



Office of Children and Family Services

Andrew M. Cuomo
Governor

Sheila J. Poole
Acting Commissioner

REQUEST FOR QUALIFICATIONS

LOW VISION EXAMINATION & LOW VISION PRESCRIPTION SERVICES

New York City and Long Island

January 29, 2016

New York State
Office of Children and Family Services

LOW VISION EXAMINATION & LOW VISION PRESCRIPTION SERVICES

Request for Qualifications

January 29, 2016

PROPOSAL SUBMISSIONS SHOULD BE ADDRESSED TO:

*Mr. Nathaniel Beyer
NYS Office of Children and Family Services
Commission for the Blind
52 Washington Street, Room 201 - South
Rensselaer, NY 12144*

See section 2.4 for additional submission information.

TIMETABLE OF KEY EVENTS:

See section 2.3 for further information on Timetable for Proposals.

<u>Event:</u>	<u>Date:</u>
• Proposals Due (3:00 PM ET)	02/29/2016
• Submittal of Question Deadline	02/11/2016
• Posted Date of Answers (on or about)	02/18/2016
• Awards Announced (Tentatively)	03/16/2016
• Projected Contract Start Date	05/01/2016

INQUIRIES:

From the issuance of this RFQ until the resultant contracts are approved by the Office of the State Comptroller, all contacts with OCFS personnel, except as otherwise specified herein, concerning this RFQ must be made through the OCFS Program Managers identified in Section 2.2

NON-GRANT PROCUREMENT REQUEST FOR QUALIFICATIONS

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Section One: INTRODUCTION

1.1 Purpose and Procurement Objectives

The Office of Children and Family Services (OCFS), New York State Commission for the Blind (NYSCB) is seeking responses from providers willing to provide Low Vision Examination and Low Vision Prescription Services in New York City or Long Island

New York City

Manhattan
The Bronx
Brooklyn
Queens
Staten Island

Long Island

Nassau County
Suffolk County

The NYSCB requires Low Vision Examination and Low Vision Aid Prescription services for legally blind individuals referred by NYSCB for the purpose of maximizing the use of their residual vision.

1.2 Background

The New York State Commission for the Blind (NYSCB) provides vocational rehabilitation and other direct services to legally blind New York State residents, including children, adults, and elderly persons. One of NYSCB's primary objectives is to assist consumers in achieving economic self-sufficiency and full integration into society.

1.3 Term of Contract

The anticipated term of the contract shall be of five (5) years commencing on May 1, 2016 through to and ending April 30, 2021.

1.4 Qualification of Bidders

In order to be eligible for this solicitation, bidders must be an individual who is, or an organization who employs, the following:

- 1) A licensed ophthalmologist, OR,
- 2) Must be an optometrist certified as a low vision specialist by the New York Optometric Association (NYSOA) <http://www.nysoa.org/index.php>, AND,
- 3) Must agree to accept NYSCB Low Vision examination Fees and Low Vision device reimbursement rates as set forth in the schedules found at http://ocfs.ny.gov/main/cb/low_vision.asp and within RFQ Section 1.10 Payment Terms.

1.5 Contract Management System (CMS)

OCFS has developed a comprehensive, web-based Contract Management System (CMS) providing technology that automates the contract development, claiming, and program reporting process. Vendors awarded contracts under this procurement may develop and electronically sign contracts through CMS. The opportunity to submit claims and program reports online is also available to CMS users. All vendors are required to include the [“Contract Developer, Contract Signatory, and Claim Signatory Authorization Form”](#) located in Section 7, Required Forms, of this RFQ. Vendors opting to use CMS must complete the entire form, while all others may leave the section at the bottom blank. In addition to the authorization form, a current organization chart that indicates where the organization head or the chief administrative officer and the contract developers, contract signatories and claim signatories appear in relation to the board of directors and the organization as a whole must be on file with OCFS, and must be included with the proposal.

A description of CMS, including benefits to vendors, follows:

CMS Standardizes the contract development process, automating labor-intensive tasks and providing system edits that reduce common errors. Interactive budget and contract documents streamline the development process. Intuitive screens provide a user-friendly environment. Online claiming functionality allows for expedited payment of claims through the use of system edits, elimination of mailing time, and consolidation of all supporting documentation in to one easy-to-access location. The system facilitates prompt contracting and prompt payment thereby making services available to the children and families of New York State in a timely manner. CMS features will permit vendors to do the following online:

- Develop, manage and electronically sign a contract online.
- Receive alerts and notifications regarding the status of contract approval.
- Permit correspondence between the vendor and OCFS.
- Upload and download contract documents into CMS.
- Process online budget modifications.
- Process online claims including expenditures.
- Upload supporting documentation for budget modifications and claims.
- Submit program reports online.
- Check the status of contracts and payments.

CMS has no hardware requirements. Minimum computer requirements for participating are simply Internet access, Explorer 6.0 and Acrobat Reader 7.0. Acrobat Reader can be obtained free of charge at: <http://get.adobe.com/reader>.

For Macintosh users, Safari 3.1 or higher are recommended and can be obtained free of charge at: <http://www.apple.com/support/mac-apps/safari/>.

In order to develop and sign contracts online and in a secure manner, it is necessary for the organization head or the chief administrative officer to authorize and assign contract development roles and signature permissions. This is done using the [“Contract Developer, Contract Signatory, and Claim Signatory Authorization Form.”](#) Found in Section 7 of this RFP. This form must be completed and included with every proposal submission, even if the organization or the individuals designated as contract developer and contract signatory already have accounts in CMS. If accounts already exist, please check the appropriate boxes on the authorization form.

In addition to the authorization form, a current organization chart that indicates where the organization head or the chief administrative officer and the contract developers and contract

signatories appear in relation to the board of directors and the organization as a whole must be on file with OCFS, and should be included with every proposal submittal.

1.6 Executive Order Number 38 – Limits on State-Funded Admin Costs & Executive Compensation

On January 18, 2012 Governor Andrew M. Cuomo issued Executive Order Number 38, "Limits on State-Funded Administrative Costs & Executive Compensation," which requires that state agencies establish limits on state reimbursement of administrative and executive compensation costs for contracts and programs that provide direct services to clients. Contracts, payment requests and reporting must comply with this Executive Order. The Executive Order can be found at the following website address:

<http://executiveorder38.ny.gov/>

LEGAL NOTICE: Based upon the April 8, 2014 decision in Agencies for Children's Therapy Services, Inc. v. New York State Department of Health, et al. ("ACTS"), covered providers conducting business in Nassau County need not file Executive Order 38 disclosures. For purposes of this notice, "conducting business" means having a place of business within Nassau County, providing program services or administrative services involving the use or receipt of State funds or State-authorized payments within Nassau County, or otherwise conducting business within Nassau County in relation to which executive compensation is paid. Please note that the ACTS decision is under appeal. Those affected by the ACTS' decision should periodically check the EO 38 website for updates regarding any changes to this notice.

1.7 Contract Readiness

It is expected that all offerer's awarded a contract will negotiate with the state in good faith and cooperatively work with the awarding agency to move from an award to an approved contract prior to the start date. It is expected that this process will be expedited and awardees will need to be available and prepared to respond in required time frames. Awardees who cannot meet prescribed timeframes for contract development and/or signature will, at OCFS discretion, and barring extenuating circumstances, lose funds awarded.

Prior to submitting a bid, offerer's are responsible for various verifications which validate their capacity and organizational authority to receive public funding and operate a business in the State of New York. All suppliers of goods and services to the state must be registered in the New York Statewide Financial System (SFS) Central Vendor Registry file and provide their identification number at the time of contracting. For additional information on the vendor file, contact http://www.osc.ny.gov/vendor_management/index.htm.

1.8 Description of Services to be Performed

Service Description: For consumers referred by NYSCB, Low Vision Services evaluate the consumer's vision acuity and make a determination of required low vision aids according to the low vision protocol set forth by the NYSCB (See "Guidelines for Prescribing Low Vision Aids," found at http://ocfs.ny.gov/main/cb/low_vision.asp). The low vision examination must consider factors that affect the consumer's functioning and acceptance of low vision devices.

Based on the assessment of visual acuity and related factors, the low vision specialist must prescribe optical and/or non-optical aids and/or appliances to meet the individual needs of the consumer.

Service Standard: The low vision examination must include the assessment and identification of factors affecting the individual's vision including, but not limited to the following:

- visual acuity
- visual field restriction(s)
- occupational choice
- tasks to be performed
- special lighting required
- other medical factors or conditions affecting vision
- assessment for the ability to use a Closed Circuit Television (CCTV)

Low Vision Prescription Services: Optical aids, devices, equipment, and appliances must be prescribed to meet the particular visual needs of each consumer referred by NYSCB. The physician prescribing these devices must follow the “Guidelines for Prescribing Low Vision Devices” which can be found online at http://ocfs.ny.gov/main/cb/low_vision.asp.

The low vision examination must evaluate endurance, i.e. how long a period of time, including necessary rest periods, the consumer is able to use the devices prescribed by the low vision specialist.

1.9 Procedure for Selecting a Provider of Low Vision Services under Contract

The following procedure will be used by NYSCB when selecting a provider of Low Vision Services and Low Vision Prescription Services:

- 1) NYSCB will inform the consumer of the opportunity to choose a low vision provider from the list of approved providers of service.
- 2) When a consumer expresses a preference for a low vision service provider who meets the established standards, that practitioner will be used.
- 3) When a consumer does not express any preference, the counselor will provide the consumer with a list of all approved practitioners from which the consumer may make a selection.
- 4) Low Vision Providers may not solicit referrals of NYSCB consumers nor should they assume payment for services not pre-authorized by NYSCB.

Being awarded a contract does not guarantee any particular number of referrals for service.

1.10 Payment Terms

The following are the payment terms under the contract(s) for Low Vision Examination Services and Low Vision Prescription Services resulting from this RFQ:

- 1) Low Vision Examination Service providers will be reimbursed, as payment in full, for Services provided based on the rates found in the Low Vision Fee Schedule: http://ocfs.ny.gov/main/cb/low_vision.asp
 - a) Each consumer referred by NYSCB can receive a maximum of one (1) initial examination and three (3) follow-up examinations, purchased by

NYSCB, within any consecutive twenty-four (24) month period. Any additional exams must be based on District Office prior approval

- 2) Low Vision Aids will be reimbursed according to the rates in the Low Vision Fee Schedule found online at http://ocfs.ny.gov/main/cb/low_vision.asp.
- 3) Items not found on the Fee Schedule may be provided with prior approval by NYSCB. Information on special requests may be found online at http://ocfs.ny.gov/main/cb/low_vision.asp under "Special Request Prior Approval"
- 4) Upon completion of the examination, the Contractor will submit a fully completed Low Vision Evaluation Report (Form 1119), found online at http://ocfs.ny.gov/main/cb/low_vision.asp to the NYSCB Vocational Rehabilitation Counselor who made the referral, within 5 work days of the examination.
- 5) To obtain reimbursement for services, the Contractor will return the signed NYSCB authorization to the District Office which made the referral.
- 6) All authorizations or letters for low vision services must include the statement "Less any third party insurance reimbursement". If providers are reimbursed after NYSCB has paid for services, the provider is obligated to reimburse NYSCB for any excess payment. Providers are required to seek/obtain any and all available insurance reimbursements.
- 7) Only those items required to meet the consumers stated goals will be approved for reimbursement.
- 8) Low Vision Providers may not solicit referrals of NYSCB consumers nor should they assume payment for services not pre-authorized by NYSCB.

Section 2: ADMINISTRATIVE INFORMATION

2.1 Issuing Office

This RFQ is issued by the New York State Office of Children and Family Services for the State of New York (OCFS), New York State Commission for the Blind (NYSCB).

2.2 Questions Regarding This Procurement

All questions regarding this procurement, to be given consideration by the state, must be in writing and submitted via email to **Robert.Kennedy2@ocfs.ny.gov** or sent by US Postal Service to **Robert Kennedy** at the following address:

NYS OCFS
Attn: Robert Kennedy
52 Washington Street
South Bldg., Room 201
Rensselaer, NY 12144
(518) 474-7785

Questions must be received in accordance with the timetable in Section 2.3 of this RFQ. Each question should, to the degree possible, cite the specific RFQ section and paragraph number to which it refers. The state will distribute its official answers to all organizations that have requested a copy of this RFQ.

2.3 Timetable

See TIMETABLE OF KEY EVENTS on page 2.

2.4 Submission of Proposals

1. Proposals must be signed by an official authorized to bind the offerer to its provisions.
2. Proposals should include Workers Compensation, Disability Insurance, ST-220 CA and Vendor Responsibility Questionnaire.
3. Offerers mailing their responses must allow sufficient mail delivery time to ensure receipt of their proposals BY the bids due date as specified in the Timetable of Key Events.
4. The following information must appear on the outside front cover of each proposal and displayed on the exterior of the packaging:
 - Offerer's name and address
 - Low Vision Services RFQ
 - Proposal
 - Date
5. Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OCFS prior to the bid due date referenced in the "Time Table of Key Events" on page 2. **LATE BIDS** will be rejected. Email bid submissions are not acceptable and will not be considered.
6. Two (2) hard copies of the proposal must be mailed or delivered to the individual noted below. Proposals must be received by the due date and time identified in Section 2.3:

**Mr. Nathaniel Beyer
NYS Office of Children and Family Services
Commission for the Blind
52 Washington Street, Room 201 - South
Rensselaer, NY 12144**

7. By submitting a proposal, the bidder warrants that it has carefully reviewed the needs of the state (as described in this RFQ, its attachments and other communications related to this RFQ), has familiarized itself with the specifications and requirements of this RFQ and warrants that it can provide such products and services as represented in bidder's proposal. The bidder agrees that it will perform all of its obligations in the resultant contract in accordance with all applicable federal, state, and local laws, regulations and policies now or hereafter in effect. The bidder affirms that the terms of this RFQ do not violate any contracts or agreements to which the bidder is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under the contract.
8. All proposals and accompanying documentation become the property of the State and will not be returned.

