/or administrative change, including but not limited to server, firmware, and other technical change or business structural change which may have the potential of affecting service delivery or reporting; and
  - (viii) operator, vehicular user, and installation/service provider complaints;
- (18) provide documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total. The manufacturer shall provide a signed statement holding harmless the State of New York, the division, every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the manufacturer or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device;
- (19) provide documentation and verification of and maintain a Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;
- (20) submit any other information determined by the division to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction and/or monitoring tool;
- (21) agree that the consequences of a failure to adhere to any manufacturer requirements specified in this Part and/or in contractual provisions with the State of New York may result in suspension or removal of the qualified manufacturer from doing business in the State of New York, or, in the event of suspension, such terms and conditions required by the division in any manufacturer's reconciliation plan; and.

- (22) agree to only provide an unlock code to an operator within two (2) hours of a scheduled service visit. The unlock code shall be a unique one time code and only functional for two (2) hours immediately preceding the service visit scheduled as a result of a vehicle being rendered inoperable due to a lockout mode.
- (d) Every qualified manufacturer shall ensure that its installation/service providers comply with the following additional requirements:
- (1) the ignition interlock device shall be installed in vehicle(s) owned or operated by the operator within seven (7) business days of the operator's request for installation of the device;
  - (2) provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device;
  - (3) record the odometer reading of the motor vehicle in which the ignition interlock device is installed and during all service visits;
  - (4) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized pursuant to section 358.7 of this Part. Where at the time of removal the installation/service provider or qualified manufacturer notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;

- (5) installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to section 358.5(c) (12);
- (6) installation shall be performed according to the manufacturer's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation;
- (7) at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device;
- (8) be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal;
- (9) perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and installation, data download, transmission, or recalibration instructions;
- (10) maintain records of installation and maintenance work performed on the devices;
- (11) screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, untuned engine, and frequent stalling;
- (12) prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) business day installation period in paragraph one shall commence when repairs or adjustments are completed;
- (13) prior to installation of the ignition interlock device, obtain and record the following information from every operator:
  - (i) photo identification;
  - (ii) the name and policy number of his/her automobile insurance;
  - (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other

- individuals who operate the motor vehicle(s) owned or driven by the operator;
- and
- (iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;
- (14) if, during the installation, the operator fails to pass the initial breath test, the installation will be halted and the monitor promptly notified;
- (15) after installation during any service visit, recalibrate as necessary or required in this Part and check the device and vehicle to ensure proper operation;
- (16) notify the applicable monitor when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation;
- (17) complete the following with respect to service visits:
  - (i) document photo identification from the operator during all required in-person services;
  - (ii) provide service/monitoring of the ignition interlock device as required herein;
  - (iii) recalibrate as necessary the ignition interlock device at each service visit;
  - (iv) check for signs of circumvention or tampering; and
- (18) adhere to any other applicable state or federal requirement.

Section 358.6 Cancellation, suspension, and revocation of qualified manufacturers, installation/service providers, and certified ignition interlock devices.

- (a) Any of the following reasons may result in revocation of a certified ignition interlock device or suspension or removal of a qualified manufacturer or installation/service provider:
  - (1) when there is a voluntary request by a manufacturer to cancel certification of a device;
  - (2) when notified by the department of health that a device no longer meets their regulatory standards;
  - (3) when a device is discontinued by the manufacturer;
  - (4) when the manufacturer's liability insurance is terminated or cancelled;

- (5) when the manufacturer or installation/service provider conceals or attempts to conceal its true ownership;
- (6) when materially false or inaccurate information is provided relating to a device's performance standards;
- (7) when there are defects in design, materials, or workmanship causing repeated failures of a device;
- (8) when the manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;
- (9) when a manufacturer or installation/service provider assists users with circumventing or tampering with a device;
- (10) when service or the submission of required reports is not provided in a timely manner as required by this Part;
- (11) when the manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;
- (12) when there is a pattern of substandard customer service;
- (13) when a manufacturer or installation/service provider interferes with or obstructs a review or investigation by the division or any designee;
- (14) when there are any other violations of the provisions contained in this Part, including division and department of health regulations, or any ignition interlock contractual agreement;
- (15) upon verbal and/or written notification or communication of disapproval, suspension in whole or in part, revocation, or cancellation of a manufacturer's device, services and/or operations by another state or jurisdiction;
- (16) when a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business; and
- (17) when a manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by the division.

Section 358.7 Monitoring.

- (a) (1) Any monitor shall receive notification pursuant to its county plan of all operators which it has responsibility to monitor within five (5) business days of the applicable criminal court's order imposing the condition of an ignition interlock device and of an operator's release from imprisonment, in accordance with section 358.4(d)(6). Such monitor shall obtain proof of installation by the operator and installation/service provider. The installation/service provider shall provide notification of installation of an ignition interlock device to the appropriate monitor and probation department in accordance with section 358.5 (d) (16) and the operator in accordance with subdivision (c) of this section;
- (2) Where a monitor learns that the operator no longer owns or operates a motor vehicle in which an ignition interlock device has been installed, the monitor may issue a letter of de-installation directly to the installation/service provider which authorizes removal of the device;
- (b) (1) Where the operator is under interim probation supervision or probation and resides in another county in New York State at the time of sentencing or subsequently desires to reside in another county, upon intrastate transfer of probation, the receiving probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the receiving probation department from a qualified manufacturer in the operator's region of residence. Where intrastate transfer occurs after sentencing and the installation of a different device is required as a result of the transfer, the device shall be installed within ten (10) business days of relocation. All intrastate

transfer of those under interim probation supervision or probation shall be in accordance with applicable laws and Part 349, where relevant;

- (2) Where an operator has received a sentence of conditional discharge and resides in another county in New York State at the time of sentencing or thereafter, the sentencing county monitor shall contact the monitor in the county of residence to determine the class of ignition interlock device available from a qualified manufacturer in its region which will be required for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence. The sentencing county monitor shall perform monitor services and the sentencing court retains jurisdiction of the operator. The sentencing county monitor shall notify the sentencing court and county district attorney pursuant to paragraph (d) of this section. Where devices with Emergency Notification Program (ENP) capabilities are required by the county of residence, the sentencing county monitor shall notify the IID Manufacturer so that the designated law enforcement agency within the county of residence shall receive all applicable ENP communications/notifications;
- (3) Where an operator has been court ordered to install an ignition interlock device in advance of sentencing with monitoring and resides in another county at the time of such order or thereafter, the county monitor in such jurisdiction shall contact the monitor in the county of residence to determine the specific class and features of the ignition interlock device available from a qualified manufacturer in its region which will be required for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence. The monitor in the county of the court ordering installation shall perform monitor services, and the court ordering installation retains jurisdiction of the operator. The county monitor shall notify the court ordering installation and county district attorney pursuant to paragraph (d) of this section. Where devices with

Emergency Notification Program (ENP) capabilities are required by the county of residence, the sentencing county monitor shall notify the IID Manufacturer so that the designated law enforcement agency within the county of residence shall receive all applicable ENP communications/notifications;

- (4) Where an operator resides or desires to reside out-of-state and is an offender subject to the interstate compact for adult offender supervision pursuant to section two hundred fifty-nine-mm of the executive law, the governing rules of such compact shall control. Additionally, Part 349, as applicable, shall apply with respect to transfer of supervision of probationers or those under interim probation supervision. Where transfer is permitted, the receiving state retains its authority to accept or deny the transfer in accordance with compact rules. Where an operator is subject to interim probation supervision or probation and is granted reporting instructions and/or acceptance by a receiving state, the sending probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in the receiving state. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the sending probation department from a qualified manufacturer in the receiving state region. The device shall be installed prior to relocation or return where feasible. A qualified manufacturer shall make necessary arrangements to ensure the county monitor in New York State and the receiving state receive timely reports from the manufacturer and/or installation/service provider; and
- (5) where an operator resides or desires to reside out-of-state, is not subject to the interstate compact for adult offender supervision and such compact's governing rules, and has been given permission to return or relocate by the criminal court or monitor, the same provisions with respect to selection specified in paragraph four of this subdivision applies and the device shall be installed prior to relocation or return. A qualified manufacturer shall make necessary arrangements to ensure the county monitor receives timely reports from the manufacturer and/or installation/service provider.

