



State of New York
David Paterson Governor
Competitive Procurement for:
Vendor-Managed Civil Fingerprint Capture System
DCJS NY RFP CJS2008-09

CONTRACTING ENTITY	DCJS SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS
<p>State of New York acting by and through the Division of Criminal Justice Services (DCJS) Denise E. O'Donnell, Commissioner, On behalf of: Offices, departments, and agencies of the State of New York, certain political subdivisions and authorized users of the DCJS Statewide Vendor-Managed Civil Fingerprint Capture System</p>	<p>Ms. Kimberly Szady Director, Financial Administration New York State Division of Criminal Justice Services 4 Tower Place, 10th Floor Albany, NY 12203-3764</p> <p>All questions regarding this RFP must be submitted via electronic mail to the designated contact for this RFP Procurement.Officer@dcjs.state.ny.us Neither phone nor fax inquires will be accepted</p>

Calendar of Events	
Event	Date
1. RFP release date	June 30, 2008, 4 p.m.
2. Deadline for filing Mandatory Notice of Intent to Bid:	July 7, 2008, 4 p.m.
3. Deadline for Submission of Offerer's Questions	July 7, 2008, 4 p.m.
4. Issuance of DCJS Response to Submitted Questions	July 11, 2008
5. BID PROPOSALS DUE DATE	July 21, 2008, 4 p.m.
6. Anticipated Notification of Award	August 11, 2008
7. Debriefing Request Deadline	August 25, 2008
8. Bid Protest Deadline	See Attachment 9.4
9. Timeframe for Contract Approval	Estimate 60 days from Notification of Award (October 10, 2008)
10. Timeframe for Product Rollout	4 months from Contract Approval (February 10, 2009)

Mandatory Requirements: Filing of a *Notice of Intent to Bid* is a mandatory prerequisite to further participation in this Procurement. DCJS reserves the right its sole discretion to alter the information and schedule shown above. In such an event, DCJS will email notice to offerers who have filed a timely Notice of Intent to Bid and publish the notification on its website at: <http://www.criminaljustice.state.ny.us/livescan>

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

NOTICE OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING AND CONTACTS

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

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

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

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

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

Vendors must provide DCJS with a required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. The vendor must agree to the certification and complete the affirmation of such agreement included at Attachment 10.5 Form 1: Offerer’s Affirmation of Understanding of an

Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b) and Form 3: Offerer's Certification of Compliance with State Finance Law §139-k(5), which are mandatory submissions.

Sole Designated Procurement and Solicitation Contact

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

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

Prior Non-responsibility Determination Affirmation

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

The Offerer must agree to the certification and complete the affirmation of such agreement included at Attachment 10.5 Form 2: Offerer’s Disclosure of Prior Non Responsibility Determinations, which is a mandatory submission.

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

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

Public Officers Law Sections 73 and 74

The New York State Commission on Public Integrity, established by the Public Employee Ethics Reform Act of 2007, is charged with administering and enforcing the State's ethics and lobbying laws as well as the State's anti-nepotism law and laws pertaining to certain political activities and improper influence. Building upon the strong foundations established by the New York Temporary State Commission on Lobbying and the New York State Ethics Commission, the Act transferred all powers, duties, functions and staff of both former Commissions to the Commission on Public Integrity. The mission of the New York State Commission on Public Integrity is to insure compliance with the ethical standards that public officials and lobbyists must observe in order to ensure public trust and confidence in government. More information is available at the Commission's website at <http://www.nyintegrity.org>

The Offerer will ensure that all of its personnel involved in the preparation and submission of the Offerer's proposal(s) have read the Public Officers Code of Ethics, Sections 73 and 74 of the Public Officers Law, and that the Offerer has advised its personnel of their obligation not to importune any violations of those sections. For the convenience of the reader certain sections in effect as of the date of release of this RFP are reproduced below. Readers are advised to check official sources.

Public Officers Law § 73(5)

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

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

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

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

Public Officers Law §74:

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

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

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

3. Standards.

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

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

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

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

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

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

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

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

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

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

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1.0 Introduction

1.1 Overview of DCJS' Statutory Mission and Role in Criminal Justice

The New York State Division of Criminal Justice Services (DCJS) is an executive agency of the State of New York and a multi-function New York State criminal justice agency which serves, by statute, as New York's central repository for criminal history record information (CHRI). DCJS is among the nation's leaders in developing criminal justice technologies, communication and information systems. The core business function of DCJS is receiving, processing, and identifying criminal, civil and crime scene fingerprint submissions against resident base files of more than 40 million fingerprint images. The outcome of this important public safety operation is the positive identification of subject individuals, and the timely dissemination of their complete and accurate CHRI to approximately 1,200 authorized agencies in New York State. DCJS' Office of Criminal Justice Operations (OCJO) provides full Tenprint and crime scene fingerprint processing services on a 24/7/365 basis. Professional Fingerprint Examiners integrate traditional and time honored identification skills with Statewide Automated Fingerprint Identification System (SAFIS) technology to support both the State's criminal justice system and the suitability determination process in relation to applications for certain types of employment and licenses.

1.2 Purpose of this Request for Proposal (RFP)

The purpose of this proposal is to conduct a procurement to acquire the services of a vendor-owned and managed civil fingerprint capture system. This new vendor provided service is intended to eventually eliminate the need for agency owned and operated fingerprint capture systems currently in place for a number of DCJS' largest civil contributors. The goal of the proposal is to procure a solution to:

- simplify the process for citizens needing to be fingerprinted for background checks,
- reduce the overall cost and improve convenience to citizens for civil fingerprint background checks,
- reduce state-wide costs by eliminating redundancy in livescan systems across multiple State and local agencies,
- improve the quality and security of civil fingerprints, photographs and data submitted to DCJS and participating agencies.

This procurement will provide applicants with a single, convenient, and affordable fingerprinting solution to benefit citizens applying for a position or license which requires a fingerprint based background check. It also permits DCJS to receive high quality fingerprint images, photographs and data electronically, permitting a streamlined operation which eliminates data entry and the

scanning agencies of hardcopy fingerprint cards. From that perspective, it also permits DCJS to greatly reduce the turnaround times of civil fingerprint transaction received as hardcopy cards.

1.3 Background

During calendar year 2007, DCJS processed approximately 730,000 criminal fingerprint transactions and 550,000 civil transactions. Criminal fingerprint transactions received electronically were processed in an average of 31 minutes, and hard copy fingerprint cards in approximately fourteen hours. Civil fingerprint transactions were processed, on average, in 1.4 days with 72 percent processed in under 24 hours. The repository grows at a rate of approximately 500,000 new individuals per year.

Year	Number of Civil Fingerprints Received	% Increase from Previous Year
2005	385,395	11.17%
2006	445,945	15.71%
2007	551,344	23.63%

DCJS receives and processes thousands of civil fingerprint cards each month for individuals seeking a background check for employment or license purposes, and the volume of civil fingerprint input continues to rise. In October of 2007, the volume of civil fingerprint input actually exceeded the volume of criminal input for the first time. The majority of civil fingerprints are submitted electronically (via Store and Forward) by several large NYS and NYC agencies. The table below contains statistics from four of the agencies processing civil prints and is included for the purpose of illustrating growth in civil fingerprints. The growth in civil fingerprint requirements is expected to continue. DCJS expects that future requirements will expand beyond fingerprints to include palm prints and other methods of biometric identification.

Agency Name	2006 Print Volume	% of 2006 Total Civil Input	2007 Volume	% of 2007 Total Civil Input
NYS Office of Children and Family Services (OCFS)	52,291	11.73%	60,649	11.77%
NYS Department of Health (DOH)	15,843	3.55%	84,082	15.25%
NYS Department of Motor Vehicles (DMV)	12,087	2.71%	12,285	2.33%
NYS Dept. of State (DOS)	30,905	6.93%	31,717	5.75%
Totals:	111,126	24.92%	188,733	34.23%

Most of the agencies that submit fingerprints to DCJS have purchased technology, including livescan and cardscan equipment and related consulting services, to automate the process of capturing and submitting prints to DCJS. In some cases, these agencies have also hired or redeployed staff to administer the fingerprinting process. Advances in technology have enabled

some degree of streamlining the fingerprint submission process, both for the contributing agencies and for DCJS. However, the cost for each of these contributing agencies to acquire and support this technology and related functions is substantial and will increase as the volume of civil fingerprinting increases, especially when agencies procure such technology separately and may not be aware of technical advances in time to permit efficient implementation planning.

Separate agency maintained systems are not only costly, but the fact that each agency has already pursued or is planning to pursue its own solution has caused significant and duplicative expenditure of both staff effort and money. DCJS is also aware that several agencies have expressed a need for an additional investment to address their expanding business needs and to meet current and anticipated legislative requirements. The establishment of a statewide vendor managed civil fingerprint capture system would eliminate further capital expenditures, enhance the level of security and internal control, and provide a vehicle for addressing the ever expanding need for civil fingerprint capture to support criminal history background checks.

2.0 Procurement Timeline

The following is the proposed Timetable of Key Events for this RFP:

Calendar of Events	
Event	Date
1. RFP Release Date	June 30, 2008
2. Deadline for filing Mandatory Notice of Intent to Bid:	July 7, 2008, 4 p.m.
3. Deadline for Submission of Offerer's Questions	July 7, 2008, 4 p.m.
4. Issuance of DCJS Response to Submitted Questions	July 11, 2008
5. BID PROPOSALS DUE DATE	July 21, 2008, 4 p.m.
6. Anticipated Notification of Award	August 11, 2008
7. Debriefing Request Deadline	August 25, 2008
8. Bid Protest Deadline	See Attachment 9.4
9. Timeframe for Contract Approval	Estimate 60 days from Notification of Award (October 10, 2008)
10. Timeframe for Product Rollout (all sites, systems and infrastructure ready for business)	4 months from Contract Approval (February 10, 2009)

2.1 Deadline for Submission of Initial and Subsequent Questions

All questions relating to the content of this RFP shall be directed, in writing, to the **DCJS Sole Designated Contact for Inquiries and Submissions** identified on the face of this RFP. Only those questions received prior to the deadline shown above will be accepted. Each question shall cite the particular RFP section and paragraph number to which it refers. Offerers are advised that submissions to DCJS including but not limited to written questions become part of the procurement record.

2.2 DCJS Official Responses to Questions

Written copies of Bidders' questions and DCJS' responses will be sent to all Bidders who have filed the Mandatory Notice of Intent to Bid, on or before the Official Written Response to Questions Release Dates. DCJS will not respond to questions regarding proprietary processes of the contractor(s) currently providing the subject services, if any. Potential Bidders that do not file the Mandatory Notice of Intent to Bid will not receive copies of the Bidders' questions and DCJS' responses.

3.0 Project Scope Overview

DCJS seeks to procure turnkey services of a vendor committed to installing, maintaining and operating vendor managed livescan fingerprint systems in strategic locations throughout the entire State of New York for the purpose of capturing fingerprints, photographs, and data from citizens who are required to statutorily have a fingerprint background check performed in connection with employment or licensing activity. DCJS seeks to establish, through the use of web-based advanced appointment scheduling technology and a customer contact center, a statewide solution that addresses cultural diversity, geographical locations and population distribution as is necessary to provide civil justice fingerprint capture services in rural and suburban areas as well as major metropolitan areas. DCJS has determined that through the use of customer service and management techniques including advance scheduling and a customer contact center, its citizen constituents must be able to obtain this service within:

- 7 calendar days
- 20 miles driving distance
- 30 minutes one way travel time

In rural areas, accomplishing this performance requirement may require the use of mobile units scheduled to appear at specified locations at prearranged dates and times – including this option will be up to the bidder. The successful bidder will be required to implement:

- a call center, including a toll free inbound “800” number for telephone contact that will be available from 9:00 AM to 9:00 PM ET Monday through Saturday; and,
- create a secure web site available 24/7/365 which will enable applicants to schedule a time and location to be fingerprinted, and input basic information in advance to reduce the amount of time the applicant spends on site.
- minimally, DCJS requires 2 fixed locations in counties exceeding a population of 750,000

The contractor must comply with all security requirements then in effect for fingerprint activity as determined by DCJS at its sole discretion, and personnel employed or subcontracted by the prime contractor and subcontractor must be fingerprinted and must be acceptable to DCJS following a DCJS criminal history and background check.

3.1 New York State Agency Participation

The initial scope of the vendor-managed system is to provide new installations as well as an opportunity to replace or use the majority of existing fingerprint capture systems currently in place or contemplated to be put in place by four of our largest NYS agency contributors – Department of Health (DOH), Department of Motor Vehicles (DMV), Department of State

(DOS), and the Office of Children and Family Services (OCFS). Each of these agencies has participated in discussions regarding this topic and is supportive of this initiative. The long-term goal is to incorporate additional civil contributors into this new system until the majority of civil fingerprints in the state are collected via this vendor-managed system.

3.2 Process Outline

Although the final design of the system will be determined in conjunction with the selected vendor, a preliminary outline of the process elements is as follows:

- Using established procedures, the vendor will view applicant identification, collect or verify applicant data and retrieve or establish a unique identifier for the applicant transaction.
- Applicants referred by an agency or potential employer may be required to obtain and present an authorization form issued by the fingerprint requestor.
- The vendor will collect a fee from the applicant, participating agency or potential employer.
- Some agencies will make previously collected data available to the vendor to reduce data entry errors. In this case, agencies may supply an applicant with a unique identifying number to be used by the vendor to retrieve agency data.
- The vendor system will transmit the fingerprints, photographs, and biographic data to DCJS using existing DCJS “Store and Forward” technology.
- DCJS will transmit a “data received” message to the vendor system.
- The vendor system will forward this status message to the participating agency if required.
- DCJS will process the fingerprints if nothing causing a rejection is encountered.
- DCJS will send the fingerprint response to the participating agency and a message to the vendor system indicating completion by DCJS. The vendor system will forward this status message to the participating agency.
- DCJS will forward data to the FBI if appropriate. An FBI “data received” confirmation is *not* sent to the vendor system.
- If DCJS forwarded data to the FBI, the FBI will respond back to DCJS. DCJS will forward the FBI response to the participating agency and a message to the vendor system indicating completion by the FBI. The vendor system will forward this status message to the participating agency.

3.3 Functional Scope - Business

3.3.1 Applicant Scheduling

All participating agencies requiring civil fingerprinting services will instruct the applicant or licensee to contact the contractor to arrange a time and place to be fingerprinted. The objective is for the contractor to provide live-scan fingerprinting services to all applicants and participating agencies in a timely, efficient, and accurate manner and provide satisfactory service to applicants.

The contractor shall establish a toll-free number, web based scheduling functions and a call center to schedule appointments for all fingerprinting sites maintained by the contractor. The call center shall be available between the hours of 9:00 AM to 9:00 PM ET, Monday through Saturday.

The contractor shall provide English and Spanish speaking operator availability during all call center operating hours. Hearing impaired services for scheduling shall also be provided by the contractor at a separate phone number during the same hours as the call center.

Applicants shall not wait more than five (5) minutes before being connected with a live operator to accept the applicant's information. During this waiting period, the contractor shall notify the applicant of the website scheduling option described below. In addition, there shall be recurring statements notifying the caller of the anticipated wait time until an operator is available.

The contractor shall create a secure website which must comply with NYS Office for Technology Policy P04-002 "Accessibility of New York State Web-based Intranet and Internet Information and Applications", and NYS Mandatory Technology Standard S04-001, as determined by quality assurance testing. The results of such testing must be approved by DCJS before the web application will be considered a qualified deliverable under this Procurement.

<http://www.oft.state.ny.us/Policy/p04-002/index.htm>
<http://www.oft.state.ny.us/Policy/s04-001/index.htm>

The contractor shall be available to fingerprint applicants within seven (7) calendar days of the applicant's request to schedule an appointment. A web-based scheduling function for all fingerprinting sites maintained by the contractor shall be established. Applicants shall also have the option to schedule their appointments for future dates, beyond the seven business day timeframe. Web-based scheduling appointments shall be available, at a minimum, up to 60 days following the date of inquiry. The web-based scheduling function shall be available 24 hours per day, 7 days per week, 365 days per year. Applicants shall have the ability to book, cancel, and change appointments via the web. The contractor-provided web scheduling function must include controls to ensure that applicants can change only their own appointment and personal information.

Although the majority of applicants will make appointments, the contractor must accept occasional "walk-in" applicants who have a legitimate reason for bypassing the appointment process, such as a same-day fingerprinting requirement from an employer.

Applicants referred by a participating agency or potential employer may be required to obtain and present an authorization form issued by the fingerprint requestor.

3.3.1.5 Penalties for failure to meet time requirements for Applicant Scheduling and Availability

DCJS reserves the right to audit compliance with DCJS requirements by the Prime Contractor including requirement for failure to meet response time, scheduling, up-time and waiting time and reserves the right to investigate complaints received from users of the system. In the event that DCJS determines that Offerer as Prime Contractor fails to meet requirements concerning time set forth herein for maximum wait time, system or website uptime and availability and time in which to schedule applicants DCJS shall notify Prime Contractor and Prime Contractor shall implement action necessary to bring performance into compliance with the requirements of this RFP. For requirements which establish standards for accuracy and security, the failure of the Prime Contractor will in addition adversely impact the State's public safety and DCJS' public safety mission.

In the event that Prime Contractor fails to correct an occurrence of excessive waiting time or downtime, notwithstanding whether DCJS has notified or Prime Contractor has discovered such an occurrence as a result of its own monitoring or complaints it has received within thirty minutes of receipt of notification by DCJS or its own discovery, the following penalties shall be applicable:

For the first instance within any calendar month a penalty in the amount of one thousand dollars (\$1,000) shall be paid by the Prime Contractor to DCJS.

For the second and subsequent instances within any calendar month a penalty in the amount of five thousand dollars (\$5,000) shall be paid by the Prime Contractor to DCJS.

DCJS at its sole option may recover any applicable penalty through set off of any amount then due and owing to Prime Contractor by the State of New York for any purpose, by acceptance of payment from the Prime Contractor or by initiating a draft on the Standby Letter of Credit which the Prime Contractor is required to maintain under this RFP. Amounts due hereunder shall be in addition to any other amount due DCJS.

3.3.2 Fingerprinting Sites

The contractor must develop a comprehensive plan to provide statewide coverage. Planning should take into account the geographic requirements in Section 3.0 – Project Scope Overview. Fingerprinting sites shall be established in consideration of cultural diversity and the population distribution of rural, suburban and major metropolitan areas, and maintain a presence sufficient to meet or exceed all requirements of this RFP. Fingerprinting sites shall also be situated conveniently to public transportation routes where such exist.

Permanent site closures must not affect an applicant's ability to obtain service in a timely manner and within the geographic requirements defined in Section 3.0 – Project Scope Overview. If a site becomes temporarily or permanently unavailable for any reason, registered applicants must be notified within 24 hours of the closing and offered an alternative appointment scheduled no later than 7 calendar days from their original appointment. Registered applicants must be contacted by phone and/or email, depending on available contact information.

Fingerprint site hours of operation shall be at a minimum Monday through Friday, 9:00 AM to 5:00 PM ET. Each site must remain open one weekday evening until 9:00 PM. In addition, each site shall be open two (2) Saturdays per month from 8:00 AM to 12:00 PM ET. Changes to the hours of operation shall be based on applicant demand and require approval by the State Contract Manager.

Nothing in the RFP precludes a bidder from entering into any servicing agreements with local sheriffs' offices or similar entities.

The contractor shall:

- Adjust hours as necessary to meet the scheduling requirements in RFP Section 3.0 – Project Scope Overview.
- Establish sites with handicap access that are Americans with Disabilities Act (ADA) compliant and comply with all applicable State and local regulations.
- Ensure that all live-scan equipment is properly maintained and receives routine preventative maintenance in order to assure availability of services during normal working hours.
- Procure and maintain all equipment necessary for a successful operation.
- Provide, at each location, sufficient directional signs for applicants to easily locate the fingerprinting room or area without the need to ask for directions. In locations with multilingual populations, signage must be appropriately multilingual.
- Provide trained and background-checked personnel to take fingerprints.
- Have sufficient site staffing to remain operational in the event of absent personnel (illness, emergency, etc.).
- In areas where fixed locations are not feasible due to low population density, provide alternative solutions.

3.3.3 Applicant Identification

The contractor shall ensure that the applicant presents proper identification documents at the time of fingerprinting. Two forms of identification are required, with at least one providing a photograph of the applicant. Applicant information obtained from the identification documents must include at a minimum:

- The applicant's name
- The applicant's current address (home or employment)
- The applicant's date of birth
- A photograph of the applicant.
- The vendor system shall capture information indicating the obtained forms of identification.

Acceptable photo documents include:

- U.S. Passport (unexpired or expired)
- Permanent Resident Card or Alien Registration Receipt Card
- Unexpired foreign passport
- Unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A or B)
- Drivers license or ID card issued by a state or outlying possession of the United States provided it contains a photograph and information such as name, date of birth, gender, height, eye color and address
- ID card issued by federal, state or local government provided it contains a photograph and information such as name, date of birth, gender, height, eye color and address
- School ID card with a photograph

Acceptable supplementary identification documents include:

- Voter registration card
- U.S. Military card or draft record
- Military dependent's ID card
- Coast Guard Merchant Mariner Card
- Native American tribal document
- Driver's license issued by a Canadian government authority
- U.S. Social Security card
- Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States, bearing an official seal
- Certification of Birth Abroad issued by the U.S. Department of State
- U.S. Citizen ID Card (Form I-797)

For persons under the age of 18 who are unable to present a document listed above:

- School record or report card
- Clinic, doctor or hospital record

In deference to cultural prohibitions against photographs, DCJS may in the future permit acceptance at the time of fingerprinting of supplementary identification documents, as described previously in section 3.3.3, in addition to an agency referral document which is defined as an original document from a participating agency that reflects the official letterhead of the agency as well as the signature of the issuing official. It shall also contain, at a minimum, the name, date of birth, and gender of the subject individual to be fingerprinted and the purpose of the fingerprinting.

DCJS reserves the right to approve acceptable applicant identification. The site operator shall screen all applicants, asking appropriate questions at the time of fingerprinting to ensure accurate biographic and licensing information is captured.

An individual shall be denied service based on non-compliance with the established identification criteria. Identification criteria are subject to revision by the State.

3.3.4 Vendor-Managed Fee Structure

Vendor-managed systems for capturing civil fingerprints have become commonplace across the country in recent years. The list of states that have adopted this approach includes New Jersey, California, Illinois, Tennessee, Michigan, Pennsylvania, Florida, Wisconsin, Texas and Kansas, and several other states are moving toward this model. In addition, at least 35 states use the vendor-managed model to process drivers' license applications related to federal HAZMAT regulations as well as certain other types of employment applications.

Funding of this approach – termed a “vendor owned and managed” system – relies on a fee charged to the applicant, potential applicant employer or contributing agency to offset the vendor's costs, including software, equipment, and staffing. (This fee would be in addition to the current DCJS fee of \$75 and the current FBI fee of \$19.25 for electronic submission.) The amount of the fee to be charged by the vendor will be determined as part of the procurement process. DCJS expects the vendor to provide a sliding scale for fees based on statewide annual volume of multiple participating agencies.

An automated vendor-managed system will also reduce the FBI fee for those fingerprints that are currently submitted manually (ink and rolled on hardcopy cards) because the FBI charges a substantially lower fee for fingerprints submitted electronically. The FBI has a two-tiered fee schedule – currently \$19.25 for fingerprints submitted to them electronically, and \$30.25 for fingerprints submitted to them manually. Two of the four agencies in question, DMV and DOS, currently submit fingerprints manually, thereby charging the full \$30.25 FBI fee. If a vendor-managed, full livescan system were implemented, the FBI fee for those individuals would be reduced to \$19.25. The table below summarizes the different fees in the current system.

Types of Fees	Current System Fees	
	Manual Input to FBI	Electronic Input to FBI
DCJS Fee	\$75	\$75
FBI Fee	\$30.25*	\$19.25

*Note that the FBI fee for manual input is scheduled to rise to \$34.25 in the future.

Offerers must take notice that participation in this procurement requires that the vendor install, operate and maintain at its expense and at no cost to the State of New York (except for specific participating agency data collection customizations discussed in RFP Section 3.4.2.1 – Customizations) and consistent with the requirements of this RFP and any contract which will be negotiated as a result of this procurement, sufficient fingerprint systems installations and any proposed mobile solutions to meet the requirements of this RFP with respect to driving distance, travel time and level of service provided herein. Offerers must take notice that data including numbers of prints processed is provided herein to enable the Offerer to determine how to satisfy the requirements of this RFP but **in no event is this data a guarantee of either quantity or agency participation** with respect to civil fingerprint collection activities in the future.