2.5 OCFS Rights

OCFS reserves the right to:

1. Place a monetary cap on the funding amount made in each contract award.
2. Change any of the schedule dates stated in this RFQ.
3. Request all bidders who submitted proposals to present supplemental information clarifying their proposals either in writing or by formal presentation.
4. Require that bidders demonstrate, to the satisfaction of the OCFS, any feature(s) present as a part of their proposal which may include an oral presentation of their proposal, and may be considered in the evaluation of the proposal.
5. Direct all bidders who submitted proposals to prepare modifications addressing RFQ amendments and/or amend any part of this RFQ with notification to all bidders. These actions are without liability to any bidder or other party, for expenses incurred in the preparation of any proposals or modifications submitted in response to this RFQ.
6. Make funding decisions that maximize compliance with and address the outcomes identified in this RFQ.
7. Fund only one portion, or selected activities, of the selected bidder's proposal; and/or adopt all or part of the selected bidder's proposal based on federal and state requirements.
8. Eliminate any RFQ requirements unmet by all bidders, upon notice to all parties that submitted proposals.
9. Waive procedural technicalities, or modify minor irregularities, in proposals received, after notification to the bidder involved.
10. Correct any arithmetic errors in any proposal, or make typographical corrections to proposals, with the concurrence of the bidder.
11. Negotiate with the selected bidder(s) prior to contract award.
12. Award contract to the next highest bidder, if contract negotiations with the selected bidder(s) cannot be accomplished within an acceptable time frame. No bidder will have any rights against OCFS arising from such actions.
13. Award contracts to more than one bidder, or to other than the lowest bidder.
14. Require that all proposals be held valid for a minimum of 180 days from the closing date for receipt of proposals, unless otherwise expressly provided for in writing.
15. Fund any or all of the proposals received in response to this RFQ. However, issuance of this RFQ does not commit OCFS to fund any proposals. OCFS can reject any proposals submitted and reserves the right to withdraw or postpone this RFQ, without notice, and without liability, to any bidder, or other party, for expenses incurred in the preparation of any proposals submitted in response to this RFQ, and may exercise these rights at any time.

16. Use the proposal submitted in response to this RFQ as part of an approved contract. At the time of contract development, awardees may be requested to provide additional budget and program information for the final contract.
17. Make additional awards based on the remaining proposals submitted in response to this RFQ and/or to provide additional funding to awardees if additional funds become available.
18. Make inquiries of third parties, including but not limited to bidders references, with regard to the applicants' experience, or other matters deemed relevant to the proposal by OCFS. By submitting a proposal in response to this RFQ the applicant gives its consent to any inquiry made by OCFS.
19. Require contractors to participate in a formal evaluation of the program to be developed by OCFS. Contractors may be required to collect data for these purposes. The evaluation design will maintain confidentiality of participants and recognize practical constraints of collecting this kind of information.
20. Consider statewide distribution and regional distribution within New York City, including borough distribution methodology, in evaluating proposals.

2.6 Incurred Costs

The State of New York shall not be liable for any costs incurred by an offerer in the preparation and production of a proposal. The State of New York shall not be liable for any cost incurred by the contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York. Additionally, no cost will be incurred by the state for the contractor's participation in any pre-contract award activity or for any work performed prior to the issuance of a fully executed task order by the state to the contractor.

2.7 Content of Proposals

To be considered responsive, an offerer must submit complete proposals, which satisfy all the requirements stated in this RFQ. Proposals not conforming to the outline content and sequence as specified in Section IV may be rejected as nonconforming. The offerer's proposals must include a statement that the proposal will remain valid for a period of 180 days.

2.8 Security, Nondisclosure and Confidentiality Agreement

The content of each bidder's proposal will be held in strict confidence by the state during the bid evaluation process and will not be disclosed except to the evaluation panels, and to the NYS Attorney General's Office and the Office of the State Comptroller as may be necessary to obtain the approvals of those agencies for the final Contract and except as required by law. The successful bidder's proposal and a copy of the specifications will be made a part of the contract.

Public inspection of a proposal is regulated by the Freedom of Information Law (Article 6 of the New York Public Officer's Law, hereinafter "FOIL"). Proposals are presumptively available for public inspection. If this would be unacceptable to bidders, they should apply to the Division of Budget (DOB) for trade secret protection for their bid.

Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the bidder. Marking the bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered to be sufficient without specific justification as to why disclosure of particular information in the bid would cause substantial injury to the competitive position of the bidder.

Bidders/contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

The Public Officers' Code of Ethics (Section 74 of the Public Officers Law) sets the standard that no officer or employee of a state agency shall disclose confidential information that he/she acquires during the course of his/her official duties. These standards control the confidentiality of a bidder's proposal unless DOB grants a petition for records access in accordance with the Freedom of Information Law.

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

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

Please see Section 7, Required Forms for the [Confidentiality Non-Disclosure Agreement – \(OCFS-4715\)](#) which each contractor, employee of a contractor or subcontractor, and volunteer with a contractor or subcontractor will be required to sign.

2.9 Omnibus Procurement Act

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors, and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available on the internet at www.esd.ny.gov. For additional information and assistance, contact:

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

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, New York 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

NOTE: Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the Standard Industrial Classification (SIC) code, size and location of vendors.

A directory of minority and women-owned business enterprises is available on the internet at www.esd.ny.gov. For additional information and assistance, contact either of the above listed offices.

The Omnibus Procurement Act of 1992 requires that by signing a bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the state.
2. Document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors by showing that they have:
 - Solicited bids, in a timely and adequate manner, from New York State Empire State Development business enterprises including certified minority and women-owned businesses; or
 - Contacted the New York State Empire State Development to obtain listings of New York State business enterprises and MWBEs; or
 - Placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State; or
 - Participated in bidder outreach conferences.

If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.

If the contractor does not intend to use subcontractors, the contractor shall provide a statement verifying such.

3. The contractor has complied with the federal Equal Opportunity Act of 1972 (P.L. 92-961), as amended.
4. The contractor will be required to notify New York State residents of employment opportunities through listing any such positions with Community Services Division of the New York State Department of Labor, providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The agency agrees to document these efforts and to provide said documentation to OCFS upon request.
5. Bidders located in a foreign country are notified that the state may assign or otherwise transfer offset credits to third parties located in New York State, and the bidders shall be obligated to cooperate with the state in any and all respects in making such assignment or transfer, including, but not limited to, executing any and all documents deemed by the state to be necessary or desirable to effectuate such assignment or transfer, and using their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government.
6. Bidders are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principle place of business is located in a discriminatory jurisdiction. "Discriminatory jurisdiction" is defined as a state or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdiction is maintained by the Commissioner of the New York State Empire State Development.

2.10 Minority- and Women-Owned Business Enterprises (MWBE) – Equal Employment Opportunity (EEO) - Requirements & Procedures

This section outlines contractor requirements and procedures for business participation opportunities for New York State certified Minority- and Women-Owned Business Enterprises (MWBE), and Equal Employment Opportunities (EEO) for minority group members and women.

New York State Executive Law (Article 15-A)

Pursuant to New York State Executive Law Article 15-A, the New York State Office of Children and Family Services (OCFS) recognizes its obligation to promote opportunities for maximum feasible participation of certified Minority and Women-Owned Business Enterprises (M/WBEs) and the employment of minority group members and women in the performance of OCFS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether M/WBEs 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 M/WBEs in state procurement contracting versus the number of M/WBEs 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 M/WBE Program. The recommendations from the Disparity Study culminated in the enactment and implementation of New York State Executive Law Article 15-A, (which requires, among other things, that OCFS establish goals for maximum feasible participation of New York State certified M/WBEs and the employment of minority group members and women in the performance of New York State contracts. In order to be recognized as a certified MWBE, a vendor must be for-profit and certified by the Empire State Development.

Business Participation Opportunities for M/WBEs – OCFS Established Goals

For purposes of this solicitation, OCFS hereby establishes an overall goal of 30% for M/WBE participation. OCFS recommends that whenever practicable, Contractors attempt to equally utilize Minority-Owned Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") participation in the performance of the contract. It is expected that all Contractors make a good faith effort to utilize M/WBEs when there is an opportunity to subcontract or purchase supplies to carry out a contract with OCFS, however strict adherence to the suggested MBE and WBE utilization is not mandatory as long as the overall 30% goal is met.

A contractor must document good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the Contract, and agrees that OCFS may withhold payment pending receipt of the required M/WBE documentation. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com>. This website (known as New York State Contract System – NYSCS) was developed to facilitate New York State's Minority - and Women-Owned Business Enterprise (M/WBE) initiatives as set forth in Article 15-A of Executive Law. NYSCS offers tools that can be used by businesses, as well as New York State Agencies, to expand the role of minorities and women-owned businesses in the economic activities of New York State. This website contains:

- A Directory of all Certified Minority- and Women-Owned Businesses. This database is designed to allow end-users the capability to search for M/WBE vendors in a variety of ways; for example, by region, product type, product category or name.
- A portal to be used by agencies and businesses at the prime and sub-prime level to record, monitor and report M/WBE goal attainment in state funded contracting. (The NYSCS allows only the reporting of money spent with Certified M/WBEs.)
- Links to the latest bid and grant opportunities from state agencies, authorities and state universities.

- Information on the Empire State Development Corporation and the Governor's M/WBE Program.

Vendors interested in doing business with New York State agencies are encouraged to familiarize themselves with this resource before the contracting process begins, since it contains the information needed to identify Certified M/WBEs, which is required for compliance.

For guidance on how OCFS will determine a Contractor's "good faith efforts", refer to 5 NYCRR §142.8 at the following website:

http://www.esd.ny.gov/MWBE/Data/122210_MWBE15-ARegs.pdf

In accordance with 5 NYCRR §142.13 (Provisions in Contracts; Violations), The contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the M/WBE participation goals set forth in the contract, such finding constitutes a breach of contract and OCFS may withhold or recover payment from the contractor as liquidated or other damages, as well as impose other such remedies as determined necessary. Such liquidated damages shall be calculated up to an amount equaling the difference between: (1) all sums identified for payment to M/WBEs had the contractor achieved the contractual M/WBE goals; and (2) all sums actually paid to M/WBEs for work performed or materials supplied under the Contract.

Notice of Deficiency (Issued to Contractor if warranted by OCFS)

OCFS expects its contractors to demonstrate good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the establishment of M/WBE goals in accordance with agency standards and in the performance of the contract. This includes the contractor's requirement to properly document said efforts. OCFS will work collaboratively with contractors, whenever possible, to lend technical assistance to accomplish successful compliance with the requirements set forth in Article 15-A of the NYS Executive Law to minimize the need for punitive or other corrective actions.

However, when it is determined that no other recourse is possible, a **Notice of Deficiency** may be issued to the contractor. The issuance of a **Notice of Deficiency** may occur during contract development, prior to full execution of the contract, or at any point during the term of the contract. The determination of deficiency will be made by OCFS, following the review of information provided by the contractor.

If OCFS issues a **Notice of Deficiency**, the contractor must respond to the notice within seven (7) business days of receipt, by **submitting a written remedy to (NYS Office of Children and Family Services, Equal Opportunities and Diversity Development Unit, Room 205 South Building, 52 Washington Street, Rensselaer, NY 12144 – Attn: Affirmative Action Administrator)**. If the written remedy submitted is not timely or is found by OCFS to be inadequate, OCFS may notify the contractor of any inadequacies in the response. As a result, the contractor may be directed by OCFS to submit an [OCFS-4442 - M/WBE Request for Waiver Form](#) within seven (7) business days, requesting either a partial or total waiver of MWBE participation goals. Failure to file the Request for Waiver Form in a timely manner may be grounds for disqualification of the proposal or contract. Completed Request for Waiver Forms must be **signed and emailed to: mwbeinfo@ocfs.ny.gov**.

Please be advised that **there are no automatic waivers**. All requests for waivers will require **both the approval of OCFS and the Governor's Office**.

Required Documentation

By submitting this proposal, bidder/contractor agrees to complete and submit the following forms, documents and/or requested information, as required or applicable, as evidence of compliance with the foregoing. Once a contract is awarded, OCFS may disqualify a contractor as being non-responsive if the contractor fails to submit any of the below-noted three (3) forms/documents listed with an asterik (*), which are required during contract development; **OR**, if OCFS determines that the contractor has failed to document good faith efforts to comply with Article 15-A.

It is expected that all contractors make a good-faith effort to utilize Minority and/or Women Owned Business Enterprises (M/WBEs) when there is an opportunity to subcontract or purchase supplies to carry out a contract with OCFS.

- [OCFS-4629 - Project Staffing Plan Form](#) * (Submit with Proposal)
This form is to be completed by the bidder and submitted as part of their proposal identifying the anticipated work force to be utilized on the contract. Any modifications or changes to the Project Staffing Plan form after a contract is awarded must be reported on a revised Project Staffing Plan form, on a quarterly basis. **Submit with proposal to (Program contact name, division and bureau, address).** If there are no personal service dollars committed to the contract then the Project Staffing Plan form is not required.
- [OCFS-3460 – M/WBE – Equal Employment Opportunity Policy Statement](#) * (Applies to Contract Awardees ONLY)
This document is to be completed by the contractor and submitted to OCFS, pursuant to Article 15-A of the NYS Executive Law. OCFS-3460 is provided to contractors/subcontractors as a model Policy Statement and may be used if the contractor/subcontractor lacks an M/WBE-EEO Policy Statement that is acceptable pursuant to Article 15-A. The contractor/subcontractor has the option to use this model statement or create an appropriate M/WBE–EEO Policy Statement to be submitted to OCFS for approval. More information on the M/WBE-EEO Policy Statement can be found in the [M/WBE Appendix](#). **Completed Document: To be signed and emailed to: mwbeinfo@ocfs.ny.gov.**
- [OCFS-4631 – Subcontracting/Suppliers Utilization Form](#) * (Applies to Contract Awardees ONLY)
This form is to be completed and submitted by the contractor during the contract development stage for the purpose of identifying anticipated M/WBE utilization and during the term of a contract to report actual M/WBE participation goals achieved. Contractors should attempt to utilize, in good faith, any MBE or WBE identified on the Subcontracting/Suppliers Utilization Form, during the performance of the Contract. **Completed Form: To be signed and emailed to: mwbeinfo@ocfs.ny.gov.**
 - [OCFS-4630 - Subcontractors and Suppliers Letter of Intent to Participate Form](#) (Applies to Contract Awardees ONLY)
This form is to be completed and submitted by the proposed M/WBE Subcontractor/Supplier during the contract development stage, **and attached** to the [OCFS-4631 – Subcontracting/Suppliers Utilization Form](#) for each certified M/WBE the contractor proposes to utilize as subcontractors, service providers or suppliers. If the MBE or WBE proposed for any portion of this proposal/contract is a part of a joint venture or other temporarily-formed business arrangement, the name and address of the joint venture or the temporarily formed business entity should be indicated. If the subcontractors are unknown at the time of the

award, enter prime contractor information and enter “unknown” in the “subcontractor/supplier” section. **Completed form: To be signed and emailed to: mwbeinfo@ocfs.ny.gov.**

- **[OCFS-4441 - M/WBE Quarterly Report Form](#) (Applies to Contract Awardees ONLY)**
This form is to be completed and submitted by contractor within 15 days following the end of each applicable reporting quarter over the term of the contract, documenting the progress made toward achievement of the MWBE goals of the contract. **Completed Form: To be signed and emailed to mwbeinfo@ocfs.ny.gov.**

Equal Employment Opportunity (EEO) Requirements

By submission of this proposal, the bidder/contractor agrees with all of the terms and conditions of the State of New York Master Contracts for Grants, including Section IV. Additional Contractor Obligations, Representations and Warranties, J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises and Appendix M/WBE. The contractor is required to ensure that any subcontractors awarded a subcontract over \$100,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), 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.

Further, pursuant to Article 15-A of the NYS Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, national origin, sex, 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.

