



**Division of Criminal  
Justice Services**

**State of New York  
Andrew M. Cuomo, Governor**

**Competitive Procurement for:**

**Decision Making and Human Factors Law Enforcement Training  
NYSDCJS RFP# CJS 2020-01**

<b>CONTRACTING ENTITY</b>	<b>DCJS SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS</b>
<p style="text-align: center;"> <b>State of New York acting by and through the Division of Criminal Justice Services (DCJS) Michael C. Green, Executive Deputy Commissioner On behalf of the State of New York, Division of Criminal Justice Services</b> </p>	<p style="text-align: center;"> <b>Mr. Sanford Fader Procurement Officer, Office of Financial Administration New York State Division of Criminal Justice Services Alfred E. Smith State Office Building 80 South Swan Street, Albany, NY 12210</b> </p> <p>All questions regarding this RFP must be submitted via electronic mail to the designated contact for this RFP at:  <a href="mailto:DCJSprocurement@DCJS.ny.gov">DCJSprocurement@DCJS.ny.gov</a></p> <p><b>Neither phone nor fax inquiries will be accepted (see Section 2.1 for details). Responses to questions will be posted on the DCJS website.</b> If you want to confirm that DCJS received your questions, please call 518- 485- 1016. Please note that DCJS cannot answer substantive questions concerning this RFP in any manner other than the email method.</p>

<b>PROCUREMENT TIMELINE</b>	
<b>Event</b>	<b>Date (Time)</b>
1. RFP Release Date	09/14/2020
2. Deadline for Submission of Bidder's Questions	10/07/2020
3. Issuance of DCJS Response to Submitted Questions	On or about 10/14/2020
4. Bid Proposals Due Date	10/28/2020 4:00 P.M. EST
5. Anticipated Notification of Award/Non-Award	On or about 12/2/2020
6. Anticipated Contract Start Date	On or about 05/01/2021

NYS reserves the right, in its sole discretion, to alter the information and schedule shown above. In such an event, NYS will e-mail notice to vendors who have submitted a Bid and publish the notification on its website at:

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

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

**PLEASE NOTE: As used in this Request for Proposals (RFP), the terms "Bidder" and, "Offerer" means any entity submitting applications in connection with this RFP and the terms "Contractor" and "Vendor" means those who have been awarded services under this RFP.**

## **Decision Making and Human Factors Law Enforcement Training Request for Proposals**

### **PREAMBLE**

#### **NOTICE OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING AND CONTACTS**

State Finance Law §139-j(6) requires that a governmental entity incorporate a summary of its policy and prohibitions regarding permissible contacts during a covered procurement. Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal (RFP) includes and imposes certain restrictions on communications between the Division of Criminal Justice Services (DCJS), a governmental entity, and a vendor<sup>1</sup> during the procurement process.

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

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

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

<http://www.ogs.ny.gov/ACPL/>

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

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

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

All Vendors are required to comply with Chapter 1 of the Laws of 2005, the Procurement Lobbying Act and subsequent amendments made pursuant to Chapter 4 of the Laws of 2010. All questions regarding this RFP must be submitted via electronic mail to the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFP. Pursuant to the Procurement Lobbying Law, the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFP is designated as the DCJS Solicitation Contact for this procurement. All inquiries, questions, filings and submission of proposals that are submitted to any other individual or physical address shall not be considered as official, binding, or as having been received by the State.

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

## **Prior Non-responsibility Determination Affirmation**

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

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

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

## **Public Officers Law Sections 73 and 74**

The New York State Joint Commission on Public Ethics is charged with administering and enforcing the State's ethics and lobbying laws as well as the State's anti-nepotism law and laws pertaining to certain political activities and improper influence. Its mission is to insure compliance with the ethical standards that public officials and lobbyists must observe in order to ensure public trust and confidence in government. More information is available at the Commission's website at <http://www.jcope.ny.gov>.

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

### **Public Officers Law § 73(5)**

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 or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.
- e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
- f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
- g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.
- h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.
- i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.
4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

#### **Notification of Award and Opportunity for Debriefing**

The successful Offerer will be advised of selection by DCJS through the issuance of a formal written correspondence indicating a proposed award. All Bidders will be notified of the selection or rejection of their proposals. Once an award has been made, Bidders may submit a written request for a debriefing as to why their proposal did not result in an award. The written request must be received by the DCJS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement.

#### **DCJS Contract Award Protest Procedure**

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

vendor is encouraged to informally contact the DCJS Sole Designated Contact for this procurement, listed on the cover page of this RFP, immediately to resolve the matter.

If the vendor believes that the objection affects the outcome or nature of the proposed award for this Procurement, the vendor must follow the procedures for timely filing a formal protest set forth in the DCJS Contract Award Protest Procedures at Exhibit B of this RFP by the deadline set forth in the procedure. Prior to Contract award, protests which may affect the outcome or nature of the award may only be considered by the State in the context of a formal written protest filed in accordance with the procedure within this document.

### **Freedom of Information Law (FOIL) Requests**

To request access, pursuant to the Freedom of Information Law (FOIL), to a record maintained by the Division of Criminal Justice Services, you must make your request in writing. Please be as specific as possible in describing the record(s) in which you are interested. Within five business days of the receipt of a written request, we will send a written acknowledgement that we have received the request. Please send your inquiry via mailing provider, FAX or e-mail to:

Records Access Office  
NYS Division of Criminal Justice Services  
Alfred E. Smith State Office Building  
80 South Swan Street  
Albany, NY 12210  
FAX: (518) 457-2416  
E-mail: [foil@dcjs.ny.gov](mailto:foil@dcjs.ny.gov)  
Questions or comments: [foil@dcjs.ny.gov](mailto:foil@dcjs.ny.gov)

### **Procurement Record**

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

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## 1.0 PROPOSAL BACKGROUND

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

The Division of Criminal Justice Services (DCJS) is seeking to establish up to two (2) agreements with experienced vendor(s) to provide research-based Decision-Making and Human Factors law enforcement trainings. Qualified vendors have the opportunity to bid on Basic and Advanced Decision Making and Human Factors for Law Enforcement (Group 1) and/or De-escalation Training (Group 2). DCJS reserves the right to award none, all, or part of this RFP. There is no implied guarantee of Award or a minimum amount of trainings to be utilized under a contractual agreement.