Offerers are also required to convert acceptable “ink and roll” fingerprint cards into an electronic medium and process them through the system, as described in RFP Section 3.4.4 – Manual Fingerprint Conversion.

3.3.5 Fee Collection

Unless contractor has entered into an alternate agreement with a participating agency or potential employer, all fees shall be collected by the applicant at the time of fingerprinting. Fees will be collected from the applicant, the participating agency or the potential applicant employer and the Contractor’s proposal shall include a menu of options to accommodate fee collection methods.

The contractor shall accept all reasonable forms of payment, including, but not limited to:

- 1) Major Credit Cards such as MasterCard, Visa, Discover and American Express
- 2) Debit cards
- 3) Money orders
- 4) Certified or bank checks
- 5) Business checks
- 6) Cash
- 7) Escrow Accounts
- 8) ACH debits
- 9) Domestic Wire Transfer

The contractor shall give the applicant two (2) copies of a receipt indicating the applicant’s name and address, fingerprint site, date and time, Unique Identifier, fee and source of payment, referring party, and reason for fingerprinting.

As part of the post-award process, the contractor shall provide DCJS with its documented chargeback and refund policies for New York State review and approval.

The contractor shall collect the established per applicant fees for providing the electronic live-scan fingerprinting service as follows:

- a) The Contractor shall collect the appropriate DCJS and, if applicable, FBI fee. Federal and State fees are subject to change during the course of the contract.
- b) The Contractor shall collect an additional fee from each applicant for its services in accordance with the proposed fee schedule. The State shall be under no obligation to pay the contractor its portion of any fee which is not collected by the contractor or reimburse the contractor in the event that a fee is charged back. Costs associated with any Credit or Debit Card processing gateway or service are to be paid by the Contractor and in no event shall such costs become the obligation of the State.
- c) The Federal fee for a Federal resubmission shall be collected by the contractor if the applicant is making an appointment that is more than 365 days after the original FBI rejection date. In cases where the Federal Bureau of Investigation has rejected two fingerprint submissions, the Federal Fee shall be collected for a third Federal fingerprint submission.

Any fees incurred by the contractor in connection with bad checks, invalid credit cards, etc., are the sole responsibility of the contractor, who shall, as part of the post-award activities, submit its plan for management of contested credit card charges including time to resolve and appeal process which plan must be acceptable to the State of New York.

The contractor is required to enter into an Escrow Agreement, shown at Exhibit F. Contractor payment of DCJS and FBI fees shall be as follows:

- Contractor shall make an initial deposit of \$500,000 into the escrow account;
- DCJS shall debit the account for the appropriate DCJS and FBI fingerprint fees associated with fingerprint submissions; and,
- Contractor shall maintain a positive balance in this account at all times.

DCJS will provide a report of transaction fees charged by DCJS for contractor use for financial reconciliation purposes.

3.3.6 Agency and Provider-Paid Fees

Certain applicants will have their fees paid by an agency or potential employer (service provider)

In cases where the fees are paid directly by the participating agency or the potential employer, the contractor shall accept all reasonable forms of paying as described in Section 3.3.5.

DOH maintains relationships with 1,400 third-party service providers, such as health care providers. DOS requires applicants for certain security-related positions to be fingerprinted. In both these cases the fees are paid by the employer.

In the case of agency and employer referrals, the contractor is required to establish a billing and collection relationship with parties that send applicants to the contractor. DCJS will not assist nor participate in creating or managing these relationships. It is recommended that the bidder establish a business relationship with one or several ACH or manual payment processors and include the associated overhead in its cost proposal.

The State must approve any subcontractor proposed by the Offerer to provide the processing of fees or management of escrow accounts. If the Prime Contractor subsequently replaces the processing subcontractor DCJS must approve the replacement processor.

3.3.7 Contractor Fee Schedule

As part of their bid submission, the contractor shall propose a fee schedule for their services (Exhibit J). DCJS expects the vendor to provide a sliding scale for fees based on statewide annual volume of multiple participating agencies, although no specific level of participation is guaranteed. Initial fees shall be established consistent with the 2007 volume of participating agencies, histories of which are listed in RFP Section 1.3 - Background. Fees shall be adjusted twice per year, on January 1st and July 1st, beginning on January 1, 2010. Adjusted fees shall be based on an annual volume calculation, using actual volume data from the prior six month period. The process is:

- Contractor collects fingerprinting metrics for the period June through November.
- Contractor announces historic metrics and new fees on December 1st.
- New fees go into effect January 1st.
- Contractor collects fingerprinting metrics for the period December through May.
- Contractor announces historic metrics and new fees on June 1st.
- New fees go into effect July 1st.

3.4 Functional Scope – Technical

3.4.1 Live Scan Requirements

Initially, live scan devices shall be FBI compliant pursuant to CJIS-RS-0010 V7.1. Fingerprint images must be compressed using the FBI certified WSQ compression algorithm at the FBI required maximum average compression ratio of 15:1. Live scan devices must be fully compliant with FBI WSQ Gray-Scale Fingerprint Image Compression Specifications IAFIS-IC-0010v3.

Electronic fingerprint images shall be captured and transmitted to DCJS at 500 PPI and in accordance with the standard for the electronic interchange of fingerprint information, ANSI/NIST-ITL 1-2007. Live scan devices must contain quality assurance software which will provide a user selectable threshold for image quality control and error checking to ensure capturing of quality images in correct sequence. The live scan must support transmission protocol specified in the New York State Criminal Justice Electronic Fingerprint Transmission Standard (NYSCJEFTS) (found at www.criminaljustice.state.ny.us/advtech/efts.pdf).

Digital images must comply with current FBI-EBTS image quality specifications.

Data captured at the live scan site will be used to electronically update the New York's Computerized Criminal History (CCH) System. This data requires standardization; therefore, each live scan machine shall utilize edit tables to ensure standardization. Additional information for CCH will be provided to the contractor.

The initial transaction fingerprint quality rejection rate cannot exceed 2 percent. The historical FBI reject percentage is .08%.

3.4.1.5 Penalty for Failure to Meet Initial Transaction Fingerprint Quality

DCJS may at its option at any time when it becomes aware of or in its sole discretion has cause to question whether the fingerprint quality rejection rate exceeds 2 percent at any system provided by the Prime Contractor hereunder conduct any test or monitoring activity which DCJS determines in its sole discretion is necessary to ascertain performance with respect to this requirement. In the event that any report or scheduled or unscheduled testing indicates that the system or any part thereof provided or managed by the Prime Contractor is not in compliance with the fingerprint quality rejection rate requirement, DCJS shall notify the Prime Contractor and the Prime Contractor shall immediately initiate action to:

1. Correct the situation so that the rejection rate is brought into compliance;
2. Ascertain and identify transactions which have or may have been impacted by the failure of the system to meet the rejection rate requirement;
3. Immediately with consultation with DCJS develop and implement action necessary to correct the problem and to correct or reprocess all transactions which were impacted; and,
4. Verify the integrity of all data and transactions which were processed by the system during the period in which DCJS determines in consultation with the Prime Contractor could have been impacted by the circumstances which gave rise to or appear to have caused the failure to comply with the rejection rate requirements of this RFP and any resulting contract.

In the event that Prime Contractor fails to correct an occurrence of excessive rejection rate, notwithstanding whether DCJS has notified or Prime Contractor has discovered such an

occurrence as a result of its own monitoring within thirty days of receipt of notification by DCJS or its own discovery, the following penalties shall be applicable:

For the first instance a penalty in the amount of \$1,000 shall be paid by the Prime Contractor to DCJS

For the second instance a penalty in the amount of \$5,000 shall be paid by the Prime Contractor to DCJS

For subsequent instances a penalty in the amount of \$10,000 shall be paid by the Prime Contractor to DCJS.

DCJS at its sole option may recover any applicable penalty through set off of any amount then due and owing to Prime Contractor by the State of New York for any purpose, by acceptance of payment from the Prime Contractor or by initiating a draft on the Standby Letter of Credit which the Prime Contractor is required to maintain under this RFP. Amounts due hereunder shall be in addition to any other amount due DCJS.

3.4.2 Collection of Identifying and Biographic Information

Identifying Information

As part of the applicant identification process outlined in Section 3.3.3, the vendor is required to capture and maintain as part of its records identifying data specific to the identification document provided as follows:

- Document title
- Issuing authority
- Document number, if any
- Expiration date, if any

Under no circumstances shall vendor photocopy or retain any identification documents.

Biographic Information

Applicant biographic information may be obtained in either of two ways: from the agency (if the agency has and can make such data available) or directly from the applicant:

- Applicant data is provided by applicant at time of fingerprinting
- Applicant presents document with ID number (which may be bar coded) which enables vendor to retrieve biographic data from agency database

Information returned by a query to an agency should be verified by the vendor at the time of applicant processing. If biographic data cannot be verified, an applicant may, depending on

agency preferences, be denied fingerprint service and referred back to the participating agency, or processed and the new biographic data returned to the agency. This will be determined with each individual agency following contract award.

Specific requirements for biographic data capture will be determined by each agency after contract award. For the purposes of this RFP, bidders should plan to capture, store, transmit during intake and response processes and report to DCJS and participating agencies up to 50 data fields using a standard data entry screen or screens. The bidder's system should be constructed to minimize data entry errors through edits and cross checks of fields like State and Zip Code, for example. The bidder's system must also support dropdown selection lists for data like reason codes, employer ID or agency identifier, for example.

Examples of biographic data required from this process include:

- Applicant identification number
- Name and address
- Telephone
- Date of birth
- Gender and race
- Height and weight
- Hair and eye color
- Referring party
- SSN
- Reason for fingerprinting

The applicant data capture process must be able to accept multiple reasons and multiple agency identifiers for a single applicant and transmit this information to DCJS and the applicable agencies. The process for subsequent processing of this data will be determined after contract award. If an applicant is applying for more than one reason to one or more agencies, DCJS currently requires multiple submissions by the contractor to DCJS, and appropriate fees for each submission. The contractor is responsible for properly interfacing with all participating agencies.

3.4.2.1 Customizations

Agencies may require customization of the standard data entry interface or other aspects of this project to suit their particular requirements. This customization is outside the scope of this RFP and will be implemented using a change order process described in RFP Section 6.2.25 with requesting agencies. The proposed rate for Computer Programmer Analyst services proposed on Exhibit J will be applied to requests for agency customizations.

3.4.3 Collection/Transmission of Data to DCJS

All state and federal fingerprint and data transmissions must conform to the current and future specifications defined in the New York State Criminal Justice Electronic Fingerprint Transmission Standard (NYSCJEFTS) (found at www.criminaljustice.state.ny.us/advtech/efts.pdf) and the FBI CJISD/EBTS ANSI/NIST-ITL 1-

2007 (data format for the interchange of fingerprint, facial and other biometric information, found at <http://fingerprint.nist.gov/standard/Approved-std-20070427.pdf>.

The contractor shall provide fingerprint images that meet the current and future State and Federal standards. The Federal standards can be located on the FBI website at

www.fbi.gov/hq/cjisd/iafis/efts71/efts71.pdf.

Fingerprints, photos and biographic data must be simultaneously transmitted to DCJS for processing.

The contractor shall transmit electronic fingerprint images and associated data in real-time, except with regard to mobile operations. Fingerprint transactions captured on a mobile device shall be transmitted no later than the close of business the next business day.

The State requires that the electronic transmission, including all fingerprint images and associated data captured that day, be submitted from a single centralized point to DCJS.

3.4.3.1 Retention of Data

The vendor shall retain the applicant fingerprints, digital photo and biographic information, and data on the identity verification documents, for 90 days following the completion of these criteria:

- Receipt of an acknowledgement message from DCJS that the transaction has completed identification processing at DCJS
- Receipt of an acknowledgement message from DCJS that the transaction has completed identification processing at the FBI if applicable
- Completion messages have been transmitted to the appropriate agency or agencies

During this 90-day period, collected data must be made available to DCJS and partner agencies for reporting and auditing purposes as described in Section 3.5 – Reporting Requirements. Rejected or uncompleted transactions should never be routinely deleted, but need to be available for possible modification and resubmission.

3.4.4 Manual Fingerprint Conversion

Participating agencies processing applications using manual “ink and roll” fingerprint cards will forward these fingerprint cards to the contractor. The contractor shall conduct a technical examination of the quality of the fingerprint images to ensure a successful conversion into the electronic medium. Fingerprint images that do not pass the contractor’s technical examination shall be sent back to contributing agency for reprint.

The contractor shall convert acceptable “ink and roll” fingerprint cards into an electronic medium whereby they may be transmitted electronically. This conversion and electronic

transmission to DCJS must occur within 48 hours of receipt by the contractor. DCJS expects a minimal volume of cards that will decline over time. All report requirements that apply to live scan transactions will also apply to card scan transactions.

The Contractor shall have the ability to process hard copy fingerprint cards. This requires the use of FBI-certified equipment that allows for the manual capture of fingerprint images and appropriate data with no degradation of the fingerprint images. This capture shall conform to the IAFIS specifications provided in Appendix F of the CJIS Electronic Biometric Transmission Specification which can be found at

<http://www.fbibiospecs.org/fbibiometric/docs/EBTS%20V8.002%2004-01-08-final.pdf>

Hard copy fingerprint transactions must be formatted pursuant to the New York State Criminal Justice Fingerprint Transmission Standard (NYSCJEFTS) which can be found at

www.criminaljustice.state.ny.us/advtech/efts.pdf.

3.4.5 Mobile Fingerprinting Workstations

Mobile fingerprint workstations may be established by the contractor to address applicant fingerprinting needs.

3.4.6 Work in Process at Contract End

The contractor shall complete all work in process at contract end under the same policies and procedures that were in force during the contract term, including but not limited to applicant processing, data transmission and archiving, payment processing and escrow maintenance. The contractor shall delete all images and data per the requirements in RFP Section 3.4.3.1 – Retention of Data.

3.4.7 Resubmission Processing

The contractor shall store existing fingerprint images and biographic data with the ability to retrieve and transmit per the requirements in RFP Section 3.4.3.1 – Retention of Data. The contractor shall not archive and must correct all fingerprint image and biographic data not meeting DCJS and FBI certification and transmission standards.

In situations where a fingerprint transaction is rejected for failure to meet data or fingerprint quality standards for processing and the resultant transmission is rejected at the State and/or Federal level, the contractor shall contact and schedule a new fingerprinting session with the applicant at no additional cost. Resubmission must conform to DCJS and Federal Bureau of Investigation Electronic Biometric Transmission Standards. Following two (2) failed submissions to the FBI, the contractor will be charged a new fee, as described in RFP Section 3.3.5.

The contractor shall delete all images and data from the archive per the requirements in RFP Section 3.4.3.1 – Retention of Data.

Failure to transmit resubmission transactions in accordance with specified standards will be viewed as a new submission and the contractor shall be responsible for all costs incurred.

3.5 Reporting Requirements

The contractor shall provide a database and reporting system that permits DCJS, State agencies, and other DCJS authorized entities access to data and reports for record keeping and reconciliation purposes.

A database from which the reports described herein can be obtained shall be developed and maintained by the contractor and must be available 24 hours per day, seven (7) days per week, except for periodic scheduled maintenance outside normal business hours specified in Section 2.2. The database must be password protected per DCJS, FBI, CSCIC and OFT policies then in effect. The policies of both agencies are available on their respective agency websites. Data must be available to only those agencies designated by DCJS and restricted so that agencies can only see their own applicants. Reports shall be provided to the authorized entities at no additional cost.

- Unique index fields shall preserve data integrity.
- Updates to the database must occur in real-time wherever possible.
- Changes to the database must maintain an audit trail with source, time, type and date of change.
- The database should support Crystal Reports or similar tools.

Applicant data must be maintained per the requirements in RFP Section 3.4.3.1 – Retention of Data. A description of applicant data requirements can be found in RFP Section 3.4.2.

Daily operational data including but not limited to applicant transactions per site, data transmission statistics, and financial transactions and balances must be maintained for the life of the contract and ninety (90) days following contract end.

Reports shall contain information on applicants who have been scheduled for or have completed fingerprinting. Information on the reports shall include the appointment date, applicant data submitted at time of appointment, and reason for fingerprint. Once fingerprinted, applicant information should also include location, name of operator taking the print, applicant name and address and contact information, and identifying document information.

The contractor shall provide electronic distribution mechanisms for the reports, including secure FTP and a secure web-server.

3.5.1 Other Reports

The contractor may be required to provide additional data and reports in an electronic format, consistent with DCJS defined security policy, and based upon the needs of the different Participating Agencies and DCJS. The frequency of any additional reports (daily, weekly, etc.) will be determined by DCJS and Participating Agencies. In addition, the contractor shall make the database available to pre-authorized users for “ad hoc” reporting at no additional cost.

3.5.2 Production Reports

If requested by any Participating Agency, the contractor shall meet with that Participating Agency on a regular frequency to tailor production reports based on the Participating Agency’s needs and requirements. Production reports shall be distributed to Participating Agencies on a daily, weekly, or monthly basis depending on the Participating Agency’s needs and requirements. Information on these reports shall include:

- Names and biographic information for persons scheduled to be fingerprinted on a given date for a particular agency.
- Names and biographic information for persons fingerprinted on a given date for a particular agency.
- Other data as may be determined by DCJS, the contractor and/or the Participating Agency.

3.5.3 Rejection Reports

The contractor shall prepare and submit Submission Rejection Reports to DCJS on a monthly basis, by the 5th day of each month. Submission Rejection Reports shall minimally include the following data:

Number of rejected submissions this month

Total number of submissions this month

Monthly Rejection Rate

DCJS reserves the right to modify the data elements and frequency of this report.

3.6 *Interface Requirements*

3.6.1 Daily Activity Report for DCJS

The contractor shall provide DCJS with a daily activity report of fingerprints received at the contractor's centralized point of storage. The vendor shall provide a plan as to how this will be accomplished. The report must contain the following data:

- TCN Number
- TCR
- Applicant Name
- Applicant Date of Birth
- Applicant Address
- Agency ORI Number
- Agency Name
- Agency Case Number
- Date forwarded to DCJS Store-and-Forward

Data types and field lengths will be determined after contract award.

The report must be updated and available daily by 8:00 AM ET to reflect the previous day's activity.

This report must document all applicant fingerprint transactions at all sites for every fingerprinting business day. The report shall be provided to DCJS at no additional cost.

3.6.2 Daily Transmission Reconciliation

The contractor is responsible for performing a daily reconciliation to ensure successful transmission of fingerprints from the contractor to DCJS. Daily transmission totals will be made available to DCJS for verification of receipt and operational procedures established for manual review and escalation.

The contractor shall correct and retransmit all unsuccessful/ unaccounted applicant fingerprints within one (1) business day. A transmission will not be considered successful until it is received and accepted by DCJS.

3.6.3 Agency Interfaces

As part of this RFP, the bidder should include the design, testing and implementation of interfaces to participating agencies. Interfaces should be capable of supporting batch or message-based transmission of data including but not limited to:

- Identification number retrieval
- Identification number submission and biographic data retrieval

- Successful receipt at DCJS
- Applicant data transfer to the agency
- Transaction completion status (successfully processed by DCJS/FBI)

3.7 Security and Control

The contractor shall ensure that all fingerprint images, photo images, and biographic data of fingerprinted applicants are processed and housed at the contractor's centralized point of storage. The contractor is responsible for the security of all data collected, stored, and transmitted.

The contractor shall ensure that all fingerprint images, photo images, and biographic data of applicants that are received at the contractor's centralized point of storage are transmitted and received through the contractor's store-and-forward server unit. The store-and-forward server unit is a device that receives and stores incoming submissions and retransmits those submissions to the proper destination.

New York State law protects the privacy of criminal history records and other confidential information. The Prime Contractor shall take all steps required by the State to protect confidential information. This may include, but not be limited to, execution of a non-disclosure agreement with the contractor and/or each staff assigned to the project, fingerprint checks and New York State Police background checks of Prime Contractor, subcontractor, vendor, consultant, employee and service provider personnel with access to such information and a requirement that the Prime Contractor must replace any personnel at the discretion of the State whether personnel are employees or agents of Prime Contractor or of its subcontractors. Prime Contractor must provide for this requirement in any subcontracts it executes.

Contractor personnel not meeting background check standards must not be permitted access to confidential data.

DCJS may conduct periodic contractor site inspections for site integrity and contract adherence purposes.

No DCJS, applicant or agency data in part or whole may be transmitted by any means, including paper copies, electronic transmissions or data storage media, outside the United States for any purpose whatsoever, including but not limited to system development and testing activities, reporting, data entry, data analysis or product demonstration.

Contractor shall demonstrate to the satisfaction of DCJS that security procedures, both physical and data, are in compliance with DCJS, FBI, CSCIC and OFT policies then in effect.

3.7.1 Penalties for failure to comply with Security and Control and Accuracy Requirements

In addition to the requirements of this RFP applicable to time and system availability, DCJS may at its option at any time when it becomes aware of or in its sole discretion has cause to question whether any system provided by the Prime Contractor hereunder is performing in a manner inconsistent with the security, control and accuracy requirements of this RFP and of DCJS or of the FBI, conduct any test or monitoring activity which DCJS determines in its sole discretion is necessary to ascertain performance with respect to security, control and accuracy. In the event that any scheduled or unscheduled testing indicates that the system or any part thereof provided or managed by the Prime Contractor is not in compliance with the security, control and requirements, DCJS shall advise the Prime Contractor and the Prime Contractor shall immediately initiate action to:

- 1) Correct the situation;
- 2) Ascertain and identify transactions which have or may have been impacted by the failure of the system to meet the accuracy requirements;
- 3) Immediately with consultation with DCJS develop and implement action necessary to correct the problem and to correct or reprocess all transactions which were impacted; and,
- 4) Verify the integrity of all data and transactions which were processed by the system during the period in which DCJS determines in consultation with the Prime Contractor could have been impacted by the circumstances which gave rise to or appear to have caused the failure to comply with the accuracy requirements of this RFP and any resulting contract.

Penalty for Non-compliance with Security, Accuracy and Control Requirements:

Because the Vendor-Managed Civil Fingerprint Capture System serves the public safety requirements of DCJS and statutory requirements of participating agencies, its failure or degradation will result in damages that are impossible to calculate. Damages include but are not limited to loss of life of law enforcement and civilian personnel, failure to identify sex offenders, inmates and persons of interest to law enforcement, and violation of civil rights of individuals. Any incident of failure of Security, Accuracy or Control may result in failure to identify and prevent undesirable applicants from entering positions which the Legislature or Federal Government have identified as requiring background investigation and fingerprinting. Offerer affirms its understanding and agreement that it is proposing a system and solution including maintenance and procedures to ensure that the accuracy requirements of this RFP and Contract are met, and Offerer understands that System Security, Control and Accuracy is a critical component of the State's continuing public safety requirements for the Vendor Managed Civil Fingerprint Capture System. DCJS and the Offerer agree that damages are difficult to ascertain in the event that there is any failure to accomplish the Public Safety requirements, and for this reason the parties are willing to stipulate to a pecuniary amount to be established as damages. If Offerer as Prime Contractor fails to meet the accuracy and control requirements set forth herein whether such failure is discovered by the Prime Contractor or by DCJS from whatever source,

that the Prime Contractor has an affirmative requirement to immediately disclose such failure to DCJS and initiate corrective action to resolve security breaches or repair the cause and rehabilitate the accuracy and control of transactions which were impacted as defined above. For each disclosure or discovery of a uniquely-identified problem concerning accuracy or control, the Prime Contractor shall pay to DCJS or DCJS may at its sole option recover by initiating a draft on the Standby Letter of Credit required to be maintained under the terms of this RFP or by setoff against any amount then due and owing from the State to Prime Contractor, the amount of one thousand dollars (\$1,000) for each occurrence without limitation as to amount. In the event of a security breach, this penalty increases to ten thousand dollars (\$10,000) per occurrence. In the event that an identical accuracy or control problem occurs subsequent to the rectification of the first problem, the amount to be paid hereunder shall increase to five thousand dollars (\$5,000) per occurrence without limitation as to amount plus one thousand dollars (\$1,000) for each business hour or part of hour until resolution as required herein. Repetition of a security breach will incur a penalty of fifty-thousand dollars (\$50,000) without limitation as to amount plus one thousand dollars (\$1,000) for each hour or part of business hour until resolution as required herein. Amounts due to DCJS hereunder shall be in addition to any other amount due DCJS.

For the purposes of this section, the term Accuracy is defined as the ability to maintain absolute correlation between fingerprint data, biographic data and photographic data. The term Control is defined as the ability to maintain operational control over the acceptance, transmission and reporting of transactions and data.