2.11 Anti-Kickback Act

The contractor understands that it must comply with federal Executive Order 11246, the Copeland “Anti-Kickback Act” (18 USC 874), Section 508 of the federal Clean Air Act, Section 306 of the federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by the state (see federal Executive Order 12549 and 7 CFR Part 3017).

2.12 Contractor Responsibility

In the event the selected offerer’s proposal includes services provided by another firm, it shall be mandatory for the selected offerer to assume full responsibility for the delivery for such items offered in the proposal. Should the selected offerer seek external financing, the state reserves the right to approve the assignment of the contract for financing purposes. In any event, the state will contract only with an offerer, not the offerer’s financing institution or subcontractors. The state shall consider the selected offerer to be the sole responsible contact with regard to all provisions of the contract resulting from this RFQ. Should a bidder wish to subcontract its responsibilities under this solicitation, OCFS requests that the prime contractor/vendor obtain approval.

2.13 Contract

Any bidder issued an award as a result of this RFQ will be expected to enter into a contract with OCFS. A copy of the terms and conditions of the contract are attached to this RFQ in Section 6.

Any contract resulting from this RFQ, if any, will not be effective until approved by the NYS Attorney General's Office and OSC.

2.14 Multi-Agency Use

The contract entered into pursuant to an award resulting from this RFQ shall contain a provision which grants the option to extend the terms and conditions of such contract to any other state agency in New York State.

2.15 Contacts with Employees

1. From the release date of this RFQ until the resultant contracts are approved by the Office of the State Comptroller, all offerer contacts related to this procurement must be authorized by the OCFS point of contact, **Robert Kennedy** at (518) **474-7785**.
2. Prospective offerers shall not approach state personnel with offers of employment during the procurement period or risk being disqualified from the procurement. Any offerer who is aware of a state employee who is considering employment with the offerer must advise the state forthwith.

2.16 Procurement Lobbying Act

Pursuant to State Finance Law §§139-j and 139-k, this procurement imposes certain restrictions on communications between the State and a vendor during the procurement process. Vendors are restricted from making oral, written or electronic contacts with New York State employees until Office of the State Comptroller (OSC) contract approval other than to the point of contact as identified above. Statutory exceptions to vendor contact with other than the designated point of contact are listed below:

1. Submission of a written proposal in response to this procurement;
2. Submission of written questions prior to the proposal due date; (note: the PLA does not allow the hiring manager to schedule interviews)
3. Complaints filed by a vendor stating that the designated point of contact has failed to respond in a timely manner;
4. Negotiations following task order award;
5. Debriefings to vendors that were not award recipients; and
6. Filing of an appeal or protest.

New York State employees other than the designated point of contact who are contacted by a vendor are required to obtain and record certain information when contacted that could result in a finding of non-responsibility against the vendor. Such a finding can result in a rejection of a task order award and in the event of two findings within a four year period, the vendor would become debarred from obtaining New York State contracts. Further information about these requirements can be found at <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Procurement Lobbying Act also requires that every procurement over \$15,000 include a certification by the vendor that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. See [OCFS-4822-Procurement Lobbying Act – Offerer Certification Form](#) in Section 7, Required Forms, of this RFQ.

The state reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the state may exercise its termination right by providing written notification to the award recipient.

2.17 Public Officers Law

All offerers and their employees must be aware of and comply with the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State law and all resultant codes, rules and regulations from state laws establishing the standards for business and professional activities of state employees and governing the conduct of employees of firms, associations and corporations in business with the state. In signing the proposal, each offerer guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving the state and/or state employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law http://www.tenant.net/Other_Laws/Pubofc/puboftoc.html.

2.18 Office of Information Technology Services

Prior to award selection, this RFQ and all responses thereto may be subject to review by the New York State Office of Information Technology Services.

2.19 Vendor Responsibility

New York State Finance Law requires that state agencies award contracts to responsible contractors, including but not limited to not-for-profit and for-profit vendors. Vendor responsibility will be determined based on the information provided by the bidder online through the New York State VendRep system questionnaire, or through a paper copy of the vendor responsibility questionnaire. OCFS will review the information provided before making an award.

OCFS reserves the right to reject any proposal, if in the sole discretion, it determines the bidder is not a responsible vendor, or is not, or may not be, during the life of the contract, a stable financial entity. All proposals are subject to vendor responsibility determination before the award is made, and such determination can be revisited at any point up to the final approval of the contract by OSC.

Enrolling and completing the questionnaire online through the New York State VendRep system is the best method because both the questionnaire and answers are stored in the system. Thus, subsequent questionnaires in response to contracts or Request For Qualifications from any state agency would only need to be updated in the system.

To access or enroll in the VendRep system, or update your existing online questionnaire click here: [Online Questionnaire](#). Questionnaires in the VendRep system that have been completed in the last six months in response to contracts or bid announcements do not need to be updated. If

the vendor is using the hard copy notarized questionnaire, then it also has to be current within six months of the due date of the proposal.

Vendors opting to complete a paper questionnaire, can access the questionnaire by clicking the following link: [Paper Questionnaire](#). Please note that there are separate vendor responsibility questionnaires depending on the contractor status. The vendor responsibility questionnaire – not-for-profit business entity form must be used by not-for-profit vendors, and the vendor responsibility questionnaire – for-profit business entity form must be used by for-profit vendors.

Vendors are also encouraged to have subcontractors file the required vendor responsibility questionnaire online through the New York State VendRep system. These subcontractors are required to submit a questionnaire when the value of the subcontract is \$100,000 or more.

Prior to executing a subcontract agreement, the contractor needs to agree to provide the information required by OCFS, to determine whether a proposed subcontractor is a responsible vendor.

Vendors must provide their New York State vendor identification number when enrolling. To request assignment of a vendor identification number or for direct VendRep system user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.ny.gov.

The New York State VendRep system offers the following benefits:

- Ease of completion, filing, access to and submission of the questionnaire. Efficiencies are multiplied for vendors who bid and contract with the state frequently or with multiple state agencies.
- Questionnaire updates are easily filed by updating only those responses that require change from the previously saved questionnaire. (As opposed to a paper copy where a new questionnaire is required each time there is a change).
- The stored questionnaire information eliminates the need to re-enter data for each subsequent questionnaire submission.
- Reduction of costs associated with paper documents including copying, delivery and filing.
- Online questionnaire information is secure and accessible to authorized vendor users only. State agencies can only view certified and finalized questionnaires.
- VendRep question prompts ensure that the correct forms are completed.
- The VendRep online system contains links to all definitions of the terms used in the questionnaire.

Note: All vendor responsibility questionnaires must be dated within six months of the proposal due date. Any subcontractors under that proposed contract must also complete a vendor responsibility questionnaire when the value of the subcontract is projected to be \$100,000 or more for the contract term.

2.20 Workers' Compensation Law

New York State Workers' Compensation Law (WCL) and Section 142 of the State Finance Law requires that businesses contracting with New York State HAVE and MAINTAIN workers' compensation and disability insurances. In the event that an award is made from this RFQ, updated proof of coverage must be submitted during contract development. Failure to submit the proof will delay the contract development process. Please note that the OSC has determined that municipalities are not required to show proof of coverage.

Proof of Workers' Compensation Coverage

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

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12** – Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- **CE-200** – Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

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

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- **Form DB-155** - Certificate of Disability Benefits Self-Insurance; or
- **CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

2.21 New York State Sales and Compensating Use Taxes

Tax Law Section 5-a, which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004, imposes upon certain contractors the obligation to certify whether or not the contractor and its affiliates are required to register to collect state sales and compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the New York State Comptroller, or other approving agency, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Pursuant to Tax Law Section 5-a, the contractor, upon award, will be required to complete and sign, under penalty of perjury, the Contractor Certification Form [ST-220-TD](#) and [ST-220-CA](#). The contractor must also submit a copy of the certificate of authority, if available, for itself and any affiliates required to register to collect state sales and compensating use tax. If certificates of authority are unavailable, the contractor, affiliate, subcontractor or affiliate of subcontractor must represent that it is registered and that it has confirmed such status with DTF.

The above-noted ST-220-TD and ST-220-CA forms and additional information regarding NYS Sales and Compensating Use Taxes can be found at the following websites:

Publication 223

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

ST-220-CA

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

ST-220-TD

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

www.nystax.gov

2.22 Contractor Employee and Volunteer Background/Confidentiality Non-Disclosure Agreement Forms

OCFS is responsible for maintaining the safety of the youth in its care. State law requires that any client identifiable information be kept confidential. Any contractor who will provide goods and/or services to a residential facility or programs operated by OCFS must require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of OCFS to complete and sign the [Contractor Employee and Volunteer Background Certification – \(OCFS-4716\)](#) and [Confidentiality Non-Disclosure Agreement – \(OCFS-4715\)](#) forms. These forms must be completed before any such employees and/or volunteers are permitted access to youth in care or custody of OCFS, and/or any financial and/or client identifiable information concerning such youth. **The forms should be completed after the bidder has been awarded funding and during the contract development.** For additional information see Appendix A-1, Section 7b. [Confidentiality and Protection of Human Subjects](#) (Section 6.3 of this RFQ).

2.23 Consultant Disclosure Requirements

Chapter 10 of the Laws of 2006 requires collection and reporting of consulting services contracts by New York State vendors and state agencies during the April 1 through March 31 State Fiscal Year. The Law took effect June 19, 2006.

- [Initial Report Requirements](#)

State contractors are required to disclose by employment category, the number of persons projected to be employed who will provide services under a contract for consulting services, the number of hours that they will work, and the amount they will be paid working under the state contract. This will include information on any persons working under any subcontracts with the state contractor.

To comply with these reporting requirements, state contractors must complete and submit Form [OCFS-4842 State Consultant Services-Contractor's Planned Employment](#) to their OCFS contract manager with applicable contract documents.

- [Annual Report Requirements](#)

State contractors must also report each year on the actual employment information described above, including work performed by subcontractors. The report must include employment information for the period ending March 31st of each year. To comply with the annual reporting requirement, state contractors must complete Form [OCFS-4843 State Consultant Services – Contractors Annual Employment Record](#). The form must be submitted by April 30th of each year to the following offices:

Bureau of Contract Management
New York State Office of Children and Family Services
52 Washington Street, South Building, Room 202

Rensselaer, New York 12144

New York State Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

New York State Department of Civil Service
Alfred E. Smith Office Building
Counsel's Office, 8th Floor
80 South Swan Street
Albany, New York 12239

2.24 Debriefing Sessions

Unsuccessful bidders will be notified in writing and may request the opportunity for a debriefing session. Such sessions will be limited to discussions of evaluation results as they apply to the bidder receiving the debriefing and will be scheduled at the state's convenience.

2.25 Procedure for Handling Protests/Appeals of Bid Specifications and Proposed Awards

- Section 1: Applicability
- Section 2: Definitions
- Section 3: Informal Complaints
- Section 4: Formal Protest and Appeal Procedure
- Section 5: Appeal to Office of the State Comptroller

Section 1: Applicability

The intent and purpose of these procedures is to set forth the steps that must be taken when an interested party challenges a contract award by OCFS. These procedures shall apply to all contract awards made by OCFS.

Section 2: Definitions

1. "Interested party" shall mean a participant in the procurement process and those whose participation in the procurement process has been foreclosed by OCFS.
2. "Contract award" shall mean a written determination from OCFS to an offerer, indicating that OCFS has accepted the offerer's bid or offer.
3. "Formal Protest" shall mean a written challenge to a contract award by OCFS.
4. "Procurement" shall mean any method used to solicit or establish a contract (i.e., invitation for bid, request for proposal, single/sole source, etc.)
5. "Protesting party" is the party who is filing a protest to the bid, contract award, or other aspect of procurement.
6. "Formal protest determination" shall mean the determination of a formal protest by the Associate Commissioner for Financial Management of OCFS or his or her designee.
7. "Decision after appeal" shall mean the decision on the appeal of a formal protest by the Executive Deputy Commissioner of OCFS or his or her designee.

Section 3: Informal Complaints

In order to reduce the administrative burden and to be responsive to interested parties, other than as provided below, OCFS staff will be receptive to and attempt to resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party will be fully reviewed by the OCFS Program Division responsible for the procurement. Matters that are identified by the interested party as containing, or that OCFS perceives to contain, potentially confidential or trade secret information, may be shared internally within OCFS as necessary. OCFS staff will document the subject matter and results of any informal complaints and inquiries. OCFS' response to the informal complaint or inquiry will indicate the existence of the Formal Protest and Appeal Procedure available to the interested party should the informal process fail to resolve the matter.

Final OCFS determinations or recommendations for award after any attempt to resolve the matter informally may be reconsidered only in the context of a formal protest.

Section 4: Formal Protest and Appeal Procedure

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

A. Submission of Bid or Award Protests

1. Deadline for Submission
 - a. Concerning Alleged Errors, Omissions or Prejudice in the Bid Specifications or Documents: Formal protests that concern alleged errors in the drafting of bid specifications must be received by OCFS at least ten (10) calendar days before the date set in the solicitation for receipt of bids.
 - b. Concerning Proposed Contract Award: Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party knows or should have known of the facts that constitute the basis of the formal protest. Formal protests will not be accepted by OCFS concerning a contract award after the contract between OCFS and the offerer who received the contract award has been approved by the Office of the State Comptroller (OSC).

B. Review and Formal Protest Determination

1. Formal protests must be filed with the OCFS Associate Commissioner for Financial Management. Any protests filed with the OCFS Program Division responsible for the procurement will be forwarded to the Associate Commissioner for Financial Management. Copies of all formal protests will be provided by the Associate Commissioner for Financial Management to the OCFS Division of Legal Affairs and other necessary parties within OCFS, as determined by the Associate Commissioner for Financial Management.
2. Formal protests shall be resolved through written correspondence; however, either the protesting party or OCFS may request a meeting to discuss a formal protest. Where further formal resolution is required, the program division responsible for the procurement may designate a state employee not involved in the procurement ("designee") to determine and undertake the initial attempted resolution or settlement of any formal protest.

3. The OCFS program division responsible for the procurement will conduct a review of the records involved in the formal protest, and provide a memorandum to the Associate Commissioner for Financial Management or the Associate Commissioner's designee summarizing the facts, an analysis of the substance of the protest, and a preliminary recommendation including: (a) an evaluation of the findings and recommendations, (b) the materials presented by the protesting party and/or any materials required of or submitted by other bidders, (c) the results of any consultation with the OCFS Division of Legal Affairs, and (d) a draft response to the formal protest.
4. The OCFS Associate Commissioner for Financial Management or his or her designee shall hear and make a formal protest determination on all formal protests. A copy of the formal protest determination, stating the reason(s) upon which it is based and informing the protesting party of the right to appeal an unfavorable decision to the OCFS Executive Deputy Commissioner, shall be sent to the protesting party or its agent within thirty (30) business days of receipt of the formal protest, except that upon notice to the protesting party such period may be extended by OCFS. The formal protest determination will be recorded and included in the procurement record, or otherwise forwarded to the OSC.