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

It should be noted that NYS and DCJS may have other contract vehicles for certain similar services. DCJS reserves the right to use whichever contract best serves the purposes for any given situation without notification to any of the vendors. Vendors who have been awarded other contracts with State Agencies may also bid on this Request for Proposal (RFP).

Award(s) from this procurement for training services will be offered to the highest scoring vendor in each group that is qualified to supply the requested training(s). This is a “best value” procurement and each group will be evaluated separately. Awards will be based on a combination of cost and technical scores in each group. DCJS reserves the right to propose and award to a lower scoring vendor if DCJS is unable to negotiate a contract with the highest scoring vendor.

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

The Division of Criminal Justice Services’ mission is to enhance public safety by providing resources and services that inform decision making and improve the quality of the criminal justice system. Law enforcement training provided by DCJS is a core service offered to local law enforcement officers.

Currently, the Office of Public Safety (OPS) within the Division, trains police officers in the evidence based fundamental skills of police training, through the Basic Course for Police Officers, Use of Force, Defensive Tactics, Basic Firearms, Professional Communications and Decision Making as well as Reality Based Training. OPS contracts with vendors to offer various topics directly related to these fundamental skills. In addition to the fundamental skills, OPS is using research-based training to educate officers on not only their hard skills but the physiological factors that impact those skills and their ability to make decisions in high stress situations.

The purpose of this RFP is to expand the scope of research-based Decision-Making and Human Factors (physiological) trainings offered by DCJS to local police officers.

## 2.0 DEADLINE FOR SUBMISSION OF INITIAL AND SUBSEQUENT QUESTIONS

There will be no pre-bid conference held for this procurement. All questions relating to the content of this RFP shall be directed, by email utilizing **Attachment F** to the **DCJS Sole Designated Contact for Inquiries and Submissions** at the email address identified on the cover page of this RFP. Only those questions received prior to the deadline shown above will be accepted. Each question shall cite the RFP section and paragraph number to which it refers. Bidders are advised

that submissions to DCJS including, but not limited to, written questions become part of the procurement record.

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

[DCJSprocurement@DCJS.ny.gov](mailto:DCJSprocurement@DCJS.ny.gov)

***Please be aware that the staff who answer the phone will not have any knowledge about the content of this RFP, and any assistance they can provide will be limited to resolving any reported technical issues.*** Please note that DCJS cannot answer substantive questions concerning this RFP in any manner other than the email method.

## **2.1 DCJS Official Responses to Questions**

Responses to Bidders' questions and DCJS' responses, as well as updates and/or modifications, will be posted to Contract Reporter and to the DCJS website at:

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

Responses to all submitted questions will be posted to Contract Reporter and/or on this website. Vendors are responsible for checking the website on a regular basis for the responses and to ascertain whether any new information or notices have been posted. Vendors should contact the DCJS Sole Designated Contact if they experience problems accessing the website

## **3.0 SCOPE OF SERVICES**

### **3.1 Office of Public Safety**

The Office of Public Safety, Law Enforcement Training Unit, is responsible for providing specialized training to local police officers in New York State. The RFP seeks to procure qualified vendors to instruct local police officers in decision-making skills and human factors over an initial 2-year period with the possibility of extensions. All courses must be based on research or evidence-based practices utilized by the vendor.

### **3.2 Scope of Work**

Bidders can bid on Group 1 which is comprised of 2 training topics. Topic 1: Introduction to Decision Making and Human Factors for Law Enforcement and Topic 2: Advanced Decision Making and Human Factors for Law Enforcement; and/or Group 2 comprised of a single training topic: De-Escalation Training.

#### **3.2.1 Group 1 Training Topics**

##### **Introduction to Decision Making and Human Factors for Law Enforcement**

- Minimum 16 hours of instruction
- Up to 150 students
- Qualified subject matter instructors acceptable to DCJS
- Sufficient reference materials, in printed form or electronically, prepared for dissemination to student participants and DCJS staff at a time agreeable to both parties.

- Course Content (minimum):
  - Analysis of vital elements of uses of force that are often overlooked.
  - Skills to help identify the human factors involved in officer recollection versus the evidence presented.
  - Techniques for helping officers accurately and thoroughly recall force incident details.
  - Discussion of the utility of site visits and /or video review when making a statement in force investigations.
  - Human factors involved in officer decision making and physiological reaction times
- Certificate of completion for each trainee satisfactorily completing the course
- Copies of the students' completed course evaluations must be provided to DCJS staff.
- Audience will be police officers or other qualified persons as determined by DCJS

### **Advanced Decision Making and Human Factors for Law Enforcement**

- Minimum of 40 hours of instruction
- Up to 50 students
- Qualified subject matter instructors acceptable to DCJS
- Sufficient reference materials, in printed form or electronically, prepared for dissemination to student participants and DCJS staff at a time agreeable to both parties.
- Content (minimum):
  - Overview of human physiology to include the nervous system, vision and visual effects, memory and the human heart and how they affect human performance
  - Biometrics of stress and stressful events
  - Research discussion of time and motion as it relates to officers' actions and performance
  - Elements of the decision-making process utilized by officers during high stress events
  - Implications of concentration, attention and response options on motor performance and reaction time and research to support these implications
  - Importance of training as it relates to reaction and response time
  - Cognitive interviewing techniques for use of force incidents
  - Legal aspects of use of force incidents and effective tools to accurately investigate use of force incidents
  - Case Studies for student learning
- Certificate of completion for each trainee satisfactorily completing the course
- Copies of any student completed course evaluations must be provided to DCJS staff.
- Audience will be police officers or other qualified persons as determined by DCJS