3.8 Business Continuity

The contractor shall provide a mechanism and proof of capability of restoring full service within twenty-four (24) hours following disablement of the primary processing site. Full service means connectivity to and processing for all Livescan satellite sites, and batch and real-time interfaces to DCJS and Participating Agencies. Contractor shall be responsible, at their own cost, for the recreation or recovery of any transactions, lost due to the disablement of the primary processing site. Additionally, the contractor must maintain real-time offsite replication of all data stored at the contractor's normal central point of storage either on or off site. Security procedures for data storage and replication must be consistent with the policies of DCJS, FBI, CSCIC, and OFT then in effect and may be modified by the state from time to time. DCJS at its sole option, may assess a penalty in the amount of \$2,000 in the event that business continuity is not restored within 24 hours consistent with the provisions of this RFP.

3.9 Additional Requirements

The contractor shall provide Participating Agencies with the necessary specifications and technical support to allow the agencies to electronically import data from the contractor. This will provide both the contractor and Participating Agencies with the ability to exchange data and eliminate redundant data entry, as well as reducing data entry errors.

The contractor shall establish service level agreements with DCJS and with each participating agency, at the agency's discretion.

Any changes to software and/or procedures must be completed and made operational within ten (10) business days or less from the date requested by DCJS, unless the time period is extended by, or agreed to, by DCJS.

4.0 Bidder Eligibility and Qualifications

Bidders shall meet all of the requirements of this section of the RFP in order to be deemed eligible to respond to this RFP.

4.1 Authorized to Do Business in New York State

a. The Bidder shall represent and warrant that it is duly organized, validly existing, and authorized to do business in the State of New York.

b. The Bidder shall represent and warrant that, as of the date of submission of its Proposal, the Bidder has completed, obtained, or performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the Services and that Bidder will, in order to perform said Services during the term of the Contract, if any, comply with any requirements imposed upon it by law during said Contract term. (For details concerning this requirement, refer to: http://www.dos.state.ny.us/cnsl/do_bus.html. To register with the Secretary of State, contact: <http://www.dos.state.ny.us/corp/corpspub.html>.) Bidder/Contractor shall notify DCJS immediately in the event that there is any change in the above corporate status.

4.2 Sufficiency, Capacity, and Experience

a. The Bidder shall represent and warrant that it possesses adequate staffing resources, and

b. the Bidder shall represent and warrant that it possesses at least two (2) years of experience in the Service being proposed including operating a statewide system, placed into commerce, with multiple points of presence, and including operation of a call center and integrated web-based scheduling tool offering comprehensive management of applicant appointments, and

c. provide evidence that it has maintained an organization capable of performing the work described, in continuous operation for at least the past three (3) years. *Qualifying experience shall be in a production customer environment, (no labs or inter-organization service.)*

4.3 Mandatory Requirement – Vendor Must Timely File a Notice of Intent to Bid

Filing of a Notice of Intent to Bid, Exhibit T, is mandatory. Failure to timely submit a complete Notice of Intent to Bid disqualifies a vendor from further participation in this procurement. Vendors must submit a complete Notice of Intent to Bid submission for receipt by the DCJS Sole

Designated Procurement Contact no later than the date and time specified on the Calendar of Events.

Submission of a complete Notice of Intent to Bid requires that the vendor submit the following four (4) documents:

- Signed and completed Notice of Intent to Bid, Exhibit K
- Signed, notarized and completed DCJS Non-Disclosure Agreement, Exhibit Q
- Signed, notarized and completed Non-Disclosure for Cyber Security Standards Agreement, Exhibit R
- Signed, notarized and completed Non-Disclosure for CJIS Security Policy (Version 4.4) Agreement, Exhibit S

The Notice of Intent to Bid documents must contain the original notarized signature of the vendor's authorized representative and be submitted for receipt by the DCJS Sole Designated Contact by the date and time specified in the Calendar of Events.

Partial submissions are not permissible and will disqualify the vendor from further participation in this procurement. DCJS shall not be responsible for advising vendors of incomplete submissions.

Submission of a Notice of Intent to Bid does not obligate a vendor to submit a bid proposal; however, failure to timely submit a complete Notice of Intent to Bid disqualifies a vendor from further participation in this procurement.

Upon timely receipt of the complete Notice of Intent to Bid, DCJS will provide the vendor with further documents for use by the vendor in preparing their bid response to this RFP.

5.0 Submission Instructions

5.1 Submission of Proposals

Bidder's Proposal shall respond to all of the submission requirements of this RFP. Bidders are solely responsible for timely delivery of their Proposals to DCJS prior to the stated **Proposal Due Date and Time** as set forth above. Delays in United States Postal Service mail deliveries or any other means of transmittal, including couriers or agents of the State, shall not excuse late bid submissions. Late bid submissions will not be accepted by DCJS. Phone, facsimile, and e-mail submission of Proposals will **not** be accepted for this RFP. Proposals accepted in response to this RFP will not be opened publicly and will be subject to separate technical and financial/administrative evaluations. Any Proposal received at the specified location set forth herein above after the **Proposal Due Date and Time** as set forth herein above will be considered a late bid submission. A late bid shall not be considered for award and will be destroyed or returned unopened to the sender. The State reserves the right at any time to postpone or cancel the scheduled time for receipt of Proposals at its sole discretion.

5.1.1 Proposal Packaging

Offerers must submit a complete response to this RFP in conformance with the format, content and administrative requirements set forth below. The Proposal shall be organized in **two (2) parts**: (1) *Administrative/Financial Proposal*; (2) *Technical Proposal*. Each part shall be bound and packaged in separate, sealed envelopes/containers. The two packages must contain the following information. Failure to submit all of the following information may render the Offerer's proposal non responsive. Minor omissions deemed not critical may be corrected at the sole discretion of the State. Electronic copies of the Bidder's Administrative/Financial Proposal and Technical Proposal shall be included in each sealed package with the hard copy submission. To facilitate the evaluation process, one (1) original hard copy marked as "ORIGINAL", seven (7) hard copies, and one (1) electronic copy (CD) of each Submission shall be submitted. Packages containing each part shall be bound separately and clearly identified as to contents as described below. Electronic submissions shall be in Microsoft Word, Excel and/or Adobe Acrobat formats, and in Windows file format. In the event of a discrepancy, the "ORIGINAL" hard copy shall govern.

Each part (i.e., Administrative/Financial Proposal and Technical Proposal), shall have a label on the outside of its package indicating the following information (in addition to any labels directing the package to DCJS):

5.1.2 Proposal Label:

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

**BID ENCLOSED: PROJECT CODE 2008-09
Vendor-Managed Civil Fingerprint Capture System
(Indicate package contents, as applicable):
ADMINISTRATIVE/FINANCIAL OR TECHNICAL**

Bidder assumes all risk of late delivery associated with the Submissions not being identified, packaged or labeled in accordance with the foregoing requirements. In the event that the Bidder fails to provide such information on the cover of the sealed packages, the State reserves the right to open the package to determine its contents. Bidder shall have no claim against the State arising from such opening and such opening shall not affect the validity of the procurement.

Notwithstanding the State's right to open the package to ascertain the contents, Bidder assumes all risk of late delivery associated with the Submission not being identified, packaged or labeled in accordance with the foregoing requirements.

5.1.3 Proposal Content

The Administrative/Financial submission shall include the following documents:

- 1) Completed and signed Firm Offer Letter (Exhibit A)
- 2) Firm Information (Exhibit L)
- 3) Completed and signed Exhibit B, Form A: State Consultant Services – Contractor's Planned Employment
- 4) Completed, signed and notarized Exhibit B, Addendum Acknowledging Form B Reporting Requirements
- 5) Completed and signed Exhibit C: Non-Discrimination in Employment in Northern Ireland
- 6) Completed and signed Exhibit D: Non-Collusive Bidding Certification, Section 139-D of State Finance Law
- 7) Completed and signed Exhibit E, Form 1: Offerer's Affirmation of Understanding of an Agreement Pursuant to State Finance Law Section 139-j(3) and 139-j(6)(b)
- 8) Completed and Signed Exhibit E, 10.5.2: Offerer's Disclosure of Prior Non-Responsibility Determinations
- 9) Completed and signed Exhibit E, 10.5.3: Offerer's Certification of Compliance with State Finance Law Section 139-k(5)
- 10) Completed, Signed and Notarized Exhibit F: Escrow Agreement
- 11) Completed Exhibit J: Cost Proposal. The contractor shall establish a fee schedule for their services: DCJS expects the vendor to provide a sliding scale for fees based on statewide annual volume of multiple participating agencies.
- 12) Vendor Responsibility Questionnaire (See Section 5.1.4 and Exhibit N)

- 13) Completed and Signed DCJS Non-Disclosure Agreement (Exhibit Q)
- 14) Completed and Signed Non-Disclosure Agreement for Cyber Security Standards/Policy Agreement (Exhibit R)
- 15) Completed and Signed Non-Disclosure Agreement for CJIS Security Policy (Exhibit S)

The Technical submission shall include the following documents:

- 1) Firm Information (Exhibit L)
- 2) Completed Exhibit G: Bidder Eligibility and Qualifications
- 3) Completed Exhibit H: Technical Proposal Response Form
- 4) Completed Exhibit I: Technical Proposal Response Form
- 5) Proposed Sub-Contractors (Exhibit O), if any subcontractors are proposed
- 6) Key Sub-Contractor Certifications (Exhibit P), if any subcontractors are proposed

5.1.4 NYS Standard Vendor Responsibility Questionnaire

Offerers must complete and submit the NYS Standard Vendor Responsibility Questionnaire, which is available from the Comptroller's website at <http://www.osc.state.ny.us/vendrep>. Offerer acknowledges that the State's approval of any resulting Contract will be contingent upon the State's determination that the Vendor is responsible, and that the State will be relying upon the Vendor's responses to the Questionnaire in making that determination.

Offerers are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact DCJS or the Office of the State Comptroller for a paper form.

5.1.5 Proposal Format

Submissions shall be complete and legible. Information required by the RFP shall be supplied by the Bidder on the forms or in the format specified in the RFP. Bidders are cautioned to verify their Proposals before submission, as requests for withdrawal of Proposals received by the State after the Proposal Due Date and Time, may not, in the sole discretion of the State, be considered.

5.1.6 Language/Currency

All offers (tenders), and all Proposals provided in response to this RFP shall be written in the English language with quantities expressed using Arabic numerals. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$ US). Any Proposal received that does not meet the above criteria may be rejected.

5.1.7 Table of Contents

Each Submission shall include a “Table of Contents” with page numbers

5.1.8 Index Tabs

Each major section of the Submission shall be labeled with an index tab that identifies the title of the major section/part as it is named in the “Table of Contents.”

5.1.9 Page Numbering

Each page of each Submission shall be dated and numbered consecutively within its major section.

5.1.10 Prior Non-responsibility Determination Affirmation

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

The Offerer must agree to the certification and complete the affirmation of such agreement included at Exhibit E Form 2: Offerer’s Disclosure of Prior Non Responsibility Determinations, which is a mandatory submission.

5.2 Notice of Policy and Prohibitions on Procurement Lobbying and Sole Designated Procurement Contact

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

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

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

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

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

Offerers/Bidders must provide DCJS with a required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding contacts in the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. The Offerer must agree to the certification and complete the affirmation of such agreement included at Exhibit E in Form 1: Offerer’s Affirmation of Understanding of an Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b) and Form 3: Offerer’s Certification of Compliance with State Finance Law §139-k(5), which are a mandatory submissions.

6.0 Terms and Conditions

6.1 Standard Terms and Conditions

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

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

6.1.2 Public Officers Law Sections 73 and 74

The New York State Commission on Public Integrity, established by the Public Employee Ethics Reform Act of 2007, is charged with administering and enforcing the State's ethics and lobbying laws as well as the State's anti-nepotism law and laws pertaining to certain political activities and improper influence. Building upon the strong foundations established by the New York Temporary State Commission on Lobbying and the New York State Ethics Commission, the Act transferred all powers, duties, functions and staff of both former Commissions to the Commission on Public Integrity. The mission of the New York State Commission on Public Integrity is to insure compliance with the ethical standards that public officials and lobbyists must observe in order to ensure public trust and confidence in government. More information is available at the Commission's website at <http://www.nyintegrity.org>.

The Offerer/bidder will ensure that all of its personnel involved in the preparation and submission of the Offerer's/bidder's proposal(s) have read the Public Officers Code of Ethics, Sections 73 and 74 of the Public Officers Law, and that the Offerer/bidder has advised its personnel of their obligation not to importune any violations of those sections. For the convenience of the reader certain sections in effect as of the date of release of this RFP are reproduced below. Readers are advised to check official sources.

Public Officers Law § 73(5)

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

(a) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in

the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

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

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

Public Officers Law §74:

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

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

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

3. Standards.

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

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

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

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

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

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

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

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

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

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

6.1.3 Taxes

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

6.1.4 Costs Incurred Prior to Contract Approval

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

6.1.5 Mandatory Requirement - Price Protection

The Offerer agrees that all of the prices, terms, warranties and benefits established in the Agreement are comparable to or better than the equivalent terms being offered by the vendor to other customers using similar scope and volume of services. If the offerer shall, during the term of this Agreement, enter into arrangements with any other customer providing greater benefits or more favorable terms, the Contract shall thereupon be deemed amended to provide the same to the State.

6.1.6 Procurement Record

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

6.1.7 Mandatory Requirement - Appendix A Standard Clauses for New York State Contracts

Appendix A- Standard Clauses for New York State Contracts annexed hereto at Appendix A is incorporated herein by reference and made a part of this agreement as though fully set forth in its entirety.

6.1.8 Mandatory Requirement for Contracts Estimated to be \$1,000,000 or More:

- a. Subsequent to the award of procurement contracts in an amount estimated to be \$1,000,000 or more, contractors will be required to document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors by showing they have (i) solicited bids in a timely and adequate manner from New York State business enterprises including certified minority-owned businesses, (ii) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in offerer/bidder outreach conferences. If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors, the contractor shall provide a statement verifying such.
- b. Subsequent to the award of procurement contracts in the amount estimated to be \$1,000,000 or more, contractors will be required to notify New York State residents of employment opportunities through listing any such positions with the Community Services Division of the New York State Department of Labor, or providing for such notifications in a manner as is consistent with existing collective bargaining contracts or agreements.
- c. Offerers located in a foreign country are notified that the State may assign or otherwise transfer offset credits created by any procurement contract of \$1,000,000 or more to third parties located in New York State, and that offerers shall be obligated to cooperate with the State in any and all respects in making such assignment or transfer, including, but not limited to, executing any and all documents deemed by the State to be necessary or desirable to effectuate such assignment or transfer, and using their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government.

6.1.9 Mandatory Requirement - Discriminatory Jurisdictions

Offerers are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principal place of business is located in a discriminatory jurisdiction. Discriminatory jurisdiction is defined as a state or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdictions is maintained by the commissioner of the New York State Department of Economic Development.

6.1.10 Use of Bidder Submissions

All materials submitted by the Bidder become the property of the State and may be returned at its sole discretion. The State of New York is not liable for any cost incurred by a Bidder in the

preparation and production of any Proposal, or for any work performed prior to the execution and approval of the Contract.

6.1.11 Notification of Intent to Award and Offerer Debriefing

The successful Bidder will be advised of selection by the State through the issuance of a formal written correspondence indicating proposed award. All Bidders will be notified of the selection or rejection of their Proposals.

Once an award has been made, offerers may submit a written request for a debriefing as to why their proposal did not result in an award. The written request must be received by the DCJS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement.

6.1.12 Contractor Responsibilities Under Executive Law Article 15-A

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

DCJS is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, Equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, DCJS hereby establishes a goal of 10% for minority business enterprises (MBE) participation and 10% for women-owned business enterprises (WBE) participation.

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

Policy and Provisions

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State Contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE Subcontractors or suppliers in the performance of this Contract.

For the purpose of determining a Contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the Contracting agency shall consider:

(a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,

- (i) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
- (ii) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Contracting agency's bid date; and

(b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

A. GOALS - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and Equipment necessary to perform the project, are also considerations used to determine the percentage goals.

B. UTILIZATION - The Contractor may count as M/WBE participation: subcontracting part of the Contract to certified firms or purchasing supplies and Equipment used to perform the terms and conditions of the Contract from certified firms. Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State may waive a Contractor's failure to achieve the goal M/WBE participation.

C. MINORITY AND WOMEN-OWNED BUSINESS OFFICER - The Contractor shall designate an Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this Contract. The DCJS staff is available to help in identifying certified M/WBEs. In addition, the New York State Office of General Services (OGS) maintains a website containing information on certified vendors:

<http://www.ogs.state.ny.us/asp/purchase/snt/consulting/defaulta.asp>

D. NONDISCRIMINATION - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this Contract.

6.2 Terms and Conditions Specific to this RFP

6.2.1 Trade Secret Materials and Critical Infrastructure Information

NOTICE TO BIDDER'S LEGAL COUNSEL:

Proposals submitted to DCJS in response to this RFP are subject to the Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to §87(2)(d) of FOIL, records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise” may be exempt from disclosure. In addition, pursuant to §89(5)(a)(1-a) of FOIL, records or portions thereof that contain critical infrastructure information may be exempt from disclosure (“Critical infrastructure” is defined in §86(5) of FOIL).

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

6.2.2 Multiple Submissions

Provided that each submission meets all of the mandatory requirements of this RFP, offerers may separately submit more than one proposal for the purpose of offering alternative solutions. Offerers are cautioned that because of the possibility of any one proposal being deemed non-responsive, that each of any multiple proposals submitted must be complete and must not reference any other submission, and the offerer must provide a summary of the differences between multiple proposals. Multiple proposals received from the same offerer will be separately evaluated by DCJS as if each proposal were the sole submission of the offerer.

6.2.3 Mandatory Requirement - No Exceptions Permitted

No exceptions to any requirement of this RFP are permitted. Proposals of offerers taking exceptions, reservations or otherwise qualifying or limiting any submission will be deemed non-responsive. Requirement of this RFP means all requirements contained herein and as may later be identified or amended by DCJS on notice to offerers/bidders who have filed a Notice of Intent to Bid and attend the mandatory Pre-Bid Conference as required by this RFP.

6.2.4 DCJS Contract Award Protest Procedure

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

If the Offerer believes that the objection affects the outcome or nature of the proposed award for this Procurement, the Offerer must follow the procedures for timely filing a formal protest set

forth in the DCJS Contract Award Protest Procedure at Attachment 9.4 of this RFP by the deadline set forth in the procedure. Prior to Contract award, protests which may affect the outcome or nature of the award may only be considered by the State in the context of a formal written protest filed in accordance with the procedure at Attachment 9.4.

6.2.5 State's Reserved Rights

This is a best value procurement. DCJS and the State of New York intend to acquire goods and services that represent the "best value." DCJS reserves the right to:

- a) At any time prior to contract execution withdraw or award the RFP in whole or in part; and
- b) At any time prior to contract execution, accept or reject any and all Proposals, or separable portions of Proposals, and waive minor irregularities and/or omissions in Proposals if the State determines the best interests of the State will be served; and
- c) In its sole discretion, accept or reject illegible, incomplete, or vague bids, and its decision shall be final; and
- d) During the evaluation process, at its sole option, seek clarification from an Offerer for the purpose of assuring DCJS's full understanding of the Offerer's responsiveness to the RFP requirements. This clarification information, if required in writing by DCJS, must be submitted in writing in accordance with the formats as prescribed by DCJS at the time it is requested by DCJS, and if received by the due date requested, shall be included as a formal part of the Offerer's Proposal. Failure to provide required information by the specified due date may result in rejection of the Offerer's Proposal. Bidders may be required to participate in individual presentations. Presentations and clarification information provided pursuant to a request by DCJS if any will be considered in the evaluation process; and
- e) Eliminate mandatory requirements if deemed to be in the State's best interests, or negotiate additional terms and conditions in any resulting Contract that are to the State's advantage; and
- f) Amend the RFP if it becomes necessary in the sole discretion of DCJS, and in such an event addenda will be provided by DCJS to all Bidders who timely filed an Intent to Bid; and
- g) Establish evaluation criteria relating to quality, quantity, performance and cost; establish the relative importance of each criterion; and evaluate proposals as well as award contracts on the basis of these criteria. As a result, service and technology procurements administered through an RFP process would not necessarily be awarded to the responsible Offerer submitting the lowest priced proposal pursuant to State Finance Law §§ 163(4)(d), (7) and (9)(b)); and

- h) Award a contract for any or all parts of a proposal and negotiate contract terms and conditions to meet agency program requirements consistent with the solicitation; and
- i) Consider all offerers' proposals firm and binding for a period of at least one (1) year from the Bid Proposal Due date, or until such time as a Contract resulting from this RFP is approved by the NYS Comptroller; and
- j) Establish that in the event two proposals are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the agency head or designee to award a contract to one or more of such Offerers shall be final. The basis for determining the award shall be documented in the Procurement Record; and
- k) Elect to award a contract to one or more responsive and responsible Offerers, provided that the basis for the election among multiple contracts at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the State.

6.2.6 Contract Term

The Contract awarded in this procurement shall not be deemed executed unless and until it shall have been approved by the Attorney General of the State of New York and the Comptroller of the State of New York or their respective staff designated for that purpose.

The Contract shall commence upon the date of its approval by the New York State Comptroller ("Effective Date") and shall continue for a period of five (5) years with an option for one two (2) year extension. The Contract will be subject to amendment only upon mutual written agreement of the parties, which agreement must be approved by the Attorney General and the Comptroller of the State of New York. The State shall have the right to renegotiate the terms and conditions of the Contract in the event applicable State or Federal law, policy, rules, regulations and guidelines are altered from those existing at the time of the original contract in order to be in continuous compliance therewith.

6.2.7 Time is of the Essence

Contractor understands that prompt performance of all services and delivery hereunder is required by DCJS in order to meet its schedule of commitments, statutory purpose and prior contractual agreements. Time is of the essence in the resulting Contract and will be a substantial and a material term of the Contract. In the event of any anticipated or actual delays in meeting deadlines or scheduled completion dates, Contractor shall provide additional personnel, software, hardware or any other resource deemed beneficial as required by the state and at no additional charge in order to complete the project in a timely manner.

Notwithstanding the above, any dates or times at which Contractor is required to make specified performance under the contract, the time and dates may be postponed to the extent that

Contractor is prevented from meeting such dates or times by DCJS or by causes beyond Contractor's reasonable control. Any and all extensions must be agreed to in writing by the parties.

6.2.8 Contract Formation

The Contract will incorporate this RFP, all Exhibits, all Appendices, all Attachments, all submissions, the Offerer's Bid Proposal, clarifications and additional information issued by DCJS during the course of this procurement and additional terms agreed to by the parties in writing. Execution by the successful Offerer shall not be deemed final until the execution of the Contract. The Contract will be deemed executed upon, and will not be considered fully executed and binding until, receipt of approval by the Attorney General of the State of New York and the Comptroller of the State of New York or members of their staff designated by them for that purpose.

During contract negotiations, the State expects to have direct access to Offerer personnel who have full authority to make commitments on behalf of the Offerer. Any negotiated contract must conform to the laws of New York State.

6.2.9 Negotiations with the Next Highest Offerer

In the event that DCJS should be unsuccessful in negotiating a contract within sixty (60) business days following the date of the notice of award with the originally selected Offerer, DCJS may at any time following the sixtieth business day at its option begin negotiations with the next highest scored Offerer and in such an event DCJS will give notice to all offerers that it has done so.

6.2.10 Contract Negotiations

Following the opening of bid proposals, the State reserves the right to negotiate the technical services offered, the terms and conditions and/or the price of a proposed contract award with any bidder.

6.2.11 Cancellation Clause

DCJS is responsible for monitoring and enforcing the contractor's performance. Performance requirements include contractor's conformance with DCJS/FBI live-scan transmission and certification standards, quality of fingerprint images and biographic data submitted by the contractor, and contractor's conformance with scheduling requirements. DCJS will provide written notice to the contractor of such failure and if, within 30 calendar days thereafter, the contractor does not remedy the problem to DCJS's satisfaction, DCJS may terminate the contract consistent with this provision.