C. Appeal of Formal Protest Determination

1. If the protesting party is not satisfied with the formal protest determination, the protesting party **must** submit a written notice of appeal to the Executive Deputy Commissioner of OCFS no more than fifteen (15) business days after the date the formal protest determination is sent to the protesting party.
2. The Executive Deputy Commissioner or his or her designee shall hear and make a decision after appeal on all appeals.
3. An appeal may not introduce new facts unless responding to facts or issues unknown to the protesting party prior to the formal protest determination.

D. Reservation of Rights and Responsibilities of OCFS

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

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

- b. If a formal protest determination or decision after appeal is made after the transmittal of the procurement record and contract(s) to OSC, but prior to OSC approval, a copy of the formal protest determination or decision after appeal will be forwarded to OSC when issued, along with a letter either: a) confirming the original OCFS recommendation for award(s); b) modifying the proposed award recommendation; or c) withdrawing the original award recommendation.
5. All records related to formal protests and appeals shall be retained for at least one (1) year following resolution of the formal protest. All other records concerning the procurement shall be retained according to the applicable requirements for records retention.

Section 5: Appeal to the Office of the State Comptroller

If the protesting party is still not satisfied with the result of its protest after conclusion of the formal protest and appeal procedure described above, the protesting party **must** file a written appeal with the OSC within ten business days of the date the protesting party received OCFS's protest determination. An appeal to the OSC, Bureau of Contracts, must be in writing and must contain the specific factual and/or legal allegations setting forth the basis upon which the protesting party challenges the contract award by OCFS. Such appeal must be filed with the Director of the Bureau of Contracts at the Office of the State Comptroller, 110 State Street, 11th Floor, Albany, NY 12236.

2.26 Limited English Proficiency (LEP)

By submitting a bid in response to this RFP, bidder agrees that if awarded a grant/contract, it will provide meaningful access to all services and programs to eligible limited English proficient persons through interpretation or translation of vital documents, in accordance with applicable federal and State provisions, including but not limited to Executive Order (EO) # 26, Title VI of the Civil Rights Act of 1964, Federal EO 13166, 28 CFR §42.104, 45 CFR §80.3, and all applicable State and federal guidance issued.

2.27 Federal Funds

OCFS will be using federal dollars to fund all or part of this project. The federal funding requirements are included in the Attachments section of this RFQ, and will be included as Appendix A3 of any contract that results from this RFQ. A copy of Appendix A3, with a completed and signed certification must be returned with the bidder's proposal.

Section 3: REQUIREMENTS

3.1 Overview

Bidder proposals must provide sufficiently detailed responses to each of the requirements, which are judged acceptable by OCFS, to receive a passing mark in the pass/fail phase.

Bidder must provide a detailed response to each of the following requirements and must provide specific references to enable OCFS to locate each response in the bidder's proposal. The Proposal consists of the resume for licensed staff and a narrative as specified herewith.

3.1a Bidder Experience Requirement

Ref #	Requirement	Response Requirement
3.1a	<p>The bidder must be an individual who is, or an organization who employs, the following:</p> <p>A licensed ophthalmologist. OR,</p> <p>The bidder must be an optometrist certified as a low vision specialist by the New York Optometric Association (NYSOA) (http://www.nysoa.org/index.php.)</p>	<p>The proposal must consist of a resume for licensed staff and narrative.</p> <p>The resume should state relevant qualifications.</p> <p>The narrative must describe and demonstrate how the bidder meets the requirement(s) as stated in RFQ Section 1.4 Qualification of Bidders. The narrative should refer to specific entries in the resume.</p>

3.1b Ability to Provide Services

Ref #	Requirement	Response Requirement
3.1b	<p>Bidder must be willing and have the ability to provide services in NYC or Long Island.</p>	<p>A statement must be included within the narrative stating the bidder is willing, and has the ability to provide services in NYC or Long Island</p>

3.1c Fixed Rates

Ref #	Requirement	Response Requirement
3.1c	<p>Must agree to accept NYSCB Low Vision examination Fees and Low Vision device reimbursement rates as set forth in the schedules found at http://ocfs.ny.gov/main/cb/low_vision.asp and within RFQ Section 1.10 Payment Terms.</p>	<p>A statement must be included within the narrative stating the offerer agrees to accept as payment in full, the fixed rates as stated in this RFQ and the Low Visions Fee Schedule found online at http://ocfs.ny.gov/main/cb/low_vision.asp and within RFQ Section 1.10 Payment Terms.</p>

Section 4: EVALUATION AND SELECTION METHODOLOGY

4.1 Overview

The resume and narrative will be reviewed by OCFS. A pass/fail rating will be assigned to the bidder, based on the criteria stated herewith.

Only proposals judged to be responsive to the submission requirements set forth in this RFQ will be evaluated.

4.2 Evaluation Philosophy

The OCFS is committed to a fair and impartial evaluation process characterized by:

- Requirements based upon the OCFS's substantiated needs.
- Evaluation by structured impartial process.

4.3 Selection Methodology & Proposal Evaluation Methodology

Proposals that satisfy the format and content criteria will be examined on a pass/fail basis to determine their satisfaction of the requirements found in Section 3 of this RFQ. Failure to meet any requirements found in this section may result in an offerer's removal from further consideration.

Proposals deemed responsive as a result of this review will be considered for selection.

A pass/fail rating will be assigned to the bidder, based on a comparison of the bidder's stated qualifications and the requirements specified in the RFQ Section 1.4 titled "Qualifications of Bidders."

A pass/fail rating will be assigned to the bidder, based on bidder's willingness and ability to provide services in NYC or Long Island.

A pass/fail rating will be assigned to the bidder, based on bidder agreeing to accept as payment in full, the fixed rates as stated in this RFQ and the Low Vision Fee Schedule found online at http://ocfs.ny.gov/main/cb/low_vision.asp

Section 5: PROPOSAL REQUIREMENTS

5.1 Overview

This section identifies the information that all bidders must include in their proposals to the Office of Children and Family Services (OCFS).

For the purposes of evaluation, each proposal consists of a resume and a narrative (cover letter).

The rules established for proposal content and format will be enforced. Variations from the rules prescribed herein may subject the respondent to outright disqualification. It is in the best interests of the respondent to become familiar with the constraints imposed on its proposal so that the evaluation process can proceed in a timely manner.

Failure by an offerer to respond to a requirement stated in this RFQ may cause the proposal to be declared unresponsive. Proposals must list and clearly explain any and all exceptions and/or caveats to any item contained in this RFQ in a separate section of the proposal.

All proposals and accompanying documentation will become the property of the State of New York and will not be returned. The content of each bidder's proposal will be held in strict confidence during the bid evaluation process, and no details of any proposal will be discussed outside the evaluation process. The successful bidder's proposal and a copy of the specification will be made part of the contract. Therefore, an official authorized to commit the company to a contract must sign the proposal.

5.2 Proposal

The Proposal consists of the resume and a narrative which must address requirements as specified in RFQ Section 3. Requirements.

Proposal Section 1 - Resume

A resume is required from each bidder. Resumes should state the bidder's relevant qualifications.

Proposal Section 2- Narrative

Each narrative should describe and demonstrate how the bidder meets the requirement(s) specified in the RFQ Section 3. Requirements. The narrative should refer to specific entries in the resume.

A statement should be included within the narrative stating the bidder is willing, and has the ability to provide services in New York City or Long Island. Further, a statement must be included within the narrative stating the offerer agrees to accept as payment in full, the fixed rates as stated in this RFQ and the Low Visions Fee Schedule found online at http://ocfs.ny.gov/main/cb/low_vision.asp and within RFQ Section 1.10 Payment Terms.

Section 6: CONTRACT TERMS AND CONDITIONS / APPENDICES

6.1 Agreement

Upon selection, the successful offerer will be invited to enter into an Agreement with the OCFS (hereinafter also referred to as the state). The contents of the selected contractor's proposal, together with this RFQ and any formal questions and answers passed during the bidding process, will be made a part of the final agreement. Should the selected offerer fail to enter into an agreement with the state following notification of award, the state reserves the right to select another firm and commence negotiations.

The clauses contained in this section will form the basis of the agreement between the state and the eventual contractor.

AGREEMENT

between

The New York State Office of Children and Family Services having its principal offices at 52 Washington Street, Rensselaer, New York 12144

(hereinafter "OCFS" or the "State"),

and

Contractor located at the address identified on the cover page of this agreement

(hereinafter "the Contractor").

WHEREAS, The OCFS initiated a Procurement (Invitation for Bid/Request for Qualifications/single source/sole source) to contractually secure services; and

WHEREAS, the Contractor submitted a proposal; and

WHEREAS, the OCFS, selected the Contractor as a successful respondent to the Procurement to provide services and desires to engage the Contractor to fulfill OCFS's needs under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

Article 1: Agreement Duration and Amendment

- A. This Agreement shall commence on the start date of the period as stated on the cover page of this agreement and will continue until the end date of the period as stated on the cover page of this agreement unless renewed according to the renewal provisions, if any, as stated in Appendix C.
- B. The State shall have the right to renegotiate the terms and conditions of this Agreement in the event applicable New York State (State) or Federal policy, rules, regulations and guidelines are altered from those existing at the time of this Agreement in order to be in continuous compliance therewith. This Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by the Comptroller of the State of New York.

Article 2: Executory Provision

- A. The State Finance Law of the State of New York, Section 112, requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The parties recognize that this Agreement is wholly executory until and unless approved by the Comptroller of the State of New York.
- B. The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York. Additionally, no cost will be incurred by the State for the Contractor's participation in any pre-contract award activity.
- C. This Agreement and the Exhibits and Appendices, attached hereto and incorporated by reference herein, constitute the entire agreement between the parties with respect to the subject matter; all other prior agreements, representations, Statements, negotiations and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder. It is understood that unless the context clearly indicates otherwise,

all references herein to this Agreement shall be deemed to include the Exhibits and Appendices attached hereto and incorporated by reference herein.

Article 3: Standard Contract Provisions

- A. Standard New York State Contract Appendix A, attached hereto as Appendix A, is hereby fully incorporated into this Agreement.
- B. The parties agree that this Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. The Contractor shall be required to bring any legal proceeding against the State arising from this Agreement in New York State courts.
- C. Should any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.
- D. No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.
- E. It shall be understood that the Contractor is an independent contractor, and the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the State.

Article 4: Assurances

- A. The Contractor warrants that it has carefully reviewed the needs of the State for products and services, as described in the Procurement and its attachments and otherwise communicated in writing by the State to the Contractor, that it has familiarized itself with the specifications, and it warrants that it can provide such products and services as represented in its proposal and the other documents incorporated into this Agreement.
- B. The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.
- C. The Contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.

Article 5: Contractor Requirements

- A. The Contractor agrees to assume complete responsibility for the cost effective and timely accomplishment of all activities and duties required by this Agreement and to carry out those activities and duties in a competent and timely manner. The Contractor also agrees to perform in accordance with the specifications contained in the Procurement, as well as its proposal.
- B. The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement. Contractor shall also:
 - 1. Maintain an adequate administrative organizational structure sufficient to discharge its contractual responsibilities.
 - 2. Provide for normal day-to-day communications and maintain the level of liaison and cooperation with the State as necessary for proper performance of all contractual responsibilities.
 - 3. Replace any employee whose continued presence would be detrimental to the success of the State's efforts with an employee of equal or better proposals. The State Project Director will exercise exclusive judgment in this matter and will be required to make such a request in writing only upon written request of the Contractor.
 - 4. Notify the State in writing of any changes in the persons designated to bind the Contractor.
 - 5. Ensure that all contacts by Contractor personnel with other external organizations, to fulfill the objectives of this Agreement, are cleared and coordinated by the State. The State will fulfill this role promptly, so as not to impede the Contractor's timely performance hereunder.

6. Assume responsibility for the accomplishment of all activities and duties required by this Agreement and carry out those activities and duties in a competent and timely manner.
 7. Notify the State within three business days, in writing, of each problem that threatens the success of the project, including a recommendation for resolution whenever possible.
 8. Agree that no aspect of Contractor performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of 1) Those activities specifically identified in this Agreement as requiring State acquisition, approval, policy decisions, or policy approvals, 2) The normal cooperation which can be expected in a contractual relationship. Such actions by the State will not be unreasonably delayed, and except as stated specifically herein, the State shall not be liable for any damages for delays.
 9. Reasonably cooperate with any other contractors who may be engaged by the State to carry out responsibilities associated with this Agreement and immediately take into account changes mandated by Federal regulatory agencies and the State due to changes in policies, regulations, statutes or judicial interpretations, which the State and/or the Contractor may become aware of.
 10. Recognize and agree that any and all work performed outside the scope of this Agreement shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.
 11. Implement changes within the scope of work of this Agreement, in accordance with a State approved schedule, including changes in policy, regulation, statute or judicial interpretation.
- C. The Contractor agrees that it and its personnel will at all times comply with all security regulations in effect at the State's premises, or any premises assigned, and externally for materials belonging to the State or to the Project.
 - D. The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit corporation or entity other than a self-insured municipal corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an appropriate amount. The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this contract to obtain and maintain a general policy of liability insurance in an appropriate amount.
 - E. The Contractor agrees to secure and keep in effect during the term of this agreement a policy of comprehensive liability insurance (if required) covering services to be performed pursuant to this agreement and to provide OCFS with a certificate of insurance indicating such coverage is in effect. Such certificate shall name OCFS as an additional insured and shall state that the policy will not be cancelled or changed without 10 days prior written notice to OCFS.
 - F. The Contractor shall secure and keep in effect during the term of this agreement workers compensation and disability benefits coverage as required by law. The Contractor shall provide to OCFS certificates of such coverage, or proof that such coverage is not required, in such form as required by the Worker's Compensation Board.

Article 6: Nonassignability

- A. Full responsibility for the delivery of services provided by another firm acting as a subcontractor to the Contractor under this Agreement shall be assumed by the Contractor. Should the Contractor seek external financing, the State reserves the right to approve the assignment of the contract for financing purposes. The State shall consider the prime contractor to be sole contact with regard to all provisions of this Agreement.
- B. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.
- C. Subcontracting or assignment of the Contractor's duties and responsibilities will not be allowed without prior written approval of the State as specified in Appendix A. The Contractor shall furnish to the State the following:
 1. A description of the supplies or services to be provided under the proposed subcontract;
 2. Identification of the proposed subcontractor, including protected class status; and

3. Any other reasonable information or documentation requested by the State.

Article 7: Charges

- A. *Payment to the Contractor shall be based on invoices submitted by the Contractor or on a Standard New York State Claim for Payment in a form acceptable to the State and the Comptroller of the State of New York. The State will make best efforts to process all invoices or claims for payment within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract.*
- B. *Payment shall be made at the rates, frequency and manner as set forth in Appendix C attached hereto.*
- C. *The State shall not be liable for the payment of any taxes under this Agreement however designated, levied or imposed. The State represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided to the State.*

Article 8: Performance Standards and Liquidated Damages

Per specification requirements indicated in Appendix D

Article 9: Procurement lobbying Law

The Contractor will comply with all New York State and Office procedures relative to the permissible contacts and disclosure of contacts as required by State Finance Law Sections 139-j and 139-k and Office procedures and will affirmatively certify that all information provided pursuant to those provisions is complete, true and accurate. This certification is included in the Offerer's Certification and Affirmation of Understanding and Agreement pursuant to State Finance Law Sections 139-j and 139-k.