- (c) Every operator shall:

- (1) have installed and maintain a functioning ignition interlock device in any vehicle(s) he or she owns or operates within ten (10) business days of the condition being imposed by the court and any sentence to imprisonment upon release from imprisonment, whichever is applicable and any subsequent vehicle he or she may own or operate to have the device installed in accordance with this Part and, within three (3) business days of installation, submit proof of installation to the court and applicable monitor. Nothing in this Part shall preclude an operator from having installed a certified ignition interlock device in excess of the class and/or features authorized herein;
- (2)
  - (a) submit to service visits within thirty (30) calendar days of initial installation(s) and subsequent service visits every thirty (30) calendar days where the device does not automatically transmit data directly to the monitor; and submit to service visits within thirty (30) calendar days of initial installation(s) and subsequent service visits every sixty (60) calendar days where the device automatically transmits data directly to the monitor or the device head is required to be sent to the qualified manufacturer every thirty (30) calendar days. However, an operator shall never remove the device head or any of the component parts of an ignition interlock device.
  - (b) submit to a scheduled service visit within two (2) hours of an unlock code having been issued by a qualified manufacturer.
- (3) provide the installation/service provider and the monitor prior to installation of the ignition interlock device, the following information:
  - (i) his/her photo identification/license for examination purposes;
  - (ii) the name and policy number of his/her motor vehicle insurance;
  - (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and
  - (iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;

- (4) present photo identification/license for examination purposes during any in-person service visit; and
- (5) provide the monitor with documentation requested by the monitor as to vehicle(s) owned or driven by the operator. Prior to an operator legally driving an employer's vehicle within the scope of his or her employment, the operator must provide satisfactory proof to the monitor that the employer has been notified of the operator's driving privilege is restricted and necessitates installation and maintenance of a functioning ignition interlock device and such employer grants permission for the operator to drive the employer's vehicle without the device only for business purposes. Such exemption for business purposes shall not apply to any vehicle owned by a business entity all or partly owned or controlled by the operator. Any operator shall provide satisfactory proof to the monitor that any other person who rents, leases, or loans a motor vehicle to him or her has been notified that the operator's driving privilege is restricted and necessitates installation of the ignition interlock device on any vehicle he or she owns or operates and that the person grants permission for the operator to install the device on such vehicle(s) and operate the vehicle(s). Further, prior to return of any vehicle which is leased, rented, or loaned, the operator shall comply with service visit requirements of this Part;

- (d) (1) Upon learning of the following events:
  - (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
  - (ii) that the operator has not complied with service visits requirements and has not had his/her vehicle promptly serviced within the three business days immediately following the missed service appointment;
  - (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
  - (iv) a report of a failed start-up re-test;
  - (v) a report of a missed start-up re-test;

- (vi) a report of a failed rolling re-test;
- (vii) a report of a missed rolling re-test; and/or
- (viii) a report of a lockout mode;

the applicable monitor shall take appropriate action consistent with public safety. Where under probation, the probation department shall adhere to Part 352. With respect to any operator sentenced to conditional discharge, interim probation supervision or operators who are otherwise court ordered to install an ignition interlock device in advance of sentencing, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan.

- (2) At a minimum, any monitor shall notify the appropriate court and district attorney, within five (5) business days of the following events:
  - (i) where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
  - (ii) any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
  - (iii) any report of a failed start-up re-test;
  - (iv) any report of a missed start-up re-test;
  - (v) any report of a failed rolling re-test;
  - (vi) any report of a missed rolling re-test; and/or
  - (vii) where the operator has not complied with a service visit requirement, and has not had his/her vehicle promptly serviced within the three business days immediately following the missed service appointment, the monitor shall notify the appropriate court and district attorney no later than the close of business on the fifth business day.
- (3) The monitor may recommend modification of the operator's ignition interlock condition as otherwise authorized by law, including extension of his/her ignition interlock period, a requirement that the operator attend alcohol and substance abuse treatment and/or

drinking driver program, referral to the department of motor vehicles to determine whether the department may suspend or revoke the operator's license, or recommend revocation of his/her sentence or release, as applicable.

- (4) Where the operator is under supervision by the department of corrections and community supervision, the monitor shall coordinate monitoring with the department of corrections and community supervision and promptly provide such agency with reports of any failed tasks or failed tests.
- (e) Any monitor may disseminate relevant case records, including failed tasks or failed reports not otherwise sealed or specifically restricted in terms of access by state or federal law to appropriate law enforcement authorities, district attorney, treatment agencies, licensed or certified treatment providers, the judiciary, for law enforcement and/or case management purposes relating to criminal investigations and/or execution of warrants, supervision and/or monitoring of ignition interlock conditions, and treatment and/or counseling. Personal information in any financial disclosure report shall only be accessible to the monitor, court, and district attorney for purposes related to determination of financial affordability. Case record information is not to be used for noncriminal justice purposes and shall otherwise only be available pursuant to a court order. In all such instances, those to whom access has been granted shall not secondarily disclose such information without the express written permission of the monitor that authorized access.

#### Section 358.8 Costs and maintenance.

- (a) Any operator shall pay the cost of installing and maintaining the ignition interlock device unless the operator has been determined to be financially unable to afford the cost of the ignition interlock device by the applicable criminal court whereupon such cost may be imposed pursuant to a payment plan or waived.
- (b) Any operator who claims financial inability to pay for the device shall submit in advance of any pre-sentence release or sentencing three (3) copies of his or her financial disclosure report, on a form prescribed by the division, to the criminal court which shall distribute copies to the district

attorney and defense counsel. The report shall enumerate factors which may be considered by the court with respect to financial inability of the operator to pay for the device and shall include, but not be limited to income from all sources, assets, and expenses. This report shall be made available to assist the court in determining whether or not the operator is financially able to afford the cost of the ignition interlock device, and if not whether to impose a payment plan. Where it is determined that a payment plan is not feasible, the court shall determine whether the fee/charge for the device shall be waived.

#### Section 358.9 Record Retention and Disposition.

Record retention and disposition of all records of the county, any qualified manufacturer, and installation/service provider with respect to this Part shall be in accordance with the applicable Records Retention and Disposition Schedule promulgated by the state education department.

#### Section 358.10 Liability and Incorporation by Reference

##### Liability

Nothing contained in the Part shall impose liability upon the division, the State of New York, or any county, for any damages related to the installation, monitoring or maintenance of an ignition interlock device or an operator's use or failure to use such devices.

##### Incorporation by Reference.

NHTSA's Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), which have been incorporated by reference in this Part have been filed with the Office of the Secretary of State of the State of New York, the publication so filed being 78 FR 26849, published by the National Archives and Records Administration, pages 26849-26867, posted May 8, 2013 and effective May 8, 2014. Technical corrections to these NHTSA Model Specifications, which also have been incorporated by reference in this Part, have been filed with the Office of the Secretary of State of the State of New York, the publication so filed being 80 FR 16720, published by the National Archives and Records Administration, pages 16720-16723, posted and effective March 30, 2015. These Model Specifications (including the 2015 technical corrections) may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY

12231-0001, and the Division of Criminal Justice Services, Office of Probation and Correctional Alternatives,  
Alfred E. Smith Office Building, 80 South Swan Street, Albany, NY 12210.

**ATTACHMENT B**

**DEVICE CLASSIFICATION AND FEE STRUCTURE**

**ATTACHMENT B**

**DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE  
CLASS I DEVICE**

**Applicant Name:**

**Device Make:**

**Device Model:**

- **Check and fill in all spaces that apply to the specified CLASS I device listed above.**
- **Applicants must submit an ATTACHMENT B DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE for each proposed device/model.**

**CLASS I Required Device Features:**

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Has reporting capabilities
- Has capability for storage of data
- Programmable re-test sequences
- Data download, inspection and re-calibration service
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of Operator will be taken every time operator is prompted to take a test
- Infra-red or other low-light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or visual instruction

**Optional Features under CLASS I:**

- Keys enabling service codes to be entered
- Early recall system if a fuel cell fails- uses split cell technology
- Restricted drive time capabilities
- Unlock code to minimize towing due to lockouts
- Other feature- specify
- Other feature- specify

**Fee Structure:** Following is the fee structure for this device. This fee structure is based upon an anticipated ten percent (10%) waiver of the fee by sentencing courts due to unaffordability and includes any and all fees charged to the operator.

- Installation fee
- Monthly fee
- Special service fees- specify
- Shipping fee
- De-installation fee
- Other fee- specify
- Other fee- specify
- Other fee- specify

**Comments:** Please place any other descriptive comments about this device here.

**ATTACHMENT B  
DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE  
CLASS II DEVICE**

**Applicant Name:**

**Device Make:**

**Device Model:**

**\*Check and fill in all spaces that apply to the specified CLASS II device listed above.**

**\*Applicants must submit an ATTACHMENT B DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE for each proposed device/model.**

**CLASS I Required Device Features:**

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Has reporting capabilities
- Has capability for storage of data
- Programmable re-test sequences
- Data download, inspection and re-calibration service
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of Operator will be taken every time operator is prompted to take a test
- Infra-red or other low-light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or visual instruction

**CLASS II: This CLASS has all the minimum, required features of CLASS I and contains the following additional features:**

- Global Positioning System location of vehicle
- Real Time data reporting
- Other feature- specify
- Other feature- specify

**Fee Structure:** Following is the fee structure for this device. This fee structure is based upon an anticipated ten percent (10%) waiver of the fee by sentencing courts due to unaffordability and includes any and all fees charged to the operator.