6.2.12 Prime Contractor

Offerer is required to serve as the Prime Contractor for this project. The Prime Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, Exhibits, and any subsequent amendments mutually agreed to in writing between the parties. The Prime Contractor is responsible for payment of all subcontractors and suppliers, including all third-party equipment and service providers contracted by or through the Prime Contractor in performance of the agreement. Where equipment or services are supplied by or through the Prime Contractor under the Contract, Prime Contractor must assume full integration responsibility for delivery, installation, maintenance, performance, and warranty support services for such items. The Prime Contractor shall also be responsible for payment of any license fees, rents, or other monies due third parties for acquisition of scanner sites or facilities, and for such other site manager responsibilities as set forth in the Contract. It shall be the responsibility of the Prime Contractor throughout the Contract term, at its cost and expense, to provide periodic design and technical presentations on behalf of DCJS, e.g., expert testimony regarding the Vendor-Managed Civil Fingerprint Capture System and the proposed technology for DCJS or other interested parties as approved by DCJS. The subject matter, location and frequency of such meetings shall be determined by DCJS.

6.2.13 Subcontractors

Offerers may submit proposals that include subcontractors. All subcontractors proposed by the Offerer must be identified in the proposal and must be acceptable to DCJS. The Offerer as Prime Contractor remains the single point of contact for DCJS and all agencies and entities participating in the Vendor-Managed Civil Fingerprint Capture System, who contract and interface only with the Prime Contractor. DCJS reserves the right to require fingerprint and security background checks of subcontractor personnel providing services to the Prime Contractor in connection with this RFP and the resulting Master Agreement.

6.2.14 News Releases

News releases, written or oral, relating to this RFP, selection or rejection, or the Contract shall not be made by any Bidder or its agent without the prior written approval of DCJS, which shall not be unreasonably withheld.

6.2.15 Integration, Merger and Order of Preference

The Contract shall be comprised solely of the following documents, which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:

- 1) Appendix A (Standard Clauses for All NYS Contracts);
- 2) The Contract and Clarifying Documents, if any (i.e. Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications to the RFP);

- 3) DCJS Request for Proposal No CJS2008-09, other than Appendix A (Standard Clauses for All NYS Contracts); and
- 4) Contractor's Proposal.

Only documents expressly enumerated above shall be deemed a part of the Contract, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.

All prior agreements, representations, statements, negotiations, and undertakings are superseded. All statements made by the State shall be deemed to be representations and not warranties.

The terms, provisions, representations and warranties contained in the Contract shall survive performance hereunder.

6.2.16 Extraneous Terms

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

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

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

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

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

6.2.17 Liquidated Damages

DCJS may assess liquidated damages at an amount equal to \$1,000 per calendar day in the event that a major milestone as specified in the Detailed Project Plan is not met. The Detailed Project Plan will be developed jointly by the selected contractor and DCJS. The amount of liquidated damages will not exceed \$100,000. The selected contractor shall not be held responsible for (and liquidated damages will not be assessed due to) any delay:

- Caused by schedule amendments requested by DCJS;
- Determined to be the result of activity that is the responsibility of the DCJS project team; or,
- Deemed by DCJS to be outside the control of the contractor.

Assessments incurred under this provision must be paid to DCJS within thirty (30) days of receipt of notice of assessment of liquidated damages or DCJS may recover any assessment through offset of any amount due to DCJS or by initiating a draft of the Standby Letter of Credit required to be maintained by contract under this RFP. The selected contractor shall be responsible for notifying the DCJS Project Manager, in writing, of any delays caused by DCJS personnel. The documentation should reflect the date and nature of the delay and be provided to the DCJS Project Manager within 5 days of the occurrence.

6.2.18 Qualified to Work in the United States

All personnel of the Prime Contractor and any subcontractors must be legally authorized to work in the United States.

6.2.19 Warranties

In addition to the warranties set forth elsewhere in the Contract, the following warranties **shall survive beyond termination or expiration of the Contract** term in accordance with the terms below. For purposes of this RFP, "Product" shall mean all hardware, software, accessories, system integration, network connectivity, storage devices and any other part of the Vendor Managed Civil Fingerprint Capture System together with services and connectivity as defined in this RFP whether hardware, software or the integration of both and whether individual component or integrated as a system. Prime Contractor, in submitting the Bid Proposal and executing the Contract, warrants and represents to the State the following:

A. Product and System Performance

At all times during the Contract term, Prime Contractor warrants that all components or deliverables specified and furnished by or through the offerer under this Contract meet the requirements set forth in the RFP and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards warrants and represents that the Vendor Managed Civil Fingerprint Capture System and all component parts shall operate in accordance with the requirements and acceptance criteria set forth in the Contract. If any portion of the Vendor Managed Civil Fingerprint Capture System fails to meet this warranty standard, the Prime Contractor shall repair or replace the defective component at its sole expense to minimize disruption and loss of functionality, time being of the essence.

Offerer warrants and represents full ownership, clear title free of all liens, and/or that Offerer has obtained on behalf of DCJS perpetual license rights set forth herein to use the Offerer's proposed solution including equipment, software, customizations and services ("Product"), for the purposes stated in this RFP. Offerer shall indemnify DCJS for any loss, damages or actions arising from a breach of this warranty without limitation. DCJS may require Offerer to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. DCJS' request or failure to request such documentation shall not relieve Offerer of liability under this warranty.

Offerer warrants and represents that any required deliverables specified and furnished by or through Offerer, whether tangible or intangible, regardless of form, shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered, with no attachment or part substituted or applied contrary to the manufacturer's recommendations and standard commercial practice in the industry.

Offerer warrants and represents that all Products or deliverables specified and furnished by or through Offerer under the Contract meet the completion criteria set forth in the Contract and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

Offerer further warrants and represents that Products or deliverables specified and furnished by or through the Offerer under the Contract shall individually, and where specified by Offerer to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for the warranty period stated in the Contract, or a minimum of ninety (90) days from the date of acceptance, whichever period is longer ("Project Warranty Period"). During the Project Warranty Period, defects in the Products or deliverables specified and furnished by or through Offerer shall be repaired or replaced at no cost or expense to DCJS.

Offerer shall extend the Project Warranty Period for individual Product(s) or for the System as a whole, if applicable, by the cumulative period(s) of time, after

notification, during which an individual Product or the System requires servicing or replacement (down time), or is in the possession of the Offerer, its agents, officers, subcontractors, distributors, resellers or employees.

In addition to Offerer's Project Warranty, DCJS shall have the benefit of all manufacturers' standard commercial warranties for individual project deliverables. It shall be the Offerer's responsibility to insure such warranties begin conterminously with the commencement of Offerer's Project Warranty Period. Any additional cost(s) for having the periods begin conterminously shall be borne by the Offerer. During the Project Warranty Period, Offerer shall be responsible for placing and coordinating all manufacturers' warranty claims on behalf of DCJS. Such manufacturer's warranty coverage shall be supplemental to, and not relieve the Offerer from, Offerer's warranty obligations during the Project Warranty Period.

Where the manufacturer's warranty term is longer than the Project Warranty Period, Offerer shall notify DCJS and pass through the manufacturer's warranty to DCJS at no additional charge. Offerer shall not be responsible for coordinating services under the manufacturer's warranty after expiration of the Project Warranty Period.

B. Conformance to Manufacturer's Specifications

The warranties expressly set forth in this RFP and resulting Contract will be in lieu of all other warranties, express or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The above warranties do not apply to the extent the problem is caused by misuse, unauthorized modification, unsuitable physical environment, failure to follow required maintenance or failure caused by product for which the Offerer is not responsible.

C. Product & Equipment Warranty

At all times during the Contract term, Prime Contractor warrants and represents that the Product delivered under this Contract conform to the requirements, specifications, performance standards and documentation, and the documentation fully describes the proper procedure for use. Technologies and equipment offered shall be standard new equipment, current model or most recent version or release of standard commercial offering with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Prime Contractor further warrants and represents that the Product delivered under this Contract (including any equipment, components or deliverables specified and furnished by or through Prime Contractor) shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the manufacturer's standard warranty period or for the duration of the Contract, whichever is longer ("warranty period"). During the warranty period, defects in the materials or

workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the State.

If during the warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. Substituted or replacement Product shall be unconditionally guaranteed for a period of one year from the date such substituted or replacement Product was installed or replaced, the standard manufacturer's warranty period, or the remaining duration of the warranty period, whichever is longer.

Where third party equipment manufacturer or software developer offers any project deliverable by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Prime Contractor from, Contractor's warranty obligations during the project warranty period(s). Where a standard commercial warranty covers all or some of the warranty period(s), Prime Contractor shall be responsible for coordinating the warranty service with the third party manufacturer(s) or developers.

All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Prime Contractor, and the State shall in no event be liable or responsible therefore.

D. Title & Ownership Warranty

Prime Contractor warrants and represents full ownership, clear title free of all liens and encumbrances, and/or that Prime Contractor has obtained on behalf of the State perpetual license rights to use the Products, hardware, interfaces, third-party software or any other deliverable ("System") pursuant to this Contract. Prime Contractor shall be solely liable for any costs of acquisition associated therewith. Prime Contractor fully indemnifies the State for any loss, damages or actions arising from a breach of said warranty without limitation. The State or DCJS, or DCJS on behalf of Authorized Users may require Prime Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of Contract award or payment. The State's request or failure to request such documentation shall not relieve Prime Contractor of liability under this warranty.

E. Contractor Compliance

Prime Contractor warrants and represents that it will pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and gives all notices and complies with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Prime Contractor shall establish to the satisfaction of the State that it meets or exceeds all requirements of the bid/ Contract and any applicable laws, including but not limited to, permits,

insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the State. Failure to do so may constitute grounds for the State to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the State.

F. Virus Warranty

Prime Contractor warrants and represents that licensed or customized Software contains no known viruses.

G. Workmanship Warranty

Prime Contractor warrants and represents that all components or deliverables specified and furnished by or through Contractor under the Contract meet the completion criteria set forth in the Contract and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

H. Adequate Parts Supply

Prime Contractor warrants and represents that adequate parts supply will be available throughout the term of the Contract and extensions and stored in such locations to meet the response times and performance specifications set forth herein.

I. Manufacturer's Field Support & Maintenance

Prime Contractor warrants and represents that manufacturer's field support and maintenance will be available to protect the Product from interruption of service due to the inability of the Prime Contractor to meet its service obligations, as such inability is determined by the State in its sole discretion where Prime Contractor is outside the timeframe for response set forth in this RFP.

J. Date Processing Warranty

Prime Contractor warrants and represents that Contract services involving the processing of date/time data shall be provided in an accurate and timely manner insofar as accurately processing date/time data, including leap year and daylight savings calculations. In the event of any breach of this warranty, the Contractor shall restore the services to the same level of performance as warranted herein, and clean, repair or replace data, time being of the essence, at the Prime Contractors' sole cost and expense.

The Prime Contractor shall, at its sole cost and expense, promptly repair or, upon demand, replace the defective unit or component part affected or furnish a patch or temporary fix or work around during the period in which the repair is made so that the performance and functionality of the Product is maintained, time being of the essence.

All costs for labor and material and transportation incurred to repair or replace defective equipment or components during the warranty periods shall be borne solely by the Prime Contractor, and the State shall in no event be liable or responsible therefore.

The Offerer shall provide a warranty period of one year from the date of system acceptance for all products and deliverables. This warranty period shall include full maintenance services at no additional cost to DCJS or Authorized Users. The Offerer solution shall include details of the proposed warranty to meet the needs of DCJS and Authorized Users as described in this RFP.

K. Personnel Eligible for Employment

The Contractor further warrants to DCJS that contractor personnel performing services under the Contract are eligible for employment in the United States.

L. Survival of Warranties

All warranties contained in the Contract shall survive the termination of the Contract. The Contractor will maintain all original manufacturers' warranties, organized neatly by installation location, and will present the organized warranty package to DCJS upon completion and/or termination of contract.

6.2.20 Indemnification & Limitation of Liability

- A. Offerer shall be fully liable for the actions of its agents, employees, partners or subcontractors of the Offerer and shall fully indemnify and save harmless the State and Authorized Users of the Vendor Managed Civil Fingerprint Capture System from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Offerer, its agents, employees, partners or subcontractors of the Offerer, without limitation; provided, however, that the Offerer shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the DCJS.
- B. Offerer will indemnify, defend and hold the State and Authorized Users of the Vendor Managed Civil Fingerprint Capture System harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the DCJS in any action for infringement of a patent with respect to the Product furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the DCJS shall give the Offerer: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Offerer's sole expense, and (iii) assistance in the defense of any such action at the expense of Offerer. Where a dispute or claim arises relative to a real or anticipated infringement, the DCJS may require Offerer, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the DCJS' Counsel's Office shall require. If the Offerer has an opportunity to terminate any such infringement suit by a third-party Offerer, the Offerer shall obtain the consent of the State and the Attorney General of the State of New York to the settlement if such settlement will alter any financial or performance terms of the Agreement.
 - 1. If principles of governmental or public law are involved, the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Offerer without the Offerer's written consent.

2. If in the Offerer's opinion the equipment, materials, or information mentioned in paragraph b., above, are likely to or do become the subject of a claim of infringement of a United States patent or copyright, then without diminishing the Offerer's obligation to satisfy any final award, Offerer may, with the State's written consent, substitute other equally suitable equipment, materials, and information or, at Offerer's option and expense, obtain the right for the State to continue the use of such equipment, materials, and information.
- C. The Offerer will indemnify DCJS without limitation against any claims brought against DCJS by reason of a wrongful disclosure of confidential information attributed to the Offerer or any Offerer employee and will cooperate fully with DCJS and the Attorney General in defense of the claim.
 - D. The Offerer shall not be obligated to indemnify that portion of a claim or dispute based upon: i) DCJS' unauthorized modification or alteration of a product; ii) DCJS' use of the product in combination with other products not furnished by Offerer; iii) DCJS' use in other than the specified operating conditions and environment.
 - E. Unless otherwise specifically enumerated herein, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Offerer is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

Indemnification for Direct Damage:

For all other claims against the Offerer where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Offerer's liability under this Contract for direct damages shall be two (2) times the charges rendered by the Offerer under the Contract.

6.2.21 Compliance with Laws

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

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

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

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60.
- b. Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/subgrants greater than \$2,000 must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit contractors or subrecipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 U.S.C. 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- e. Rights to Inventions Made under a Contract or Agreement- Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.
- f. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)- Contracts and subgrants in excess of \$100,000

shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.

- g. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- which requires that every contractor under a contract for more than \$100,000 and every tier of contractors or subcontractors there under shall file certification, as required, that said contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by such Amendment. A contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)
- h. Debarment and Suspension. (Federal E.O.s 12549 and 12689)- Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

6.2.22 Termination

A. For Convenience

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

- 1. The State shall have the right to unilaterally terminate this Contract, in whole or in part, for convenience provided that prior notice of such termination is given. Such option may be exercised upon thirty (30) days advance written notice to the Prime Contractor pursuant to paragraph (C), below. In the event that the State exercises this option, the Contract shall terminate as to the portion(s) of work being deleted as of the termination date set forth in paragraph (C), below, with obligations of the parties as follows:
 - a. The Prime Contractor shall deliver to the possession of the State within such thirty (30) day notice period all drawings, reports or other required Contract deliverables to date related to the portion(s) of work subject to the termination, whether preliminary or final, in the form and format set forth in this agreement. The State's receipt of such deliverables shall be a

condition precedent to the obligation of the State to make payments to the Prime Contractor.

- b. Upon receipt of such deliverables, the State shall be obligated to pay the Prime Contractor the amounts then due and owing as specified in the approved Vendor Managed Civil Fingerprint Capture System progress payment plan as the exclusive amounts due Prime Contractor, calculated as of the termination date, such payment to be tendered to Prime Contractor within ninety (90) days of receipt of the deliverables. The State shall not be liable to Prime Contractor for lost profits, administrative or other expenses, however denominated.

B. For Cause

1. Notice

If either party fails to materially comply with any provision of the Contract the other party shall so notify the party in default as provided in paragraph (C), below. The notification shall specify in reasonable detail the nature of the default.

2. Cure Period

Where timeframes for performance are otherwise set forth in this Contract, the specific time period stated shall govern. For all other instances constituting default, the party in default shall have forty-five (45) calendar days from the date of receipt of notice to correct the default (“cure period”). During the cure period, the party in default shall work diligently to resolve and cure any default. The parties may, upon mutual written agreement, agree to extend the timeframe for cure.

Because of the public safety nature of the Vendor Managed Civil Fingerprint Capture System, the State may, upon written notice to the Prime Contractor, shorten the forty-five (45) day cure period as it deems necessary in the event that the Prime Contractor’s breach threatens or has the potential to threaten the ongoing operation of the Vendor Managed Civil Fingerprint Capture System, or the health, safety or welfare of those served by the Vendor Managed Civil Fingerprint Capture System.

3. Default

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

4. Additional State Rights & Remedies

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

Therefore, in the event of termination of this Contract in whole or in part based upon the Prime Contractor's default or abandonment, the State shall, in its sole judgment, among other factors, determine the usability to the State of that portion of the Vendor Managed Civil Fingerprint Capture System completed prior to default with reference to completion of the foregoing mission. The State may, in accordance with that determination, pursue any remedies as it deems advisable in completing that mission, with sole reference to the best interests of the State, including, but not limited to:

- i. buy out all or part of completed Vendor Managed Civil Fingerprint Capture System or system components, software or accessories;
- ii. Prime Contractor to license or grant to the State such intellectual property and patent rights for the proposed technology solution as are required for a purpose limited to:
 - a) Continued operation and maintenance of the previously completed portion of the Vendor Managed Civil Fingerprint Capture System, including completed work in progress, leased to or rented or under construction for Authorized Users and all Products in operation, by the State or by a qualified third party selected by the State for the remainder of the original contract term, and/or

b) the design, build, continued operation and maintenance of the uncompleted Vendor Managed Civil Fingerprint Capture System deliverables due under the Contract; iii. procuring from any third party, upon such terms and in such manner as the State deems appropriate, either:

- (1) an alternate system(s) to complete the unfinished portion of the Vendor Managed Civil Fingerprint Capture System deliverables at time of default, and/or
- (2) an alternate network to completely replace the deliverables (whether completed or partially completed at time of default) furnished by Prim Contractor prior to default; and/or
- (3) pursuing any other action(s) provided at law or in equity as the State deems necessary to enable the State to complete the above mission.

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

5. Transition

In the event that the any Vendor Managed Civil Fingerprint Capture System or arrangement for associated services is operational at the point that a termination for cause is issued, the Prime Contractor shall provide and comply with the requirements for transition set forth in the RFP, below.

6. Cumulative Remedies

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

C. Termination Notice

Notices required by this section shall be delivered to the other party in writing, by certified mail, return receipt requested. The date of notice shall be deemed the date of delivery set forth on the return receipt. (“date of return receipt notice”) Such notice shall be addressed as follows:

State of New York:
Deputy Commissioner/CIO
State of New York
Division of Criminal Justice Services

4 Tower Place
Albany, NY 12203-3764

Prime Contractor:

D. Termination Date

Contract termination dates shall be determined as follows:

In the event a notice of termination is issued for convenience, the Contract termination date shall be deemed ninety (90) calendar days from the date of delivery set forth on the return receipt notice.

Subject to the State’s right to shorten the forty-five day period pursuant to paragraph (B), above, in the event a notice of termination is issued for cause, the Contract termination date shall be forty-five (45) days from the date of the return receipt notice, or such other extended period of time as has been mutually agreed in writing by the parties.

E. Mitigation of Costs

The Prime Contractor shall not undertake any additional or new Contractual obligations on or after the date of return receipt notice of a termination notice without the prior written approval of the State. On or after the date of return receipt notice of a termination notice and during the termination notice period, the Prime shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

6.2.23 Post Termination Transition

Because of the public safety interests of the State, the State may require the Prime Contractor to provide uninterrupted services after Contract termination as the State deems reasonable and necessary for the continued safe operation of the Vendor Managed Civil Fingerprint Capture System and/or as necessary for the State to comply with all legal requirements for establishing a new Contract to continue safe operation of the Vendor Managed Civil Fingerprint Capture System (“transition period”). Transition services shall be governed as follows:

A. Post Termination Transition Period

The post termination transition period shall be determined by the State, and set forth in writing, return receipt notice, to the Prime Contractor. The State shall consult with the Prime Contractor prior to making such determination. The State reserves the right to

subsequently amend the post termination transition period upon thirty (30) days advance written notice to the Prime Contractor.

B. No Interruption in Service

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

C. Post Termination Transition Plan

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

D. Prime Contractor Post Termination Transition Services

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

The Prime Contractor shall transfer to the successor Contractor all title, leasing rights, or license rights of all hardware, service agreements, agreements for the provision of services and equipment in use in the Vendor Managed Civil Fingerprint Capture System operation. The successor Contractor shall utilize such hardware and equipment in accord with the rights and duties attendant thereto. The Prime Contractor shall turn over to the

successor Contractor all network software, data files, application programs, and documentation.

E. Compensation for Post Termination Transition Services

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

F. State Responsibilities for Post Termination Transition

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

G. Training Successor Organization & Personnel

Post Termination Transition Services furnished by the Prime Contractor must include the development of a training plan. The Prime Contractor is required to provide post termination transition training for the successor organization's management in the operation and maintenance of the Vendor Managed Civil Fingerprint Capture System and associated services. The training effort shall focus on providing the successor Contractor's management personnel with information about all operational aspects of the Vendor Managed Civil Fingerprint Capture System. During transition, the Prime Contractor shall prepare a detailed training program. This program shall establish a post termination transition training group which shall provide the required training for successor Contractor personnel.

Training shall be accomplished through a mixture of formal and on-the-job training. The successor Contractor's management personnel shall participate in all Vendor Managed Civil Fingerprint Capture System and related services and functions during the post termination transition period. The successor Contractor's management shall be asked to participate in normal operations and to fulfill required tasks. The Prime Contractor agent shall also provide documented instructional materials to facilitate the learning process. The latest version of all documentation shall be used during the formal training sessions.

6.2.24 Downsize or Rescale of Project

The State reserves the right to terminate or modify this Contract in the event of the loss of funding streams or appropriations. The State reserves the option to scale back the capacity functionality of the Vendor Managed Civil Fingerprint Capture System or the

requirements in order to serve the best interests of the State. If the State exercises the option to scale back the project and such option adversely affects the Vendor Managed Civil Fingerprint Capture System performance and/or requires modification of the Vendor Managed Civil Fingerprint Capture System design to insure operability of the remaining, scaled-back network, any proposed modifications to insure the performance or interoperability of the modified network will be subject to the Change Order provisions set forth in this RFP, below. If the State exercises the option to scale-back the project and such option does not adversely affect network performance and/or require modification of the Vendor Managed Civil Fingerprint Capture System design to insure interoperability of the remaining, scaled-back Vendor Managed Civil Fingerprint Capture System, the State shall be entitled to a corresponding adjustment in fees due the Prime Contractor with no further compensation due Prime Contractor for the deleted scope.

6.2.25 Process for Change Orders

At any time during the term of this Contract, the State may make changes, subtractions or additions in any of the Equipment, Software, Documentation, Services and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this agreement. Such changes will be subject to the unit costs itemized in the Contract or such other costs as may be mutually agreed between the parties. All such changes shall be reduced to a written Change Order, Attachment 9.6 executed by both parties, and shall otherwise be in accordance with the terms and conditions of this Contract. The Change Order shall be accepted and agreed to by both the State and the Prime Contractor as evidenced by the written signatures of the appropriate representatives of both parties. If any such change causes an increase or decrease in pricing or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the parties, subject to the approval of the New York State Comptroller and any applicable control agency, if required.

6.2.26 Force Majeure

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

In the event of a service disruption caused by a State Disaster Emergency, as defined in section 20(2)(b) of the Executive Law or other emergency situation or occurrence that the Commissioner of the Division of Criminal Justice Services, in his or her sole discretion, has determined poses a risk to health and public safety or the conservation of public resources, the Contractor shall be notified that DCJS is invoking this provision and that

notwithstanding any other provision in the Contract, during a State disaster emergency or other emergency situation, unless the Contractor's performance would be excused pursuant to the *Force Majeure* provisions of the Contract, the Contractor shall provide the necessary Services to the State on a time-is-of-the-essence basis, working on a twenty-four (24) hour a day, seven (7) day a week basis, to restore and/or recover State operations and Services that are critical to the public safety, health, and welfare of the State, to be determined at the sole discretion of the State. Except as provided in this section, all other provisions of the RFP and Contract remain in full force and effect during a state disaster emergency or other emergency situation.

6.2.27 Security, Information Security, Breach and Notification Act

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

A. Security Procedures & Employee Dishonesty

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

B. Information Security Breach and Notification Act, Indemnification of DCJS and Authorized Users for Breach of Security

The NYS Information Security Breach and Notification Act amends the State Technology Law (Section 208) and the General Business Law (Section 899-aa). More information is available at

<http://www.cscic.state.ny.us/security/securitybreach/index.cfm>.