### **3.2.2 Group 2 Training Topic**

#### **De-escalation Training**

- Minimum 16 hours of instruction
- Up to 150 students

- Qualified subject matter instructors acceptable to DCJS
- Sufficient reference materials, in printed form or electronically, prepared for dissemination to student participants and DCJS staff at a time agreeable to both parties.
- Course Content (minimum):
  - Demonstrate the full integration of tactical and communication skills in real scenarios
  - Evidence based de-escalation efforts in both the field and in training
  - Application of human factors and performance research to most effectively address challenging situations with individuals in crisis.
  - Evaluation tools to determine whether de-escalation efforts are reasonable to consider, tactically practical, and likely to be successful;
  - Skills to safely and effectively handle challenging encounters with mentally ill subjects;
  - De-escalation efforts through human performance research findings, observations of subject behavior, and psychological techniques for negotiation and influence;
  - Discuss the balance between the desirability of trying to resolve a conflict peacefully with the need to maintain officer and citizen safety;
  - Techniques and communication skills to overcome resistance and avoid or defuse physical confrontations;
  - Considerations for assessing whether de-escalation efforts might have been feasible and potentially effective in use of force cases with a focus on situational and behavioral factors;
- Certificate of completion for each trainee satisfactorily completing the course
- Copies of any student completed course evaluations must be provided to DCJS staff.
- Audience will be police officers or other qualified persons as determined by DCJS

#### **4.0 Requests for Training Services**

The selected vendor(s) must respond rapidly and effectively to requests for training services. Training will be scheduled in advance with the DCJS program representative no less than six weeks prior to any requested training. DCJS reserves the right to re-locate, re-schedule or cancel any training based on the best interests of the State.

Trainings may be scheduled in any county within New York State. Please note DCJS will not pay for travel. The proposal for training services in each group will be all inclusive. The total costs include instructor compensation, all reference materials, hotels, per diems, car rentals, and any other incidentals pursuant to traveling and/or personnel costs.

Trainings may be terminated based on conditions/situations including but not limited to:

- Budget constraints;
- Change in agency priorities;
- Acquisition of additional in-house resources
- Best interests of the state.

#### **4.1 Notification Process for Requesting Services From Vendor**

The following describes the process when DCJS seeks services from the successful vendor(s) in each group.

- A. DCJS will send an e-mail to the selected vendor requesting training on a specific topic on a specific date no less than six weeks prior to that requested date.
- B. The e-mail will include a description of the training services desired, and the proposed location, dates, and times of training. DCJS will be responsible for all costs associated with the proposed location.
- C. Vendor is required to notify DCJS of availability for training within 5 business days of receipt of email proposing training dates. If dates are not acceptable both parties will work together to reach an agreement on acceptable training dates.
- D. The vendor shall provide the Division with the name of the proposed trainer no later than four weeks prior to the proposed training date. DCJS reserves the right to interview a proposed instructor and review their resume. In the event that the proposed trainer is not acceptable to DCJS, DCJS will immediately notify the vendor and request a new proposed instructor.

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

A Bidder submitting a bid for Group 1 must meet all of the Mandatory Qualifying Technical Requirements. A Bidder submitting a bid for Group 2 must meet all of the Mandatory Qualifying Technical Requirements. Bidders not meeting these mandatory qualifying requirements will immediately be removed from further consideration.

### **5.1 Bidder Attestation**

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

1. The Bidder shall represent and warrant that it is authorized to do business in the State of New York.
2. 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.ny.gov/cnsl/do\\_bus.html](http://www.dos.ny.gov/cnsl/do_bus.html) . To register with the Secretary of State, contact: <http://www.dos.ny.gov/corps/corpwww.html>

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

#### **5.1.2 Response Requirement**

Bidders submitting a bid for Group 1 must complete **Attachment A.1 (Firm Information and Attestation Form)**. Bidders submitting a bid for Group 2 must complete **Attachment A.2 (Firm Information and Attestation Form)**.

Please note that bidders submitting a bid for both Group 1 and Group 2, must complete **Attachment A.1** and **Attachment A.2**.

## 5.2 Bidder Experience

### 5.2.1 Training Services

- a **Longevity** – The Bidder must have been and continue to be in the business of providing the services being procured, within the group for which a bid will be submitted, to government entities for at least two (2) years from the date of issuance of the RFP. For the purpose of this RFP, a government entity means a state, province, city, county, town or agency of the United States government.
- b **Capacity** – The Bidder must have provided, at a minimum, two (2) distinct trainings comprised of all the topics contained within the group for which a bid will be submitted in this RFP to one or more customers within the last two (2) years from the date of issuance of the RFP. Do not count the same trainings held multiple times unless it was for a different engagement. Engagements are separate and distinct projects or agreements. Vendors without experience in each topic will not be considered for award.
- c **Experience – Government Clients-** Bidders must have provided the specific training being procured for in this RFP to a minimum of two (2) government entities (as defined in 5.2.1.a. above) within the last two (2) years from the date of issuance of the RFP.

### 5.2.2 Response Requirement

Bidders submitting a bid for Group 1 must complete **Attachment B.1 Parts A and B (Mandatory Technical Requirements Response Form)**. Bidders submitting a bid for Group 2 must complete **Attachment B.2 Parts A and B (Mandatory Technical Requirements Response Form)**.

## 6.0 TECHNICAL REQUIREMENTS

This section outlines specific requirements the Bidder must address to receive technical evaluation points in response to this proposal. The Bidder should provide all information requested and must be as specific as possible to ensure DCJS can score the Bidder's response appropriately. Incomplete or vague responses will negatively impact the technical score.