- Installation fee
- Monthly fee
- Special service fees- specify
- Shipping fee
- De-installation fee
- Other fee- specify
- Other fee- specify
- Other fee- specify

**Comments:** Please place any other descriptive comments about this device here.

**ATTACHMENT B  
DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE  
CLASS III DEVICE**

**Applicant Name:**

**Device Make:**

**Device Model:**

**\*Check and fill in all spaces that apply to the specified CLASS III device listed above.**

**\*Applicants must submit an ATTACHMENT B DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE for each proposed device/model.**

**CLASS I Required Device Features:**

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Has reporting capabilities
- Has capability for storage of data
- Programmable re-test sequences
- Data download, inspection and re-calibration service
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of Operator will be taken every time operator is prompted to take a test
- Infra-red or other low-light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or visual instruction

**CLASS II: This CLASS has all the minimum, required features of CLASS I and contains the following additional features:**

- Global Positioning System location of vehicle
- Real Time data reporting

**CLASS III: This CLASS has all the minimum, required features of CLASSES I and II and contains the following additional feature(s):**

- Emergency Notification Program (i.e.) for interception of a targeted vehicle during a Rolling Re-Test Failure
- Other feature- specify
- Other feature- specify

**Fee Structure:** Following is the fee structure for this device. This fee structure is based upon an anticipated ten percent (10%) waiver of the fee by sentencing courts due to unaffordability and includes any and all fees charged to the operator.

- Installation fee
- Monthly fee
- Special service fees- specify
- Shipping fee
- De-installation fee
- Other fee- specify

**Comments:** Please place any other descriptive comments about this device here.

**ATTACHMENT C**

**IGNITION INTERLOCK MANUFACTURER'S APPLICATION AND CERTIFICATION**

**ATTACHMENT C: IGNITION INTERLOCK MANUFACTURER APPLICATION/CERTIFICATION**  
**PART 1**  
**INSTRUCTIONS**

Manufacturers, or distributors, seeking to join existing DCJS-approved qualified manufacturers in providing an ignition interlock services in New York State, shall submit a complete response to this application.

**Applications must be signed by the individual authorized to make contractual commitments on the applicant's behalf.** Where attachments are indicated they must be attached to this application/. The applicant must furnish three (3) completed original signed applications, and five (5) additional hard copies. Your response should be enclosed in one mailing envelope or box with the notation "CJS2020-02 Ignition Interlock Program Application" clearly visible on the front. Fax or e-mail transmittals will not be accepted. Send Applications by RFA Date and Time Deadline to:

**Sandy Fader**  
**Assistant Director/Procurement Officer/Office of Financial Administration**  
**NYS Division of Criminal Justice Services**  
**Alfred E. Smith Office Building, 10<sup>th</sup> Floor**  
**80 South Swan Street**  
**Albany, New York 12210**

All applications will become the property of DCJS and will be considered public documents once final decisions are made, with the exception of any information deemed proprietary by the division upon review of such request from a manufacturer.

Application Contact Information

1. Applicant:  
Chief Executive Officer:  
Address:  
City:  
State/Zip Code:  
Email:  
Phone Number
  
2. Person Responsible for Completing Application  
Name:  
Title:  
Phone Number:  
Fax Number:  
(Address if different from Applicant)  
Address:  
City:  
State/Zip Code  
Email:

3. Who should we contact with questions about this application?

Name:

Title:

Phone Number:

Fax Number:

Email:

**ATTACHMENT C, PART 2  
IGNITION INTERLOCK APPLICATION/CERTIFICATION**

**INSTRUCTIONS:** This application with certifications must be signed by the individual authorized to make contractual commitments on the applicant organization's behalf.

Applicant Organization:

<b>NARRATIVE</b>		
<p>1. Describe your experience in the development and maintenance of a statewide ignition interlock service program. In your description include the following: a listing of all the states, territories and the District of Columbia, and other countries in which you operate, and how you organize, pay, and train your installation/service providers. Additionally, separately list any state, territory, the District of Columbia, and country, where your company services have been suspended, terminated, revoked, or cancelled, in whole or in part, within the preceding three (3) years. Please provide specific details by listing the grounds cited by the jurisdiction(s) that resulted in such suspension, termination, revocation, or cancellation, including, but not limited to, relevant dates, subsequent remedial, corrective, or other legal actions, if any, and a summary of any pending or final litigation/administrative proceeding. Where company services have not been suspended, terminated, revoked, or cancelled, in whole or in part, within the past three (3) years, the applicant must provide a statement to that effect. DCJS will consider any suspension, termination, revocation, or cancellation, and details provided by the applicant in DCJS' evaluation and ultimate determination whether or not to approve the applicant as a Qualified Manufacturer for purposes of this RFA and related contractual services.</p> <p>Please attach a Word document to your application, clearly labeled as Attachment C, Part 2 Narrative Response, for DCJS to evaluate.</p> <p><b>Applicant's response to this question will be scored; vendor's not meeting a pre-set minimum score will not be considered for approval.</b></p>		
<b>CERTIFICATIONS</b>		
1. I certify that the applicant organization will adhere to all regulatory provisions of the NYS Department of Health with respect to certification, testing, labeling, reporting and any additional requirements, and shall also specifically adhere to its responsibilities contained in 9 NYCRR Part 358;	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. I certify that an ignition interlock device shall conform to national highway traffic safety administration standards and department of health specifications, be calibrated at a set point of .025 BAC percent, and also require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a failed or missed rolling test. An ignition interlock	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>device shall enter into a lockout mode upon the following events: one failed start-up retest, one missed start-up retest, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit;</p>		
<p>3. I certify that a reduced breath sample volume as permitted in national highway traffic safety administration standards from 1.5 liters to 1.2 liters, or any subsequent NHTSA reduced volume sample standards, may only be utilized where an individual has submitted sufficient documentation from a physician of a condition which prevents regular operation at normal breath volume levels and such proof authorizing reduction in the breath sample volume has been approved by the applicable criminal court.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>4. I understand that an operator shall pay the cost of installing and maintaining the ignition interlock device unless the operator has been determined to be financially unable to afford the cost of the ignition interlock device by the sentencing court whereupon such cost may be imposed pursuant to a payment plan or waived. I agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the ignition interlock device where a payment plan is so ordered, and provide a device free of fee/charge to the operator where the cost is waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the sentence has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with the division;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>5. I certify that if authorized to provide services in a region, I will adhere to and comply with all applicable provisions specified in 9 NYCRR Part 358, with respect to service delivery. I certify that installation/service providers will be available to service every county within the region or regions in which the manufacturer is qualified to operate. I agree to service every county within a region and ensure that there shall be an installation/service provider located in this state within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest and ensure repair or replacement of a defective ignition interlock device shall be made available within the same 50 mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated;</p>		
<p>6. I guarantee that the applicant organization or one of our installation/service providers shall verify that an operator requesting a “voluntary” installation will verify with said operator that it is not subsequent to an arrest for Driving While Intoxicated. If the operator is installing subsequent to an arrest for Driving While Intoxicated, then the manufacturer shall notify the appropriate monitor.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>7. I guarantee that the applicant organization or one of our installation/service providers shall download the usage history of every operator’s ignition interlock device within thirty (30) calendar days of initial installation(s) and during subsequent service visits every thirty (30) calendar days where the device does not automatically transmit data directly to the monitor; and within thirty (30)calendar days of initial installation(s) and during subsequent service visits every sixty (60)calendar days where the device automatically transmits data directly to the monitor; or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the division. Further guarantee that the installation/service provider, unless the manufacturer provides such notification, shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor, in the manner designated by the DIVISION, within three (3) business days of knowledge or receipt of data indicating:</p> <p>(i) installation of a device on an operator’s vehicle(s);</p> <p>(ii) report of a failed start-up re-test;</p> <p>(iii) report of a missed start-up re-test;</p> <p>(iv) report of a failed rolling re-test;</p> <p>(v) report of a missed rolling re-test;</p> <p>(vi) report of the device entering lockout mode;</p> <p>(vii) failure of an operator to appear at a scheduled service visit; or</p> <p>(viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