State entities and persons or businesses conducting business in NY who own or license computerized data which includes private information must disclose any breach of the data to NY residents State entities must also notify non-residents.

When notification is necessary then the State entity or person or business conducting business in NY must also notify three New York State Offices including the New York State Attorney General (OAG), the New York State Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB).

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

6. (a) whenever the attorney general shall believe from evidence satisfactory to him that there is a violation of this article he may bring an action in the name and on behalf of the people of the state of New York, in a court of justice having jurisdiction to issue an injunction, to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under article sixty-three of the civil practice law and rules. In such action the court may award damages for actual costs or losses incurred by a person entitled to notice pursuant to this article, if notification was not provided to such person pursuant to this article, including consequential financial losses. Whenever the court shall determine in such action that a person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to ten dollars per instance of failed notification, provided that the latter amount shall not exceed one hundred fifty thousand dollars.

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

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

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

6.2.28 User Data is the Property of State of New York

In the course of performance of its obligations pursuant to this RFP and any resulting Contract the Prime Contractor, its subcontractors, vendors, consultants, employees and service providers will have access to or come into possession of data and information which is the property of the State of New York and data and information which is processed by or stored within DCJS or other Participating Agency for the benefit of other entities. Such data includes but is not limited to fingerprint cards, criminal history information, employee and license application information, biometric identifiers, social security numbers, personally identifying information, photographs, palm prints and other data and information stored in electronic, optical or physical form including data and information concerning individuals and data and information concerning operations,

processes, procedures and policies of DCJS, Participating Agency and other governmental entities.

All information concerning DCJS or other Participating Agency operations, procedures and policies shall be kept confidential by the Prime Contractor, its subcontractors, vendors, consultants, employees and service providers and Prime Contractor, its subcontractors, vendors, consultants, employees and service providers shall comply with DCJS and State of New York administrative procedures and regulations concerning this requirement. Prime Contractor, its subcontractors, vendors, consultants, employees and service providers shall take all steps required by DCJS or other Participating Agency and the State of New York to protect confidential information. This may include, but is not limited to, execution of non-disclosure agreements by Prime Contractor employees, and the employees of subcontractors, vendors, consultants, employees and service providers of the Prime Contractor. If applicable to the environment, fingerprint checks and New York State Police background checks of Prime Contractor, subcontractor, vendor, consultant, employee and service provider personnel with access to such information, and a requirement that the Prime Contractor, subcontractor, vendor, consultant, employee and service provider personnel must be approved by DCJS. The Prime Contractor shall be responsible for assuring DCJS that it notifies its officers, agents and employees involved with the contract of the provisions of this Section, and the Prime Contractor shall require compliance with the provisions of this section by all of its subcontractors, vendors, consultants, employees and service providers performing or providing services to the Prime Contractor in connection with this RFP and the resulting Contract.

The use of information obtained by the Prime Contractor, its subcontractors, vendors, consultants, employees and service providers in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties. The Prime Contractor, its subcontractors, vendors, consultants, employees and service providers do not acquire any ownership, right to use, title or any interest in any data or information which remains the property of DCJS or other Participating Agency or the property of the entities for which DCJS or other Participating Agency is processing or storing the data or information.

The Prime Contractor, its subcontractors, vendors, consultants, employees and service providers shall never remove any work papers or product from the DCJS premises except with the written consent of DCJS. The Prime Contractor, its subcontractors, vendors, consultants, employees or any other service provider shall never disclose, sell, publish, archive, make available in any form or summary any information of any kind obtained in connection with performance under this RFP and any resulting Master Agreement.

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

6.2.29 Nondisclosure & Confidentiality

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

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

Prime Contractor shall hold the State harmless from any loss or damage to the State resulting from the disclosure by the Prime Contractor, its officers, agents, employees, and subcontractors of such confidential information.

Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. If Prime Contractor is intending to seek an exemption from disclosure of these materials under the Freedom of Information Law, the Prime Contractor must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

Confidentiality of Criminal History Information

- a. New York State law protects the privacy of criminal history records and other confidential information. The Prime Contractor shall take all steps required by the State to protect confidential information. This may include, but not be limited to, execution of a non-disclosure agreement with each staff assigned to the project, fingerprint checks and New York State Police background checks of Prime Contractor, subcontractor, vendor, consultant, employee and service provider personnel with access to such information and a requirement that the Prime Contractor replace personnel at the discretion of the State.
- b. The Prime Contractor shall be responsible for assuring that it notifies its officers, agents and employees involved with the contract of the provisions of this subsection. The Prime Contractor shall be responsible for assuring that any subcontracting agreement contains a provision that conforms to the provisions of this subsection.

- c. All oral or written public representations pertaining to the award of this contract and also verbal or written public representations involving the State made by the Prime Contractor during the life of the Agreement shall not be made without the prior written approval of an authorized representative of the State.
- d. The Prime Contractor shall comply with administrative procedures and regulations concerning DCJS operations, procedures, and policies.
- e. The Prime Contractor shall not send or permit to be sent to any location outside of the United States of America, any data about individuals in the Vendor Managed Civil Fingerprint Capture System even if that data cannot be uniquely linked to a single person (e.g., DOB).

NYS Cyber Security Policy P03-002

- a. All information concerning DCJS' operations, procedures and policies shall be kept confidential by the Prime Contractor and the Prime Contractor shall comply with administrative procedures and regulations concerning these rules. The Prime Contractor shall take all steps required by DCJS to protect confidential information. This will include fingerprint and background checks of Prime Contractor personnel with access to such information and a requirement that the Prime Contractor replace personnel at the discretion of DCJS.
- b. Prime Contractor must abide by the conditions set forth in the DCJS Non-Disclosure Agreement, Exhibit Q.
- c. As a result of the security issues associated with the services to be performed by the Prime Contractor, the Prime Contractor and any associates and/or subcontractors will be required to insure that all work is performed within the continental United States.

6.3 Standby Letter of Credit (SLOC)

Within thirty (30) days of receipt of a “Notice of Contract Award” from the State, the successful Offerer must submit a Standby Letter of Credit (SLOC) in the form set forth at Exhibit 9.5.4 SLOC, and must otherwise comply with the requirements of this Section.

At time of bid submission, Offerer is required to submit irrevocable guarantee of its financing institution (“commitment guarantee”) stating that, if Offerer is selected for proposed award, the financing institution will issue the SLOC in the form set forth in Exhibit 9.5.4 SLOC, and that the financing institution otherwise meets all applicable requirements of this RFP.

A. Prime Contractor’s Obligation to Maintain

The Prime Contractor shall at all times maintain in effect an irrevocable SLOC for the entire contract term and any applicable extensions, as may now or hereafter be modified upon mutual agreement of the parties.

Failure to maintain such SLOC in the full aggregate amount set forth herein shall constitute a material breach by the Prime Contractor.

The SLOC must be issued by a financial institution authorized to do business under the laws of the State of New York.

B. Form of SLOC

The form for the SLOC shall be as set forth in Exhibit 9.5.4 Letter of Credit Form (SLOC).

C. Effective Date

The fully executed SLOC shall be delivered to the State no more than thirty (30) days after receipt of “Notice of Contract Award” from the State. The executed SLOC so delivered (“Initial SLOC”) shall be effective as of the date of approval of the Contract by the New York State Comptroller. (“effective date”) The State shall certify such approval to Issuer within fifteen business days of receipt of the Comptroller’s approval.

D. Issuer’s Obligations

1. SLOC

The obligation of Issuer under the SLOC shall be the individual obligation of Issuer and in no way contingent upon reimbursement by Prime Contractor with respect thereto.

2. Term

A SLOC shall be irrevocably maintained in effect by the Prime Contractor beginning on the Contract Effective Date and ending at the earlier of the time it is terminated or modified by a change order agreement executed by the parties or expiration of the Contract term plus all applicable extensions as provided by this RFP. (“SLOC Term”)

3. Required Notices

Issuer is required to provide the State with a written notice of: (i) any failure of the Prime Contractor to replenish the SLOC to the full aggregate amount; or (ii) any failure of the Issuer to renew the SLOC.

4. Presentment & Demand

The State shall be entitled to present a written draft at sight (sight draft) on the Issuer. All drafts made under and in compliance with the terms and conditions of the SLOC shall be duly honored by Issuer upon presentment. The State’s failure to make such demand for a particular action shall not be deemed a waiver of its rights under the SLOC. Partial and multiple drawings are permitted under the SLOC and such drawings will immediately reduce the then available balance of the SLOC, subject to the replenishment provisions, below. The Issuer, for value received, must stipulate and agree that the obligations of said Issuer and its Irrevocable Standby Letter of Credit shall be in no way impaired or affected (i) by any extensions of the times within which: (a) State may receive, review, accept or pay for deliverables under the Contract, or (b) within which the Prime Contractor

may furnish a Standby Letter of Credit, or (ii) by any waiver by the State of any of the requirements of said Contract, and Issuer must waive notice of any such extensions or waivers.

E. Aggregate Amount & Replenishment

1. Aggregate Amount

The executed SLOC shall be maintained by Prime Contractor at all times during the SLOC Term in the full amount of five hundred thousand dollars and no cents (\$ USD).

2. Replenishment

In the event the State makes a partial or complete drawing(s) against the SLOC, the amount(s) of such drawing(s) must be replenished by Prime Contractor to the full aggregate amount within five (5) business days of any individual draws against the SLOC. Failure of the Prime Contractor to replenish the SLOC within the required timeframe shall be deemed a material breach of this Contract.

F. Jurisdiction & Venue

Issuer may designate a separate location for receipt of the State's draft, however, presentment shall be deemed to occur within the State of New York regardless of the physical location designated for receipt of the State's draft. Any actions or proceedings under the SLOC shall be governed by the laws and heard in Courts of the State of New York. Any rights set forth in this section shall be deemed cumulative, and in addition to any other remedies available at law or in equity.

G. SLOC Fees

The Prime Contractor shall be responsible for payment of all fees associated with obtaining and maintaining the SLOC, including extension period(s).

7.0 Technical Proposal Instructions

Bidders shall provide responses to the following on Exhibits G, H and I.

7.1 Bidder Eligibility and Qualifications (Exhibit G)

- a) The bidder shall respond fully to the questions in each section of Exhibit G:
 - 1) Bidder Eligibility and Qualifications
 - 2) Sufficiency, Capacity and Experience
- b) The bidder shall complete the Required Experience table to provide evidence that bidder maintains an organization capable of performing the work described, in continuous operation for at least the past three (3) years.
- c) The bidder shall complete the Supplemental Information section to provide contact information for references able to confirm data in the Required Experience table.

7.2 Executive Summary (Exhibit H)

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should:

- a) Summarize approach and plans for accomplishing the work outlined in Section 3. This should include a high level discussion of the major points distinguishing bidder's proposal, and should:
 - o Convince the state that the bidder understands the objectives that the contract is intended to meet;
 - o Convince the state that the bidder understands the nature of the required work;
 - o Convince the state that the bidder understands the level of effort necessary to successfully complete the contract; and,
 - o Convince the state that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract.

The bidder's response to this section should be designed to convince the State that the bidder's detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

- b) The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP. DCJS plans to contact each of these contact names as a reference. Bidders are encouraged to provide up to 2 alternate contact names, in the event primary contacts cannot be reached to provide a reference.
- c) The bidder should include descriptive information for prior projects, including but not limited to contract value, number and types of sites, applicant volume, error and resubmission rates, issues encountered and resolved, etc.

7.3 Technology Proposal (Exhibit H)

Proposals must have ability to transmit fingerprint and non-fingerprint data in the format required by DCJS.

- a) What live-scan equipment do you propose?
- b) Describe typical problems and mean time between failures for this equipment.
- c) Present a plan for maintaining this equipment. Include personnel qualifications, training and locations, maximum potential outage length in hours, notification and escalation procedures, standard maintenance schedules, and spare equipment depots.
- d) Describe proposal for meeting business continuity requirements.
- e) DCJS expects that future requirements will expand beyond fingerprints to include palm prints and other methods of biometric identification. Describe proposal to address these future requirements.

7.4 Applicant Service Plan (Exhibit H)

Proposals must have ability to meet applicant service needs.

- a) Describe your plans to address the applicant service level requirements of this RFP. Include your approach to establishing fixed/mobile sites for applicant fingerprinting services.
- b) Describe your approach to address the geographically and culturally diverse clientele aspect of this project, including foreign language support and hearing impaired support.

- c) Present a design for a web-based appointment scheduling system. Include applicant data capture, real-time appointment availability management, confirmation code generation, Mapquest or similar capability to indicate facility locations, facility and agency appointment notification, and appointment attendance reporting.
- d) Present a design for an associated toll free call-center operation. Discuss staffing, location, foreign language support, hearing impaired support, communications and training requirements. Explain how this facility will interact with the web-based system, clients and agency personnel.
- e) Present your plan for collection, management and reconciliation of applicant fees and cash management with the State. Include subcontracted operations such as ACH or other financial intermediaries. Subcontractors must be acceptable to the State

7.5 Participating Agency Service Plan (Exhibit H)

Describe your plans to address the needs of participating agencies with respect to:

- a) the initial interface to capture unique identifying information;
- b) participating agency reporting and inquiry needs; and
- c) Participating agency custom programming needs.

7.6 Mobilization and Implementation Plan (Exhibit H)

Proposals must address the requirement to fully implement within four months of contract approval.

- a) Present a plan in MS Project for achieving a rollout (as defined in Attachment 9.3 - Glossary) within four (4) months following contract approval. At a minimum, the plan should include tasks, dependencies (internal and external), resource requirements by role, work effort for each task, and sufficient milestones to ensure accurate progress tracking.
- b) In support of this plan, provide a communications plan indicating audience, communication type, frequency, format and feedback mechanisms, if any.

7.7 Risk Management Plan (Exhibit H)

Each Offerer is required to submit a Risk Management Plan. The Plan must clearly articulate:

- 1) the methods to be utilized in the identification of potential risks;

- 2) the procedures utilized to predict the likelihood that a risk will occur;
- 3) the methods for quantifying the potential impact to the project;
- 4) the methods for development of action plans to mitigate the impact of that risk occurrence; and,
- 5) information regarding best practices and, if applicable, lessons learned during the implementation of other vendor managed fingerprint capture systems.

7.8 Quality Plan (Exhibit H)

The Offerer must provide a Quality Management Plan that describes:

- 1) The processes and techniques to measure, monitor and control, the quality of the end product to ensure that the proposed solution meets the objectives and provides the critical project features listed throughout this RFP; and,
- 2) Best practices and lessons learned during the implementation of other vendor managed fingerprint capture systems.

7.9 Experience of Bidder on Contracts of Similar Size and Scope (Exhibit H)

Describe three (3) similar projects which have been successfully completed within the past five (5) years. For each project, indicate

- a) Client
- b) Goals
- c) Staffing provided for implementation and post-implementation activities
- d) Original and actual schedule
- e) Impressions per (year), and highest volumes for one day, one week and one month
- f) Average uptime during agreed business hours
- g) Error rate
- h) System down time for any period over 12 hours, with reasons and remedies

- i) Security breaches, if any
- j) Present statistics indicating number of fingerprint based transactions, and rejection rate due to poor quality images.

7.10 Contract Management (Exhibit I)

The bidder should describe its specific plans to:

- a) manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule.
- b) The plan should include the bidder's approach to escalate issues as appropriate.
- c) The plan should include the bidder's approach to communicate with the State Contract Manager including, but not limited to, status meetings, status reports, etc.

7.11 Location (Exhibit I)

The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.

7.12 Proposed Subcontractors (Exhibit O)

The bidder should list each subcontractor proposed for use on the project.

7.13 Key Subcontractor Certification (Exhibit P)

The bidder should submit a Key Subcontractor Certification Form for each Key Subcontractor proposed for use on the project.

8.0 Proposal Evaluation, Bid Evaluation and Award

8.1 Proposal Evaluation Committee

Bid proposals may be evaluated by an Evaluation Committee composed of members of participating agencies. Separate teams will be established for the financial/administrative and technical portions of the evaluation. On occasion, the Evaluation Committee may choose to make use of the expertise of an outside consultant in an advisory role.

8.2 Evaluation and Selection Process

DCJS will evaluate Bidders' Proposals in accordance with the evaluation methods, procedures, and criteria as set forth below. Pursuant to Article XI of the State Finance Law, the basis for award shall be on a "Best Value" basis. As defined in New York State Finance Law, Article 11, "Best Value" means the basis for awarding contracts to a responsible and responsive Bidder whose offer optimizes quality, cost, and efficiency, and that is consistent with the best interests of the State of New York. Award shall be based on the objective and quantifiable analysis as described herein, with 50 percent (50%) of the overall award based on the Bidder's Financial Proposal and 50 percent (50%) of the overall award based on the Bidder's Technical Proposal. DCJS evaluates Proposals for goods and Services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Through this process, DCJS identifies vendors who will best meet its needs and do so in a cost-effective manner. DCJS intends that all Proposals will be evaluated uniformly and consistently, providing Bidders an equal opportunity to be considered. Proposals accepted in response to this RFP shall be subject to the following evaluation process:

8.2.1 1st Level: Pass/Fail Screening

Each Proposal will be screened on a pass/fail basis for completeness and conformance to the submission requirements stated in Section 5.1.3 – Proposal Content. Proposals that do not pass this 1st Level Pass/Fail Screening will be deemed non-responsive and removed from further consideration.

8.2.2 2nd Level: Initial Screening of Technical Proposal for Compliance with Mandatory Technical Requirements

The Technical Proposals will be screened for compliance with the Mandatory Technical Requirements set forth in Exhibit G - Bidder Eligibility and Qualifications. Proposals that do not respond affirmatively to each mandatory requirement will be deemed non-responsive and removed from further consideration. Organizational experience will be verified by the identified contacts as part of the Reference Check process. Bidders are encouraged to provide alternate

contact information for use in the event DCJS is unable to reach a primary contact. If DCJS cannot confirm the organizational experience in the bidder's response, the proposal will be deemed non-responsive and will not be evaluated further.

8.2.3 3rd Level: Technical Proposal Evaluation - 50% of Overall Bid Score

Those Bidders who pass the 1st and 2nd Level screenings will proceed to the 3rd level evaluation. Exhibit H of the Technical Response will be evaluated based on their content and references, and proposals will be scored based on a weighted scoring system.

8.2.4 4th Level: Financial Proposal Evaluation – 50% of Overall Bid Score

The Financial Proposals of those Bidders who pass the 1st and 2nd Level screening will be evaluated by DCJS. DCJS shall score the financial proposal as follows:

- a) Scoring of the proposed sliding scale fee schedule will be worth 48 points. DCJS will independently score each of the nine volume breaks listed in Exhibit J.
- b) Scoring of the proposed Hourly Rate for Computer Programmer Analyst Services will be worth 2 points. The score will be calculated as follows:

$$\text{Hourly Rate of Low Cost Bidder} / \text{Hourly Rate of Bidder}$$

The scores for the sliding scale fee schedule and the Hourly Rate for Computer Programmer Analyst Services will be summed to determine the Total Financial Score.

8.2.5 Final Proposal Ranking

The results of the third-level and fourth-level evaluations will be combined to calculate and rank the Proposals based on the Bidder's Total Combined Score. Contract award will be made to that responsive and responsible Bidder who's Proposal achieves the highest Total Combined Score.

8.3 Evaluation Criteria

Proposal Responses on Exhibit H will be used to evaluate technical bid proposals received in response to this RFP. The evaluation response categories may be used to develop more detailed evaluation criteria to be used in the evaluation process:

- a) The bidder's general approach and plans in meeting the requirements of this RFP.

- b) The bidder's detailed approach and plans to perform the services required by the Scope of Work of this RFP.
- c) The bidder's documented experience in successfully completing contracts of a similar size and scope to the work required by this RFP.
- d) The qualifications and experience of the bidder's management, supervisory or other key personnel assigned to the contract, with emphasis on documented experience in successfully completing work on contracts of similar size and scope to the work required by this RFP.
- e) The overall ability of the bidder to mobilize, undertake and successfully complete the contract. This judgment will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the bidder to complete the contract, the availability and commitment to the contract of the bidder's management, supervisory and other staff proposed, and overall attainability and appropriateness of the bidder's proposal to lead to successful contract completion.
- f) The bidder's Applicant and Participating Agency Service plans, Mobilization and Implementation Plan, Risk Management Plan and Quality Plan.
- g) The bidder's experience on contracts of similar size and scope.
- h) The bidder's approach to contract management.

8.4 Bid Discrepancies

In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum of the column of figures.

9.0 Attachments

9.1 Abbreviation Definitions

Abbreviation	Definition
ABIS	Automatic Biometric Identification System
ACL	Access Control List
ADAMS	Authenticated Digital Asset Management System
AES	Advanced Encryption Standard - Currently in development by the federal government.
AFIS	Automated Fingerprint Identification System
AFIT	Advanced Fingerprint ID Technology
AGC	Automatic Gain Control
AIRS	Automated Incident Report System
ALFS	Aid to Localities Fiscal System
ALI	Automatic Location Identification
ANI	Automatic Number Identification
ANSI	American National Standards Institute
AOR	Area of Operation
API	Application Program Interface
ASCII	American Standard Code for Information Interchange
ASTM	American Society for Testing and Materials
AVIS	Advanced Verification and Identification System
B2B	Business to Business
BAT	Biometric Automated Toolset
BEE	Biometric Experimentation Environment
BEFF	Biometric Exchange Formats Framework
BER	Bit Error Rate
BI	Business Intelligence
BI/O	Biometric Interoperability
BPO	Business Process Outsourcing
BRR	Backup-Recovery-Restore
CAC	Common Access Card
CAR	Criminal, Answer required
CASE	computer-aided system engineering
CBEFF	Common Biometric Exchange Format
CCH	Computerized Criminal History System
CD-ROM	Compact Disc media, read-only memory with a computer data capacity of 650 MB (Megabytes) and compatible with ISO-9660.

