



**Office of Children  
and Family Services**

**ANDREW M. CUOMO**  
Governor

**SHEILA J. POOLE**  
Acting Commissioner

**INVITATION FOR BIDS**

**Industry Land Lease**

**IFB 2016-02**

**BID DUE DATE: December 1, 2016**

Issue Date: 11/17/2016

Questions Due: 11/24/2016

## Table of Contents

1. Introduction.....	4
1.1 Overview.....	4
1.2 Designated Contacts .....	4
1.3 Key Events .....	4
1.4 IFB Questions and Clarifications.....	5
2. Bid Submission .....	5
2.1 Instructions for Bid Submission.....	5
2.2 Packaging of IFB Response .....	5
3. Specifications.....	6
3.1 Product/Service Specifications.....	6
3.2 Delivery .....	6
3.3 Security Procedures.....	6
4. Administrative Information .....	6
4.1 Method of Award .....	6
4.2 Price .....	6
4.3 Term of Contract.....	6
4.4 Method of Payment.....	6
4.5 Dispute Resolution .....	7
4.6 Contractor Responsibilities .....	7
4.7 Inspection of Books.....	7
4.8 OCFS Reserved Rights .....	7
4.9 Incurred Costs.....	8
4.10 Security, Nondisclosure and Confidentiality Agreement .....	8
4.11 Contractor Responsibility .....	9
4.12 Multi-Agency Use .....	9
4.13 Contacts with Employees.....	9
4.14 Procurement Lobbying Act.....	9
4.15 Public Officers Law .....	10
4.16 Vendor Responsibility .....	10
4.17 Workers' Compensation Law.....	11
4.18 New York State Sales and Compensating Use Taxes .....	12

4.19 OCFS Procedure for Handling Debriefing Requests, Formal Protests and Appeals ....13  
5. Sample Contract {See attached}.....16

# 1. Introduction

## 1.1 Overview

New York State is offering an opportunity to lease, for the purpose of growing crops, land that is currently held by the New York State Office of Children and Family Services (OCFS). This land is part of parcels under the control of the Industry Residential Center located at 375 Rush-Scottsville Road, in Rush, NY. The expected term of the lease will be for five growing seasons during 2017-2021, and will comprise six lots, for a total of 160 acres as follows:

- Lot 3 - 8 Acres - East of Erie RR, South of dirt road running between Building 75 and 76, West of Building 76
- Lot 4 - 5 Acres – East of Erie RR, South of Perry Hill Road
- Lot 5 – 21 Acres - East of Erie RR Tracks, West of Main Road, South of Building 79 and North of Lehigh Valley RR bed
- Lot 6 - 8 Acres- South of Lehigh Valley RR bed, East of Erie RR and North of Building 16 (old dairy barn)
- Lot 7 - 78 Acres - South of Lehigh Valley RR bed, West of Erie RR
- Lot 8 - 40 Acres- South of Building 16 to Honeoye Creek, East of Erie RR

See attachment 1 for a map of the field locations.

Offeror's submitting a bid must submit a bid for all lots.

## 1.2 Designated Contacts

From the issuance of this Invitation for Bid (IFB) until contractors are selected, all contacts with OCFS personnel, except as otherwise specified herein, concerning this IFB must be made via email or post to the following:

NYS OCFS, RFP Unit – Room 202, 52 Washington Street, Rensselaer, NY 12144. Or, email inquiries to [RFP@ocfs.ny.gov](mailto:RFP@ocfs.ny.gov). In both cases, please reference CFS01-IFB-2016-02.

## 1.3 Key Events

The Table below outlines the schedule for important action dates.

Invitation For Bid (IFB) issued	11/17/2016
Deadline for Submission of Offeror Questions	11/24/2016
Responses to Questions published (estimated)	11/25/2016
Bid Due Date/ Bid Opening Date	Bids due: 11 a.m. on December 1, 2016 Bid opening: December 2, 2016
<b>Projected Contract Date</b>	Not earlier than 1/1/2017

## 1.4 IFB Questions and Clarifications

All questions regarding this IFB, including questions regarding the minimum qualifications and specifications, should be emailed to the primary contact identified in Section 1.2, Designated Contacts, by the date and time indicated in Section 1.3, Key Events. Questions submitted after the deadline indicated may not be answered. An offeror is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective offeror in the form of a question and answer document which will be posted to the Contract Reporter website and will not identify the offeror asking the question.