an attempt thereof;		
<p>8. I certify that the applicant organization will adhere to real-time reporting and emergency notification program requirements, where such is required in any county plan. Where real time reporting is utilized, such reports provided to the monitor as required above must occur contemporaneously as the event occurs or as soon as cellular reception permits. Where an emergency response program is utilized, immediate report notification as required above must be transmitted to the appropriate monitor and any other law enforcement specified by the county;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>9. I certify that the applicant organization will provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>10. I agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order. All records maintained by the manufacturer and distributor and any of its installation/service providers with respect to ignition interlock devices in New York State shall be retained in accordance with section 358.9;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>11. I agree to ensure that the applicant organization and/or its installation/service provider, where applicable, complies with any reporting requirements established by the division in providing information and reports to the division, and on a case –by- case basis to localities as may be necessary with respect to an operator's use of the ignition interlock device;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>12. I certify that the applicant organization will establish and distribute to the division, its installation/service providers, and any county where it does business a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance. I am providing an up-to-date listing by region, of New York State installation/service providers as part of my application submission.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>13. I certify that all installation/service providers: (i) have been trained in advance as to installation, maintenance,</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>troubleshooting, set point requirement of .025. BAC percent, and recalibration of such qualified manufacturer's devices;</p> <p>(ii) have instructions as to installation and usage of such manufacturer's devices;</p> <p>(iii) have agreed to comply with the qualified manufacturer's service agreements;</p> <p>(iv) have agreed to comply with the provisions of section 358.5(c) and (d);</p> <p>(v) have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an ignition interlock device is being installed, with a valid driver's license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the operator;</p> <p>(vi) have been informed of New York State law governing circumvention of ignition interlock devices and penalties associated therewith;</p> <p>(vii) have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or court order; and</p> <p>(viii) have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified in section 358.5. An installation/service provider may be reinstated by the division, at its discretion, upon satisfactory proof from the qualified manufacturer of corrective action;</p>		
<p>14. I certify that the applicant organization will conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide DCJS with yearly sworn statements that such audits have been conducted, as well as a copy of the findings of such annual quality assurance audits. Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude the division and/or its representative from conducting random audits and quality assurance audits or reviews;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>15. I certify that the applicant organization take all reasonable steps necessary to prevent tampering or circumvention of the ignition interlock device and promptly notify the division, the applicable county's monitor and district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an ignition interlock device of any operator</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;</p>		
<p>16. I certify that the applicant organization will provide immediate written notice to the division and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>17. I certify that the applicant organization will provide immediate written notice to DCJS and the NYS Department of Health whenever any of its manufacturer's, and/or distributor's, device(s), or applicant organization's services, and/or operations has been compromised or does not function as intended in New York State or any other state or jurisdiction in which the manufacturer does business, or disapproved, suspended in whole or in part, revoked, or otherwise cancelled by another state or jurisdiction, or has received notice or communication from another state or jurisdiction that any such actions are imminent</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>18. I certify that the applicant organization agrees to submit such reports, as requested and in such format and timeframes as determined by DCJS, for each model or type of certified device, including, but not limited to:</p> <p>(i) operator and other vehicular user operation error;</p> <p>(ii) faulty automotive equipment that directly impact successful implementation and use of the device;</p> <p>(iii) apparent misuse or attempts to circumvent or tamper/bypass a device;</p> <p>(iv) device malfunctions, including proposed and follow-up action taken by the manufacturer to correct such malfunctions;</p> <p>(v) deficiencies in device calibration stability;</p> <p>(vi) deficiencies in device reporting or information transmission as a result of any reason, including but not limited to service outages or downtimes of any nature;</p> <p>(vii) <b>any</b> proposed operational modification or other proposed operational and/or administrative change, including but not limited to server, firmware, and other technical change or business structural change which may have the potential of affecting service delivery or reporting; and</p> <p>(viii) operator, vehicular user, and installation/service provider complaint.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>19. I certify that the applicant organization will provide documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total. The applicant organization shall provide a signed statement holding harmless the State of New York, DCJS and OPCA, and every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the applicant organization and/or distributor or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device, upon each subsequent policy issuance or renewal.</p> <p>This documentation is required to prepare a contract.</p> <p>Check one box      <input type="checkbox"/>documentation submitted with application</p> <p>   <input type="checkbox"/>documentation will be submitted within 10 business days of initial notice of approval as a Qualified Manufacturer.</p>		
<p>20. I certify commitment to obtain, provide documentation and verification of and maintain a requisite Standby Letter of Credit (SLOC) if approved for an RFA award consistent with RFA and contractual requirements;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>21. I certify that the applicant organization will submit any other information determined by the division to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction and/or monitoring tool; and</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>22. I agree that the consequences of a failure to adhere to any requirements specified in 9 NYCRR Part 358 and/or in contractual provisions with the State of New York may result in suspension or removal of the qualified manufacturer from doing business in the State of New York, or, in the event of suspension, such terms and conditions required by the division in any manufacturer's subsequent reconciliation plan.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>23. I certify that any operational modification to a certified device must be submitted in advance with necessary documentation to DCJS and DOH and to obtain DOH approval before releasing the modified device. Further to notify DCJS in writing of intent of any operational modification, testing/plans, and results and any subsequent approval and provide a written summary of any requested or approved modification. Operational modification means any change to the product design or function that could affect the devices anti-circumvention, anti-tampering or analytical features as determined by DOH.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

24. I designate the following region or regions of New York State in which to provide ignition interlock services and in so designating, I certify that the applicant organization will adhere to and comply with all applicable provisions specified in 9 NYCRR Part 358 and contractual provisions, as applicable. For purposes of 9 NYCRR Part 358, Regions and the counties contained therein are as follows:

Check to designate and certify:

Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates

Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins

Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington

Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester

<p>25. agree to only provide an unlock code to an operator within two (2) hours of a scheduled service visit. The unlock code shall be a unique one-time code and only functional for two (2) hours immediately preceding the service visit scheduled as a result of a vehicle being rendered inoperable due to a lockout mode.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>26. I certify that the applicant organization will provide to DCJS' OPCA documentation and verification of insurance covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total upon each subsequent policy issuance or renewal.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>27. I understand that a SLOC is required in the amount of \$100,000 for any qualified manufacturer if their IIDs installed in the field at any given time (IID base) in New York State is less than 500 and \$200,000 if their installed IIDs in the field at any given time (IID base) is 500 or more. New successful applicants will be required to have an initial SLOC in the amount of \$100,000. Any new or amended SLOC will be required to reflect the contract number and contractual term. A SLOC in the appropriate amount must be maintained throughout the contractual term, contract extension or post transition period.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>28. I certify that the applicant organization will provide a signed statement holding harmless the State of New York, the Division of Criminal Justice Services, and every county and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>or omission by the applicant organization or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device.</p> <p>Check one box:</p> <p><input type="checkbox"/> signed statement submitted with application</p> <p><input type="checkbox"/> signed statement will be provided on or before _____ (date)</p>		
<p>29. I understand that DCJS' OPCA will classify all certified ignition interlock devices into categories based upon features of the devices and provide the list to every county.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>30. I am providing a thorough description of each device intended for use in New York State by the applicant organization, and the fee structure associated with each specific device. The proposed fee structure should take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by sentencing courts due to operator unaffordability. Descriptive information about the device should include but not be limited to: make and model of device, special features of the device such as camera, reporting capabilities, removable head, Global Positioning System capability, and real-time or next day reporting. Fee structure information shall include any and all fees charged to the operator, including but not limited to installation fee, monthly fee, any special service fees, shipping fee and de-installation fee. Use ATTACHMENT B to provide this requested information.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>31. I agree to enter into a contractual agreement with DCJS for an initial term effective when the contract is fully executed by all Parties and approved by the Attorney General's and State Comptroller's offices in New York State with a term commencing on or about August 14, 2021 and continuing through August 14, 2024, and with a DCJS option of up to 2 one year extensions setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with Division regulations 9 NYCRR Part 358 and this application submission approved by OPCA.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>

<p>32. I certify that any contractual agreement between the operator and the qualified manufacturer or its installation/service providers will permit an early termination without penalty to the operator when a certificate of completion has been issued, where operator's sentence or release has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>33. I understand that on or about February 15<sup>th</sup> of each year, OPCA shall review requests by qualified manufacturers for rate adjustments which shall include information submitted by qualified manufacturers involving unaffordability waivers granted by courts, and at its discretion approve rate adjustments where appropriate.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>34. I understand that any of the following reasons may result in revocation of a certified ignition interlock device or suspension or removal of a qualified manufacturer or installation/service provider:</p> <ul style="list-style-type: none"> <li>i. When there is a voluntary request by a manufacturer or the distributor applicant to cancel certification of a device;</li> <li>ii. When notified by the department of health that a device no longer meets their regulatory standards;</li> <li>iii. When a device is discontinued by the manufacturer or the distributor applicant;</li> <li>iv. When the qualified manufacturer's liability insurance is terminated or cancelled;</li> <li>v. When the qualified manufacturer or installation/service provider conceals or attempts to conceal its true ownership;</li> <li>vi. When materially false or inaccurate information is provided relating to a device's performance standards;</li> <li>vii. When there are defects in design, materials, or workmanship causing repeated failures of a device;</li> <li>viii. When the qualified manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;</li> <li>ix. When a qualified manufacturer or installation/service provider assists users with circumventing or tampering with a device;</li> <li>x. When service or the submission of required reports is not provided in a timely manner as required in 9 NYCRR Part 358;</li> <li>xi. When the qualified manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;</li> <li>xii. When there is a pattern of substandard customer service;</li> <li>xiii. When a qualified manufacturer or installation/service provider interferes with or obstructs a review or investigation by the office or any designee;</li> <li>xiv. When there are any other violations of the provisions contained in 9 NYCRR Part 358, including division and department of health regulations, or any ignition interlock contractual agreement;</li> <li>xv. Upon verbal and/or written notification or communication of</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>disapproval, suspension in whole or in part, revocation, or cancellation of a manufacturer's device, applicant organization or one of its manufacturer's services, and/or operations by another state or jurisdiction; When a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business, and</p> <p>xvi. When a qualified manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by OPCA.</p>		
<p>35. I certify that all ignition interlock devices used in New York State by the applicant organization meet New York State Department of Health (DOH) regulatory standards contained in 10 NYCRR Part 59. The applicant organization shall provide proof of such certification for each device intended for use in New York State.</p> <p>Check one box:</p> <p><input type="checkbox"/> Proof of DOH certification attached</p> <p><input type="checkbox"/> DOH certification anticipated and proof of certification will be submitted prior to (date)</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>36. I certify that all of the applicant organization's installation/service providers will comply with the following requirements:</p> <p>i. the ignition interlock device shall be installed in any vehicle(s) owned or operated by the operator within seven (7) business days of the operator's request for installation of the device.</p> <p>ii. provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States, and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>