Abbreviation	Definition
CFR	Code of Federal Regulations
CHR	Criminal History Record
CIA	Central Intelligence Agency
CJIS	Criminal Justice Information Services
CLE	Certified Latent Examiner
CoE	Center of Excellence
COTS	Commercial Off-the-Shelf
CPR	FBI Photo Services
CPU	central processing unit
CRM	Customer Relationship Management
CSR	Customer Service Representative
DBA	database administrator
DC	District of Columbia
DCJS	Division of Criminal Justice Services
DES	Digital Encryption Standard
DHS	Department of Homeland Security
DMS	Database Management System
DOB	Division of the Budget (NYS)
DOCS	Department of Correctional Services
DOD	Department of Defense
DOJ	Department of Justice
DOS	Department of State
DOT	Department of Transportation (NYS)
dpi	dots per inch
DTF	Department of Taxation and Finance (NYS)
DSS	Data Synchronization Service
EAI	Enterprise Application Integration
EBTS	Electronic Biometric Transmission Specification
EFTS	Electronic Fingerprint Transmission Specification
EJB	Enterprise JavaBeans
EMI	Electromagnetic Interference
EMR	Electromagnetic Radiation
ERP	Enterprise Resource Planning
ESD	Electrostatic Sensitive Devices
ETIS	Enhanced Terrorist Identification Service
F&A	Finance and Accounting
FBI	Federal Bureau of Investigation
FCC	Federal Communications Commission

Abbreviation	Definition
FDMA	Frequency Division Multiple Access
FFL	Federal Firearms Licensee
FIPS	Federal Information Processing Standard
FOC	Full Operating Capability or Final Operational Capability
FPQU	Fingerprint Quality Upgrade
GAO	Government Accountability Office
Gbps	Gigabytes per second
GJXDM	Global Justice XML Data Model
GPS	Global Positioning System
GUI	graphical user interface
GSP	Gateway Service Provider
HR	Human Resources
IAFIS	Integrated Automated Fingerprint Identification System (FBI)
ICE	Immigration and Customs Enforcement
IDENT	Automated Biometric Identification System (DHS)
iDSM	interim Data Sharing Model
III	Interstate Identification Index (FBI)
IJAB	Interactive Justice Advisory Board (NYS)
INS	Immigration and Naturalization Service
IOC	Initial Operating Capability or Initial Operational Capability
IT	Information Technology
ITIM	Information Technology Investment Management
ITSS	Information Technology Support Services
J2EE	Java 2 Enterprise Edition
JABS	Joint Automated Booking System
JPEG	Joint Photographic Experts Group – Establish standards for data compression typically used in large image files.
JRIES	Joint Regional Information Exchange System
kbps	Kilobits per second
kHz	Kilo-Hertz
LAN	local area network
LEO	Law Enforcement Online
LINCS	The “Long-distance Intercity Network Communications System,” New York State’s internal long distance voice/data switching network.
LFP	Latent Fingerprint
LPP	Latent Palm Print
Mbps	Megabytes

Abbreviation	Definition
MHz	Mega Hertz
MIS	management information system
MISI	Multi-Agency Information Sharing Initiative
MRE	Multiple Registration Events
NAS	National Alert System
NCHIP	National Criminal History Improvement Program
NCIC	National Crime Information Center
NFIQ	NIST Fingerprint Image Quality
NGI	Next Generation Identification
NICS	National Instant Background Check System
NIEM	National Information Exchange Model
NIF	Not In File
NIST	National Institute of Standards and Technology
NPPS	National Palm Print System
NSTC	National Science Technology Council
NYeNET	New York State government's high-speed communications carrier whose fiber optic backbone follows the routes of the State's major highways. The NYeNET is fiber infrastructure capable of transporting data, voice and video providing a statewide Internet.
NYCPD	New York City Police Department
NYPD	New York Police Department
NYS	New York State
NYSID	New York State Identification Number
NYSP	New York State Police
NYSPIN	New York Statewide Police Information Network
OFT	Office for Technology (NYS)
OM	Operations Management
OMB	Office of Management and Budget
OMH	Office of Mental Health (NYS)
ORI	Originating Agency Identifier
OTDA	Office of Temporary and Disability Assistance (NYS)
PC	personal computer
PDA	personal digital assistant
PCN	Process Control Number
PM	Project Manager or Program Manager
PMO	Program Management Office
PP	Palmprint
PPD	Palmprint Database

Abbreviation	Definition
QA	Quality Assurance
RAP	Report of Arrest and Prosecution
RDBMS	relational data base management system
RFI	Request for Information
RFP	Request for Proposal
RFQ	Request for Quotation
RISS	Regional Information Sharing System
RUP	Rational Unified Process
SAFIS	Statewide Automated Fingerprint Identification System
SAN	Storage Area Network
SCM	Supply Chain Management
SDLC	Software Development Lifecycle
SID	State Identification Number
SIP	Strategic Implementation Planning
SMT	Scars, Marks, Tattoos, and Other Characteristics
SNMP	Simple Network Management Protocol
SOA	Service Oriented Architecture
SRT	Remote Search Results
SSG	Standard Systems Group
TCN	Transaction ID
TCP/IP	Transmission Control Protocol/Internet Protocol
TDB	Temporary database
TFT	Thin Film Transistor as relates to LCD screens
TOT	Type of transaction
TP/TPID	Tenprint to Tenprint Identification
TP	Tenprint
TPDB	Tenprint Database
TPIS	Tenprint Fingerprint Image Searches
TPS	Tenprint Fingerprint Searches
ULFD	Unsolved Latent Fingerprint Database
ULPD	Unsolved Latent Palm print Database
VQU	Visual Quality Image Upgrade
WAN	wide area network
WCB	Worker's Compensation Board (NYS)
WSQ	Wavelet Scalar Quantization
XCBF	XML Common Biometric Format
XML	Extensible Markup Language
Y2K	Year 2000

Abbreviation	Definition
YOB	Year of Birth

9.2 Search Abbreviations

Search Abbreviations	
TP/TPDB	Tenprint Record to Tenprint Database Search
TP/ULFD	Tenprint Record to Unsolved Latent Fingerprint Database Search
PP/PPD	Palmprint to Palmprint Database Search
PP/ULPD	Palmprint to Unsolved Latent Palmprint Database Search
LFP/TPDB	Latent Fingerprint to Tenprint Database Search
LFP/ULFD	Latent Fingerprint to Unsolved Latent Fingerprint Database Search
LPP/PPD	Latent Palmprint to Palmprint Database Search
LPP/ULPD	Latent Palmprint to Unsolved Latent Palmprint Database Search

9.3 Glossary

Term	Definition
Ad hoc report	Report for the special purpose or end presently under consideration.
Autoclass	Assignment of fingerprint pattern designation(s) by SABIS, for each rolled and plain fingerprint image
Bad Identification	An identification where the reply indicates an identification to a person on file when, in fact, the print belongs to another individual, whether or not on file.
Offerer	See Vendor
Biographic	Non fingerprint data relating to an individual which is gathered from textual section of the fingerprint card
Candidate List	See Messaging Table
Clarification	Utilization of court accepted tools to improve the clarity of a submitted fingerprint image
Completed	The database conversions for the Ten Print and Latent Print System has been accomplished and the hardware and software has been delivered, installed and accepted for the test and production systems; and acceptance testing has been successful, and proven that all base and chosen optional requirements have been met, including those described in solution descriptions by the offerer/vendor; and the production system has been implemented and all SAFIS processing has been transitioned to the SABIS.

Composite Record	A record containing an individual's set of fingerprints and/or palm print images comprised of the best image for each specific finger or palm image determined from all images for the specific finger or palm print which are associated with multiple event submissions.
Computerized Criminal History System (CCH)	The DCJS system which contains New York State's central repository of history information for criminal justice and civil event processing .
Consolidations	The merging of an individuals records, parts of which were previously maintained under two NYSID numbers, so that the resultant record is maintained under one NYSID number
Contract Effective Date	The date that the Contract is approved by the New York State Comptroller.
CXL	Current DCJS database of 10 rolled prints per NYSID
Dubious identification	A dubious identification is a potential identification which includes such criteria as (a) Year of birth difference of seven years or more; or (b) low matching scores, or the equivalent. To meet the criteria of a dubious identification, a transaction must match the criteria of (a) or (b).
Duplex	A mode of communications where two channels are used
DXL	Combined CXL/IXL current database.
Elimination records	A fingerprint, or set of fingerprints, of an individual known to an inquiring agency which are submitted along with an unidentified latent print in order to eliminate that person as a suspect in the latent case
Electronic Acquisition	Viewing, cropping, and orientation of incoming electronic fingerprints/palm prints received from outside agencies. This enables searching, sequence checking and processing of the prints.
eJustice	DCJS secure web site, accessed with a standard browser, that was developed to meet the needs of the Criminal Justice community
Exception Processing Unit	Exception Processing Unit – This unit handles exception processing in instances where a transaction falls outside what is considered to be normal processing. There are two types of transactions: TCN-based and NYSID-based. TCN-based exception processing transactions cannot be resolved by a verification/validation

	operator so must be addressed before the final results can be sent back to the contributor. NYSID-based exception processing transactions have already completed the identification process. These can be done at a later time and have a lower priority than TCN-based exception processing transactions.
Expandability	The ability of the Network to be incrementally enhanced to support, without replacement, the additional system loading necessary to accommodate growth
Filtered name search	Name search process that eliminates candidates based on filters such as pattern non-matches.
forensic	The use of a multi-modal biometric identification system such as but not limited to, the processing of rolled fingerprint images, slap fingerprint images, palmprint images, and latent print images to investigate and establish evidence for use in a court of law.
Front end Processing	Front End processing is the processing that takes place prior to searching. It includes acquisition, pattern and quality assignment, coding and quality control.
Full Duplex	A mode of communication where two channels are used for simultaneous transmit and receive.
Government Site	Property, structure or facilities owned by a governmental entity, including the State, or any federal, political subdivision, local governmental entity, or public authorities and public benefit corporations, or any sites under the legal control or management of such entities.
Half Duplex	A mode of communications where two channels are used for non-simultaneous transmit and receive.
Hardcopy Acquisition	Acquiring a hard copy fingerprint/palm print card using an FBI certified scanner. This involves scanning the fingerprints/palm prints for viewing , cropping, and orientation for processing as well as searching purposes .
High name search score	A DCJS defined value where the result from a name search is very certain to be an identification.
Histogram	A graphical display of tabulated frequencies. In the context of this RFP it will generally refer to the distribution of pixels in a grey scale from 0

	to 256
HVAC	Heating, Ventilation, Air Conditioning
Identification Technician	Ten print workstation operator
Identification Retained	A transaction that is searched and saved to the target database
Identification Returned	A transaction that is searched against the target database but is not inserted/updated to the target database.
Implementation	System implementation shall be achieved when (a) all transactions are being processed on the new SABIS; and (b) no transactions are being processed on the current DCJS SAFIS. In other words, system 'cutover' has occurred.
In-Building	Any area confined within a man-made structure including, but not limited to, tunnels and other underground areas that require coverage.
Interoperability	The ability of two or more systems or components to work together within and across organizational boundaries in order to advance the effective delivery of information without special effort on the part of the customer
Invalidated Identification	This occurs when an identification is made against an individual whose images were removed from file, either by death or seal orders, between the time that the suspect was produced in the search process and the identification was completed.
IXL	Current DCJS database of 2 index finger rolled prints per NYSID
Key Subcontractors	Any entity responsible for providing any of the products or services to the Vendor-Managed Civil Fingerprint Capture System defined in Subsection 2.27 of the RFP.
Latent Case Number	Current DCJS Latent Case Numbers are composed of a default seven character Submitting Agency ID, single character month (values in 1-9, O, N, D,) two digit year, and five digit specific case number.
Latent Case Tracking	Detailed record management of latent cases and the evidence/assets associated with each case may include but not be limited to: <ul style="list-style-type: none"> Receiving Latent Case evidence/assets Evidence chain of custody, physical and digital • Processing Latent Print Examiner/s • Authenticated image clarification

	<p>processing/calibration</p> <ul style="list-style-type: none"> • Import/Export of Digital assets
Latent Cluster	A Latent Cluster is a grouping of more than one latent fingerprint impression that comes from the hand of one subject.
Latent Crime Region	A geographic area of the State of New York defined by DCJS
Latent evaluation	One-to-one comparison
Latent Examiner	Latent workstation operator
Latent Search	The term “Latent Search” refers to the preparation and search of a single latent finger or palm image. Therefore, a single latent finger or palm print lift from a crime scene may be utilized to create multiple latent searches.
Latent Search Ineligible	A civil tenprint input transaction which, either by law or user agency request, may not be searched against the Unsolved Latent file, or have subsequent searches done against it.
Latent verification	Second or subsequent comparison
Lossless	A term describing a data compression algorithm which retains all the information in the data, allowing it to be recovered perfectly by decompression.
Multiple Registration Event (MRE)	Reference to a single event’s group of information when more than one group of event information is retained. In the SABIS, a group of event information is the fingerprint and/or palm print images and associated data, where each group is related to a specific event.
Missed Identification	Replying to a fingerprint inquiry as a non identification when the individuals prints are on file.
NYSID Subscription	Valid users from authorized criminal justice agencies can subscribe to a specific NYSID Number so that they will receive a notification from DCJS when subsequent fingerprint based activity occurs for that individual
Pattern Match	A match where a) the search fingerprint pattern is exactly the same as the candidate fingerprint pattern, b) a primary or reference pattern of the search finger is the same as candidate finger, c) a search finger or candidate finger is denoted as M(issing), or d) a search finger or candidate finger is denoted as U(known). Rules governing pattern matches may be changed, per DCJS.
Pattern updating, automatic	See Autoclass

Pattern updating, manual	Assignment of fingerprint pattern designation(s) by experienced Identification Technicians.
Predict	An older compression algorithm still in use on an estimated 8% of the existing SAFIS fingerprint files.
Pricing	The Offerer's pricing schedules set forth in the Offerer's <i>Financial Proposal</i> .
Priority	Numerical importance given to a transaction. Priority 1 is the highest priority.
Prime Contractor	The successful Offerer who has executed a Contract as a result of an award made by the State in response to this RFP.
Printing	The term "printing" in the RFP means the ability to print directly to a printer with the ability to print to a file as a secondary option.
Public Safety Agency	A public safety agency shall be defined to be governmental and public entities at the state, federal or local level, or those non-governmental, private organizations that are properly authorized by the appropriate governmental authority, that protect and preserve life, property, or natural resources, or that serve the public welfare.
Public Service Agency	A public service agency shall be defined to be governmental and public entities at the state, federal or local level, or those non-governmental, private organizations that are properly authorized by the appropriate governmental authority, that furnish, maintain, and protect the nation's basic infrastructures or that are required to promote the public's safety and welfare.
Recheck	Additional review of a transaction by an Identification Technician before the final non-identification decision is made.
Reconciliations	Checking of subsystems for consistency for data integrity purposes.
Refresh	See "Technology Refresh"
Region (Latent Crime)	A geographic area of the State of New York defined by DCJS.
Rollout	All Livescan sites, systems, personnel and infrastructure ready for business.
Seal Order (Seal)	An order from a court specifying that all fingerprints, photographs, and other data which DCJS has on file in regards to a specific case decided in favor of the offender be sealed and

	the documents expunged.
Store and Forward System	Store and Forward is an electronic two-way interface between remote live scan and card scan fingerprinting sites and the data systems at DCJS whereby fingerprint images, data, photographs, palmprints, and signatures are received and processed before being stored at DCJS and then forwarded on to the FBI, if applicable.
Store and Forward Transaction Result Message	An electronic message sent by DCJS, and the FBI if applicable, at the conclusion of identification processing of a fingerprint transaction to indicate that the transaction resulted in either a hit (identification) or no-hit (non-identification).
Subcontractor	Any commercial entity responsible for providing any products or services specified in the RFP, works with identified Offerer/Vendor
System Implementation	See "Implementation"
Technology Refresh	Any process that shall (a) ensure that the Offerer's/vendor's software stays no less than two (2) releases from the latest available release; and (b) ensure that the SABIS hardware is refreshed every four (4) years or more frequently throughout the duration of the contract.
Ten Print Record	The data and images associated with a fingerprint card submission. When used in the context of existing DCJS processing only 2 or 10 images are associated. When used in the context of the proposed system 14 images are input and 20 images are maintained.
Ten print verification	One-to-one comparison
Ten print validation	Second or subsequent comparison
Tentative Rejection Transaction	Transaction that does not get rejected during initial processing, but has poor quality and/or rejection reasons selected. If this transaction is a non-identification, it will become an actual rejection at the end of the process.
Third Party Sites	Non-Governmental Sites.
TCR	Transaction Control Reference – Used for reporting the TCN of a previously submitted transaction to permit proper linking of the current transaction with the original transaction.
User(s)	Personnel who are authorized to access the

	SABIS for criminal justice purposes.
Vendor	The term “Vendor” refers to any eligible entity submitting a responsive Bid Proposal to this solicitation.
Work Queue	For the purpose of these requirements, a Work Queue is defined as a user interface feature enabling a user to view all work available for processing and enabling them to initiate work on a specific item.

9.4 DCJS Contract Award Protest Procedure

CONTRACT AWARD PROTEST PROCEDURE FOR CONTRACTS AWARDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES

Section 1 Applicability

Section 2 Definitions

Section 3 General Requirements

Section 4 Protest Procedure

Section 5 Appeals

1. Applicability

Consistent with the provisions of the Procurement Lobbying Law (State Finance Law §139-j), it is the policy of the Division of Criminal Justice Services (DCJS) to identify a sole Procurement Contact to receive all inquiries during an identified procurement period. DCJS will attempt to resolve inquiries submitted to the identified sole Procurement Contact, and will advise parties initiating such inquiries of the existence of this formal protest policy should the informal process fail to resolve the matter. **Final agency determinations or recommendations for award will not be reconsidered by DCJS unless a formal written protest is timely filed according to the procedures specified below. The procedures below must be used** which set forth the procedure to be utilized when an interested party challenges a contract award by DCJS. These guidelines apply to all contract awards by DCJS, including sole source procurements, single source procurements, emergency procurements and procurements awarded after a mini-bid process.

2. Definitions

(a) "Offerer" mean an individual or entity who has submitted an offer in response to a solicitation for commodities or services issued by DCJS.

(b) "Responsive Offerer" means a bidder or Offerer meeting all of the minimum specifications and requirements as prescribed in a solicitation for commodities or services by DCJS.

(c) “Successful Offerer” means the responsive bidder or Offerer which receives written notification from DCJS indicating that its bid or offer has been accepted.

(d) “Interested party” means a participant in the procurement process and those who would be bona fide participants but whose participation in the procurement process has been foreclosed by the actions of DCJS.

(e) “Contract award” is a written determination from DCJS to an Offerer indicating that the DCJS has accepted its bid or offer (see State Finance Law §163(10)(a)).

(f) "Emergency" means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk (see State Finance Law §163(1)(b)).

(g) “Mini-bid process” is an abbreviated bid and selection process for individual agency projects utilizing a list of prequalified vendors on a back drop contract

(h) “Back drop contract” means a contract consisting of a pool of prequalified vendors who are eligible to participate in a secondary mini-bid award process, or other specified selection process.

(i) “Single source” means a procurement in which although two or more Offerers can supply the required commodities or services, DCJS, upon written findings setting forth the material and substantial reasons therefore, awards the contract to one Offerer over the other (see State Finance Law §163(1)(h)).

(j) “Sole source” means a procurement in which only one Offerer is capable of supplying the required commodities or services (see, State Finance Law §163(1)(g)).

(k) “Protest” means a written challenge to a contract award by DCJS.

(l) “Comptroller” means the Comptroller of the State of New York, as well as his or her designee.

(m)“Commissioner” means the Commissioner of the Division of Criminal Justice Services, an agency of the State of New York, as well as his or her designee.

3. General Requirements

(a) Any solicitation issued by DCJS with respect to a contract award subject to these guidelines, including an Invitation for Bid, a Request for Proposal, or other similar document, shall provide notice that any interested party may protest the contract award. Such notice shall indicate that a protest of a contract award is to be filed with the DCJS Director of Financial Administration at:

Ms. Kim Szady (Incumbent)

**Director, Financial Administration
New York State Division of Criminal Justice Services
4 Tower Place, 10th Floor
Albany, NY 12203-3764**

The solicitation must include a copy of these guidelines, or advise offerers that a copy of these guidelines will be provided to the Offerer upon request.

(b) All offerers shall be given written notice of the contract award or of a proposed award. Any unsuccessful Offerer, upon request, must be afforded an opportunity for a debriefing at least five business days prior to the date by which any protest must be filed. Notwithstanding the foregoing, in any case where DCJS has reduced the time period for the filing of a protest in accordance with section 4(a) of these guidelines, DCJS shall provide in the solicitation for a reasonable and appropriate method to debrief the offerers in a timely manner. An Offerer's failure to request a debriefing in a timely fashion shall not cause an extension of the time period within which a protest must be filed.

(c) A protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the DCJS. A formal protest must include:

(i) a statement of all legal and/or factual grounds for disagreement with a DCJS specification or purchasing determination;

(ii) a description of all remedies or relief requested; and

(iii) copies of all applicable supporting documentation

(d) Any interested party will be given the opportunity to participate in the protest procedure.

(e) The DCJS Director of Financial Administration may, in his or her sole discretion, waive any deadline or requirement set forth in these guidelines, or consider any materials, submitted in writing, beyond the time periods set forth in these guidelines.

(f) Where the DCJS Director of Financial Administration deems appropriate, the DCJS Director of Financial Administration may require the protesting party, the procuring Division of DCJS, DCJS staff involved in the procurement, the successful offerer, or any other interested party, to address and/or submit further information with respect to additional issues raised by the DCJS Director of Financial Administration review of the procurement.

(g) Nothing herein shall preclude the DCJS Director of Financial Administration from obtaining information relevant to the procurement from any other source, as he or she deems appropriate.

4. Protest Procedure

(a) Any interested party may file a protest with the DCJS Director of Financial Administration within ten business days from the date of the notice by DCJS of the contract award, except that:

(i) any protest concerning the terms and conditions of the solicitation or other matters that would be apparent to an interested party prior to the date set in the solicitation for the receipt of bids including but not limited to matters concerning errors, omissions or prejudice in the bid specifications or documents must be filed on or before the date set in the solicitation for the receipt of bids or proposals; and

(ii) where DCJS determines that sufficient circumstances exist DCJS may set forth a different time period for filing protests in the solicitation.

Any filing deadlines may be waived by the DCJS Director of Financial Administration pursuant to section 3(e) of these guidelines. A formal protest must be submitted in writing to DCJS, by surface mail addressed to the DCJS Director of Financial Administration pursuant to section 3(a) above, or, where permitted in the solicitation, by facsimile or e-mail transmission. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: "Bid Protest of DCJS Solicitation (Reference Number)".

(b) The DCJS Director of Financial Administration shall refer any protest either to an individual employee or group of employees of DCJS, or to an independent hearing officer who is not an employee of DCJS. The decision regarding to whom the bid protests is referred shall be in the sole discretion of the DCJS Director of Financial Administration. Where the protest is referred to a DCJS employee or a group of DCJS employees, no such employee may have been actively involved in the procurement process being protested.

(c) The DCJS Director of Financial Administration will provide a copy of any protest filed to the successful Offerer.

(d) The DCJS Director of Financial Administration may summarily deny a protest that fails to contain specific factual or legal allegations, or raises only issues of law that have already been decided by the Courts or by the Comptroller of the State of New York.

(e) Except where the DCJS Director of Financial Administration summarily denies the protest, the procuring Division of DCJS shall file an answer to the protest within seven business days of the filing of the protest. The answer to the protest should address all the factual and legal allegations contained in the protest. A copy of the answer filed by the procuring Division of DCJS shall be delivered to the protester and the successful Offerer. The successful Offerer may, but shall not be required to, file an answer to the protest. Any answer by the successful Offerer must be filed with the DCJS Director of Financial Administration no later than the date that the procuring Division of DCJS is required to file its answer. If the successful Offerer chooses to file an answer, it must deliver a copy of such

answer to the procuring Division of DCJS and the protester, and its answer must contain an affirmation as to such delivery.

(f) The protesting party may, but is not required to, file a reply to the answer of the procuring Division of DCJS and the successful Offerer. Such reply shall be filed with the DCJS Director of Financial Administration no later than five business days after the date that the procuring Division of DCJS answer is filed. A copy of such reply shall also be delivered to the successful Offerer, and the protester's reply must contain an affirmation as to such delivery.

(g) Upon the DCJS Director of Financial Administration's own initiative, or upon request of any participant in the protest process, the DCJS Director of Financial Administration may in his or her sole discretion act on an expedited basis, upon written notification to the interested parties, in which case the DCJS Director of Financial Administration will advise all participants of filing deadlines.

(h) During the time period in which a protest may be filed, or during the resolution of a pending protest, DCJS may negotiate terms and conditions of the contract with the successful Offerer. However, a contract will not be approved by the Office of the State Comptroller Bureau of Contracts before the expiration of the time period for filing a protest, or, if a protest has been filed, before the resolution of the protest.

(i) The person or persons designated by the DCJS Director of Financial Administration to consider the protest shall review all of the filings submitted by the parties, and the procurement record, and shall prepare a written recommendation to the DCJS Director of Financial Administration, or his or her designee, addressing all of the issues that have been raised by the protest.

(j) The person or persons designated by the DCJS Director of Financial Administration to consider the protest shall determine whether, in addition to the review of the filings submitted by the parties and the procurement record, it is necessary to conduct a fact finding hearing. The person or persons so designated shall decide the level of formality of such a hearing.

(k) The DCJS Director of Financial Administration, or his or her designee, may accept, modify or reject such recommendation.

(l) In making his or her determination with regard to the protest, the DCJS Director of Financial Administration, or his or her designee, may, in his or her sole discretion, consider any additional material and relevant information from any source relating to the allegations set forth in the protest.

(m) All parties that have participated in the protest, as well as the original successful Offerer, shall be provided with a copy of the final determination of the DCJS Director of Financial Administration, or his or her designee. The determination shall be made part of the procurement record.

5. Appeals

(a) The protest determination of the DCJS Director of Financial Administration shall be deemed a final and conclusive agency determination unless a written notice of appeal is received no more than five business days after the date the final protest decision is sent to the Offerer. Such notice of appeal must be filed in writing at the address set forth below:

**Commissioner
New York State Division of Criminal Justice Services
Reference: Bid Protest of DCJS Solicitation (Reference Number)
4 Tower Place
Albany, NY 12203-3764**

(b) The Commissioner shall hear and make a final written determination on all appeals within ten business days of the date the Appeal is received. The Commissioner may designate a person or persons to act on his or her behalf.

A formal protest appeal may not introduce new facts unless responding to issues newly raised as a result of the final protest.