## 2. Bid Submission

### 2.1 Instructions for Bid Submission

Only bids from offerors who furnish all required bid documents will be considered. Submit all required bid documents to OCFS at the following address:

NYS Office of Children and Family Services  
Attn: RFP Unit, Room 202  
52 Washington Street  
Rensselaer, NY 12144

#### **E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.**

The State of New York will not be held liable for any cost incurred by the offeror for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a contract. Bids must be received in the above office on or before the date/time set forth in Section 1.3, Key Events. **Offerors assume all risks for timely, properly submitted deliveries.**

#### **LATE BIDS MAY BE REJECTED.**

Any bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the commissioner's sole discretion where:

- (i) No timely bids meeting the requirements of the solicitation are received.
- (ii) The offeror has demonstrated to the satisfaction of the commissioner that the Late Bid was caused solely by factors outside the control of the offeror.

However, in no event will the commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

#### **FIRM OFFER**

Bids must remain an effective offer, firm and irrevocable, for at least 180 calendar days from the due date, unless the time for awarding the contract is extended by mutual consent of OCFS and the offeror. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 calendar-day period until either tentative award of the contract(s), withdrawal of the procurement, or withdrawal of the bid in writing by the offeror.

#### **OWNERSHIP OF IFB AND BIDS**

This IFB remains the property of the New York State at all times, and all responses to this IFB, once delivered, become the property of New York State.

### 2.2 Packaging of IFB Response

Proposals must include the following attached forms:

- [OCFS-0910](#), *Request for Bid*
- [OCFS-4822](#), *Procurement Lobbying Act – Offeror Certification Form*

During contract negotiations, awarded offerors will be required to complete the following additional forms:

- ST-220-TD Contractor Certification (NYS Dept. of Taxation and Finance form)
- ST-220-CA Contractor Certification to Covered Agency (NYS Dept. of Taxation and Finance form)
- Proof of Workers' Compensation and Disability Benefits coverage or Certificate of Attestation of Exemption from NYS Workers' Compensation Board and/or Disability Benefits coverage (See section 4.17.)
- Proof of insurance meeting or exceeding the requirements stated in Item 3 of the sample contract

The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- 1) Offeror's complete name and address
- 2) Solicitation Number (for instance, IFB 2016-02)
- 3) Bid due date and time

### 3. Specifications

#### 3.1 Product/Service Specifications

New York State is offering an opportunity to lease land currently held by the New York State Office of Children and Family Services (OCFS). This land is part of parcels under the control of the Industry Residential Center located at 375 Rush-Scottsville Road, in Rush, NY. The expected term of the lease will be for five growing seasons during 2017-2021, and will comprise six lots, for a total of 160 acres. See Section 1.1 and Attachment 1 for more details.

#### 3.2 Delivery

Not applicable

#### 3.3 Security Procedures

Please note that the location may have security policies which must be followed. The contractor will work with OCFS to obtain necessary clearances. The contractor may be required to provide information such as, but not limited to, the company name, the employee's name (as it appears on ID), valid driver license number, vehicle make, model and license plate, etc. to gain access to the location.

### 4. Administrative Information

#### 4.1 Method of Award

The award will be made to the vendor offering the highest cost per acre that passes a mandatory vendor responsibility review.

#### 4.2 Price

Bid price will be firm for the duration of the contract.

#### 4.3 Term of Contract

It is the intention of the state to award a single contract to the awarded offeror. The contract will commence on or about the contract date as stated in Section 1.3 and will continue for a period of 5 growing seasons, subject to approval by the NYS Office of the Attorney General and the NYS Office of the State Comptroller. A copy of the terms and conditions of the contract are attached to this IFB.

#### 4.4 Method of Payment

Payment for the first year is due upon lease approval or March 1, whichever is later, and on March 1 of each subsequent year of this lease.

#### 4.5 Dispute Resolution

It is the policy of the OCFS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations, contract awards, and contract administration. OCFS encourages vendors to seek resolution of disputes informally, through consultation with staff, prior to commencing a formal dispute process. All such matters will be accorded impartial and timely consideration. See Section 4.27 for additional information.

#### 4.6 Contractor Responsibilities

The contractor shall be solely responsible for all compliance with terms and conditions in this IFB or any resulting contract. The contractor may not engage a subcontractor or dealer, distributor, reseller, or any other party to carry out any part of this contract without the prior written consent of OCFS. The contractor accepts full responsibility for the actions of any employee who carries out any of the provisions of any contract resulting from this IFB.

The contractor must also comply with the following:

1. Contractor must cooperate with any other contractor that the facility may hire
2. Contractor is prohibited from doing any tree removal or logging
3. Contractor must use their own equipment

#### 4.7 Inspection of Books

It is expressly understood and agreed that OCFS and the New York State comptroller shall have the right to inspect and audit the contractor's records covered under this agreement, in accordance with his statutory responsibility to examine the books and accounts of every agency. The New York State comptroller requires, and the contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any PO resulting from this IFB for a full three-year period or contract resulting from this IFB for a full six-year period.