### 6.1 Research-Based Course Content Offerings and Trainee Materials

The Bidder must offer courses that focus on relevant course content for the expected target audience. DCJS will evaluate and award points on the depth and breadth of the course content. Bidder must provide course training objectives, a detailed description of the minimum course content for each training course described in 3.2.1 and/or 3.2.2, citations of research used to develop instructional content each course, and student reference materials, in printed form or electronically. Lastly, the Bidder shall indicate availability of remote delivery of the course and its materials to trainees.

#### 6.1.1 Response Requirement

Bidders submitting a bid for Group 1 must provide the outline/lesson plan as detailed in **Attachment C.1 Part A (Research-Based Course Content Offerings and Trainee**

**Materials Response Form**) and must provide a detailed description and/or sample of the reference materials which will be provided for each course as detailed in **Attachment C.1 Part B**. Lastly, under **Attachment C.1 Part C** bidders must indicate availability of remote delivery of the course and its materials to trainees.

Bidders submitting a bid for Group 2 must provide the outline/lesson plan as detailed in **Attachment C.2 Part A (Research Based Course Content Offerings and Trainee Materials Response Form)** and must provide a detailed description and/or sample of the reference materials which will be provided for each course as detailed in **Attachment C.2 Part B**. Lastly, under **Attachment C.2 Part C** bidders must indicate availability of remote delivery of the course and its materials to trainees.

DCJS reserves the right to contact the Bidder for clarification purposes regarding the outline/lesson plan and the citations.

## **6.2 Client References**

DCJS will contact client references listed on **Attachment B.1 Part C** for Group 1 and **Attachment B.2 Part C** for Group 2 to ensure the Bidder has prior experience providing the trainings to a similar audience.

Bidders must provide references for two (2) government clients and two (2) alternate government client who have received similar training to the one(s) being requested in the group of this RFP from the Bidder within two (2) years. Only client references for companies based in the United States are acceptable.

### **6.2.1 Response Requirement**

Bidders submitting a bid for Group 1 must complete **Attachment B.1 Part C**. Bidders submitting a bid for Group 2 must complete **Attachment B.2 Part C**.

The same client reference may be used for both Group 1 and Group 2 if applicable.

Client references will be contacted by DCJS via email and asked to complete a questionnaire. The questions on the questionnaire cover a range of vendor performance measures. DCJS reserves the right to contact references for clarification purposes.

## **7.0 FINANCIAL REQUIREMENTS**

### **7.1 Vendor Payment**

The vendor will be compensated per completed class, upon receipt of a proper invoice in accordance with the New York State Finance Law. Compensation for each class will be based on the all-inclusive cost agreed to per class. The vendor's invoice must indicate the class title, class date, and all-inclusive cost, and contract number.

### **7.2 Financial Proposal**

DCJS intends to hold up to three Introduction to Decision Making and Human Factors for Law Enforcement trainings per year, up to two Advanced Decision Making and Human Factors for Law Enforcement trainings per year, and up to two De-Escalation trainings per year.

DCJS is seeking an all-inclusive cost per class as well as a total cost for all classes for a two-year period within the group for which a bid is being submitted. The cost proposed by the Bidder must be all-inclusive; DCJS will not pay any additional costs to the Bidder. The Division reserves the right to hold any or none of the trainings.

### **7.2.1 Response Requirement**

Bidders submitting a bid for Group 1 must submit a completed **Attachment D.1 (Financial Response Form: Decision Making and Human Factors Law Enforcement Training)**. Bidders submitting a bid for Group 2 must submit a completed **Attachment D.2 (Financial Response Form: Decision Making and Human Factors Law Enforcement Training)**.

## **8.0 ADMINISTRATIVE REQUIREMENTS**

Bidders must provide the following administrative information in response to this RFP.

Please note that each document under the administrative requirements must be contained in the package for the bid for each group for which a bid will be submitted. A complete package for each bid being submitted must be received by the Division.

### **8.1 Formal Offer Letter**

A formal offer letter must be included in the proposal and must be signed by an official authorized to bind the Bidder to its provisions.

#### **8.1.1 Response Requirement**

Each Bidder must submit a formal offer in the form of a Formal Offer Letter as set forth in **Attachment E (Formal Offer Letter)**. The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Bidder in its offer to the State. The Bidder must accept all of the terms and conditions set forth in this RFP, including all amendments, appendices and attachments, and must agree to enter a contractual agreement established by DCJS.

The Formal Offer Letter must include a statement affirming that the Bid Proposal is firm and binding for a period of at least one (1) year from the Bid Proposal Due date, or until such time as a Contract resulting from this RFP is approved by the NYS Comptroller. A Bidder's Bid Proposal may be withdrawn from consideration by the Bidder on written notice to DCJS if a Contract has not been approved by the NYS Comptroller after one (1) year following the submission of the Bid Proposal to DCJS.

Each Bidder's Formal Offer Letter must include a Conflict of Interest Disclosure, in the form set forth in **Appendix F** stating that the Bidder knows of no factors existing at time of bid submission or which are anticipated to arise thereafter, which would constitute a potential conflict of interest in successfully meeting the contractual obligations set forth herein, including but not limited to:

1. No potential for conflict of interest on the part of the Bidder 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 RFP relative to the timeframe for service delivery, or personnel or financial resource commitments of Bidder to other projects.

The formal offer letter submitted must also include:

- the complete name and address of the Bidder;
- the name, address, phone number and e-mail address of the Bidder's Contract Administrator; and
- any restrictions under which the Bidder's primary negotiators will operate during contract negotiations.

Bidders must also complete and submit the Vendor Responsibility affirmation provided on **Attachment E (Formal Offer Letter)**.

## **8.2 Vendor Responsibility Questionnaire**

Section 163(4)(d) of the State Finance Law requires that service contracts shall be awarded on the basis of best value to a responsive and responsible Bidder. Upon identification of the Bidder(s) with the highest score, the Bidder(s) Responsibility Questionnaire will be analyzed to ensure that the Bidder(s) is responsible. Either DCJS or the Office of the State Comptroller may seek additional information from a Bidder to support this evaluation. In the event that a Bidder is found to be not responsible, the Bidder may be disqualified.