9.5 Post-Award Requirements

Post-Award Requirements and Forms include:

- 9.5.1: Workers' Compensation and Disability Insurance
- 9.5.2: Tax Law 5-A Amended April 26, 2006 (Sales and Use Tax Registration)
- 9.5.3: Change Request Form
- 9.5.4: Letter of Credit Form
- 9.5.5: Chargeback and Refund Policies
- 9.5.6: Plan for Management of Contested Credit Card Charges

9.5.1 Workers Compensation

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that DCJS shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with DCJS successful Bidders will be required to verify for DCJS on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. DCJS would prefer Bidders to submit this insurance verification information with their bids if possible. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518)486-6307. Failure to provide verification of either of these types of insurance coverage by the time winning bids have been selected and contracts are ready to be executed will be grounds for disqualification of an otherwise successful bid.

Workers' Compensation Requirements under WCL § 57:

To comply with coverage provisions of the WCL, businesses shall:

- a) be legally exempt from obtaining workers' compensation insurance coverage; or
- b) obtain such coverage from insurance carriers; or
- c) be self-insured or participate in an authorized group self-insurance plan.

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

1. WC/DB-100, Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

2. WC/DB-101, Affidavit That An OUT-OF-STATE OR FOREIGN EMPLOYER Working in New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage; OR

3. C-105.2, Certificate of Workers' Compensation Insurance. (The Contractor's insurance carrier will send this form to DCJS upon the Contractor's request.)

Please Note: The State Insurance Fund provides its own version of this form, the U-26.3; OR 4. SI-12, Certificate of Workers' Compensation Self-Insurance (the Workers' Compensation Board's Self Insurance Office will send this form to DCJS upon the Contractor's request), OR

5. GSI – Certificate of Participation in Workers' Compensation Group Self-Insurance (the Contractor's Group Self-Insurance Administrator will send this form to DCJS upon the Contractor's request).

Disability Benefits Requirements under WCL § 220(8):

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

- a) be legally exempt from obtaining disability benefits insurance coverage; OR
- b) obtain such coverage from insurance carriers; OR
- c) be self-insured.

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

1. WC/DB-100, Affidavit For New York Entities And Any Out Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR

2. WC/DB-101, Affidavit That An OUT-OF-STATE OR FOREIGN EMPLOYER Working in New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage; OR

3. Either the DB-120.1 – Certificate of Disability Benefits Insurance OR the DB-820/829 Certificate/Cancellation of Insurance (the Contractor's insurance carrier will send one of these forms to DCJS upon the Contractor's request); OR

4. DB-155 – Certificate of Disability Benefits Self-Insurance (the Workers’ Compensation Board’s Self Insurance Office will send this form to DCJS upon request the Contractor’s request).

9.5.2 Tax Law 5-A Amended April 26, 2006

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

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

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

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

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

9.5.3 Change Request Form

1. Description of Requested Change:
2. Reason/Justification for Change:
3. Additional or Deleted Tasks or Deliverables Required by Change:
4. Additional or Deleted Cost and/or Timeframes Required by Change:

The signatures below represent that the New York State Division of Criminal Justice Services and **(insert Offerer/vendor company name)** are in agreement with the above change(s) for the Vendor Managed Civil Fingerprint Capture System project.

New York State Division of Criminal Justice Services	(insert Offerer/vendor company name)
Name (Print):	Name (Print):
Signature:	Signature:
Title:	Title:

9.5.4 Letter of Credit Form

Vendor-Managed Civil Fingerprint Capture System LETTER OF CREDIT FORM

Instructions for Submission

The Prime Contractor must furnish a Standby Letter of Credit (SLOC) as required at RFP Section 6.3 in the form set forth below.

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

Beneficiary:

State of New York
Division of Criminal Justice Services
4 Tower Place
Albany, New York 12203-3764

Customer/ Applicant:

[Insert Prime Contractor's Name/Address]

Issuer:

Confirming Bank Information and Address

Ladies/Gentlemen:

By order of our client, _____ ("Prime Contractor") located at _____, ("Customer/Applicant"), we hereby establish in favor of the State of New York Division of Criminal Justice Services ("Beneficiary"), 4 Tower Place, Albany, New York 12203-3764 our Irrevocable Standby Letter of Credit No. _____, for an aggregate amount of one hundred thousand dollars and no cents (\$100,000 USD), established at the office of _____, ("Issuer") at _____. The effective date of this Letter of Credit shall be the date of approval of New York State Contract # C- _____ by the Comptroller of the State of New York. ("effective date").

The purpose of this Standby Letter of Credit is to irrevocably indemnify the Beneficiary in connection with New York State Comptroller's Contract # C- _____, executed between the Applicant and the State of New York for the design, development, deployment, integration with DCJS systems and procedures, customization and installation of Vendor-Managed Civil Fingerprint Capture System the requirements for which are more fully set forth in DCJS RFP CJS 2008-09 and any Contract which may result in connection therewith, together the RFP and the Contract to be known as Contract ("Contract"). Performance under the Contract includes the requirement that the Applicant will further maintain, service, support, provide customer service, payment processing and customization as approved by DCJS, and at the State's option expand and update the system through the life of the Contract and any extensions

which the State may elect. The Issuer, for value received, hereby stipulates and agrees that the obligations of said Issuer and its Irrevocable Standby Letter of Credit shall be in no way impaired or affected (i) by any extensions of the times within which: (a) Beneficiary may receive, review, accept or pay for deliverables under the Contract, or (b) within which the Customer/Applicant may furnish a Standby Letter of Credit, or (ii) by any waiver by the Beneficiary of any of the requirements of said Contract. The term "Beneficiary" includes any successor by operation of law of the named Beneficiary including without limitation, any liquidator, rehabilitator, receiver of conservator.

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

"The undersigned hereby draws the amount of \$ _____ (United States Dollars) against Issuer Standby Letter of Credit No. _____, which represents the amount due to us according to the terms of the contract between the State of New York Division of Criminal Justice Services and _____ ("Applicant") under the agreement bearing New York State Comptroller's Contract No. C - _____, dated _____, 2008, for the design, build and maintenance of an automated fingerprint and biometric identification system."

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

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

This Standby Letter of Credit shall remain in effect for the period from the date on which it becomes effective until the earlier of the expiration of the contract including renewals or until the agreement of the parties, which shall be the maximum final expiration date of this Standby Letter of Credit.

We shall immediately provide you with a written notice, by certified mail/overnight courier service, return receipt requested, of:

1. any failure of the Applicant to replenish the Standby Letter of Credit to the full aggregate amount within five (5) business days of any partial or multiple draws against the Letter of Credit ("unreplenished draw"), such written notice shall be provided to you by us within three (3) business days of the maximum time for Applicant to restore any unreplenished draw to the full aggregate amount; or

2. any failure of Applicant to renew the Standby Letter of Credit to the full aggregate amount for any successive term(s), such written notice shall be provided to you by us at least sixty (60) days prior to the then current Standby Letter of Credit expiration date. We agree that Applicant shall be required to provide an irrevocable notice of renewal at least ninety (90) days prior to then current expiration date.

Any failure(s) of the Applicant to replenish the Standby Letter of Credit to the full aggregate amount within five (5) business days of any individual draws against the Standby Letter of Credit, or any notice of a failure to renew the Standby Letter of Credit to the full aggregate amount for the duration of the agreed term(s), including extensions, shall be conclusively deemed to constitute a material breach by Applicant which shall immediately entitle the State to call the unexpired balance of the Letter of Credit. Such unexpired balance shall be paid to you by us sent via certified mail, return receipt requested, within five (5) business days of receipt of the current dated demand, signed by the Commissioner of the State of New York Division of Criminal Justice Services stating:

“The undersigned hereby draws the remaining balance outstanding against [Issuer Name]. Standby Letter of Credit No. _____, which represents the amount due to us according to the terms of the Letter of Credit No. _____ based upon a material default in maintaining either (i) the aggregate balance or (ii) the Letter of Credit for the duration of the agreed term(s), including extensions.”

The obligation of Issuer under this Standby Letter of Credit is the individual obligation of Issuer and is in no way contingent upon reimbursement with respect thereto.

Except so far as otherwise expressly stated, this Standby Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication 600, and as to matters not addressed by the UCP 600, shall be governed by the Laws of the State of New York and applicable U.S. Federal Law.

Any disputes under this Letter of Credit shall be venued within the State of New York.

Issuer Bank: _____

BY: _____

Name (Please Print): _____

Title (Please Print): _____

9.5.5 Chargeback and Refund Policies

Per Section 3.3.5 of this RFP, the contractor shall provide DCJS with its documented chargeback and refund policies for New York State review and approval.

9.5.6 Plan for Management of Contested Credit Card Charges

Per Section 3.3.5 of this RFP, the contractor shall provide DCJS with its plan for management of contested credit card charges including time to resolve and appeal process which plan must be acceptable to the State of New York.

10.0 Exhibits

10.1 Exhibit A: FIRM OFFER LETTER AND CONFLICT OF INTEREST DISCLOSURE [TO BE COMPLETED ON OFFERER'S LETTERHEAD]

Date

Ms. Kimberly Szady
Director, Financial Administration
New York State Division of Criminal Justice Services
4 Tower Place, 10th Floor
Albany, New York 12203-3764

Dear Ms. Szady:

**RE: Vendor Managed Civil Fingerprint Capture System DCJS RFP 2008-09
Firm Offer to the State of New York and Conflict of Interest Disclosure**

[INSERT OFFERER NAME] hereby submits this firm and binding offer to the State of New York in response to New York State Request for Proposals (RFP) 2008-09 by the New York State Division of Criminal Justice Services for the Vendor Managed Civil Fingerprint Capture System. The Bid Proposal hereby submitted meets or exceeds all terms, conditions and requirements set forth in the above-referenced RFP. This formal offer will remain firm and non-revocable for a minimum period of one (1) year from the date proposals are due to be received by the State, or until a Contract is approved by the NYS Comptroller and executed by the State.

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

Technical Proposal: Total of ___ hard copy volumes, with ___ electronic copies in _____ (disk, CD Rom) format.

Financial/Administrative Proposal: Total of ___ hard copy volumes, with ___ electronic copies in _____ (disk, CD Rom) format.

[INSERT OFFERER NAME] hereby affirms that the solution proposed by the Offerer in the Bid Proposal meets or exceeds the mandatory requirements set forth in RFP Number DCJS 2008-09 including referenced attachments.

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

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

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

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

Corporate Seal

CORPORATE ACKNOWLEDGMENT

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

PARTNERSHIP ACKNOWLEDGMENT

STATE OF	}
	:ss.:
COUNTY OF	}
On the _____ day of _____ in the year 200__, before me personally came: _____ to me known, who, being by me duly sworn, did depose and say that he reside(s) in _____; that he is _____ (the General/Managing Partner or other officer or attorney in fact duly appointed) of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.	
_____ Signature and Office of Person Taking Acknowledgment	

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF	}
	:ss.:
COUNTY OF	}
On the ___ day of _____ in the year 20 __, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of _____, County of _____, State of _____; and that he executed the foregoing instrument in his/her name and on his/her own behalf.	
_____ Notary Public	

10.2 Exhibit B: Consultant Disclosure Legislation Forms

(These forms will only be completed and submitted upon selection of a vendor.)

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

Form B: Contractor’s Annual Employment Record

Addendum Acknowledging Form B Reporting Requirements

Consultant Disclosure Legislation Forms

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

Form A captures planned employment information. Form B will be submitted each year that the contract is in effect and will detail employment data for the most recent concluded State fiscal year (April 1 – March 31). The first Form B must be submitted by May 15, 2008 to the Division of Criminal Justice Systems, the NYS Office of the State Comptroller and the NYS Department of Civil Service. Instructions and addresses are attached.

***State Consultant Services –
Contractor's Planned Employment***

Instructions

State Consultant Services

Form A: Contractor's Planned Employment

And

Form B: Contractor's Annual Employment Report

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

Form B - Contractor's Annual Employment Report. Offerer/Prime Contractor agrees to annually submit Form B each year that the contract is in effect and will detail employment data for the most recent concluded State fiscal year (April 1 – March 31). Instructions for these forms follow. Form B must be submitted by May 15th of each year to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service. The first Form B must be submitted by May 15, 2008. The Offerer/Prime Contractor agrees to simultaneously report such information to the NYS Division of Criminal Justice Services, the NYS Office of the State Comptroller and the NYS Department of Civil Service as designated below:

NYS Division of Criminal Justice Services
Attn: Office of Financial Services, 10th Floor
4 Tower Place
Albany, NY 12203-3764

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

NYS Department of Civil Service
Attn: Consultant Reporting
Alfred E. Smith Office Building
Albany, NY 12239

INSTRUCTIONS FOR COMPLETING FORM A AND B

Form A and Form B should be completed for contracts for consulting services in accordance with the Office of the State Comptroller's Bulletin G-226 <http://www.osc.state.ny.us/agencies/gbull/g-226.htm> and the following:

Form A - Contractor's Planned Employment Form (available from and submitted to the using agency, if necessary.)

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

- **Scope of Contract:** choose a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the employees providing services under the contract. (*Note:*

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

- **Number of Employees:** enter the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.
- **Number of Hours:** enter the total number of hours worked during the report period by the employees in the employment category.
- **Amount Payable under the Contract:** enter the total amount paid by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the report period.

***Contractor's Annual Employment
Record***

10.3 Exhibit C: Non-Discrimination in Employment in Northern Ireland Statement

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

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

No

Yes

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

No

Yes

By: _____
Signature of Authorized Representative

Name

Title

Offerer

Date

10.4 Exhibit D: Non-Collusive Bidding Certification

(SECTION 139-D OF STATE FINANCE LAW)

BY SUBMISSION OF THIS BID, OFFERER AND EACH PERSON SIGNING ON BEHALF OF OFFERER 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 Offerer 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 Offerer and will not knowingly be disclosed by the Offerer prior to opening, directly or indirectly, to any other Offerer or to any competitor; and
- (3) No attempt has been made or will be made by the Offerer 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 OFFERER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE OFFERER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

Subscribed to under penalty of perjury under the laws of the State of New York, this

_____ day of _____, 20__ as the act and deed of said corporation or partnership

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

NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____
_____	_____

IF OFFERER(S) (IS) (ARE) A CORPORATION, PLEASE COMPLETE THE FOLLOWING:

NAME

LEGAL RESIDENCE

President:

Secretary:

Treasurer:

IDENTIFYING DATA

Potential Contractor _____

Address _____

Telephone _____ Title _____

If applicable, Responsible Corporate Officer

Name _____

Title _____

Signature _____

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

Legal name of person, firm or corporation
corporation

Legal name of person, firm or
corporation

By _____

By _____

Name

Name

Title _____

Title _____

Address _____

Address _____

City State Zip
Zip

City State

10.5 Exhibit E: Division of Criminal Justice Services Summary of Policy and Prohibitions on Procurement Lobbying

Division of Criminal Justice Services Procurement Lobbying Guidelines

Procurement Lobbying Submissions

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

Background:

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

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

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

Mandatory Submissions:

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

The Offerer/Bidder must also complete and submit Form 2 to the DCJS Procurement Lobbying Guidelines, the “Offerer Disclosure of Prior Non-Responsibility Determinations” and Form 3, “Offerer’s Certification of Compliance with State Finance Law §139-k (5).

Division of Criminal Justice Services Procurement Lobbying Guidelines

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

I. INTRODUCTION

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

II. STATUTORY DEFINITIONS

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

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

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

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

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

Procurement Contract

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

Restricted Period

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

III. EXEMPTIONS

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

IV. NEW YORK STATE LEGISLATURE OR LEGISLATIVE STAFF

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

V. VIOLATIONS

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

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

VI. PROCEDURES

A. Notifying Offerers of Procurement Lobbying Guidelines

1. For each **Procurement Contract**, the DCJS Finance Office will designate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.
2. The DCJS Finance Office will incorporate a summary of the policy and prohibitions regarding permissible communications during a **Governmental Procurement** in its documents relating to the **Procurement Contract** and provide a copy of these Guidelines in such documents.
3. The DCJS Finance Office shall seek written affirmation from all **Offerers** as to the **Offerer's** understanding of and agreement to comply with these Guidelines (Attachment 28).

B. Making Determinations of Responsibility

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

C. Recording of **Contacts**

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

D. Investigation of Contacts/ Penalties for Violations

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

or public health or safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame. The basis of such a finding must be included in the procurement record of the Procurement Contract.

Background:

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

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

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

Mandatory Submissions:

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

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

10.5.1 Form 1

Background:

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

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

Instructions:

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

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

By: _____ Date: _____

Name: _____ (Please print)

Title: _____

Offerer Name: _____

Offerer Address: _____

Background:

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

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

Instructions:

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

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

Background:

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

Instructions:

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

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

10.5.3 Offerer Certification:

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

By: _____	Date: _____
Name: _____	
Title: _____	
Offerer's Name:	_____
Offerer's Address:	_____

10.6 **Exhibit F: ESCROW AGREEMENT**

The New York State Division of Criminal Justice Services, hereinafter called "DCJS", at 4 Tower Place, Albany, New York and «Company_Name», hereinafter called "User", at:

(address line 1)

(address line 2)

(City, State and Zip Code)

agree to establish, maintain and debit a fingerprint escrow account, hereinafter called "Account", for the payment of certain services. Both of the foregoing are collectively referred to as the "Parties".

Pursuant to Executive Law §837(8-a) as amended, DCJS shall charge a fee when it conducts a fingerprint-based search of its criminal history records and returns a report thereon in connection with applications for employment, licenses or permits. DCJS adopted Part 6051 in its regulations, establishing the fees for conducting a fingerprint-based search of its criminal history records and returning a report thereon, which require that payment for such services shall be made by postal money order, Western Union, Integrated Payment Systems, bank or American Express or Travelers Express money orders, corporate check, or governmental check, except as otherwise provided by agreement. In addition, User may submit payment to DCJS via electronic transfer of funds. Arrangements for such transfer may be initiated by User. The foregoing payment methods are collectively referred to as "Authorized Instrument."

When User submits fingerprint transactions, DCJS will conduct a search of the criminal history records maintained by it. User has requested the establishment of an Account so that payment may be made in a manner other than by individual payment affixed to each submitted card. DCJS agrees to permit payment in a manner other than by individual payment affixed to each submitted transaction under the following terms and conditions:

A. User's Duties

1. User agrees to make an initial deposit of five hundred thousand dollars, (\$500,000), by Authorized Instrument or domestic wire transfer payable to the order of the "New York State Division of Criminal Justice Services", which will be placed into the Account. The User agrees that, based on actual and projected submissions, User will maintain a positive balance in this account at all times.
2. User agrees to replenish funds in the Account sufficient to maintain a positive account balance. Such replenishment shall be by Authorized Instrument or domestic wire transfer payable in US Dollars to the order of or on account of the "New York State Division of Criminal Justice Services". If at any time the account reaches a zero or negative balance due to lack of sufficient replenishment of funds, User will be charged an immediate ten thousand dollar (\$10,000) shortfall fee, payable within

5 business days from User's account, Standby Line of Credit, or any other means available to the state.

3. User authorizes DCJS to debit the Account in the amount set forth by Part 6051 of the regulations for each fingerprint card submitted for a fingerprint-based search of DCJS' criminal history records. User agrees that it will only provide the authorization code to those individuals who have been empowered to authorize DCJS to charge the Account.

4. User agrees that when requesting DCJS to process a resubmitted fingerprint card that such resubmission shall contain the Resubmit Transaction Indicator established by the NYS Criminal Justice Electronic Fingerprint Transmission Standard.

5. User agrees to provide the Office of Financial Services at DCJS with written notification regarding a change of address or change in the User's name.

B. DCJS' Duties

1. DCJS agrees to place the funds received pursuant to this Agreement in a state agency account designated by DCJS, which does not bear interest.
2. DCJS reserves the right to implement a Required Deposit Amount to be maintained in the Account if it determines that the User has repeatedly failed to replenish the account to maintain a positive balance at all times.
3. DCJS agrees to provide User, on a periodic basis, with a statement indicating account activity.
4. DCJS agrees that if a submitted fingerprint transmission is rejected, DCJS will return an electronic rejection including the rejection reason to the User. In all cases, DCJS will retain the original payment and apply it to the processing of the resubmitted fingerprint card. DCJS shall only issue a refund for non-resubmitted prints when it is impossible for the User to obtain classifiable prints or needed information or upon written request by the User because no fingerprint transaction will be resubmitted.
5. DCJS agrees it will provide User with a unique authorization code. Use of such code by User shall provide the necessary authorization for DCJS to debit the Account.

C. Terms and Cancellation

- 1.
2. This Agreement may be terminated by either party by serving a written notice of termination thirty (30) days in advance. In the event of termination, the User shall not make additional submissions to be charged against the Account after the effective date of the termination. DCJS shall provide a final accounting and request the issuance of a check from the Office of the State Comptroller for the balance in the Account as provided by the State Finance Law.
3. This Agreement may be immediately terminated by DCJS if the User engages in any misuse of authority, misrepresentation or conduct that may be deemed detrimental to the State of

New York.

D. Miscellaneous

- 1. This Agreement sets forth the entire understanding of the Parties with respect to the Account to be established hereunder and may not be altered or amended except in writing signed by the Parties hereto.

By execution of this Letter Agreement by the appropriate officer, we have indicated our acceptance of the above conditions for the Account.

Please indicate your acceptance by having the appropriate officer execute this document, have signature notarized, and return the original to the attention of Ms. Kimberly Szady, Director of the Office of Financial Services, 10th Floor, as part of the Administrative/Financial Proposal package.

BY: _____

TITLE: _____

COMPANY: _____

DATE: _____

FEDERAL ID#: _____

ACKNOWLEDGMENT CLAUSE

State of _____)
County of _____)ss.:

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

Notary Public

USER INFORMATION

Corporation: _____

Contact Person: _____

Telephone Number: () _____

Fax Number: () _____

Please note that the above-mentioned contact person will be considered as the primary contact for all communications regarding the Account.

**EXHIBIT G: Bidder Response Form
Bidder Eligibility and Qualifications
Page 2 of 3**

c. Fill in the chart below to provide evidence that your organization has maintained an organization capable of performing the work described, in continuous operation for at least the past three (3) years. Qualifying experience shall be in a production customer environment, (no labs or inter-organization service.)

Required Experience	Dates of Service (mm/dd/yy- mm/dd/yy)	State where service was provided	List the specific experience/tasks which substantiate that the organization has the required experience
<p>Experience during the past three (3) years in the service being proposed, including operating a statewide system with multiple points of presence, and including operation of a call center and a web-site scheduling tool.</p>			

Please provide the following information for each state listed in the chart above: Name, Title, Phone Number, Fax Number, e-mail address. Primary contact information is required. DCJS also suggests vendor identify up to 2 alternate contact people for each state. Note: DCJS will contact each of these states to verify the information provided in your proposal response.

Primary Contact Name:

Title:

Phone Number:

Fax Number:

e-mail Address:

Alternate #1 Contact Name:

Title:

Phone Number:

Fax Number:

e-mail Address:

Alternate #2 Contact Name:

Title:

Phone Number:

Fax Number:

e-mail Address:

Use additional sheets if necessary. Cumulative years experience from multiple states may be used to meet minimum requirements.

Signature and Title

Date

- e) Present your plan for collection, management and reconciliation of applicant fees and cash management with the State. Include subcontracted operations such as ACH or other financial intermediaries. Subcontractors must be acceptable to the State.

10.8.4 Participating Agency Service Plan

Provide technical response in the space below. Attach additional pages as necessary. **Do not exceed 2 pages for your response to Section 10.8.4.**

Describe your plans to address the needs of participating agencies with respect to:

a) the initial interface to capture unique identifying information;

b) participating agency reporting and inquiry needs; and

c) Participating agency custom programming needs.

10.8.5 Mobilization and Implementation Plan (Exhibit H)

Provide technical response in the space below. Attach additional pages as necessary. **Do not exceed 5 pages for your response to Section 10.8.5.**

Proposals must address the requirement to fully implement within four months of contract approval.

- a)** Present a plan in MS Project for achieving a rollout (as defined in Attachment 9.3 - Glossary) within four (4) months following contract approval. At a minimum, the plan should include tasks, dependencies (internal and external), resource requirements by role, work effort for each task, and sufficient milestones to ensure accurate progress tracking.

- b)** In support of this plan, provide a communications plan indicating audience, communication type, frequency, format and feedback mechanisms, if any.

10.8.8 Experience of Bidder on Contracts of Similar Size and Scope

Describe three (3) similar projects which have been successfully completed within the past five (5) years. Attach a separate page for each project. For each project, indicate

- a) Client
- b) Goals

- c) Staffing provided for implementation and post-implementation activities
- d) Original and actual schedule

- e) Impressions per (year), and highest volumes for one day, one week and one month
- f) Average uptime during agreed business hours
- g) Error rate
- h) System down time for any period over 12 hours, with reasons and remedies

- i) Security breaches, if any

- j) Present statistics indicating number of fingerprint based transactions, and rejection rate due to poor quality images.