Article 10: Public Officer's Law

- A. The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of the State in violating Sections 73 and 74 of the Public Officers' Law.
- B. The Contractor further recognizes that an administrative or judicial finding that a Contractor has violated any of the statutes specified in the Contractor/Subcontractor Background Questionnaire completed prior to the award of this contract may entitle the State to terminate the contract, at its discretion, within thirty days after the Contractor notifies the State of such finding or the State notifies the Contractor that it has become aware of such finding.
- C. Any termination of the contract by the State under this Article shall be deemed to be a termination of the contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to the State under this contract or under any other provisions of law.

Article 11: Rights of the State

- A. LICENSE/OWNERSHIP/TITLE OF PRODUCTS FURNISHED - contractor warrants full ownership, clear title or perpetual license rights to any and all tangible or intangible products furnished, used or modified by the Contractor or third parties on behalf of the State, and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide the State with appropriate documentation indicating the vesting of such rights in Contractor, and/or the right to transfer or transfer of such rights, as requested by the State. The cost of obtaining such rights for continued perpetual use of such product(s) by the State upon Project completion shall be deemed to have been included by Contractor in its proposal. Such products include, without limitation, all hardware, commodities, custom programming or third party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to this Agreement. The Contractor fully indemnifies the State for any loss, damages or actions arising from a breach of said

warranty without limitation. The State and Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

- B. TITLE TO PROPRIETARY INFORMATION FURNISHED FOR TESTING PURPOSES- Any and all proprietary written documentation, information, object or source code and software provided to the State for use in conjunction with an evaluation, shall remain the property of Contractor. In such event, Contractor hereby grants the State and its Authorized Users a perpetual, non-transferable and non-exclusive license to use all such documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "property"), which are furnished to the State for testing purposes only.
- C. OWNERSHIP/TITLE TO CUSTOM PRODUCTS/PROGRAMMING DELIVERABLES -All custom products, including custom programming or any other deliverables, including, without limitation: software source code, object code, user or training manuals, programming, reports, and any other materials, preliminary, final and otherwise, prepared, written or developed for the State in the performance of services under this Agreement (hereinafter "Custom Products") shall be furnished to and shall become the sole and exclusive property of the State and shall be treated as confidential with the reciprocal proprietary obligations in the foregoing paragraph B of Article 11 imposed upon the Contractor, its subcontractors and partners. The State retains ownership rights to modifications developed for the State pursuant to this Agreement, including modifications made or incorporating third party proprietary components, or components transferred under perpetual license to the State pursuant to paragraph A of Article 11. In all such events, Contractor shall be deemed to have granted or secured a perpetual license to the State for Contractor or third party product being furnished and modified, in accordance with the provisions of paragraph A of Article 11. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products, including custom programming or any other deliverables, when completed and delivered to the State are protected against unauthorized copying, reproduction and marketing by or through Contractor.

Article 12: Document Incorporation and Order of Precedence

- A. This Agreement consists of:
 - 1. The body of this Agreement (i.e., that portion preceding the signatures of the parties in execution);
 - 2. The Exhibits attached to this Agreement body; and
 - 3. The Appendices attached to or incorporated by reference in this Agreement body.
 - 4. Procurement documents (if noted on cover page)
 - 5. Contractor's proposal (if noted on cover page)
- B. In the event of any inconsistency in or conflict among the document elements of this Agreement identified in this Section, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
 - 1. First, Appendix A;
 - 2. Second, body of this Agreement and the Exhibits;
 - 3. Third, the Procurement documents (if noted on cover page); and
 - 4. Fourth, the Contractor's proposal (if noted on cover page).
- C. This Agreement as defined in this Section constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, Statements, negotiations and

undertakings are superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder.

Article 13: Interpretation and Disputes

- A. This Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. Except as otherwise provided for in the Agreement, any dispute which is not disposed of by agreement shall be submitted in writing to and decided by the Commissioner of the Office of Children and Family Services (Commissioner) or his/her duly authorized representative(s) or designee(s).
- B. If the Contractor is unwilling to accept the decision of the Commissioner or a decision is not made in ninety (90) days, it may then pursue its normal legal remedies de nova, but it is specifically agreed that any and all reports made by the Commissioner upon the disagreement at issue shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the interpretation placed upon the Agreement by the STATE shall govern operation thereunder and the Contractor shall continue to perform under the Contract. The Contractor shall be required to bring all legal proceedings relating to this Agreement against the OCFS or the State of New York in the courts located in the State of New York.

Article 14: Indemnification of the State

- A. In performance of its duties pursuant to this Agreement, Contractor shall fully indemnify and save harmless the State from suits, actions, damages and costs relating to personal injury, damage to real or personal tangible or intangible property, or any other claim for direct damages arising as a result of acts or omissions of Contractor, its officers, employees, subcontractors, partners or agents.
- B. The State and OCFS may, in addition to other remedies available to them at law, retain such monies from amounts due Contractor, or may proceed against any performance and payment bond under this Agreement, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them; provided, however, that the Contractor shall not indemnify to the extent that any claim, loss or damage arising hereunder is caused by the solely negligent act or failure to act of the State.
- C. As a condition to the foregoing indemnity obligations under this Article, the State shall provide the Contractor with prompt notice of any claims for which indemnification may be sought hereunder, shall reasonably cooperate with Contractor in connection with any such claim and shall be responsible for its compliance with any laws and regulations associated with any deliverables supplied by Contractor hereunder.

Article 15: Force Majeure

Neither party shall be liable or deemed to be in default for any delay or failure in performance beyond its control under this Agreement resulting directly or indirectly from acts of God, civil or military authority not within the control of the State, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes or flood, or acts of omission or commission of individuals not under the respective parties' control except as specifically stated elsewhere in this Agreement. The parties are required to use best efforts to eliminate or minimize the effect of such events during performance of this Agreement.

Article 16: Record Retention

- A. The Contractor agrees to preserve all Agreement-related records in accordance with the provisions of Paragraph 10 of Appendix A for the term of this Agreement. Records involving matters in litigation

shall be kept for a period of not less than three (3) years following the termination of the litigation. Microfilm copies of any Agreement-related documents may be substituted for the originals with the prior written approval of the State, provided that the microfilming procedures are accepted by the State as reliable and are supported by an adequate retrieval system.

- B. The Contractor shall be responsible for assuring that the provisions of this Section shall apply to any subcontract related to performance under this Agreement.

Article 17: Access to And Audit of Agreement Records

- A. All records and information obtained by the State pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State solely for the purpose of performing this Agreement in any manner, in its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information. Notwithstanding the preceding sentence and in addition to the provisions set forth in Appendix A, the State agrees, in those instances in which it has discretion, not to disclose outside those Government agencies involved in the performance of this Agreement and then only to the personnel who are involved in the performance, the following data:
 - 1. Any resume or other description of proposals which includes the name of the individual;
 - 2. Any individual's actual salary;
 - 3. The Contractor's indirect rates including labor overhead, General and Administrative (G&A) and fee; and
 - 4. The methodology for calculating those indirect rates including the allocation base.
 - 5. The Contractor's corporate financial Statements.
- B. The Contractor shall promptly notify the State of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the State provided that rights of confidentiality or proprietary interests are preserved.
- C. The Contractor shall be responsible for assuring that the provisions in this Section shall apply to any subcontract related to performance under this Agreement.

Article 18: Confidentiality of Information

The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to recipients and providers, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the Laws of the State of New York and of the United States and any regulations promulgated there-under.

- A. Individually identifiable information relating to any eligible recipient or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the Commissioner or a designee.
- B. The use of information obtained by the Contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties.
- C. The Contractor shall promptly advise the State of all requests made to Contractor for information described in paragraph 1., above.
- D. The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision which strictly conforms to the provisions of this subsection.

Article 19: Affirmative Action

Per Appendix M/WBE

Article 20: Termination of the Agreement

A. The Agreement shall be subject to the following termination provisions:

1. Mutual Consent: All or any part of this Agreement may be terminated by mutual written agreement of the contracting parties.
2. Cause: All or any part of this Agreement may be terminated immediately by the State, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Agreement and/or with any laws, rules, regulations, policies, or procedures that are application to the Agreement.
3. Non-Responsibility: The Contractor shall provide to the Office such information as is required by the Office in order that the Office may determine whether the Contractor is a responsible vendor for purposes of compliance with Section 163 of the State Finance Law and requirements of the Office of the State Comptroller established thereunder. If there is any change in any of the vendor responsibility information provided to the Office by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Office so that the Office may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Office of any change in the vendor responsibility information or should the Office otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Office may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor.
4. Convenience: This Agreement may be terminated if the State deems that termination would be in the best interest of the State provided that the State shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective.
5. Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Agreement, the Agreements may be terminated or reduced at OCFS' discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State for payment of such costs. Upon termination or reduction of the Agreement, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State. In any event, no liability shall be incurred by the State beyond monies available for the purposes the Agreement. The Contractor acknowledges that any funds due to the State because of disallowed expenditures after audit shall be the Contractor's responsibility.
6. Force Majeure: The State may terminate or suspend its performance under the Agreement immediately upon the occurrence of a "force majeure." For purposes of this Agreement, "force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.
7. State Finance Law §139-k: This Agreement may be terminated in the event it is found that the certification filed by the Contractor during the procurement process as required by New York State Finance Law §139-k was intentionally false or intentionally incomplete.
8. Bankruptcy: This Agreement may be deemed terminated immediately at the option of the State upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the State to the Contractor.

B. Notice of Termination:

1. Service of Notice: Written notice of termination shall be sent by:
 - a. Personal messenger service; or
 - b. Certified mail, return receipt requested and first class mail
2. Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice or (ii) the date the notice is received by the Contractor and shall be established as follows:

- a. If the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or
- b. If the notice is delivered by mail, by the receipt returned from the United State Postal Service, or if no receipt is returned, five business days from the date of mailing of the letter, postage prepaid, in a depositor under the care and control of the United States Postal Service.

C. Effect of Notice and Termination of State's Payment Obligations:

1. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.
2. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Agreement. In no event shall the State be liable for expenses and obligations arising from the requirements of the Agreement after its termination date.

D. Effect of Termination Based on the Misuse or Conversion of State or Federal Property

Where the contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the contract for the purposes set forth herein, the State may, at its option, require:

1. The repayment to the State of any monies previously paid to the Contractor; or
2. The return of any real property or equipment purchased under the terms of the Master Contract; or
3. An appropriate combination of clauses (a) and (b) above.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

- E. Suspension: It is understood that the State reserves the right to suspend or reduce Contractor services during the term of the Agreement or during a task order period. Such action(s) by the State shall not be considered a breach of this Agreement or otherwise give rise to damages on the part of the Contractor, provided, however, that Contractor is given written notification of such action.

Article 21: Patent/Copyright Indemnification

Contractor will indemnify, defend and hold the State harmless from and against all Damages, expenses, including reasonable attorney's fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the products furnished, or of any copyright, trademark, trade secret or other third party proprietary right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of the Contractor.

If the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance.

The foregoing provisions shall not apply to any infringement occasioned by modification by the State of any tangible or intangible products without Contractor's approval or the use of any equipment with any adjunct device added by the State without the consent of the Contractor.

In the event that an action at law or in inequity is commenced against the State arising out of a claim that the State's use of a product under this Agreement infringes any patent, copyright or proprietary right and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in this Agreement, Contractor shall immediately notify the State and the Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of this Agreement. Contractor shall in such event protect the interests of the State and secure a continuance to permit the State to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses the State may have.

Article 22: Lobbying Certification

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Contractor or grantee (such as the State) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The certification the State has been required to sign for HHS provides that the language of this certification (shall) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Contractor understands and agrees to the Federal requirements for certification and disclosure.

Article 23: Notification

- A. Any notice or other communication required by or pertaining to this Agreement shall be sent to the destinations indicated by the State's designated Project Director or the Contractor's designated Project Director. If no destination has been so indicated, such notices or communications may be directed to the address(es) or destination(s) at which the parties to this Agreement were located when this Agreement was executed or to the last known address or destination for such party. Contractor shall be responsible for notifying the State of any change of address or destination to which notices and communications should be sent.
- B. Except as otherwise specified elsewhere in this Agreement, notices or communications may be given orally or in writing and shall be effective when received. To remain effective, oral notifications must be confirmed in writing, transmitted in a manner to be received no later than ten (10) working days after the oral notification. Notices or communications may be transmitted by personal delivery, ordinary U.S. Mail, registered or certified mail, overnight delivery service, telegram, telephone, facsimile device, electronic means or any other means of transmission that results in the fixation of the information transmitted in a tangible medium of expression.
- C. Notices or communications shall be considered received on the day such receipt is acknowledged by a signed receipt or by any other means of verification that is recorded in a tangible medium of expression. Notices or communications from the State to the Contractor shall also be considered received as follows:
 1. Oral notifications shall be considered received on the date indicated as the date of conversation in any written confirmation or on the day sworn in an affidavit to be the date of such conversation, unless contested.
 2. Notices or communications by ordinary, registered or certified U.S. Mail shall also be considered received on the first working day after five (5) days following the day the transmittal is postmarked or following the day sworn in an affidavit to be the date the transmittal was deposited in a post office or an official depository.
 3. Notices or communications dispatched by overnight delivery service shall be considered received

- one (1) working day after having been dispatched.
4. Transmissions by facsimile device or electronic means shall be considered received, upon the receipt by the State of a signal from the equipment of the Contractor indicating that the transmission was received.
 5. Notices or communications transmitted by personal delivery shall be considered received on the day the transmission is delivered to an agent of the Contractor.
 6. Any other transmissions shall be considered received no later than five (5) working days after transmission by the STATE is completed.

Article 24: Conflict of Interest

If during the term of this Agreement and any extension thereof the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall notify the State in writing immediately. Should the Contractor engage any current or former New York State employee as its own employee or as an independent contractor because of such employee's knowledge of New York State finances, operations or knowledge of the State's programs, or any current or former State employee who in the course of his State employment had frequent contact with Management level Contractor employees, the Contractor shall notify the State, in writing, immediately; should the State thereafter determine that such employment is inconsistent with State or Federal Law, the State shall so advise the Contractor, in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be terminated.

Article 25: Other Agency Use

The Contractor must extend the terms and conditions to any State agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and social services or health related services as well as (2) Local Social Services Districts in New York State including New York City, which is considered a single LSSD, consisting of the Human Resources Administration, The Administration for Children's Services, and the Department of Homeless Services.