- iii. record the odometer reading of the motor vehicle in which the ignition interlock is installed and during all service visits.
- iv. installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to 9 NYCRR Part 358.
- v. installation shall be performed according to the manufacturer's and/or distributor's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation.
- vi. at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device.
- vii. be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal.
- viii. perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and installation, data download, transmission, or recalibration instructions.
- ix. maintain records of installation and maintenance work performed on the devices.
- x. screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, un-tuned engine, and frequent stalling.
- xi. prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) day installation period in paragraph one shall commence when repairs or adjustments are completed.
- xii. after installation during any service visit, recalibrate as necessary or required in 9 NYCRR Part 358 and check the device and vehicle to ensure proper operation.
- xiii. notify the monitor as applicable, when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation.
- xiv. adhere to any other applicable state or federal requirements.
- xv. prior to installation of the ignition interlock device, obtain and record the following information from every operator:
  - a. photo identification;
  - b. the name and policy number of his/her automobile insurance;
  - c. the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator.
  - d. a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator.
- xvi. if, during the installation, the operator fails to pass the initial breath test, the installation will be halted, and the monitor

notified.		
<p>37. I certify that the applicant organization or its authorized installation/service providers will complete the following with respect to service visits:</p> <ul style="list-style-type: none"> <li>a) obtain and record photo identification from the operator during all required in-person services.</li> <li>b) provide service/monitoring of the ignition interlock device as required in 9 NYCRR Part 358.</li> <li>c) recalibrate as necessary the ignition interlock device at each service visit.</li> <li>d) check for signs of circumvention or tampering.</li> <li>e) installation/service provider or the applicant organization shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the office. Further guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data, indicating: <ul style="list-style-type: none"> <li>1. installation of a device on an operator's vehicle(s);</li> <li>2. report of a failed start-up re-test;</li> <li>3. report of a missed start-up re-test;</li> <li>4. report of a failed rolling re-test;</li> <li>5. report of a missed rolling re-test;</li> <li>6. report of the device entering lockout mode;</li> <li>7. failure of an operator to appear at a scheduled service visit; or</li> <li>8. report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof.</li> </ul> </li> <li>f. agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized by division regulation, by law, or court order. Record retention and disposition of all records of any qualified manufacturer, and installation/service provider with respect to 9 NYCRR Part 358 shall be in accordance with the applicable Records Retention and Disposition schedule promulgated by the State Education Department.</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>38. I certify that the applicant organization's installation/service providers will comply with the following requirements related to the removal of the ignition interlock device:</p> <ul style="list-style-type: none"> <li>a) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>monitor as authorized by 9 NYCRR Part 358. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;</p> <p>b) where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. Where the device includes direct exchange method of servicing, the qualified manufacturer shall report to the monitor before removal is made.</p>		
<p>39. I certify that the applicant organization and its installation/service providers will comply with DCJS and county reporting requirements in providing information and reports as may be necessary with respect to an operator's use of the ignition interlock device.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>40. I certify that the applicant organization will adhere to the same maximum fee schedule for every operator sanctioned administratively under the DMV regulations. In such cases, the applicant organization will not be required to offer a payment plan or offer a waiver of fees to such administratively sanctioned operator.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>41. I have submitted the following documentation as required in the REQUEST FOR APPLICATIONS with this application:</p>		
<p>a) Non-Collusive Bidding Certification dated and completed including street addresses and signed.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>b) Lobbying Law forms</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>c) Encouraging Business in NYS Form</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>d) Completed Vendor Responsibility Questionnaire with signed and notarized certification.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>e) Completed EO 177 Certification</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>f) Completed EEO Policy Statement</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>g) Completed and signed Sexual Harassment Prevention Certification</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>h) Copy of most recent annual financial audit.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

i) Workers Compensation and Disability Benefits Compliance documentation. This documentation is due to OPCA within 10 business days of OPCA notification to applicant of preliminary approval as a Qualified Manufacturer. Final approval is contingent upon execution of a contract.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
j) MWBE staffing plan	<input type="checkbox"/> Yes	<input type="checkbox"/> No
k) SDVOB	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>NOTE: If answer to i) above is No, check box below if you agree with the statement.</p> <p><input type="checkbox"/> I understand that Worker's Compensation and Disability Benefits Compliance documentation is required and will provide such within 10 business days of OPCA notification to this applicant of preliminary approval as a Qualified Manufacturer. I also understand that an executed contract between DCJS and this applicant is required prior to final approval as a Qualified Manufacturer.</p>		

**ATTESTATION: This attestation must be signed by the individual authorized to make contractual commitments on the applicant's behalf.**

**I have read, understand and am able and willing to comply with all standards contained in this Request for Applications, in the New York State Division of Criminal Justice Services Rules and Regulations 9 NYCRR Part 358 and in the New York State Department of Health Rules and Regulations 10 NYCRR Part 59. I attest to the accuracy and truthfulness of all information contained in this application.**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title** \_\_\_\_\_

**ATTACHMENT D**

**IGNITION INTERLOCK RFA-RELATED DEFINITIONS**

## **Attachment D: Ignition Interlock RFA-Related Definitions.**

(a) The term “blood alcohol concentration” or “BAC” shall mean the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/ 100 ml. blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.

(b) The term “certificate of completion” shall mean a document issued by the monitor after the conclusion of the ignition interlock period set by the criminal court, including any extensions or modifications as may have subsequently occurred which shows either satisfactory completion of the ignition interlock condition or a change by the court in a pre-sentence order no longer requiring the need for a device, or a change in the conditions of probation or conditional discharge no longer requiring the need for a device after completion of the minimum ignition interlock period.

(c) The term “circumvent” shall mean to request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges is so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.

(d) The term “county” shall mean every county outside of the city of New York, and the City of New York as a whole.

(e) The term “county executive” shall mean a county administrator, county manager, county director or county president and in cities with a population of one million or more, the mayor.

(f) The term “division” shall mean the division of criminal justice services.

(g) The term “drinking driver program” shall mean an alcohol and drug rehabilitation program established pursuant to section 1196 of the Vehicle and Traffic Law. Now referred to as the “impaired driver program” by the Department of Motor vehicles.

(h) The term “Emergency Notification Program” shall mean a protocol that utilizes real time data reporting and provides timely notification to law enforcement agencies regarding at minimum failed or missed rolling re-tests.

(i) The term “failed tasks” shall mean failure to install the ignition interlock device or failure to comply with a service visit or any requirement resulting therefrom as prescribed by this Part.

(j) The term “failed tests” shall mean a start-up re-test or rolling re-test at or above the set point, or a missed rolling re-test.

(k) The term “failure report recipients” shall mean all persons or entities required to receive a report from the monitor of an operator’s failed tasks or failed tests pursuant to a county’s plan which may include, but is not limited to the applicable court, district attorney, operator’s alcohol treatment provider, and the impaired driver program, where applicable.

(l) The term “ignition interlock device” shall mean any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator’s equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the department of health.

(m) The term “installation/service provider” shall mean an entity located in this state approved by a qualified manufacturer that installs, services, and/or removes an ignition interlock device.

(n) The term “lockout mode” shall mean circumstances enumerated in this Part which trigger the ignition interlock device to cause the operator’s vehicle to become inoperable if not serviced within five (5) calendar days.

(o) The term “monitor” shall mean the local probation department where the operator is under interim probation supervision or probation or any person(s) or entity (ies) designated in the county’s ignition interlock program plan for any operator granted conditional discharge or otherwise required to install an ignition interlock device and undergo monitoring in advance of sentencing pursuant to court order.

(p) The term “operator” shall mean a person who is subject to installation of an ignition interlock device arising from a felony or misdemeanor charge or conviction under the Vehicle and Traffic Law or the Penal Law or arising from a youthful adjudication of any such crime.

(q) The term “qualified manufacturer” shall mean a manufacturer or distributor of an ignition interlock device certified by the New York State department of health which has satisfied the specific operational requirements herein and has been approved as an eligible vendor by the division in the designated region where the county is located.

(r) The term “real time reporting” shall mean the contemporaneous transmission of data of particular events, as defined in Section 358.5(c) (5), to a specified monitoring entity as the event occurs or as soon as cellular reception permits.

(s) The term “region” shall mean counties comprising an area within New York State designated by the division where a qualified manufacturer is authorized and has agreed to service.

(t) The term “start-up test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration prior to starting the vehicle’s ignition.

(u) The term “start-up re-test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration required within five (5) to fifteen (15) minutes of a failed start-up test.

(v) The term “rolling test” shall mean a breath test, administered at random intervals, taken by the operator while the vehicle is running.

(w) The term “rolling re-test” shall mean a breath test, taken by the operator while the vehicle is running, within one (1) to three (3) minutes after a failed or missed rolling test.

(1) The term “failed rolling re-test” shall mean a rolling re-test in which the operator’s BAC is at or above the set point.

(2) The term “missed rolling re-test” shall mean failure to take the rolling re-test within the time period allotted to do so.

(x) The term “service period” shall mean the length of time between service visits.