10.10 Exhibit J: Cost Proposal

1) Provide your proposed price per applicant on a sliding scale for each of the volume breaks listed below.

Annual Volume	Proposed Price per Applicant
< 150,000	
=> 150,000 and < 200,000	
=>200,000 and < 250,000	
=>250,000 and < 300,000	
=>300,000 and < 350,000	
=>350,000 and < 400,000	
=>400,000 and < 450,000	
=>450,000 and < 500,000	
=>500,000	
Provide your proposed Hourly Rate for Computer Programmer Analyst Services	\$

10.11 Exhibit K: Notice of Intent to Bid

Notice of Intent to Bid

Exhibit K

Notice of Intent to Bid

Prospective Offerers/Vendors who intend to submit a bid proposal in response to the Vendor-Managed Civil Fingerprint Capture System CJS 2008-09 Request for Proposals must submit a complete Notice of Intent to Bid. Submission of a complete Notice of Intent to Bid requires that the Offerer/vendor submit the following four (4) documents:

- Signed and completed Notice of Intent to Bid, Exhibit K
- Signed, notarized and completed DCJS Non-Disclosure Agreement, Exhibit Q
- Signed, notarized and completed Non-Disclosure for Cyber Security Standards Agreement, Exhibit R
- Signed, notarized and completed Non-Disclosure for CJIS Security Standards Agreement, Exhibit S

The Notice of Intent to Bid documents must contain the original notarized signature of the Offerer's authorized representation and be submitted for receipt by the DCJS Sole Designated Contact by the date and time specified in the Calendar of Events.

Partial submissions are not permissible and will disqualify the prospective Offerer/vendor from further participation in this procurement.

Submission of a Notice of Intent to Bid does not obligate a prospective Offerer/vendor to submit a bid proposal; however, **failure to timely submit a complete Notice of Intent to Bid disqualifies a prospective Offerer/vendor from further participation in this procurement.**

Upon timely receipt of the properly completed Notice of Intent to Bid, DCJS will provide the prospective Offerer/vendor with further documents for use by the Offerer/vendor in preparing their bid response to the Vendor-Managed Civil Fingerprint Capture System Request for Proposal 2008-09.

We currently plan to participate in the above referenced competitive procurement. We understand that submittal of this form in no way obligates us to submit a bid proposal in response to the Vendor-Managed Civil Fingerprint Capture System Request for Proposal 2008-09..

Name of Business		Signature of Officer
Address		Name of Officer (Please print or type)
City, State, Zip Code		Title of Officer (Please print or type)
Name of Offerer Contact Person		Telephone Number of Offerer Contact Person
Title of Offerer Contact Person		E-mail Address of Offerer Contact Person

10.12 Exhibit L: Offerer Firm Information Form

Offerer Firm Information Form

Vendor-Managed Civil Fingerprint Capture System Request for Proposal 2008-09			
Name of Company Bidding:		Offerer Firm's Federal Tax Identification No.:	
Street		City	
State	Zip	County	Country
Contact Name:			
Title:			
Phone : () - ext ()	Toll Free Phone : () - ext ()		
Fax : () - ext ()	Toll Free Fax : () - ext ()		
E-mail Address:		Company Web Site:	

10.13 Exhibit M: Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification

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

Exhibit M

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

New York State
Department of
Taxation and Finance

Publication 223
(5/07)

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

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

Exhibit M

Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification

Publication 223 (5/07)

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

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

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

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

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

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

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

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

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

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

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

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

- (a) address an emergency, within the meaning of Article 11 of the State Finance Law¹; or
- (b) ensure the public health, safety, or welfare when an urgent event with a compelling public purpose arises.

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

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

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

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

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

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

Exhibit M

Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification

Publication 223 (5/07)

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

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

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

As defined in the New York State General Construction Law:

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

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

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

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

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

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

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

Definitions

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

Exhibit M

Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification

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

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

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

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

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

Example:

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

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

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

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

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

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

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

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

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

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

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- 12) Q: If a contract is not let pursuant to Article 11 of the State Finance Law, is it subject to section 5-a?
A: Contracts not let pursuant to Article 11 of the State Finance Law are **not** subject to section 5-a.
- 13) Q: Does Tax Law section 5-a apply to an agency accessing a centralized contract through issuance of a purchase order?
A: Assuming all criteria identified in Q&A 3 are met, Tax Law section 5-a applies to award of the centralized contract and not to covered agency access to the centralized contract through issuance of a purchase order. However, the requirements of Tax Law section 5-a do apply to covered agency purchases using **all-copy purchase orders**. For information regarding all-copy purchase orders, contact the Office of the State Comptroller, Bureau of Contracts at (518) 474-4622.
- 14) Q: Is a mini-bid contract, which is let by a covered agency from a backdrop contract, subject to Tax Law Section 5-a?
A: No. A backdrop contract is one in which a procuring agency selects a pool of qualified vendors that are deemed eligible to bid on a procurement via a mini-bid. A mini-bid is an abbreviated process during which contract users solicit final pricing from the pool of pre-selected back-drop contractors.

A state agency backdrop procurement is deemed awarded to a contractor at the point in time when the vendor is selected to be included in the pool of contractors eligible to participate in a mini-bid process. In view of that, a contractor is required to submit the Tax Law section 5-a forms when selected as a backdrop vendor by a state agency. During a mini-bid process, additional section 5-a certifications by a backdrop contractor are not required unless there are changes necessitating a new filing. For instance, if during a mini bid, a contractor hires a new subcontractor which was not previously reported on its Form ST-220-TD, then the contractor should report the new subcontractor by filing of a new Form ST-220-TD (assuming the subcontractor meets the more than \$300,000 sales in New York State threshold).
- 15) Q: Who is an *affiliate* for purposes of Tax Law section 5-a?
A: Section 5-a defines an *affiliate* as a person which directly, indirectly or constructively controls another person; is controlled by another person; or is, along with another person, under the control of a common parent. *Control* means possession of the power to direct, or cause the direction of, the management and policies of another person. Determining whether control exists is a factual inquiry to be based upon the circumstances in each case. Responsibility for determining whether a person is an affiliate rests with the contractor.
- 16) Q: Who is a *subcontractor* for purposes of Tax Law section 5-a?
A: A *subcontractor* is a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.
- 17) Q: Which contractors, affiliates and subcontractors must be certified as registered to collect New York State and local sales and compensating use taxes pursuant to section 5-a prior to a contract taking effect?
A: Those contractors, affiliates and subcontractors making sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of \$300,000 during a specified period must be certified as registered to collect New York State and local sales and compensating use taxes.

All sales of tangible personal property or taxable services within New York State during the specified period (not merely sales to covered agencies) are taken into account in determining whether the more than \$300,000 cumulative sales threshold has been met. This also includes the amount of any sales made which are exempt from sales tax (see Q & A 20).
- 18) Q: Over what period must the more than \$300,000 cumulative sales threshold occur so as to require a contractor, affiliate, or subcontractor to be certified under Tax Law section 5-a as registered with the Tax Department to collect sales and compensating use taxes?
A: The registration requirement applies if the person made a cumulative total of more than \$300,000 in sales in New York State during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June-August, September-November, December-February and March-May.

If a person has not closed its books for the sales tax quarter immediately preceding the sales tax quarter in which the certification is being made, such person should use its sales information from the four most recent sales tax quarters for which such information is available to determine whether the more than \$300,000 cumulative sales threshold has been met.

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

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

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

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

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

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

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

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

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

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Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification

Publication 223 (5/07)

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

Example:

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

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

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

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

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

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

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

Example:

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

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

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

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

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

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

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Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification

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

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



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



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



Hotline for the hearing and speech impaired:

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



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

Exhibit M

Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

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

ST-220-CA

(6/06)

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

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

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name) (title)

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

(Mark an X in only one box)

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

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

(insert contract number or description)

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

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

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

If you have questions, please call our information center at 1 800 898-2931.

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

When to complete this form

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

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

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



New York State Department of Taxation and Finance

Contractor Certification

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

ST-220-TD

(5/07)

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

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

General information

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

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

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

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

Mail completed form to:

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

Privacy notification

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

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

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

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

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

Need help?

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

10.14 Exhibit N: Vendor Responsibility Questionnaire

Vendor Responsibility Questionnaire

Exhibit N
Vendor Responsibility Questionnaire

BUSINESS ENTITY INFORMATION				
Legal Business Name			EIN	
Address of the Principal Place of Business/Executive Office			Phone Number	Fax Number
E-mail		Website		
Authorized Contact for this Questionnaire				
Name:			Phone Number	Fax Number
Title			E-mail	
List any other DBA, Trade Name, Other Identity, or EIN used in the last five (5) years, the state or county where filed, and the status (active or inactive): (if applicable)				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS	
1.0 Business Entity Type – Please check appropriate box and provide additional information:	
a) <input type="checkbox"/> Corporation (including	Date of
b) <input type="checkbox"/> Limited Liability Co. (LLC or PLLC)	Date Organized
c) <input type="checkbox"/> Limited Liability	Date of
d) <input type="checkbox"/> Limited Partnership	Date Established
e) <input type="checkbox"/> General Partnership	Date Established County (if formed in
f) <input type="checkbox"/> Sole Proprietor	How many years in business?
g) <input type="checkbox"/> Other	Date Established
If Other, explain:	
1.1 Was the Business Entity formed in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No' indicate jurisdiction where Business Entity was formed:	
<input type="checkbox"/> United State _____	
<input type="checkbox"/> Other Countr _____	
1.2 Is the Business Entity currently registered to do business in New York State with the Department of State? Note: Select 'Not Required' if the Business Entity is a Sole	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not required
If 'No' explain why the Business Entity is not required to be registered in New York State.	
1.3 Is the Business Entity registered as a Sales Tax Vendor with the New York State Department of Taxation and Finance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No', explain and provide detail, such as "not required", "application in process", or other reason for not being registered.	

Exhibit N
Vendor Responsibility Questionnaire

I. BUSINESS CHARACTERISTICS		
1.4 Is the Business Entity publicly traded?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
CIK Code or Ticker Symbol 		
1.5 Is the responding Business Entity a Joint Venture? <i>Note: If the Submitting Business Entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.6 Does the Business Entity have a DUNS Number?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Enter DUNS Number		
1.7 Is the Business Entity's Principal Place of Business/Executive Office in New York State? If 'No', does the Business Entity maintain an office in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
Provide the address and telephone number for one New York office.		
1.8 Is the Business Entity a New York State Certified Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE), New York State Small Business or a Federally Certified Disadvantaged Business Enterprise (DBE)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If 'Yes', check all that apply: <input type="checkbox"/> New York State Certified Minority Owned Business Enterprise (MBE) <input type="checkbox"/> New York State Certified Women Owned Business Enterprise (WBE) <input type="checkbox"/> New York State Small Business <input type="checkbox"/> Federally Certified Disadvantaged Business Enterprise (DBE)		
1.9 Identify Business Entity Officials and Principal Owners. For each person, include name, title and percentage of ownership, if applicable. <i>Attach additional pages if necessary.</i>		
Name	Title	Percentage Ownership (<i>Enter 0% if not applicable</i>)

II. AFFILIATES AND JOINT VENTURE RELATIONSHIPS		
2.0 Does the Business Entity have any Affiliates? <i>Attach additional pages if necessary.</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (<i>If available</i>)	Affiliate's Primary Business Activity
Explain relationship with the Affiliate and indicate percent ownership, if applicable (enter N/A, if not applicable):		
Are there any Business Entity Officials or Principal Owners that the Business Entity has in common with this Affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name	Position/Title with Affiliate	
2.1 Has the Business Entity participated in any Joint Ventures within the past three (3) years? <i>Attach additional pages if necessary</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name:	Joint Venture EIN (<i>If available</i>):	Identify parties to the Joint Venture:

Exhibit N
Vendor Responsibility Questionnaire

III. CONTRACT HISTORY	
3.0 Has the Business Entity held any contracts with New York State government entities in the last three (3) years? If “Yes” attach a list including the Contract Number, Agency Name, Contract Amount, Contract Start Date, Contract End Date, and the Contract Description.	<input type="checkbox"/> Yes <input type="checkbox"/> No

IV. INTEGRITY – CONTRACT BIDDING	
Within the past five (5) years, has the Business Entity or any Affiliate	
4.0 been suspended or debarred from any government contracting process or been disqualified on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 been denied a contract award or had a bid rejected based upon a finding of non-responsibility by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 had a low bid rejected on a government contract for failure to make good faith efforts on any Minority Owned Business Enterprise, Women Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 agreed to a voluntary exclusion from bidding/contracting with a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes” answer above provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

V. INTEGRITY – CONTRACT AWARD	
Within the past five (5) years, has the Business Entity or any Affiliate	
5.0 been suspended, cancelled or terminated for cause on any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 entered into a formal monitoring agreement as a condition of a contract award from a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes” answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

VI. CERTIFICATIONS/LICENSES	
Within the past five (5) years, has the Business Entity or any Affiliate	
6.0 had a revocation, suspension or disbarment of any business or professional permit	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 had a denial, decertification, revocation or forfeiture of New York State certification of Minority Owned Business Enterprise, Women Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status, for other than a change of	<input type="checkbox"/> Yes <input type="checkbox"/> No

VI. CERTIFICATIONS/LICENSES	
Within the past five (5) years, has the Business Entity or any Affiliate	
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

VII. LEGAL PROCEEDINGS	
Within the past five (5) years, has the Business Entity or any Affiliate	
7.0 been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 had a government entity find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 had any New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 entered into a consent order with the New York State Department of Environmental Conservation, or a Federal, State or local government enforcement determination involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.6 other than the previously disclosed: (i) Been subject to the imposition of a fine or penalty in excess of \$1,000 imposed by any government entity as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination; or (ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

VIII. LEADERSHIP INTEGRITY	
NOTE: If the Business Entity is a Joint Venture Entity, answer 'N/A – Not Applicable' to questions 8.0 through 8.4.)	
Within the past five (5) years has any individual previously identified , any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute or approve bids, proposals,	
8.0 a sanction imposed relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 an indictment, grant of immunity, judgment, or conviction of any business related conduct constituting a crime including, but not limited to, fraud, extortion, bribery, racketeering, price fixing, bid collusion or any crime related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

VIII. LEADERSHIP INTEGRITY	
<p>NOTE: If the Business Entity is a Joint Venture Entity, answer 'N/A – Not Applicable' to questions 8.0 through 8.4.)</p> <p>Within the past five (5) years has any individual previously identified , any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute or approve bids, proposals,</p>	
<p>8.3 a misdemeanor or felony charge, indictment or conviction for:</p> <p>(i) any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price fixing or collusive bidding; or</p> <p>(ii) any crime, whether or not business related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.4 a debarment from any government contracting process?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>For each "Yes" answer provide an explanation of the issue(s), the individual involved, the government entity involved, the relationship to the submitting Business Entity, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY	
<p>9.0 Within the past five (5) years, has the Business Entity or any Affiliates received a formal unsatisfactory performance assessment(s) from any government entity on any contract?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.1 Within the past five (5) years, has the Business Entity or any Affiliates had any liquidated damages assessed over \$25,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.2 Within the past five (5) years, has the Business Entity or any Affiliates had any liens, claims or judgments (not including UCC filings) over \$25,000 filed against the Business Entity which remain undischarged or were unsatisfied for more than 90 days?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the lien holder or claimant's name, the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.3 In the last seven (7) years, has the Business Entity or any Affiliates initiated or been the subject of any bankruptcy proceedings, whether or not closed, regardless of the date of filing, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the Bankruptcy chapter number, the Court name, and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.4 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any tax returns required by federal, state or local tax laws?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY	
<p>If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the taxing jurisdiction (federal, state or other), the type of tax, the liability years, the tax liability amount the Business Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.5 During the past three (3) years, has the Business Entity and any Affiliates failed to file or pay any New York State unemployment insurance returns?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes" provide the Business Entity involved, the relationship to the submitting Business Entity, the years the Business Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.6 During the past three (3) years, has the Business Entity or any Affiliates had any government audits? If "yes" did any audit reveal material weaknesses in the Business Entity's system of internal controls? If "Yes", did any audit reveal non-compliance with contractual agreements or any material disallowance (if not previously disclosed in 9.6)?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>For each "Yes" answer provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	

X. FREEDOM OF INFORMATION LAW (FOIL)	
<p>10.0 Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Indicate the question number(s) and explain the basis for the claim.</p>	

Certification

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the State or its agencies or political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; and acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination.

The undersigned certifies that he/she:

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

Signature of
Owner/Officer
Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public

10.15 Exhibit O: Proposed Subcontractors

Proposed Subcontractors

10.16 Exhibit P: Key Subcontractor Certification

Key Subcontractor Certification

Exhibit P: Key Subcontractor Certification

For each key subcontractor (as defined in the Glossary – Attachment 9.3) proposed by the Offerer in Exhibit O, submit a *Key Subcontractor Certification* that has been completed and executed by the proposed key subcontractor’s authorized representative. Each proposed key subcontractor must complete and execute a *Key Subcontractor Certification* form.

An authorized representative of the Key Subcontractor who is legally authorized to certify the information requested in the name of and on behalf of the Key Subcontractor is required to complete and sign the Required Certifications. All of the requested information and certifications must be provided. Offerer’s authorized representative must certify as to the truth of the representations made by signing where indicated, below.

CERTIFICATION:

The undersigned: (1) recognizes that these Required Certifications are submitted for the express purpose of assisting the State of New York in making a determination to award a Contract and/or approve a subcontract; (2) acknowledges and agrees by submitting the Certification, that the State may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; (3) acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 USC Section 1001, and termination the Contract; and (4) certifies that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

KEY SUBCONTRACTOR PROFILE			
Business Entity Name:			
Form of Legal Entity:	<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other _____		
State of Incorporation:			
Main Office Address:			
Federal Tax ID #:			
NYS Certifications:	<input type="checkbox"/> Minority-Owned Business Enterprise (MBE)	<input type="checkbox"/> Women-Owned Business Enterprise (WBE)	<input type="checkbox"/> Small Business Enterprise (SBE)
Name & Title of Contact Person Authorized to represent Offerer in all matters relating to the submission of this Bid Proposal:			
Address:			
Phone:			
Fax:			
E-Mail:			

10.17 Exhibit Q: DCJS Non-Disclosure Agreement

DCJS Non-Disclosure Agreement

Exhibit Q

DCJS Non-Disclosure Agreement

New York State Division of Criminal Justice Service

Confidentiality Agreement

This is an Agreement by and between the New York State Division of Criminal Justice Services (DCJS) and _____, the VENDOR (_____.), regarding services to be performed for DCJS by the VENDOR, under Project _____ Contract, _____, approved by the New York Office of the State Comptroller on _____.

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

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

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

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

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

The VENDOR shall not remove any work papers or product from DCJS premises except with the written consent of DCJS, other than work papers brought to the work site by VENDOR which contain no confidential information relating to DCJS.

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

Exhibit Q

DCJS Non-Disclosure Agreement

The prohibition against disclosure shall survive the termination of this Agreement, the termination of the contract or the completion of performance under the contract

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

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

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

ACKNOWLEDGMENT CLAUSE

State of _____)

) ss.:

County of _____)

On the _____ day of _____ in the year 200__ before me personally came _____ to me known, who, being by me duly sworn, depose and say that s/he is the _____ of _____ the entity which executed the above instrument; that s/he was authorized by and did execute the same at the direction of said entity and that s/he signed his/her name thereto.

Notary Public: _____

Exhibit R

Non-Disclosure for Cyber Security Standards/Policy Agreement

10.18 Exhibit R: Non-Disclosure for Cyber Security Standards/Policy Agreement

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

Exhibit R

Non-Disclosure for Cyber Security Standards/Policy Agreement

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

THIS AGREEMENT is between DCJS, having its principal place of business at 4 Tower Place, Albany, New York 12203 and _____, having its principal place of business at _____.

WITNESSETH

WHEREAS, _____ is a respondent to the DCJS Request for Proposal (RFP) for provision of services in connection with the Vendor Managed Civil Fingerprint Capture System.

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

WHEREAS, Cyber Security Standards S05-001 and Cyber Security Policy P03-002 are being released to this company as an anticipated Respondent to the DCJS Request for Proposal (RFP) for provision of services in connection with the Vendor Managed Civil Fingerprint Capture System to which information may be issued by DCJS on a need to know basis.

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

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

Exhibit R

Non-Disclosure for Cyber Security Standards/Policy Agreement

communicated in any fashion, form or manner to any person or entity not authorized by DCJS to obtain such information.

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

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

(Respondent)
 By: _____
 Title: _____
 Name (Please Print): _____
 Date: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

On this _____ day of _____, 200 ____, before me personally

Exhibit R

Non-Disclosure for Cyber Security Standards/Policy Agreement

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

Notary Public

Exhibit S
Non-Disclosure for CJIS Security Policy

***10.19 Exhibit S: Non-Disclosure for CJIS Security Policy, Version 4.4,
June 2007***

**Non-Disclosure for CJIS Security
Policy, Version 4.4, June 2007**

Exhibit S
Non-Disclosure for CJIS Security Policy

NON-DISCLOSURE AGREEMENT Between New York State Division of Criminal Justice Services (DCJS) and _____ (company) for the receipt and use of Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy, Version 4.4, June 2007.

THIS AGREEMENT is between DCJS, having its principal place of business at 4 Tower Place, Albany, New York 12203 and _____, having its principal place of business at _____.

WITNESSETH

WHEREAS, _____ is an anticipated respondent to the DCJS Request for Proposal (RFP) for provision of services in connection with the Vendor Managed Civil Fingerprint Capture System; and

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

WHEREAS, CJIS Security Policy, Version 4.4 is being released to this company as an anticipated Respondent to the DCJS Request for Proposal (RFP) for provision of services in connection with the Vendor Managed Civil Fingerprint Capture System (RFP) and DCJS may release additional information on a need to know basis.

NOW THEREFORE, in furtherance of Respondent's participation in the RFP process and regarding maintenance of confidentiality by Respondent and its employees as to the use of CJIS Security Policy, Version 4.4, Respondent agrees to the following:

- I. This CJIS Security Policy, Version 4.4 must be treated as confidential information. All use and distribution of the restricted parts of the CJIS Security Policy, Version 4.4 **must be consistent with the provisions of s CJIS Security Policy, Version 4.4, Section 2.2 Distribution of the CJIS Security Policy.**
- II. No confidential information shall be disclosed, divulged or communicated in any fashion, form or manner, either directly or indirectly, prior to, during or subsequent to the RFP correspondence process and any confidential information received, obtained, acquired directly or indirectly, or developed or created as a result of the RFP correspondence process or any contractual obligations that may arise thereto shall also not be disclosed, divulged or communicated in any fashion, form or manner to any person or entity not authorized by DCJS to obtain such information.
- III. Any confidential information shall be provided only to those individuals approved by DCJS in writing except that such information may be provided to employees on a need-to-know basis.

Exhibit S
Non-Disclosure for CJIS Security Policy

- IV. Respondent agrees to be bound by applicable Federal and State laws governing confidentiality and/or privacy of information.
- V. Respondent agrees that nothing in this non-disclosure agreement either limits, supersedes or will be limited or superseded by previous or subsequent non-disclosure agreements related to matters other than the CJIS Security Policy, Version 4.4.
- VI. Respondent agrees that if they breach, or threaten to breach this Agreement, DCJS shall have all equitable and legal rights (including the right to obtain injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable attorneys' fees) for losses or damages resulting from such breach. Respondent acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information as defined in this Agreement. Respondent further understands and agrees that the terms of this Non-Disclosure Agreement shall survive the RFP correspondence process and any subsequent term of engagement, and Respondent will abide by the terms of this Non-Disclosure Agreement in perpetuity or until terminated by DCJS.
- VII. Respondent agrees to return CJIS Security Policy, Version 4.4, accompanied by a written certification of the Respondent that Respondent, the Project Team and all personnel associated with the foregoing have not violated the terms of this Non-Disclosure Agreement, upon demand of DCJS.

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

(Respondent)

By: _____

Title: _____

Name (Please Print): _____

Date: _____

STATE OF _____)

) SS:

COUNTY OF _____)

On this _____ day of _____, 200 ____, before me personally came _____, to me known, who, being duly sworn by me, did depose and say that (s)he resides in _____; that(s)he is the _____ (the President, principal or other officer or director or attorney-in-fact duly appointed) of _____, the business described in and which executed the above instrument; and that (s)he signed her/his name thereto by authority of the board of directors of said business.

Notary Public

Appendix A

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE
CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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Appendix A

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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).

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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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.

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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

Appendix A

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