Article 26: Warranty for Deliverables/ Workmanship

Contractor guarantees that any required deliverables, tangible or intangible, regardless of form, shall be unconditionally guaranteed for the full contract term. This warranty will be voided by the misuse, accident, operation in other than the specified operating environment, unauthorized modification of the source code or failure caused by a product for which the Contractor is not responsible.

Article 27: Vendor Responsibility

By signing this contract, the contractor certifies that within the past three years the contractor has engaged in no actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor or, if the contractor has engaged in any such action or actions, that all such actions have been disclosed to OCFS prior to entering into this contract. The actions that would potentially establish a basis for a finding by OCFS that the contractor is a non-responsible vendor include:

- The contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
- The contractor has had a claim, lien, fine, or penalty imposed or secured against the contractor by a governmental agency.

- The contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the contractor.
- The contractor has been issued a citation, notice, or violation order by a governmental agency finding the contractor to be in violation of any local, state or federal laws.
- The contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the contractor to be in violation of any local, state or federal laws is pending before a governmental agency.
- The contractor has not paid all due and owed local, state and federal taxes to the proper authorities.
- The contractor has engaged in any other actions of a similarly serious nature.

Where the contractor has disclosed any of the above to OCFS, OCFS may require as a condition precedent to entering into the contract that the contractor agree to such additional conditions as will be necessary to satisfy OCFS that the vendor is and will remain a responsible vendor. By signing this contract, the contractor agrees to comply with any such additional conditions that have been made a part of this contract.

By signing this contract, the contractor also agrees that during the term of the contract, the contractor will promptly notify OCFS if the contractor engages in any actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor, as described above.

Article 28: State Tax Law Section 5-a

By signing this contract, the contractor agrees to comply with the State Tax Law section 5-a.

Article 29: Consultant Disclosure

Pursuant to Chapter 10, New York State Office of Children and Family Services (OCFS) must require all contractors, including sub-contractors, to submit an annual report. As a result of these changes in law, State contractors are required to disclose, by employment category; the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by these employees. Be reminded that this includes information on any persons working under a subcontract with the State contractor. The Office of the State Comptroller (OSC) has a prescribed format for reporting.

The legislation also expands the definition of contracts for consulting services to include any contract entered into by a State Agency including: analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services. Additional information can be found in the Guide to Financial Operation issued by OSC. This guide can be accessed at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

The Legislation requires that contractors complete **OSC Form B - State Consultant Services-Contractor's Annual Employment Report** for consultant services on a State Fiscal year basis. This form is indexed as form **OCFS-4843**. Contractors are required to report for the period starting April 1 or the contract start date, whichever is later, to March 31 of the following year, and annually thereafter for the duration of the contract.

This Consultant Employment Report provides a format for reporting the actual number of employees providing services on the contract or through subcontracts, and is due to OCFS, OSC and the NYS Department of Civil Service, at the addresses identified below, by May 15 following the end of the State fiscal year and annually thereafter. A separate **Form B** must be submitted for each contract. Please submit a copy of this form to each of the following:

Mr. Kevin Sweet
NYS Office of Children and Family Services
Bureau of Contract Management
52 Washington Street South Building, Room 202
Rensselaer, New York 12144

and:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

and:

NYS Department of Civil Service
Alfred E. Smith Office Building
Counsel's Office, 8th Floor
80 South Swan Street
Albany, New York 12239

6.2

Appendix A **Standard Clauses for All** **New York State Contracts**

(Revised January 2014)

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an

assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists,

the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct

any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the

states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/reggs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

6.3

APPENDIX A-1
STANDARD CLAUSES FOR ALL
NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES CONTRACTS

1. **EXECUTIVE ORDER NUMBER 38**

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with this Executive Order. The Order can be found at the following website address:

<http://executiveorder38.ny.gov/>

2. **PERSONNEL**

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel, which shall be as shown in the APPENDICES. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable Federal and State laws and regulations.
- b. It is the policy of the Office to encourage the employment of qualified applicants for, or recipients of public assistance by both public organizations and private enterprises that are under contractual AGREEMENT to the Office for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Office, to the degree that such change is within the reasonable control of the Contractor.

3. **NOTICES**

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - By certified or registered United States mail, return receipt requested;
 - By facsimile transmission;
 - By personal delivery;
 - By expedited delivery service; or
 - By e-mail.

Notices to the Office shall be addressed to the Program Manager assigned to this contract at the Address, Telephone Number, Facsimile Number or E-Mail Address provided to the Contractor during contract development, or to such different Program Manager as the Office may from time-to-time designate.

Notices to the Contractor shall be addressed to the designee identified by the Contractor, to the address as shown on the Contract Cover Page, or to such different designee as the Contractor may from time-to-time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of

facsimile transmission or email, upon receipt.

- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

4. OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the APPENDICES.
- b. For Federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies provided under this AGREEMENT shall be determined between the Contractor and the Office, pursuant to Federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Office. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Office, unless the Office has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Office, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section.

5. GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the APPENDICES. Any modifications to the tasks or workplan contained in Appendix D must be mutually agreed to by both parties in writing before the additional or modified tasks or workplan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Office within three days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the OCFS Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, any subcontractor or Program participant funded through this contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.
- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize Federal financial participation to the Office under the Federal Social Security Act.
- d. If funds from this contract will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply:
 - No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services, or against any county or other local government or local social services district with funds provided under this contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York

State Office of Children and Family Services or any county or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during the pendency of the litigation.

- Opinions prepared by consultant law firms construing the statutes or Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, Department of Law, The Capitol, Albany, New York 12224.
 - The contractor shall provide to the New York State Office of Children and Family Services in a format provided by the Office such additional information concerning the provision of legal services as the Office shall require.
- e. The Office will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- f. Except where the Office otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Office, which shall have the right to review and approve each and every subcontract prior to giving written approval to the Contractor to enter into the subcontract. All AGREEMENTS between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, (2) that nothing contained in the subcontract shall impair the rights of the Office under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Office, and (4) incorporating all provisions regarding the rights of the Office as set forth in Section 9 of this Appendix A-1 and in Appendix A-3, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Office for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor
- g. The contractor warrants that it, its staff and any and all Subcontractors which must be approved by the Office, have all the necessary licenses, approvals and certifications currently required by the laws of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this Agreement, or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and Subcontractors to obtain the requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or Subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under the AGREEMENT, Contractor will immediately notify Office.
- h. Prior to executing a subcontract agreement the Contractor agrees to provide to the Office the information the Office needs to determine whether a proposed Subcontractor is a responsible vendor if requested.
- i. If the Contractor intends to use materials, equipment or personnel paid for under this contract in a revenue generating activity, the Contractor shall report such intentions to the Office forthwith and shall be subject to the direction of the Office as to the disposition of such revenue.
- j. Any interest accrued on funds paid to the Contractor by the Office shall be deemed to be the property of the Office and shall either be credited to the Office at the closeout of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- k. The Contractor ensures that the grounds, structures, buildings and furnishings at the program

site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.

- I. By signing this contract, the contractor certifies that within the past three years the contractor has engaged in no actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor or, if the contractor has engaged in any such action or actions, that all such actions have been disclosed to OCFS prior to entering into this contract. The actions that would potentially establish a basis for a finding by OCFS that the contractor is a non-responsible vendor include:
- The contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
 - The contractor has had a claim, lien, fine, or penalty imposed or secured against the contractor by a governmental agency.
 - The contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the contractor.
 - The contractor has been issued a citation, notice, or violation order by a governmental agency finding the contractor to be in violation of any local, state or federal laws.
 - The contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the contractor to be in violation of any local, state or federal laws is pending before a governmental agency.
 - The contractor has not paid all due and owed local, state and federal taxes to the proper authorities.
 - The contractor has engaged in any other actions of a similarly serious nature.

Where the contractor has disclosed any of the above to OCFS, OCFS may require as a condition precedent to entering into the contract that the contractor agree to such additional conditions as will be necessary to satisfy OCFS that the vendor is and will remain a responsible vendor. By signing this contract, the contractor agrees to comply with any such additional conditions that have been made a part of this contract.

By signing this contract, the contractor also agrees that during the term of the contract, the contractor will promptly notify OCFS if the contractor engages in any actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor, as described above.

- m. If additional funds become available for the same purpose as described in the original procurement, OCFS reserves the right to modify the AGREEMENT to provide additional funding to the Contractor for provision of additional mutually agreed upon services and/or to extend the provision of services under the AGREEMENT. This additional funding can be provided within an existing period, or in conjunction with a change in the original term. Any changes in the amount or changes in period and amount are subject to the approval of the Office of the State Comptroller.
- p. Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by OCFS and the results of such testing must be satisfactory to OCFS before web content will be considered a qualified deliverable under the contract or procurement.
- p. Contractors must maintain Workers Compensation Insurance in accordance with the Workers Compensation Law. If a contractor believes they are exempt from the Workers Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers Compensation Board website at :

http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp

- q. All organizations that receive Federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
- r. Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

6. REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Office's Contract Manager for review and approval. These reports shall be in such substance, form, and frequency as required by the Office and as necessary to meet State and Federal requirements.

7. CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable State and Federal laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any contractor who will provide goods and/or services to a residential facility or program operated by OCFS agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of OCFS to sign the Confidentiality Non-Disclosure Agreement and Contractor Employee and Volunteer Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of OCFS and/or any financial and/or client identifiable information concerning such youth. Additionally, OCFS will require a database check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the contractor who has the potential for regular and substantial contact with children in the care or custody of OCFS. Any other contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of OCFS agrees to require all such employees and volunteers to sign the Confidentiality Non-Disclosure Agreement before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.

8. PUBLICATIONS AND COPYRIGHTS

Unless this AGREEMENT specifically provides otherwise, any and all copyrightable material or work products created or produced by the contractor under this AGREEMENT shall be considered 'work for hire' or 'work produced for the Office' by the Contractor and shall be owned exclusively by OCFS

and the State of New York. OCFS and the State of New York will, and expressly reserve the right to, hold the copyright to any and all copyrightable material or work products created or produced by the Contractor under this AGREEMENT. The Contractor will neither claim nor assert any interest, proprietary or otherwise, in any copyrightable materials or work product created or produced by the contractor under this AGREEMENT. The Contractor acknowledges that it has no interest, proprietary or otherwise, in any copyrightable materials or work product created or produced by the contractor under this AGREEMENT.

The Contractor hereby warrants that any copyrightable material or work products created or produced by the Contractor under this AGREEMENT shall be original except for such portions as may be part of copyrighted works that are included with the permission of the owner of the copyright. If such material is included, the Contractor warrants that the Contractor has obtained from the holder of the copyright all permissions necessary for the Office and the State of New York to hold the copyright to the copyrightable material or work products created or produced by the contractor under this AGREEMENT.

The Contractor hereby warrants that any copyrightable material or work products created or produced by the Contractor under this AGREEMENT contain no libelous or unlawful statements or materials and that it will not infringe on any copyright, trademark, patent, statutory or other proprietary rights of others.

The Contractor hereby agrees that it will not use, publish, permit to be published or distribute for use any copyrightable material or work products created or produced by the contractor under this AGREEMENT without the prior written permission of the Office.

The Contractor will retain the copyright to any proprietary material used in connection with this AGREEMENT that was created independently by the Contractor without the financial support of the Office or the State of New York. The Office and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted and copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT to which OCFS and the State of New York do not hold the copyright. All publications by the Contractor covered by this AGREEMENT that include material resulting from this AGREEMENT or that arise from activity supported by this AGREEMENT where the copyright is held by the Contractor shall expressly acknowledge the Office's right to such license. All publications by the Contractor covered by this AGREEMENT that include material under the copyright of the Office shall expressly acknowledge the Office's copyright.

All of the copyright and license rights so reserved to the Office and the State of New York under this AGREEMENT are equally reserved to the United States Department of Health and Human Services and subject to all applicable federal legal and regulatory provisions on copyrights if the CONTRACT is federally funded.

The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this CONTRACT, it will provide to OCFS at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis. The Contractor agrees and acknowledges the right of OCFS, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

9. PATENTS AND INVENTIONS

The Contractor agrees that any and all inventions, conceived or first actually reduced to practice in

the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Office. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

10. CONTRACTOR COMPLIANCE

The Office shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT and/or to retain the services of qualified independent auditors or investigators to perform such audit and review on the Office's behalf. If the review indicates that the Contractor has violated or is in non-compliance with any of the terms of the AGREEMENT, or has abused or misused the funds paid to the Contractor, the Contractor agrees to pay to the Office any costs associated with the review.

If the review indicates that the Contractor has violated or is in non-compliance with any of the terms of the AGREEMENT, or has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other AGREEMENT, or has abused or misused funds paid to the Contractor under any other AGREEMENT with the Office, the rights of the Office shall include, but not be limited to:

- Recovery of any funds expended in violation of the AGREEMENT;
- Suspension of Payments
- Termination of the AGREEMENT; and/or
- Employment of another entity to fulfill the requirements of the AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Office in transferring the operation of the contracted services to any other entity selected by the Office in a manner that will enable the Office or clients to continue to receive services in an on-going basis, including, but not limited to, notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Office from taking actions otherwise available to it under law including but not limited to the State's "Set-Off Rights" and "Records" provisions contained in Appendix A (Standard Clauses for all New York State Contracts).

The Contractor agrees to cooperate fully with any audit or investigation the Office or any agent of the Office may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the NYS Attorney General, State Comptroller, the Office, and any representatives specifically directed by the State Comptroller or the Office to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Office will return all such books, records and documents to the Contractor upon completing the official purposes for which they were taken.

The Contractor agrees that all AGREEMENTS between the Contractor and a subcontractor or consultants for the performance of any obligations under the AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above

specified rights of the Office.

11. FISCAL SANCTION

In accordance with the OCFS Fiscal Sanction policy, contractors may be placed on fiscal sanction when the Office identifies any of the following issues:

- The contractor has received an overpayment or other funds under this or another agreement that has not been refunded to OCFS within the established timeframe;
- An OCFS, Office of the State Comptroller, or other audit identifies significant fiscal irregularities and/or that funds are due to OCFS;
- The Contractor has not provided satisfactory services as required under the terms of this or another OCFS agreement;
- The contractor has not provided fiscal or program reports as required under the terms of this or another OCFS agreement;
- A local, State or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the contractor;
- The contractor is not in compliance with State or federal statutes or regulations, or applicable OCFS guidelines, policies and/or procedures; or
- Unsafe physical conditions exist at a program site operated by the contractor and funded under an agreement with OCFS.