### **8.2.1 Response Requirement**

Each Bidder must complete the **NYS Standard Vendor Responsibility Questionnaire**. Vendors are required to either submit a hardcopy of the appropriate Vendor Responsibility Questionnaire or file the required Vendor Responsibility Questionnaire online via the New York State VendRep System maintained by the Office of the State Comptroller (OSC). **Appendix K** must be completed indicating whether a hard copy or online certification has been completed. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://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](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire may also download the appropriate questionnaire from the VendRep website [https://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](https://www.osc.state.ny.us/vendrep/forms_vendor.htm)

## **8.3 Non-Collusive Bidding Practices Certification**

A bid shall not be considered for award nor shall any award be made where the conditions of the Non-Collusive Bidding Certification have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where the above conditions have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determine that such disclosure was not made for the purpose of restricting competition (Section 139-d of the State Finance Law).

### **8.3.1 Response Requirement**

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

#### **8.4 Consultant Disclosure**

Consultant Disclosure Law – State Finance Law §163(4)(g) requires the selected Prime Contractor 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 Prime Contractor or a subcontractor. Form A – Prime Contractor’s Planned Employment From Contract Start Date Through The End Of The Contract Term Form B – Prime Contractor’s Annual Employment Report.

Form A – Contractor’s Planned Employment Form must be submitted as part of any winning Bidder’s bid response before it can be submitted to the Office of the State Comptroller for approval.

Form B – Contractor’s Annual Employment Report. Bidder 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 15<sup>th</sup> 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. Under the timeline schedule provided herein, the first Form B must be submitted by May 15, 2021. The Bidder 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  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210

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

NYS Department of Civil Service  
Attn: Consultant Reporting  
Swan Street Building #1  
Albany, NY 12239

##### **8.4.1 Response Requirement**

Please note that although this form is not required as part of the bid submissions these documents will be required from the selected vendor.

#### **8.5 Procurement Lobbying Laws**

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

### **Offerer Disclosure of Prior Non-Responsibility Determinations**

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

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

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

### **Offerer’s Certification of Compliance with State Finance Law 139-k(5)**

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a

certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

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

#### **8.5.1 Response Requirement**

The Bidder is responsible for the completion and submission of **Appendix F Attachment 1, 2 and Form 4**.

### **8.6 Encouraging Use of New York State Businesses in Contract Performance**

New York State businesses have substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, applicants for this solicitation are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract resulting from this RFP. Such partnering with New York State businesses may be as subcontractors, suppliers, protégés or other supporting roles.

To assist in demonstrating commitment to the use of New York State businesses in the performance of the Contract, all applicants must complete the form provided in RFP identified as **Appendix C (Encouraging Use of New York State Businesses in Contract Performance)** and submit the completed form as an attachment to their proposal. There are no points attributable to this component of the application.

#### **8.6.1 Response Requirement**

The Bidder is responsible for the completion and submission of **Appendix C**.

### **8.7 Minority and Women-Owned Business Requirements and Equal-Employment Opportunities**

Pursuant to Exhibit B, bidders are expected to meet certain requirements for business participation opportunities for New York State certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group members and women.

#### **8.7.1 Response Requirement**

The Bidder is responsible for the completion and submission of **Appendix I; as well as Appendix O or similar EEO Policy Statement**

### **8.8 New York State Worker's Compensation Law**

#### **Workers' Compensation Requirements:**

Sections §57 and §220(8) of the Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. Contractor hereby acknowledges and agrees to be bound by the terms of the New York Workers' Compensation Law.

To comply with the coverage provisions of the Workers' Compensation Law, businesses must either:

- A) be legally exempt from obtaining workers' compensation insurance coverage; **OR**
- B) obtain such coverage from insurance carriers; **OR**
- C) be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

**CONTRACTOR MUST PROVIDE ONE** of the following forms to the DCJS prior to execution of the Contract. DCJS cannot submit the Contract to the Office of the State Comptroller for review and approval without one of the following, **EITHER**

- A) **Form CE-200**, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage;

*Note: Form CE-200 can be filled out electronically on the Workers' Compensation Board's website under the heading "Forms." Applicants filing electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. **OR***

- B) **Form C-105.2** – Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the government entity upon request) **PLEASE NOTE:** The State Insurance Fund provides its own version of this form, the U-26.3; **OR**

- C) **Form SI-12** – Certificate of Workers' Compensation Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247), **OR** GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self-Insurance (the business's Group Self-Insurance Administrator will send this form to the government entity upon request).

For more information please see <http://www.wcb.ny.gov>.

**Disability Benefits Requirements:**

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

- A) be legally exempt from obtaining disability benefits insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- C) be self-insured.

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

- a. CE-200 Business Does Not Require Workers' Compensation and/or Disability Benefits Coverage, or

- b. DB-120.1 Certificate of Disability Benefits Insurance Coverage or the DB-820/829 Certificate/Cancellation of Insurance, or
- c. DB-155 Certificate of Disability Benefits Self-Insurance.

DCJS will coordinate with the winning Offerer(s) to obtain the above-mentioned documentation.

### **8.8.1 Response Requirement**

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

## **8.9 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 as **Appendix H (Contractor, Affiliate and Subcontractor Sales and Compensation Use Tax Certification)**. 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. 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 with the bid response to ensure compliance with the law. The winning Offerer(s) must complete the **Appendix H (N.Y.S. Department of Taxation and Finance Contractor Certification to Covered Agency Form ST-220-CA)**. Additionally, the winning Offerer for each group must complete **Appendix H (N.Y.S. Department of Taxation and Finance Contractor Certification Form ST-220-TD)** and submit the completed certification directly to the NYS Department of Taxation and Finance.

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

### **8.9.1 Response Requirement**

Submit **Appendix H**, Form ST-220-CA

## **8.10 Non-Disclosure Agreements**

DCJS requires the winning Bidder to complete Non-Disclosure Agreements.