(y) The term “service visit” shall mean a visit by the operator or another driver of the subject vehicle to or with the installation/service provider for purposes of having the ignition interlock device inspected for repair, defect, and detection of tampering and/or circumvention, downloaded, recalibrated, or maintained as authorized by this Part.

(z) The term “set point” shall mean a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.

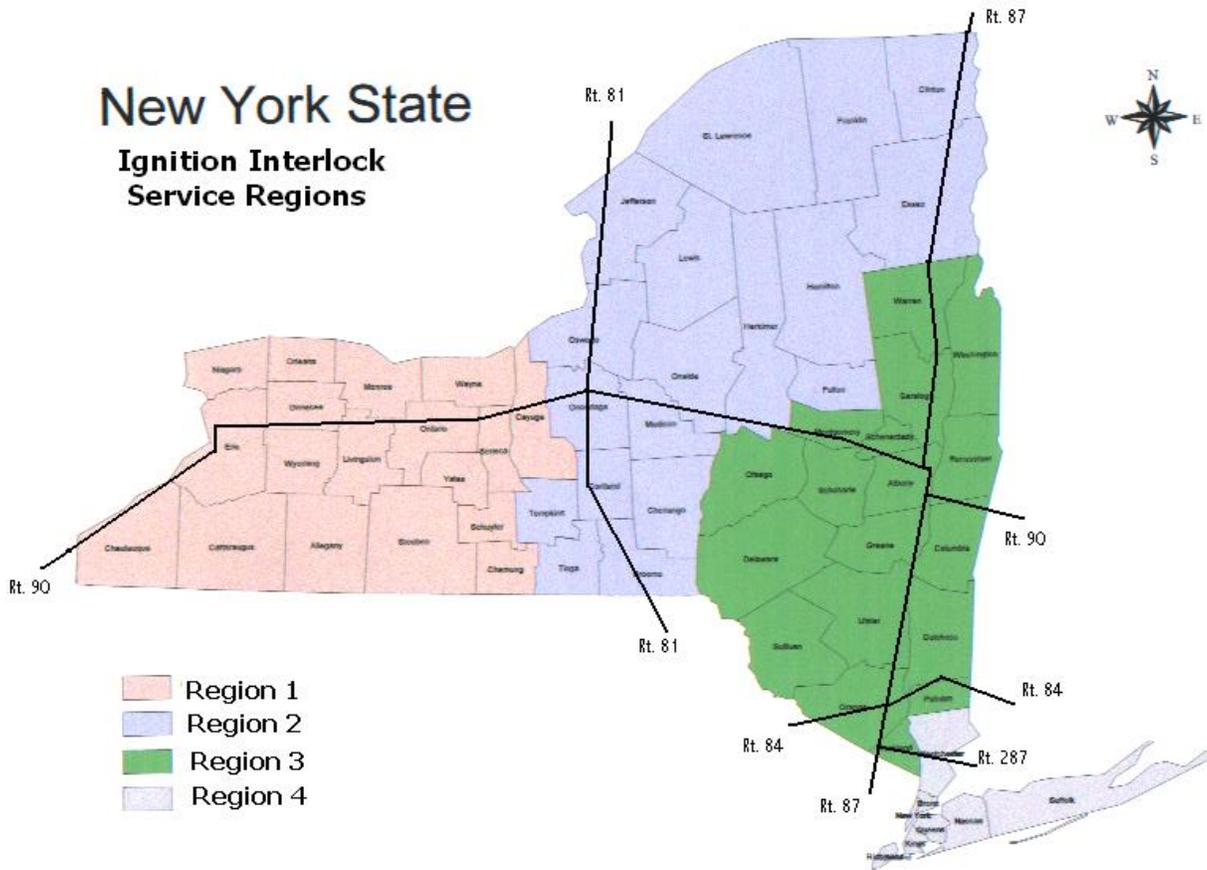
(aa) The term “STOP-DWI” shall mean special traffic options program-driving while intoxicated.

(bb) The term “tamper” shall mean to alter, disconnect, physically disable, remove, deface, or destroy an ignition interlock device or any of its component seals in any way not authorized by this Part.

**ATTACHMENT E:**  
**MAP OF IGNITION INTERLOCK SERVICE REGIONS**

# New York State

## Ignition Interlock Service Regions



The four ignition interlock service regions of the state by counties are as follows:

**Region 1:** Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;

**Region 2:** Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;

**Region 3:** Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schoharie, Sullivan, Ulster, Warren, and Washington; and

**Region 4:** Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.

**ATTACHMENT F**

**STANDBY LETTER OF CREDIT FORM**

**Standby Letter of Credit, to be issued on ISSUER's letterhead**

IRREVOCABLE LETTER OF CREDIT

LETTER OF CREDIT NUMBER: [INSERT #]

AMOUNT: [Insert Applicable Dollar Amount: \$100,000 or \$200,000]

**Beneficiary:**

State of New York  
Division of Criminal Justice Services  
Alfred E. Smith Office Building  
80 South Swan Street  
Albany, NY 12210-8001

**Customer/ Applicant:**

[Insert Name and Address]

**Issuer:**

[Insert Bank Information and Address]

**Effective Date: August 14, 2021**

**Ladies/Gentlemen:**

By order of our client, [Insert Contractor Name] ("Contractor") located [Insert Contractor's Address] (Customer/Applicant), we hereby establish in favor of the State of New York Division of Criminal Justice Services ("Beneficiary"), Alfred E. Smith Office Building, 80 South Swan Street, Albany, New York 12210-8001 our Irrevocable Standby Letter of Credit No. [Insert #], for an aggregate amount of [Insert, as applicable, one hundred thousand or two hundred thousand] dollars and no cents (\$XXX,000 U.S. DOLLARS), established at the office of [Insert Bank Name], ("Issuer") at [Insert Bank Address]. The effective date of this Letter of Credit shall be August 14, 2021 for Contract Number [Insert #].

The purpose of this Standby Letter of Credit is to irrevocably indemnify the Beneficiary in connection with New York State Comptroller's Contract [Insert #], executed between the Applicant and the State of New York for the approval of Applicant as a Qualified Ignition Interlock Device Manufacturer, the requirements for which are more fully set forth in **DCJS' RFA CJS 2020-02** and any Contract which may result in connection therewith, together the RFA and the Contract ("Contract"). Performance under the Contract includes the requirement that the Applicant will further maintain, service, support, provide customer service, payment processing cellular or wireless service, timely payment of cellular and/or wireless service charges, installation, payment of installation expenses, and customization as approved by DCJS, and at the State's option expand and update the program equipment and/or services through the life of the Contract and any extensions which the State may elect. The Issuer, for value received, hereby stipulates and agrees that the obligations of said Issuer and its Irrevocable Standby Letter of Credit shall be in no way impaired or affected (i) by any extensions of the times within which: (a) Beneficiary may receive, review, accept or pay for deliverables under the Contract, or (b) within which the Customer/Applicant may furnish a Standby Letter of Credit, or (ii) by any waiver by the Beneficiary of any of the requirements of said Contract, and Issuer waives notice of any extension or waiver. The term "Beneficiary" includes any successor by operation of law of the named Beneficiary including without limitation, any liquidator, rehabilitator, receiver of conservator.

Funds under this Standby Letter of Credit are available to the Beneficiary, in whole or in part, upon presentation of the Beneficiary's current dated demand, signed by the Executive Deputy Commissioner of the Division of Criminal Justice Services of the State of New York, stating:

"The undersigned hereby draws the amount of \$\_\_\_\_\_ (United States Dollars) against Issuer Standby Letter of Credit No. [Insert #], which represents the amount due to us according to the terms of the Contract between the State of New York Division of Criminal Justice Services and [Insert Contractor's Name] ("Applicant") under the agreement bearing New York State Comptroller's Contract No. [Insert #], dated \_\_\_\_\_, 202\_, for the approval of Beneficiary as a State of New York Qualified Manufacturer

of Ignition Interlock Devices, Associated Services and Peripherals and of Cellular or Wireless Service in connection with the State's Ignition Interlock Device Program.”

Partial and multiple drawings are permitted under this Standby Letter of Credit and such drawings will immediately reduce the then available balance of this Standby Letter of Credit. In the event of such drawing(s) under this Standby Letter of Credit, the amount(s) of such drawing(s) must be subsequently replenished by Applicant in accordance with the terms of the Contract to increase the then available balance of this Credit to the full aggregate amount.

We engage with the Beneficiary that all drafts drawn under and in compliance with the terms of this Standby Letter of Credit will be duly honored upon presentation of such drawings at the office of [Insert Bank Name], specifying Standby Letter of Credit No.[Insert #], on or prior to the expiration date of this Standby Letter of Credit.

This Standby Letter of Credit shall remain in effect throughout the contract term, any contract extensions, or post-transition period.

Any Disputes Under this Standby Letter of Credit shall be pursued in the New York Court system and the venue shall be in Albany, New York.

[Insert Bank Name]  
[Insert Name and Title of Bank Signatory]

**ATTACHMENT G**

**INDEMNIFICATION/HARMLESS STATEMENT**

**ATTACHMENT G**

**INDEMNIFICATION/HARMLESS STATEMENT**

The undersigned certifies that the Contractor or its representative will indemnify and hold harmless, without monetary limitation, the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents from all claims, demands and actions as a result of property damage and/or injury or death to persons which arise, directly or indirectly, out of any act or omission by the Contractor or its representative, or installation/service providers relating to the installation, service, inspection, maintenance, repair, use and/or removal of the ignition interlock device.