Once the contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid a Fiscal Sanction. Issues that are not resolved within the timeframe established by OCFS may be referred to the Attorney General (AG) for collection or legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

12. ADDITIONAL ASSURANCES

- a. The Office and Contractor agree that Contractor is an independent contractor, and not an employee of the Office. The Contractor agrees to indemnify the State of New York for any loss the State of New York may suffer when such losses result from claims of any person or organization (excepting only the Office) injured by the negligent acts or omission of Contractor, its officers and/or employees or subcontractors. Furthermore, The Contractor agrees to indemnify, defend, and save harmless the State of New York, and its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the contract, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of the contract, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under the contract or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this contract.
- b. The Contractor agrees that Modifications and/or Budget Revisions that do not affect any change in the amount of consideration to be paid, or change the term, will be in accordance with Appendix C.
- c. Expectation of Insured: The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit corporation or entity other than a self-insured municipal corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability

insurance in an appropriate amount. The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this contract to obtain and maintain a general policy of liability insurance in an appropriate amount.

- d. Notwithstanding the provisions of Article 14 of this contract, to the extent the contractor provides health care and treatment or professional consultation to residents of facilities operated by OCFS, in conformance with Executive Law §522 the provisions of paragraphs A, B and C of Article 14 (Article 14 A., B. and C.) shall not apply. In such cases, the provisions of Public Officers Law §17, to the extent provided by Executive Law §522, shall apply instead.

13. RENEWAL NOTICE TO NOT-FOR-PROFIT CONTRACTORS

With respect to contracts that include a renewal option, if the Office does not provide notice to Contractor of its intent to not renew this contract by the date by which such notice is required by §179-t (1) of the State Finance Law, this contract shall be deemed continued until the date that the Office provides the notice required by §179-t (1), and the expenses incurred during such extension shall be reimbursable under the terms of this contract.

14. Limited English Proficiency (LEP)

By submitting a bid in response to this RFP, bidder agrees that if awarded a grant/contract, it will provide meaningful access to all services and programs to eligible limited English proficient persons through interpretation or translation of vital documents, in accordance with applicable federal and State provisions, including but not limited to Executive Order (EO) # 26, Title VI of the Civil Rights Act of 1964, Federal EO 13166, 28 CFR §42.104, 45 CFR §80.3, and all applicable State and federal guidance issued.

6.4

Appendix A-3 **Federal Assurances and Certifications** **(Rev. 6/15/11)**

Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Office of Family and Children Services (OCFS).
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By signing and submitting this application, contract or contract amendment an authorized representative of the applicant or contractor asserts that the applicant or contractor:

1. Has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to

Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).

12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.**14.** This contract is funded in whole or part with federal funds under the CDFA No(s) shown on the first page of Appendix C or Appendix X for renewals. OCFS is a pass-through entity of these federal funds. As a recipient of these federal funds, the contractor may be determined, as shown on the first page of Appendix C or Appendix X for renewals, to be a sub-recipient of federal assistance. Sub-recipients of federal funds have the responsibility of reporting to OCFS in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the contractor to expend \$500,000 or more of federal funds from this contract or in total with other contracts or grants of federal funds or assistance in the contractor's fiscal year, regardless of the source of the funding, the contractor is required to comply with the terms and provisions of the OMB Circular A-133. The contractor will notify OCFS if it reasonably expects to expend the sum of \$500,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$500,000 in federal funds but in no event later than the close of the calendar year. The contractor will have an audit performed pursuant to the requirements of OMB Circular A-133 and provide OCFS with the required reports within 30 days of the contractor's receipt of the independent audit report or within nine months after the close of the contractor's fiscal year, whichever event is sooner.

15. Certifies that Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law does not apply to children's services

provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of children's services and all subgrantees shall certify accordingly.

16A. 1.) By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2.) The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. 3.) For grantees other than individuals, Alternate I applies. 4.) For grantees who are individuals, Alternate II applies. 5.) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 6.) Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or state highway department while in operation, state employees in each local unemployment office, performers in concert halls or radio studios). 7.) If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five). 8.) Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes; criminal drug statute means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

16B. Alternate I (Grantees Other Than Individuals). 1.) The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about: (i) The dangers of drug abuse in the workplace; (ii) The grantee's policy of maintaining a drug-free workplace; (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will: (i) Abide by the terms of the statement; and (ii) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(ii) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(ii), with respect to any employee who is so convicted: (i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and

(f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the Department of Health and Human Services (DHHS) has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201.

16C. Alternate II (Grantees Who Are Individuals). 1.) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2.) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within ten calendar days of the conviction, to every grant officer or other designee, unless the federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

17. Certifies that Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain federal contracting and financial transactions," generally prohibits recipients of federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the federal government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a federal grant or cooperative agreement must disclose lobbying undertaken with non-federal (non-appropriated) funds. The requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93). The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief that: 1.) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. 2.) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.) 3.) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

18A1. Agrees that, (a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. (b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. (c) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default. (d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. (e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Children and Family Services for assistance in obtaining a copy of those regulations. (f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. (g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions. (h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. (i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. (j) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency may terminate this transaction for cause or default.

18A2. (1) Certifies to the best of its knowledge and belief, that the applicant and its principals: (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 19A.2.(1)(b) of this certification; and (d) Have not within a three-year period preceding this application/proposal had on or more public transactions (federal, state, or local) terminated for cause or default. (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

18B.1 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions Instructions for Certification. (a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below. (b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. (c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. (d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. (e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. (f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.

Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. (h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. (i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension

and/or debarment.

18B.2 (a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

[Appendix A-3, Federal Assurances and Certificates, Revised June 15, 2011](#)

6.5

Appendix C **Payment and Reporting Terms and Conditions** **Performance Based Budget**

Revised May 2015

- This Contract is funded with non-Federal funds only
- This contract is funded in whole or in part with Federal funds (see Appendix A3, Paragraph 14, for federal audit information)
- OCFS has determined that the Contractor IS NOT a Subrecipient
- OCFS has determined that the Contractor IS a Subrecipient
- The Federal funds for this contract are from Catalog of Federal Domestic Assistance (CFDA Number(s):

I. PAYMENT TERMS AND CONDITIONS

In consideration of the services to be performed by the Contractor pursuant to this AGREEMENT, the Office of Children and Family Services (OCFS) agrees to pay and the Contractor agrees to accept a sum not to exceed the amount specified on the face page of this AGREEMENT for the initial AGREEMENT period and for subsequent periods, the amount specified in Appendix X for that period. All payments shall be in accordance with the payment plan contained in Appendix C-1 for the applicable period which is attached hereto for the period of time indicated therein. Payment under this AGREEMENT is conditional upon the continued availability of funds. Should funds become unavailable the Contractor shall be relieved of any obligation to continue this project beyond the period for which funds were available. Payments and future funding are contingent on the availability of funding for the activities to be conducted in accordance with this AGREEMENT.

Funds cannot be expended until the contract is approved by the Office of the State Comptroller (OSC). Expenditures cannot precede the contract start date. If the Contractor makes expenditures subsequent to the contract start date, but prior to OSC approval of the contract, they do so at their own risk. In the event that OSC does not approve the contract, OCFS shall have no obligation to pay the Contractor for any such expenditures made subsequent to the proposed contract start date.

See Appendix C-1 for any additional program-specific Payment Terms and Conditions applicable to this AGREEMENT. To the extent that there is a conflict between any Payment Terms and Conditions set forth in this Appendix and in Appendix C-1, the Payment Terms and Conditions in Appendix C-1 will supersede the Payment Terms and Conditions in Appendix C.

Contractor shall provide complete and accurate billing invoices to OCFS in order to receive payment. Billing invoices submitted to OCFS must contain all information and supporting documentation required by this AGREEMENT, OCFS and OSC.

II. CLAIMS FOR SERVICES

- a. The Contractor shall submit claims for payment under this AGREEMENT within fifteen (15) days after the end of each claiming period or as otherwise specified in Appendix C-1.
- b. The Contractor shall submit a New York State Claim for Payment or on-line claim submitted through CMS within fifteen (15) days after the end of each claiming period as identified in Appendix C-1. The Contractor shall also submit the appropriate supporting documentation for the services provided. The final claim shall be submitted within thirty (30) days after the expiration of each annual contract period or the early termination of this AGREEMENT or as otherwise specified in Appendix C-1.
- c. OCFS agrees to pay the Contractor for services provided in behalf of fulfilling this AGREEMENT, according to the schedule contained in Appendix C-1 and upon the submission of a properly executed State of New York Claim for Payment, or on-line claim submitted through CMS, in a form acceptable to OCFS and to OSC and the submission of the required program reports. OCFS agrees to submit each approved claim to OSC for payment, unless it shall have notified the Contractor of its disapproval of payment, in writing, together with a justification therefor.
- d. Claims are payable on the 45th day after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and OSC, and if the Contractor's claim or on-line claim submitted through CMS is received within 15 days after the end of said period. If the Contractor's claim or on-line claim submitted through CMS is received later than 15 days after the end of said period, then the claim or on-line claim submitted through CMS will be payable 30 days after receipt if deemed acceptable by OCFS and OSC.
- e. For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, claims or on-line claims submitted through CMS are payable 30 days after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and OSC. If the Contractor's claim or on-line claim submitted through CMS is not received within 30 calendar days of the contract becoming fully executed, no additional interest shall accrue after such thirtieth day.
- f. OCFS reserves the right to withhold up to ten percent of the total amount of the contract as security for the faithful completion of services under this AGREEMENT. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under this AGREEMENT. The amount withheld will be paid to the Contractor upon the receipt of all required reports, including the final programmatic and fiscal reports, all products of the project as provided in the AGREEMENT as detailed in Appendix D, a final claim or on-line claim submitted through CMS, the accounting for any payment(s) made pursuant to this AGREEMENT, and upon certification by the Contractor that it has completed its obligations and duties under this AGREEMENT.

- g. OCFS will not be liable for payments on any contract, grant or agreement made pursuant to an appropriation if insufficient monies are available.
- h. The Contractor shall require any and all subcontractors to submit all claims for services rendered and required supporting documentation and reports necessary to complete the claim in sufficient time for said information to be received by the Contractor no later than ten (10) days following the final day of the claiming period. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information and/or are not received by the Contractor by said due date. Subcontractors shall be paid on a timely basis after submitting the required reports and claims for reimbursement of services.
- i. Subcontracts should not be signed by Contractor prior to OCFS approving the subcontract and OSC approving the contract. Subcontracts cannot have start dates prior to the contract start date. If Contractor obtains signature on a subcontract subsequent to the start date, but prior to OSC approval of the contract, they do so at their own risk.
- j. Payment for travel costs and related expenses incurred by the Contractor's staff, employees and consultants shall be reimbursed at no greater than the prevailing New York State rates established for travel costs and related expenses for State employees as set by OSC and listed at the following internet website <http://www.osc.state.ny.us/agencies/travel/travel.htm>
- k. OCFS may specifically request the return of any equipment purchased pursuant to this AGREEMENT. At the discretion of OCFS, the Contractor may retain custody of such equipment, provided it continues to be used for the services AGREEMENT. No equipment purchased with OCFS funds may be transferred or disposed of without written permission from OCFS. Equipment items purchased and claimed must be listed in the approved contract budget. Any changes in the equipment listed in the budget must have prior approval by OCFS in writing before implementing the change.
- l. If the Contractor receives funds under this AGREEMENT to construct, renovate or improve the property it occupies, then the improved property will be used for the children, family and youth services outlined in this AGREEMENT for the period set forth in this AGREEMENT
- m. All obligations must be incurred prior to the end date of the contract. The Contractor has up to 90 days after the contract end date to make expenditures as long as the obligation was made prior to the contract end date.
- n. Should the contractor order goods and/or services prior to Office of the State Comptroller's approval of the contract, the contractor does so at their own risk and OCFS will not reimburse the contractor for the cost of such goods and/or services if such goods and/or services were received or paid for prior to the commencement of the contract period.

3. AUDIT AND RECORDS RETENTION

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this AGREEMENT (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. OSC, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this AGREEMENT, 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; (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. If the Records are in any way relevant to audit findings, litigation or claims and the audit findings, litigation, or claims are not resolved within a period of six (6) years after the end or termination of this AGREEMENT, the Contractor will retain such records until notified in writing by OCFS to dispose of them.

4. REFUNDS

In the event that the contractor must make a refund to OCFS for contract related activities (an audit disallowance, or for any other reason), payment must be made in the form of a check or money order payable to "New York State Office of Children and Family Services". The contractor must include with the payment a brief explanation of why the refund is being made and reference the contract number. Refund payments together with such explanation must be submitted to:

NYS Office of Children and Family Services
Attention: Contract Cash Receipts
Bureau of Contract Management
Capital View Office Park
52 Washington Street
South Building, Room 202
Rensselaer, NY 12144

5. PROGRAM REPORTING REQUIREMENTS

- a. The Contractor shall submit a Program Report on the schedule stated in Appendix C-1 and in the format specified by OCFS.
- b. In addition to the periodic reports stated above, the Contractor shall, as applicable, prior to receipt of final payment under this AGREEMENT, submit a final program report satisfactory to OCFS no later than thirty (30) days following the termination of this contract or the completion of expenditures, whichever is sooner or as otherwise specified in Appendix C-1.

6. REPORTING SCHEDULE

All periodic reports as identified in Appendix C-1 shall be submitted in accordance with the schedule provided unless otherwise designated in writing by the Program Officer. All periodic reports must be submitted no later than fifteen (15) days after the end of the reporting period or as otherwise specified in Appendix C-1.

7. DESIGNATED PAYMENT OFFICE

Designated Payment Office is the District Office that originally issued the authorization.

Maiden Lane Office – Brooklyn, Staten Island, Manhattan (up to and including 23rd Street)

NYS Commission for the Blind
80 Maiden Lane, 23rd Floor
New York, NY 10038

Hempstead Office – Nassau, Suffolk, Queens (Central and Eastern)

NYS Commission for the Blind
50 Clinton Street, Suite 208
Hempstead, NY 11550

Harlem Office – Bronx, Queens(Western), Manhattan(North of 23rd Street)

NYS Commission for the Blind
163 West 125th Street, Room 209
New York, NY 10027

6.6

Appendix M/WBE

Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures Revised May 2015

I. General Provisions

a. The Office of Children and Family Services (“OCFS”) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value: **1)** in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing **or; 2)** in excess of \$100,000 for real property renovations and construction.

b. The Contractor to the subject Contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State OCFS, to fully comply and cooperate with OCFS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State Certified Minority and Women-Owned Business Enterprises (“MWBE”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

c. Contractor shall comply with the provisions of the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions. 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.

d. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VIII of this Appendix, or enforcement proceedings as allowed by the Contract.