### **8.10.1 Response Requirement**

**Appendix N** (DCJS Non-Disclosure Agreement)

## **8.11 Offerer Proposed Extraneous Terms**

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

### **8.11.1 Response Requirement**

Proposed additional, supplemental, "or equal," or alternative terms (Extraneous Term(s)) shall be included in Volume 2 of Bidder's proposal and may only be considered by the State to the extent that such Extraneous Term(s) constitute non-material deviations from the requirements set forth in the RFP. If the Bidder proposes to include Extraneous Terms in its official Proposal, the Bidder shall meet all of the following requirements:

1. Each proposed Extraneous Term shall be specifically enumerated in a separate section of the applicable submission (Administrative/Financial or Technical) labeled "Additional/Extraneous Terms";
2. The "Extraneous Terms" section shall be prepared by the Bidder and may not include any pre-printed literature or vendor forms;
3. The writing shall identify by part, section, and title the particular RFP requirement (if any) affected by the Extraneous Term; and
4. The Bidder shall specify the proposed Extraneous Term and the reasons therefore.
5. Only those terms meeting the above requirements (1) through (5) shall be considered as having been submitted as part of the formal offer.

Extraneous Term(s) submitted on standard, pre-printed forms (including, but not limited to: product literature, order forms, manufacturer's license agreements, standard contracts, or other preprinted documents) that are physically attached or summarily referenced in the Proposal, or that, in the State's sole judgment, have not been submitted in compliance with the above requirements (1) through (5), will not be considered as having been submitted with or intended to be incorporated as part of the

official offer contained in the Proposal, but rather will be deemed by the State to have been included by Bidder for informational or promotional purposes only.

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

## **8.12 Request for Exemption from Disclosure**

### **NOTICE TO BIDDER'S LEGAL COUNSEL:**

Proposals submitted to DCJS in response to this RFP are subject to the Freedom of Information Law (Public Officers Law, Article 6; hereinafter FOIL). Pursuant to §87(2)(d) of FOIL, records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise" may be exempt from disclosure.

#### **8.12.1 Response Requirement**

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

## **8.13 Use of Service-Disabled Veteran-Owned Business Enterprises In Contract Performance**

Article 17-B of the Executive Law provides for more meaningful participation in public procurement by Service-Disabled Veteran-Owned Businesses (SDVOBs). New York State agencies are authorized to use discretionary purchasing authority for procurements from SDVOBs. DCJS has a 6% goal with respect to agency procurements.

#### **8.13.1 Response Requirement**

Bidders shall complete and submit **Appendix G** with their bid submission.

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

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

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

#### **8.14.1 Response Requirement**

Bidders shall complete and submit **Appendix M (EO 177 Certification, NYS Human Rights Law, Article 15 of Executive Law)** with their submission.

#### **8.15 Sexual Harassment Prevention Certification**

Pursuant to State Finance Law §139-I bidder must certify that by submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

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

#### **8.15.1 Response Requirement**

Bidders shall complete and submit **Appendix P (Sexual Harassment Prevention Certification)** with their submission.

### **9.0 OTHER TERMS AND CONDITIONS**

This section outlines the administrative conditions concerning the Request for Proposal, the Bidder's response and conditions related to any awarded contract.

#### **9.1 Administrative Proposal Conditions**

With the submission of a response to this Request for Proposal, the Bidder agrees to the proposal conditions outlined in this section.

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

The following highlights certain grounds for termination of any contract executed with DCJS.

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

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) calendar days advance written notice to the vendor as indicated in this RFP.
- 2) In the event the State determines that necessary and lawful appropriations are not provided or continued for the funding of this Contract, the State shall

deem the Contract terminated upon thirty (30) calendar days advance written notice.

### 9.2.2 For Cause

#### 1. Notice

DCJS reserves the right to cancel this contract within 30 days. If either Party fails to comply with any provision of the Contract the other Party shall so notify the Party in default as provided below. The notification shall specify in reasonable detail the nature of the default.

#### 2. Additional State Rights & Remedies

- a. In the event of Vendor's default, in addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:
  - i. terminate the Contract in whole or in part;
  - ii. suspend, in whole or in part, payments due Vendor under this or any other New York State Contract;
  - iii. pursue equitable remedies to compel Vendor to perform.

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

#### 3. Non-Responsibility

The Vendor shall at all times during the contractual term remain responsible. The Vendor agrees, if requested by the Executive Deputy Commissioner or Commissioner of the New York State Division of Criminal Justice Services or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

### 9.2.3 Termination or Default Notices

Written Notices required herein by either Party shall be delivered to the other Party in writing, by certified mail, return receipt requested. The date of notice shall be deemed the date of delivery set forth on the return receipt. ("date of return receipt notice") Such notice shall be addressed as follows:

**State of New York:**  
Executive Deputy Commissioner  
State of New York  
Division of Criminal Justice Services  
Alfred E. Smith Office Building, 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, NY 12210-8001

With a copy to:

Title: Deputy Commissioner, Office of Public Safety

Current Incumbent: Michael Wood  
Mailing Address: Alfred E. Smith Office Building, 3 Floor  
80 South Swan Street  
Albany, NY 12210

AND

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

**Prime Contractor:**

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

**9.2.4 Termination Date**

Contract termination dates shall be determined as follows:

In the event a notice of termination is issued for convenience or in the event that necessary and lawful appropriations are not provided or continued for the funding of this Contract, or for cause, the Contract termination date shall be deemed thirty (30) calendar days from the date of delivery set forth on the return receipt notice.

**10.0 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 Executive Deputy Commissioner or 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.

**11.0 STANDARD LEGAL LANGUAGE**

### **11.1 Issuing Agency**

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

### **11.2 Solicitation**

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

### **11.3 Liability**

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

### **11.4 Proposal Ownership**

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

### **11.5 Proposal Security**

Each Bidder's proposal will be held in strict confidence by the Division staff and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain the approvals of those agencies for the final contract and except as otherwise required by law.