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

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

Title \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

**TABLE OF CONTENTS**

	<b>Page</b>
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller’s Approval	3
4. Workers’ Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

## **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, licenser, 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.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

**APPENDIX C**

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

**APPENDIX C**

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

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

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

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

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

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

<b>Print Legal Name of Bidder</b>	
<b>Sign Name and Title of Authorized Signatory</b>	

**Will New York State Businesses be used in the performance of this contract?**

Yes  No

**If yes, identify New York State Business(es) that will be used below. (If additional space is required, please attach.)**

<b>NYS Business Name</b>	<b>NYS Business Address</b>

**APPENDIX D**

**NON-COLLUSIVE BIDDING CERTIFICATION**

**APPENDIX D: Non-Collusive Bidding Certification**

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY  
SECTION 139-D OF THE STATE FINANCE LAW**

**SECTION 139-D, Statement of Non-Collusion in bids to the State:**

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

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

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

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

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

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

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

**Non-Collusive Bidding Certification - 2**

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

**NAMES OF PARTNERS OR PRINCIPALS**

**LEGAL RESIDENCE**

---

---

---

---

---

---

---

---

---

---

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

**NAME**

**LEGAL RESIDENCE**

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

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

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

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

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

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

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

**Non-Collusive Bidding Certification - 3**

**Identifying Data**

Potential Contractor \_\_\_\_\_

Address \_\_\_\_\_  
Street

\_\_\_\_\_  
City, Town, etc.

Telephone \_\_\_\_\_ Title \_\_\_\_\_

If applicable, Responsible Corporate Officer

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

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

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

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

By \_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Address \_\_\_\_\_  
Street

Address \_\_\_\_\_  
Street

\_\_\_\_\_  
City State

\_\_\_\_\_  
City State

**APPENDIX E**

**DCJS PROCUREMENT LOBBYING GUIDELINES**

**APPENDIX E: DCJS PROCUREMENT LOBBYING GUIDELINES**  
**Division of Criminal Justice Services**  
**Summary of Policy and Prohibitions on Procurement Lobbying**

**Background:**

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

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

<http://ogs.ny.gov/acpl>

**Mandatory Submissions:**

The Division of Criminal Justice Services’ Procurement Lobbying Guidelines are attached as Appendix E. The Offerer/Bidder must affirm that it understands and agrees to comply with DCJS’ procedures relative to the “Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)” by completing and submitting Attachment 1 to Appendix F.

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

**APPENDIX E  
DIVISION OF CRIMINAL JUSTICE SERVICES  
PROCUREMENT LOBBYING GUIDELINES**

**I. INTRODUCTION**

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

**II. STATUTORY DEFINITIONS**

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

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

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

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

procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Offerer.

<b>Offerer</b>	The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that contacts DCJS about a <b>Governmental Procurement</b> .
<b>Procurement Contract</b>	Any contract or other agreement for an <b>Article of Procurement</b> involving an estimated annualized expenditure in excess of \$15,000. Grants, Article Eleven-B State Finance Law Contracts, Intergovernmental Agreements, Railroad and Utility Force Accounts, Utility Relocation Project Agreements or Orders of Eminent Domain Transactions shall not be deemed <b>Procurement Contracts</b> in these Guidelines.
<b>Restricted Period</b>	The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from <b>Offerers</b> intending to result in a <b>Procurement Contract</b> with DCJS and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

### III. EXEMPTIONS

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

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

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

### V. VIOLATIONS

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by DCJS to

receive communications for the particular **Governmental Procurement**. This includes instances where the **Offerer Contacts** DCJS regarding **Governmental Procurements** of other **Governmental Entities**.

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

## VI. PROCEDURES

### A. Notifying Vendors of Procurement Lobbying Guidelines

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

### B. Making Determinations of Responsibility

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

Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by DCJS. DCJS shall include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision. DCJS can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Articles of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

### C. Recording of **Contacts**

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

record the communication on the Record of Procurement Contact Form and submit it to dcjs.sm.procurement.law for further investigation.

5. The DCJS Finance Office will be required to include all Records of Procurement Contact in the procurement record for the related **Procurement Contract**.

D. Investigation of Contacts/ Penalties for Violations

1. All reported Contacts will be immediately investigated by the DCJS Ethics Officer, or his or her designee. If the DCJS Ethics Officer finds sufficient cause to believe that an Offerer has violated these Guidelines, the Offerer will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the Governmental Procurement.
2. If the DCJS Ethics Officer should find at the conclusion of the investigation that the Offerer knowingly and willfully made prohibited Contact in violation of these Guidelines, then the Offerer shall be disqualified as non-responsible, unless DCJS makes a finding that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health or safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame. The basis of such a finding must be included in the procurement record of the Procurement Contract.

**APPENDIX F:**

**ATTACHMENT 1: OFFERER'S AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT**

**PURSUANT TO STATE FINANCE LAW §139-j (3) AND §139-j (6) (b)**

**ATTACHMENT 2: OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY**

**DETERMINATIONS**

**FORM 4: OFFERER'S CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW §139-k(5)**

**Attachment 1**

**Offerer's Affirmation of Understanding of and Agreement pursuant to  
State Finance Law §139-j (3) and §139-j (6) (b)**

**Background:**

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

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

**Instructions:**

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

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

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

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

Title: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

**Attachment 2**  
**Offerer Disclosure of Prior Non-Responsibility Determinations**

**Background:**

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

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

**Instructions:**

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

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

## Offerer Disclosure of Prior Non-Responsibility Determinations

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

\_\_\_\_\_

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

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

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

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

No

Yes

If yes, please answer the next questions:

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

No

Yes

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

No

Yes

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

Governmental Entity:

\_\_\_\_\_

Date of Finding of Non-responsibility:

\_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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

No

Yes

6. If yes, please provide details below.

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

Date of Termination or Withholding of Contract:

\_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

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

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

Signature

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

Title: \_\_\_\_\_

**Form 4: Offerer's Certification of Compliance  
With State Finance Law §139-k(5)**

**Background:**

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

**Instructions:**

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

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

**Offerer Certification:**

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

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

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

Title: \_\_\_\_\_

Offerer's Name:

\_\_\_\_\_

Offerer's Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**APPENDIX G**

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

**APPENDIX G**

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

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at [https://ogs.ny.gov/Veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf)

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

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers. Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below and including the responses with their bid/proposal:

---

Are you a bidder/proposer that is a NYS certified SDVOB?      Yes \_\_\_      No \_\_\_

If yes, what is your DSDVBD Control #? \_\_\_\_\_

Will NYS certified SDVOBs be used in the performance of this contract?

Yes \_\_\_      No \_\_\_

If yes, identify the NYS certified SDVOBs that will be used below. (If additional space is required, please add to the table below).

SDVOB Name	SDVOB Address	DSDVBD Control #	Contract #
Nature of Participation	% of Total Work Performed	\$ Amount	

**APPENDIX H**

**CONTRACTOR, AFFILIATE AND SUBCONTRACTOR SALES AND COMPENSATION USE  
TAX CERTIFICATION**

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

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

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

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

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

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

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

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

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

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Q & A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Q & A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000, and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Q & A 8 and 9). Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As defined in the New York State General Construction Law:

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

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

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

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

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

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

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

#### Definitions

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

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

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

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

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

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

**Example:**

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

**20) Q:** Are exempt sales taken into account in determining whether the more than \$300,000 sales threshold of section 5-a is met?

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

**Example:**

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

**21) Q:** Who is responsible for making the certifications required by section 5-a?

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

**22) Q:** How does a contractor make the certifications required by the statute?

**A:** The contractor must file a properly completed Form ST-220-CA (with the procuring covered agency) and Form ST-220-TD (with the Tax Department). The covered agency must include Form ST-220-CA in the procurement record for the contract.

These requirements must be met before a contract may take effect.

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

**Example:**

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

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

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

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

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

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

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

### Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931  
To order forms and publications: 1 800 462-8100  
From areas outside the U.S. and outside Canada: (518) 485-6800



**Hotline for the hearing and speech impaired:**

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.