II. Contract Goals

a. For purposes of this Contract, OCFS hereby establishes an overall goal of 30% for MWBE participation. OCFS recommends that, whenever practicable, its contractors attempt to equally utilize

Minority-Owned Business Enterprises (“MBE”) and Women-Owned Business Enterprises (“WBE”) participation in the performance of the contract. It is however important to note that strict adherence to the suggested MBE and WBE utilization is not mandatory as long as the overall 30% goal is met.

b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II.a. hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (DMWBD) to discuss additional methods of maximizing participation by MWBEs on the Contract. DMWBD contact numbers: (518) 292-5250; (212) 803-2414; or (716) 846-8200

c. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. **In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OCFS for liquidated or other appropriate damages, as set forth herein.**

III. Equal Employment Opportunity (EEO)

OCFS-3460 – M/WBE – Equal Employment Opportunity Policy Statement

a. Contractor agrees to be bound by and comply with the provisions of Article 15-A and the MWBE Regulations promulgated by the DMWBD. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

Contractor shall comply with the following provisions of Article 15-A:

b. Contractor and Subcontractors shall undertake or continue existing Equal Employment Opportunity (EEO) programs to ensure that minority group members and women are afforded employment opportunities without discrimination 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. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

c. The Contractor shall submit an EEO Policy Statement to OCFS within 10 (ten) business days after the notice of award by OCFS to the Contractor. Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. The Contract Management System (CMS) is the official record of system used for developing and tracking OCFS Contracts. **Please do not upload MWBE forms to the Contract Management System (CMS).**

d. If Contractor or Subcontractor does not have an existing EEO Policy Statement or lacks an appropriate EEO Policy Statement as required pursuant to Article 15-A of the NYS Executive Law, OCFS may provide form OCFS-3460 – M/WBE – Equal Employment Opportunity Policy Statement as a model. The Contractor/Subcontractor has the option to use this form or create an appropriate EEO Policy Statement to be submitted to OCFS for approval.

e. The Contractor’s EEO Policy Statement shall include the following language:

i. The Contractor and/or Subcontractor 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; will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

ii. The Contractor and/or Subcontractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed (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.

iii. The Contractor and/or Subcontractor 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 (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; and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

iv. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and Subcontractor 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.

v. The Contractor and/or Subcontractor will include the above-noted language provisions outlined in numbers **i.** through **iv.**, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements in the language will be binding upon each subcontractor as to work in connection with the Contract.

IV. Project Staffing Plan Form

OCFS-4629 - Project Staffing Plan Form

a. To ensure compliance with the Equal Employment Opportunity (EEO) Section above, the Contractor shall submit a Project Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to CMS.**

b. Once a contract has been awarded, and during the term of Contract, Contractor will, on a quarterly basis, submit to OCFS any modifications or changes to the Project Staffing Plan Form. The Contractor's Project Staffing Plan Form will only include workforce data for staff utilized on the prime contract, and should not include data on staff performing work under any subcontracts. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Project Staffing Form and indicate that the information provided related to the actual workforce

utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Project Staffing Form and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

V. Subcontracting/Suppliers Utilization Form

OCFS-4631 – Subcontracting/Suppliers Utilization Form

a. The Contractor represents and warrants that Contractor will submit a Subcontracting/Supplier Utilization Form no later than 7 days after approval of the contract. Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to CMS.**

b. If at the time of submission of the OCFS-4631 appropriate New York State Certified MWBE have not been identified, the Contractor should enter “to be determined” (TBD). Within 30 calendar days of the contract approval, the Contractor must identify appropriate New York State Certified firms to be utilized, and provide this information using the OCFS-4631 Subcontracting/Suppliers Utilization Form.

c. Contractor agrees to use such Subcontracting/Supplier Utilization Form for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II.a. of this Appendix.

d. Contractor further agrees that failure to submit and/or use such Subcontracting/Suppliers Utilization Form may constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OCFS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. M/WBE Subcontractors & Suppliers Letter of Intent to Participate Forms

OCFS-4630 - Subcontractors and Suppliers Letter of Intent to Participate Form

The OCFS-4630 Subcontractor and Suppliers Letter of Intent to Participate Form is to be completed by the proposed M/WBE Subcontractor/Supplier during the contract development stage. There should be one form for each of the NYS Certified M/WBE vendors you propose to utilize as subcontractors, service providers or suppliers on the OCFS-4631 Subcontracting/Suppliers Utilization Form. If the MBE or WBE proposed for a portion of this Contract is part of a joint venture or other temporarily-formed business arrangement, the name and address of the joint venture or the temporarily formed business entity should be indicated. Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to CMS.**

VII. Waivers

OCFS-4442 - M/WBE Request for Waiver Form

Waiver Requests are submitted only at the request of OCFS using the OCFS-4442, M/WBE Request for Waiver Form.

a. If the Contractor, after making good faith efforts, is unable to comply with M/WBE goals, an OCFS-4442 M/WBE Request for Waiver Form may be submitted, under direction of OCFS, documenting any good faith efforts made to meet such goals. If the documentation included with the waiver request is complete, OCFS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

b. If OCFS, upon review of the OCFS-4631 Subcontracting/Suppliers Utilization Form and updated OCFS-4441 MWBE Quarterly Reports, determines that Contractor is failing or refusing to comply with the

Contract goals and no waiver has been issued in regards to such non-compliance, OCFS may issue a Notice of Deficiency to the Contractor. The Contractor must respond to the Notice of Deficiency within seven (7) business days of receipt. Such response may include a second request for partial or total waiver of MWBE Contract Goals with additional information/justification.

c. Once OCFS has finalized its decision regarding the waiver request, the request, along with all accompanying documentation, will be forwarded to the Governor's Chief Diversity Office for final determination.

VIII. MWBE Quarterly Report

OCFS-4441 - MWBE Quarterly Report Form

Contractor is required to submit an MWBE Quarterly Report to OCFS within 30 days following the end of each applicable reporting quarter over the term of the Contract, documenting the progress made towards achievement of the MWBE goals. Completed forms should be sent via email to_mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to CMS.**

IX. Liquidated Damages - MWBE Participation

a. Where OCFS determines that the Contractor is not in compliance with the requirements of the Contract concerning participation by minority and women-owned business enterprises, and that such failure to comply was willful and intentional, or that Contractor refused to comply with such requirements after being notified by OCFS of non-compliance with such requirements, Contractor shall be obligated to pay liquidated damages to OCFS.

b. Such liquidated damages shall be calculated up to **the** amount equaling the difference between:

- i. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- ii. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

c. In the event a determination has been made which requires the Contractor to pay liquidated damages and the identified sums of liquidated damages has not been withheld by the OCFS from any payments due to the Contractor, the Contractor shall pay such liquidated damages as have not been withheld to the OCFS within sixty (60) days after the Contractor is notified by the OCFS that the Contractor is required to pay such damages unless, prior to the end of the sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development (Director) pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable within 30 days after issuance of Director's decision if the Director renders a decision in favor of the OCFS.

Section 7: REQUIRED FORMS

7.0 Required Forms

The following is a list of required forms/documents to be completed. Most can be accessed electronically throughout this RFQ and via the links below. Those available only in hard copy are identified and attached in this section of the RFQ.

The forms in the financial proposal are designed to facilitate proposal evaluation and to standardize responses to this RFQ. The offerer must submit them in their proposal to streamline the evaluation process.

Required with bid submission:

- 7.1 MacBride Fair Employment Principles in Northern Ireland (hard copy attached)
- 7.2 Non-Collusive Bidding Certification Required by Section 139D of the State Finance Law (hard copy attached)
- 7.3 [Subcontractors and Suppliers Letter of Intent to Participate Form](#) (OCFS-4630)
- 7.4 [Subcontracting/Suppliers Utilization Form](#) (OCFS-4631)
- 7.5 [Project Staffing Plan Form](#) (OCFS-4629)
- 7.6 [MWBE Quarterly Report Form](#) (OCFS-4441)
- 7.7 [MWBE Request for Waiver Form](#) (OCFS-4442)
- 7.8 [MWBE Equal Employment Opportunity \(EEO\) Policy Statement Form](#) (OCFS-3460)
- 7.9 [Procurement Lobbying Act – Offerer Certification Form](#) (OCFS-4822)
- 7.10 [State Consultant Services – Contractors Planned Employment](#) (OCFS-4842)
- 7.11 [Vendor Responsibility Questionnaire](#) (For-Profit)
- 7.12 [Vendor Responsibility Questionnaire](#) (Not-For-Profit) (if applicable)

Please note that these forms should be completed after the bidder has been awarded funding and during the contract development

- 7.13 [ST-220-TD](#) (NYS Tax Department Form) Contractor Certification (if applicable)
- 7.14 [ST-220-CA](#) (NYS Tax Department Form) Contractor Certification to Covered Agency (if applicable)
- 7.15 [Contractor Employee and Volunteer Background Certification](#) (OCFS-4716) (if applicable)
- 7.16 [Confidentiality Non-Disclosure Agreement](#) (OCFS-4715) (if applicable)
- 7.17 Contract Developer and Contract Signatory Authorization Form and Instructions (Hard copy attached)

The form below is required annually in accordance with section 2.25 of this RFQ

- 7.18 [State Consultant Services – Contractors Annual Employment Record](#) (OCFS-4843)

NEW YORK STATE
Office of Children and Family Services

MacBride Fair Employment Principles

Non-discrimination In Employment In Northern Ireland

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a ten percent or greater ownership interest, or any individual or legal entity that holds a ten percent or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

- (1) Has business operations in Northern Ireland;

Yes _____ No _____

If yes:

- (2) Shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

Yes _____ No _____

Signature

Typed/Printed Name and Title

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

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

➤ **SECTION 1 39-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 the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where 1., 2., and 3. above have not been complied with; provided however, that if in any case, the bidder(s) cannot make the foregoing certification, the bidder shall so state and shall furnish below a signed statement which sets forth in detail the reasons therefore:

[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.

➤ **If bidder(s) (are) a partnership, complete the following:**

Names of Partners or Principals	Legal Residence
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

➤ If bidder(s) (are) a corporation, complete the following:

Names	Legal Residence
_____ President	_____
_____ Secretary	_____
_____ Treasurer	_____
_____ President	_____
_____ Secretary	_____
_____ Treasurer	_____

Identifying Data

Potential Contractor: _____

Street Address: _____

City, State, Zip Code: _____

Title / Telephone #: _____ (_____) _____
Area Code

If applicable, Responsible Corporate Officer

Name: _____

Title / Telephone #: _____ (_____) _____
Area Code

Signature

Typed/Printed Name and Title

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

**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

Street

City, State, Zip Code

City, State, Zip Code

**New York State Office of Children and Family Services
Contract Management System (CMS)
Authorization Form**

- The purpose of this form is to add, inactivate and modify users with online CMS accounts.
- Sign-on ID #s and temporary passwords will be emailed to individual staff receiving CMS role designations.

Today's Date:	Contract Number(s):
*Please note that the authorization for CMS accounts is not contract specific. If you would like to designate the below user(s) as a primary user for the indicated role, add the contract number and a brief narrative in the space provided.	

Organization Information

Legal Name		
Doing Business As (DBA) Name (if applicable)		
Federal Id	Muni Code (if applicable)	OSC Vendor ID (if applicable)
Street Address 1		
Street Address 2		
City	State	Zip

Definition of Roles

Contract, Program Report, Claim Developer [CONUSER] - Responsible for many contract related data entry tasks, such as completing online program reports and/or entering claim information online (**Claim Developer is not an authorized signer for claims or contracts*).

Contract Signatory [CONSIG] - Responsible for signing contracts on behalf of your organization.

Contract Claim Signatory [CLAIMSIG] - Responsible for signing claims on behalf of your organization and submitting them to OCFS.

Contract Viewer [CONVIEWER] – This role gives users basic read-only access to contract specific information.

Contractor User Role Designation

1. Name	Title	<input type="checkbox"/> Check here if this individual already has a CMS account
Email Address*	Phone Number	
<input type="checkbox"/> Activate user Check this box to create a CMS user account <input type="checkbox"/> Inactivate user Check this box to disable a CMS user account <input type="checkbox"/> Archive Staff in the CMS Vendor File Check this box if a person is no longer with your agency	Check all that apply: <input type="checkbox"/> Contract, Program Report or Claim Developer [CONUSER] <input type="checkbox"/> Contract Signatory [CONSIG] <input type="checkbox"/> Contract Claim Signatory [CLAIMSIG] <input type="checkbox"/> Contract Viewer [CONVIEWER]	

2. Name	Title	<input type="checkbox"/> Check here if this individual already has a CMS account
Email Address*	Phone Number	
<input type="checkbox"/> Activate user Check this box to create a CMS user account <input type="checkbox"/> Inactivate user Check this box to disable a CMS user account <input type="checkbox"/> Archive Staff in the CMS Vendor File Check this box if a person is no longer with your agency	Check all that apply: <input type="checkbox"/> Contract, Program Report or Claim Developer [CONUSER] <input type="checkbox"/> Contract Signatory [CONSIG] <input type="checkbox"/> Contract Claim Signatory [CLAIMSIG] <input type="checkbox"/> Contract Viewer [CONVIEWER]	

This section is to be completed by the Head of the Organization or Chief Administrative Officer (i.e., Executive Director/CEO). I hereby authorize the Contract Developer identified above to develop contracts online using CMS (or to be disabled as indicated), the identified Claim Signatory identified above to electronically log and sign contract claims (or to be disabled as indicated) and also authorize the Contract Signatory identified above to electronically sign contracts (or to be disabled as indicated) on behalf of our organization.

Name of Head of Agency
Title
Email Address*
Phone Number
Signature
Date

* This should be an individual email address. Confidential User Id information will be emailed to this address.

New York State Office of Children and Family Services Instructions for completing the Authorization Form for the Online Contract Management System (CMS)

Organization Information

All fields on the form must be completed; the only exceptions are the DBA Name and Muni Code.

An organization chart must be submitted which indicates where the organization head or the chief administrative officer and the contract developer and signatory appear in relation to the Board of Directors and the organization.

- ✓ Muni Code - The municipal code is used only for municipal organizations. If it does not apply, the box would be left blank. Questions regarding municipal codes should be directed to the OCFS contract manager.
- ✓ OSC Vendor ID – If available, enter your organization’s OSC Vendor ID. This ID is issued by the Vendor Management Unit (VMU) as part of the OSC vendor registration process.
- ✓ Legal Name – Enter as it appears on the Articles of Incorporation or Business Certification.
- ✓ Federal ID – Enter your 9 digit federal ID; please do not enter any dashes (-).
- ✓ State – New York is automatically filled in by default. If different, delete and enter appropriate State.

Contract Developer, Contract Signatory and Claim Signatory, Contract Viewer Information

- ✓ Email Address – This should be an individual email address. The confidential username will be emailed to this address. The password will be provided separately. A company email address accessible by multiple persons should not be used. Confidential communication between OCFS and the contract developer and contract signatory regarding this account will be sent to this address.
- ✓ Phone Number – Mandatory. If there is a problem with the email address, OCFS will call this number to resolve any issues with the account.
- ✓ Please designate the user role(s). Check the contract developer, contract signatory, contract claim signatory, and/or contract viewer box to indicate the type of account(s) you are authorizing OCFS to create or inactivate. Note that OCFS recommends that at least two contract developers, contract signatories, and contract claim signatories be assigned for each organization.
- ✓ Check the appropriate box to either activate an account (create a user role), inactivate an account (terminate user access), and/or archive a staff person from the CMS vendor file (i.e., if a person is no longer with your organization).

Signed authorization form(s) must be received before an organization can use CMS; please return the authorization form(s) with your proposed submittal.