Public inspection of the bids is regulated by the Freedom of Information Law. Following the final approval of a contract by the Comptroller, bids are presumptively available for public inspection. Bidders who have included sensitive material within their proposals should note the provisions of Section 7.13 herein above – Request for Exemption from Disclosure. Note that requests for exemption of the entire contents of a bid/proposal from disclosure have generally not been found to be meritorious and are discouraged. Requests should be limited to exemption from disclosure of bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm. The Bidder should point out those sections of the proposal that are trade secrets and explain the reasons therefore.

The public officers' code of ethics (section 74 of the Public Officers Law) sets the standard that no officer or employee of a State agency shall disclose confidential information that he or she acquires during the course of his or her official duties. These standards control the confidentiality of a Bidder's proposal unless the Division grants records access in accordance with the Freedom of Information Law. Bidders are advised that determinations of the Division or of the Office of the Attorney General or of the Office of the State Comptroller including agreements to shield or redact information are subject to review by Courts of Competent Jurisdiction.

Bidders should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by the Division or the Bidder, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Bidders should not propose a nondisclosure

agreement for Division employees, for that would be legally ineffective to alter any legal responsibility under the Freedom of Information Law or the code of ethics.

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

#### **11.6 Ethics Compliance**

All Bidders/Contractors and their employees must comply with the requirements of §73 and § 74 of the Public Officers Law, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing the bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

#### **11.7 Timely Submission**

The Bidders are solely responsible for timely delivery and submission of their proposal to the location set forth herein. DCJS is not responsible for delays in receipt, including but not limited to those due to third-party carriers.

#### **11.8 Proposal Effective Period**

The Bidder's proposal must be firm and binding for a period of at least one (1) year following the bid proposal due date.

#### **11.9 Bidder Proposal Clarification**

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

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

The Division may from time to time and in its sole discretion communicate clarifications and subsequent information whether such clarifications and information result from Bidder inquiry or is released by the Division. In such event the Division will disseminate such information by posting the information to the Division's website at the internet address identified on the face page of this RFP.

#### **11.10 Award Notification**

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

### **11.11 Proposal Review and Contract Approval**

Any contracts resulting from this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

### **11.12 Disclosure of Contract Awards**

Public Announcements or news releases pertaining to contracts shall not be made prior to contract award. Requests concerning the evaluation of a bid submitted will be considered under the Freedom of Information Law (FOIL) only after contract negotiations are complete and the contract is released by the State Attorney General's Office and the Office of the State Comptroller.

### **11.13 Debriefing Sessions**

Unsuccessful Bidders will be notified in writing and may request the opportunity for a debriefing session. Once an award has been made, Bidders may then submit a written request for a debriefing as to why their proposal did not result in an award. Such sessions will be limited to discussions of evaluation results as they apply to the Bidder receiving the debriefing. The written request must be received by the DCJS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement.

### **11.14 Bid Protest Policy**

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

Bidders desiring to initiate a bid protest must follow the procedures for timely filing a formal protest set forth in the DCJS Contract Award Protest Procedure at **Exhibit A (DCJS Contract Award Protest Procedure)** of this RFP by the deadline set forth in the procedure. Take Notice that contacts with DCJS do not constitute the filing or initiation of a Bid Protest or extend the time in which to file a Bid Protest under the DCJS Contract Award Protest Procedure. Bid Protests must be identified as such and filed in accordance with the procedures provided in the DCJS Contract Award Protest Procedure. Prior to Contract award, protests which may affect the outcome or nature of the award may only be considered by the State in the context of a formal written protest filed in accordance with the procedure at **Exhibit A**.

### **11.15 Reserved Rights**

The Division of Criminal Justice Services reserves the right to exercise any of the following actions:

- a Change any of the scheduled dates and times stated herein.
- b Amend RFP specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Bidders.

- c Disqualify a Bidder from receiving an award if such Bidder has previously failed to perform satisfactorily in connection with public bidding or contracts(s) or is deemed otherwise not responsible.
- d Eliminate a mandatory requirement when all Bidders cannot meet such requirement.
- e Evaluate, accept and/or reject any and all proposals, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Division's considered judgment, the best interests of the Division will be served. In the event compliant bids are not received, the Division reserves the right to consider late or non-conforming bids as offers.
- f Require the Bidder to provide proof of or otherwise demonstrate, to the satisfaction of the Division, any information presented as a part of their proposal.
- g Use information obtained through the Division's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the Division's request for clarifying information in the course of evaluation and selection under this RFP.
- h Determine a tie breaking mechanism for award of the contract to serve the best interests of the Division.
- i Negotiate with the successful Bidder(s) within the scope of the RFP to serve the best interests of the Division and the State.
- j The Division may agree to extend the time period established by Section 112 of the State Finance Law for approval of contracts by the Comptroller of the State of New York and in such an event the successful Offerer agrees to maintain its offer for the duration of the extension.
- k In the event the Division terminates a Contract resulting from this procurement, the Division reserves the right, with the approval of the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submissions.
- l Reject any or all proposals received in response to the RFP.
- m Withdraw the RFP at any time, at the agency's sole discretion.
- n Make an award under the RFP in whole or in part.
- o Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP.
- p Seek clarifications and revisions of proposals.

- q Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP.
- r Prior to the **bid opening**, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available.
- s Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments.
- t Waive any requirements that are not material.
- u Negotiate with the successful bidder within the scope of the IFB/RFP in the best interests of the State.
- v Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder.
- w Utilize any and all ideas submitted in the proposals received.
- x Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

## **11.16 Administrative Contract Conditions**

### **11.16.1 Payments**

All payments will be made in accordance with Section 11-a of the New York State Finance Law. The Vendor will be reimbursed for services provided based on submissions required from the Vendor's staff by DCJS including properly completed invoices detailing trainings provided with times and locations. Vendor will be reimbursed based on the proposed cost per training which was submitted as a response to this RFP.