New York State Department of Taxation and Finance

# Contractor Certification to Covered Agency

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

# ST-220-CA

(12/11)

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

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

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

(name)

(title)

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

(Mark an X in only one box)

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

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

(insert contract number or description)

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

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

(sign before a notary public)

(title)

## Instructions

### General Information

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

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

### When to complete this form

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

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

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

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF [redacted]

COUNTY OF [redacted]

SS.: [redacted]

On the [redacted] day of [redacted] in the year 20[redacted], before me personally appeared [redacted], known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that [redacted] he resides at [redacted], Town of [redacted], County of [redacted], State of [redacted]; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): [redacted] he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): [redacted] he is the [redacted] of [redacted], the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, [redacted] he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, [redacted] he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): [redacted] he is a [redacted] of [redacted], the partnership described in said instrument; that, by the terms of said partnership, [redacted] he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, [redacted] he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): [redacted] he is a duly authorized member of [redacted], LLC, the limited liability company described in said instrument; that [redacted] he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, [redacted] he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

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

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

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

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

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



Department of Taxation and Finance

# Contractor Certification

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

# ST-220-TD

(4/15)

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

Contractor name			
Contractor's principal place of business		City	State ZIP code
Contractor's mailing address (if different than above)		City	State ZIP code
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number		( )	
Covered agency or state agency		Contract number or description	
Covered agency telephone number		( )	
Covered agency address		City	State ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Unknown at this time	<input type="checkbox"/>		

### General information

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

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

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

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

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0826**

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



#### Telephone assistance

**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

**Section 1 – Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 – Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 – Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

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

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

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



Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF \_\_\_\_\_ )

:

SS.: \_\_\_\_\_

COUNTY OF \_\_\_\_\_ )

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

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

\_\_\_\_\_ he resides at \_\_\_\_\_,

Town of \_\_\_\_\_,

County of \_\_\_\_\_,

State of \_\_\_\_\_; and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

(If an individual): \_\_\_\_\_ he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): \_\_\_\_\_ he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership): \_\_\_\_\_ he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company): \_\_\_\_\_ he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

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

Registration No. \_\_\_\_\_

**APPENDIX I**

**MWBE REQUIREMENTS AND EQUAL EMPLOYMENT OPPORTUNITIES**

## **APPENDIX I**

### **MWBE Requirements and Equal Employment Opportunities**

#### **Contractor Responsibilities Under Executive Law Article 15-A**

In July of 1988, Article 15-A of the Executive Law was enacted by the New York State Legislature. This Article provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

DCJS is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, Equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, DCJS hereby establishes a goal of 25% for minority business enterprises (MBE) participation and 5% for women-owned business enterprises (WBE) participation.

In order to be awarded a DCJS Contract, every Bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

#### **Policy and Provisions**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

#### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§ 140-145 DCJS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of DCJS Contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement Contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that DCJS establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the

employment of minority groups members and women in the performance of New York State Contracts.

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, DCJS hereby establishes an overall goal of 30% for MWBE participation, 25% for New York State certified minority-owned business enterprises (“MBE”) participation and 5% for New York State certified women-owned business enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A Contractor (“Contractor”) on the subject Contract (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that DCJS may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how DCJS will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and DCJS may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>. Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A Contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

Additionally, a Bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan (Attachment Q) with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DCJS.

DCJS will review the submitted MWBE Utilization Plan and advise the Bidder of DCJS acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to [DCJSProcurement@dcjs.ny.gov](mailto:DCJSProcurement@dcjs.ny.gov) a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DCJS to be inadequate, DCJS shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DCJS may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If DCJS determines that the Bidder has failed to document good faith efforts.

The Contractor will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DCJS, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the DCJS, by the tenth (10<sup>th</sup>) day following each end of quarter over the term of the Contract, documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, Appendix O, to DCJS with their bid.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

### MWBE Utilization Proposal

Contractor Name		Contact Person
Address		Telephone No.
State	Zip Code	Email Address

Proposed Contract Amt. \_\_\_\_\_

Project Name/Bid Title \_\_\_\_\_

Participation Goals Anticipated:  
 (Enter anticipated total % of dollar amount to be spent with identified MBEs and/or WBEs at the start of the contract)

	MBE	%	WBE	%
--	-----	---	-----	---

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

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

**Contractors Agreement:**  
 My firm proposes to use the MWBEs listed above.

\_\_\_\_\_  
 (Signature of Contractor)                      (Printed Name)                      (Date)

**MWBE SUBCONTRACTOR UTILIZATION QUARTERLY REPORT**

This report is to be submitted to DCJS quarterly during the life of this contract to report the actual payments made to all certified minority or women-owned subcontractors utilized for this project. Complete and mail to NYS Division of Criminal Justice Services, Financial Services, 80 So. Swan St., Albany, NY 12210 or email completed form as an attachment to [Procurement.officer@dcjs.ny.gov](mailto:Procurement.officer@dcjs.ny.gov).

Contractor		Contract No.	
Federal ID#		Project Name	
Contact Name		Contract Start Date	
Contact Email Address		Contract End Date	
Contact Phone#		Contract Amount	

Place an X in the box for the quarter you are reporting on.

1<sup>st</sup> Quarter (Apr 1-June 30)

2<sup>nd</sup> Quarter (July 1 – Sept 30)

3<sup>rd</sup> Quarter (Sept 1 – Dec 31)

4<sup>th</sup> Quarter (Jan 1 – Mar31)

Subcontractor Name	Federal ID Number	Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payments Made to Date	
		MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
<b>TOTAL</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Printed Name)

---

**APPENDIX K**

**VENDOR RESPONSIBILITY QUESTIONNAIRE**

## APPENDIX K VENDOR RESPONSIBILITY QUESTIONNAIRE

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

### COMPLETION & CERTIFICATION

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

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

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

### DEFINITIONS

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

### RESPONSES

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

### REPORTING ENTITY

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

### ASSOCIATED ENTITY

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

### STRUCTURE OF THE QUESTIONNAIRE

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

**I. LEGAL BUSINESS ENTITY INFORMATION**

Legal Business Entity Name	EIN	
Address of the Principal Place of Business (street, city, state, zip code)	New York State Vendor Identification Number	
	Telephone ext.	Fax

Email	Website
-------	---------

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

Type	Name	EIN	Status

1.0 Legal Business Entity Type – Check appropriate box and provide additional information:

<input type="checkbox"/> Corporation (including PC)	Date of Incorporation
<input type="checkbox"/> Limited Liability Company (LLC or PLLC)	Date of Organization
<input type="checkbox"/> Partnership (including LLP, LP or General)	Date of Registration or Establishment
<input type="checkbox"/> Sole Proprietor	How many years in business?
<input type="checkbox"/> Other	Date Established

If Other, explain:

1.1 Was the Legal Business Entity formed or incorporated in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

If 'No,' indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing

United State \_\_\_\_\_

Other Country \_\_\_\_\_

Explain, if not available:

1.2 Is the Legal Business Entity publicly traded?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

If "Yes," provide CIK Code or Ticker Symbol

1.3 Does the Legal Business Entity have a DUNS Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," Enter DUNS Number

**I. LEGAL BUSINESS ENTITY INFORMATION**

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

Yes     No  
 N/A

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

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

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

Yes     No

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

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

## II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

*Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

*Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

### IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

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

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes  No

If “Yes,” enter DUNS Number

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

Name

Title

**INSTRUCTIONS FOR SECTIONS III THROUGH VII**

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

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

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

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

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

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

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

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

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

**VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY**

8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract?  Yes  No

If “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over \$25,000?  Yes  No

If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.2 Within the past five (5) years, have any liens or judgments (not including UCC filings) over \$25,000 been filed against the Reporting Entity which remain undischarged?  Yes  No

If “Yes,” provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?  Yes  No

If “Yes,” provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.

8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws?  Yes  No

If “Yes,” provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.

8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns?  Yes  No

If “Yes,” provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed?  Yes  No

a) If “Yes,” did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance?  Yes  No

If “Yes” to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**IX. ASSOCIATED ENTITIES**

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.  
(See definition of “associated entity” for additional information to complete this section.)*

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> <li>- An <u>Organizational Unit</u>; or</li> <li>- The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies).</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> <li>a) Any business-related activity; or</li> <li>b) Any crime, whether or not business-related, the underlying conduct of which was <u>related to truthfulness</u>?</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including UCC</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

If “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
--	--

<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government</u></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u>, New York State, New York City, or New York local</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

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

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

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	---

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

**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone ext.	Fax
Title	Email	

## Certification

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

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

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

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

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

Title \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

**APPENDIX M**

**EO 177 CERTIFICATION**

## APPENDIX M

### EO 177 Certification

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.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies 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.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.  
Contractor:

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

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

The Certification is to be submitted prior to contract award by all successful bidders on all Covered contracts and contract renewals.

**APPENDIX O**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

## APPENDIX O

### Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

#### M/WBE and EEO Policy Statement

I, \_\_\_\_\_, the (awardee/Contractor) \_\_\_\_\_ agree to adopt the following Minority and Women-Owned Business Enterprises and Equal Employment Opportunity policies with respect to the Crime Analysis Centers Staffing Services rendered for the New York Division of Criminal Justice Services.

#### **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (M/WBE)**

This organization will and will cause its Contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE Contractor associations;
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly;
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs;
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE Contractors to enhance their participation;
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals; and
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

#### **EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

- (1) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (2) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (3) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

- (4) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (5) This organization will include the provisions of Sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

**M/WBE Contract Goals**

30% Minority and Women's Business Enterprise Participation

25% Minority Business Enterprise Participation

5% Women's Business Enterprise Participation





**APPENDIX P**

**SEXUAL HARASSMENT PREVENTION CERTIFICATION**

**APPENDIX P**

**Sexual Harassment Prevention Certification**

Pursuant to State Finance Law §139-I bidder certifies 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.

Bidder Business Name:

Signature: \_\_\_\_\_

Print Signatory Name: \_\_\_\_\_

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