#### 4.8 OCFS Reserved Rights

OCFS reserves the right to:

1. Place a monetary cap on the funding amount made in each contract award.
2. Change any of the schedule dates stated in this IFB.
3. Reject any or all proposals received in response to the IFB.
4. Withdraw the IFB at any time at the agency's sole discretion.
5. Make an award under the IFB in whole or in part.
6. Disqualify any offeror whose conduct and/or proposal fails to conform to the requirements of the IFB.
7. Reject any proposal if, in the sole discretion of OCFS, it determines the offeror is not a responsible vendor.
8. Seek clarification and revisions of proposals. Request that offerors present supplemental information clarifying their proposals either in writing or by formal presentation. New information is not permitted.
9. Require that offerors demonstrate, to the satisfaction of OCFS, any feature(s) present as a part of their proposal that may include an oral presentation of their proposal and may be considered in the evaluation of the proposal.
10. Prior to opening of bids, amend any part of this IFB with notification to all offerors, and direct all offerors to prepare modifications addressing IFB amendments, if necessary. Expenses incurred in the preparation of any proposals or modifications submitted in response to this IFB are the sole responsibility of the offeror or other party and will not be incurred by OCFS.
11. Make funding decisions that maximize compliance with and address the outcomes identified in this IFB.
12. Fund only one portion, or selected activities, of the selected offeror's proposal and/or adopt all or part of the selected offeror's proposal based on federal and State requirements.
13. Eliminate any IFB requirements that cannot be met by all prospective offerors upon notice to all parties that submitted proposals.
14. Waive procedural technicalities or modify minor irregularities in proposals received after notification to the offeror involved.

15. Correct any arithmetic errors in any proposal or make typographical corrections to proposals with the concurrence of the offeror.
16. Negotiate with the selected offeror(s) prior to contract award.
17. Conduct contract negotiations or award a contract to the next highest offeror if contract negotiations with the selected offeror(s) cannot be accomplished within an acceptable time frame. No offeror will have any rights against OCFS arising from such actions.
18. Award contracts to more than one offeror or to other than the lowest offeror.
19. Require that all proposals be held valid for a minimum of 180 days from the closing date for receipt of proposals, unless otherwise expressly provided for in writing.
20. Fund any or all of the proposals received in response to this IFB. However, issuance of this IFB does not commit OCFS to fund any proposals. OCFS can reject any proposals submitted and reserves the right to withdraw or postpone this IFB without notice and without liability to any offeror or other party for expenses incurred in the preparation of any proposals submitted in response to this IFB and may exercise these rights at any time.
21. Use the proposal submitted in response to this IFB as part of an approved contract. At the time of contract development, awardees may be requested to provide additional budget and program information for the final contract.
22. Utilize any and all ideas submitted in the proposals received.
23. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements of the solicitation.
24. Make additional awards based on the remaining proposals submitted in response to this IFB and/or provide additional funding to awardees if such funds become available.
25. Make inquiries of third parties, including but not limited to offerors 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 IFB, the applicant gives its consent to any inquiry made by OCFS.
26. Require contractors to participate in a formal evaluation of the program to be developed by OCFS. Contractors may be required to collect data for these purposes. The evaluation design will maintain confidentiality of participants and recognize practical constraints of collecting this kind of information.
27. Consider statewide distribution and regional distribution within New York City, including borough distribution methodology, in evaluating proposals.
28. Rescind awards for failure of awardees to meet required timeframes for contract development and/or signature

#### 4.9 Incurred Costs

The State of New York shall not be liable for any costs incurred by an offeror in the preparation and production of a proposal or for the contractor's participation in any pre-contract award activity. The State of New York shall not be liable for any cost incurred by the contractor in preparation for or prior to the approval of an executed contract by the NYS Office of the State Comptroller.

#### 4.10 Security, Nondisclosure and Confidentiality Agreement

The content of each offeror'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 Office of the Attorney General and the NYS 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 offeror'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 offerors, 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 offeror. 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 offeror.

Offerors/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 an offeror’s proposal unless DOB grants a petition for records access in accordance with the Freedom of Information Law.

Offerors 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 offeror, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Offerors 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 offeror.

#### 4.11 Contractor Responsibility

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

#### 4.12 Multi-Agency Use

The contract entered into pursuant to an award resulting from this IFB 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.

#### 4.13 Contacts with Employees

1. From the issuance of this Invitation for Bid (IFB), or upon the posting of it on a governmental entity’s website, in a newspaper, or in the procurement opportunities newsletter, whichever is earlier, until final contract awards have been made and approved, all contact with OCFS personnel, except as otherwise specified herein, concerning this IFB must be made through the contact provided for on the cover page of this IFB with the bid name in the subject line.
2. All questions and requests for clarification of this IFB should cite the particular IFB section and paragraph number and must be submitted via email no later than the deadline for submission of written questions specified below. Questions received after the deadline will not be answered.
3. Prospective offerors shall not approach state personnel with offers of employment during the procurement period or risk being disqualified from the procurement. Any offeror who is aware of a state employee who is considering employment with the offeror must advise the state forthwith.

#### 4.14 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 NYS Office of the State Comptroller 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 – Offeror Certification Form](#) in the ADMINISTRATIVE INFORMATION, Content of Proposals Section of this IFB.

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

#### 4.15 Public Officers Law

All offerors 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 offeror 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](http://www.tenant.net/Other_Laws/Pubofc/puboftoc.html).

#### 4.16 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 offeror 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 offeror 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 solicitations from any state agency would only need to be updated in the system.

To access or enroll in the VendRep system, or update your existing online questionnaire click here: [Online Questionnaire](#). Questionnaires in the VendRep system that have been completed in the last six months in response to contracts or bid announcements do not need to be updated. If the vendor is using the hard copy 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 *New York State Vendor Responsibility Questionnaire Not-for-Profit Business Entity* form must be used by not-for-profit vendors, and the *New York State 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](mailto: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.

#### 4.17 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 IFB, 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*.

## **4.18 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 OSC, or other approving agency, from approving a contract awarded to an offeror 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, form [ST-220-TD](#), *Contractor Certification* and [ST-220-CA](#), *Contractor Certification to Covered Agency*. 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 forms, ST-220-TD and ST-220-CA, and additional information regarding NYS Sales and Compensating Use Taxes can be found at the following websites:

Publication 223

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

ST-220-CA

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

## 4.19 OCFS Procedure for Handling Debriefing Requests, Formal Protests and Appeals

### **Section 1: Applicability**

The intent and purpose of these procedures is to define the debriefing process, as well as the protest and appeal procedures. This includes the steps that must be taken when an interested party challenges a contract award 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 offeror, indicating that OCFS has accepted the offeror’s bid or offer.
3. **“Debriefing”** shall mean the practice whereby, upon request of a offeror, OCFS advises such offeror of the reasons why its bid was not selected for an award. It is viewed as a learning process for the offeror to be better prepared to participate in future procurements
4. **“Formal Protest”** shall mean a written challenge to a contract award by OCFS.
5. **“Procurement”** shall mean any method used to solicit or establish a contract (i.e., invitation for bid, request for proposal, single/sole source, etc.)
6. **“Protesting party”** is the party who is filing a protest to the bid, contract award or other aspect of procurement.
7. **“Formal protest determination”** shall mean the determination of a formal protest by the Associate Commissioner for Financial Management of OCFS or his or her designee.
8. **“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: Debriefing Request**

In accordance with section 163 of the State Finance Law, OCFS must, upon request, provide a debriefing to any unsuccessful offeror that responded to the IFB, regarding the reasons that the proposal or bid submitted by the unsuccessful offeror was not selected for an award.

1. OCFS will provide notice in writing or electronically to all unsuccessful offerors that the offeror will not receive an award under the IFB. An unsuccessful offeror wanting a debriefing must request a debriefing in writing, within fifteen calendar days of receipt of the notice from OCFS that the offeror's proposal did not result in an award.
2. OCFS, upon receipt of a timely written request from the unsuccessful offeror, will schedule the debriefing to occur within a reasonable period of time following the receipt of such request. Debriefings will be conducted in-person, unless OCFS and the offeror mutually agree to utilize other means, including, but not limited to, telephone, video-conferencing or other types of electronic communications.
3. Such debriefing will include: (A) the reasons that the proposal, bid or offer submitted by the unsuccessful offeror was not selected for an award; (B) the qualitative and quantitative analysis employed by OCFS in assessing the relative merits of the proposals, bids or offers; (C) the application of the selection criteria to the unsuccessful offeror's proposal; and (D) when the debriefing is held after the final award, the reasons for the selection of the winning proposal, bid or offer. The

debriefing will also provide, to the extent practicable, general advice and guidance to the unsuccessful offeror concerning potential ways that their future proposals, bids or offers could be more responsive.

#### **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 offeror who received the contract award has been approved by the NYS 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 offerors, (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 NYS Office of the State Comptroller, 110 State St, Albany NY, 12210

5. Sample Contract {*See attached*}