### **11.16.2 Taxes**

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

Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Vendor.

### **11.16.3 Mandatory Requirement – Price Protection**

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

### **11.16.4 Procurement Record**

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

### **11.16.5 Mandatory Requirement – Appendix A (Standard Clauses for New York State Contracts)**

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

### **11.16.6 Mandatory Requirement – Discriminatory Jurisdictions**

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

### **11.16.7 Public Announcements**

Public announcements or news releases relating to this RFP or the resulting agreement shall not be made by any Offerer or its agent without the prior approval of the Division. Such approval shall not be considered until an executed contract is in place.

### **11.16.8 Contract Term**

The contract resulting from an award under this procurement shall take effect upon approval by the New York State Attorney General and the Office of the

State Comptroller of New York or staff designated for such purpose (“Effective Date”) and shall continue in effect for a term of up to five years..

#### **11.16.9 Time is of the Essence**

Time is of the essence in contract formation and time is of the essence in the resulting Contract and will be a substantial and a material term of any agreement resulting from this RFP.

#### **11.16.10 Contract Formation**

A successful applicant will be required to enter into a contract with NYS within a reasonable amount of time after receipt of notification of award. The final contract may contain new or amended contractual provisions. NYS reserves the right to negotiate minor terms and conditions relative to the RFP and the applicant’s response to meet agency program requirements consistent with the solicitation. During contract negotiations, the State expects to have direct access to Offerer personnel who have full authority to make commitments on behalf of the Offerer. Any negotiated contract must conform to the laws of New York State.

The Contract will incorporate this RFP, all Exhibits, all Appendices, all Attachments, all submissions, the Offerer’s Bid Proposal, clarifications and additional information issued by DCJS during the course of this procurement and additional terms agreed to by the Parties in writing into a Master Agreement.

The State shall have the right to renegotiate the terms of Contracts resulting from this procurement at any time in the event that a change in applicable laws, codes, ordinances, statutes, rules and regulations or applicability thereof requires that the terms of the Contract be modified so that it conforms with the requirements of any applicable statute, law, ordinance, codes, rules or regulation then in effect.

#### **11.16.11 Negotiations with the Next Highest Offerer**

In the event that DCJS should be unsuccessful in negotiating a contract within thirty (30) business days following the date of the notice of award with the selected Offerer, DCJS may at any time following thirtieth business day at its option begin negotiations with the next highest scored Offerer, as applicable.

#### **11.16.12 Cancellation Clause**

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

#### **11.16.13 Contractor**

Offerer is required to serve as the Contractor when selected to provide training services pursuant to this RFP hereunder. The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract,

including all Appendices, Attachments, Exhibits, and any subsequent amendments mutually agreed to in writing between the Parties. The Contractor is responsible for payment of all subcontractors and suppliers, including all third-party equipment and service providers contracted by or through the Contractor in performance of the agreement. Where services are supplied by or through the Contractor under the Contract, Contractor must assume full integration responsibility for performance of such services.

#### **11.17 Qualified to Work in the United States**

All personnel employed by the Contractor must be legally authorized to work in the United States. Personnel and candidates provided to DCJS by any Offerer must be legally authorized to work in the United States.

#### **11.18 Indemnification & Limitation of Liability**

- a. Offerer as a Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors of the Offerer and shall fully indemnify and save harmless the State of New York and DCJS, from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Offerer, its agents, employees, partners or subcontractors of the Offerer, *without limitation*; provided, however, that the Offerer shall not indemnify for that portion of any claim, loss or damage arising from the negligence of the State and/or its employees.
- b. Offerer will indemnify, defend and hold the State of New York, DCJS, and entities which have been authorized by DCJS to participate (“Authorized participating Users” or “Authorized Users”), where applicable, and with whom the Contractor and DCJS has agreed to install or place products or provide services as defined in the Master Agreement harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys’ fees), claims, judgments, liabilities and costs which may be finally assessed against the State, DCJS, and its Authorized Participating Users in any action for infringement of any copyright, trademark, trade secret or intellectual property right, provided that DCJS shall give the Offerer: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Offerer’s sole expense, and (iii) assistance in the defense of any such action at the expense of Offerer. Where a dispute or claim arises relative to a real or anticipated infringement, the State of New York and/or DCJS may require Offerer, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State of New York and/or DCJS shall require. If the Offerer has an opportunity to terminate any such infringement suit by a third-party Offerer, the Offerer shall obtain the consent of the State and the Attorney General of the State of New York to the settlement if such settlement will alter any financial or performance terms of the Agreement.
  - i. If principles of governmental or public law are involved, DCJS and/or the State may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Offerer without the Offerer’s written consent.
  - ii. If in the Offerer’s opinion the equipment, materials, or information mentioned above, are likely to or do become the subject of a claim of infringement of a United States patent or copyright, then without diminishing the Offerer’s obligation to satisfy any final award, Offerer may, with DCJS

and/or any other contracting State agency, where applicable, and the State's written consent, substitute other equally suitable materials and information or, at Offerer's option and expense, obtain the right for the State to continue the use of such materials and information.

- c. The Offerer will indemnify the DCJS and the State without limitation against any claim(s) brought against the State and/or DCJS by reason of a wrongful disclosure of confidential information attributed to the Offerer or any Offerer employee and will cooperate fully with DCJS, the State, and the Attorney General in defense of any claim(s).
- d. The Offerer shall not be obligated to indemnify that portion of a claim or dispute based upon: i) the State's unauthorized modification or alteration of a product; ii) the State's use of the product in combination with other products not furnished by Offerer; iii) the State's use in other than the specified operating conditions and environment.
- e. Neither Party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. All Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract and shall immediately resume performance upon termination of the force majeure.
- f. 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.
- g. Indemnification for Direct Damage: For all other claims against the Offerer by DCJS and the State of New York where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Offerer's liability under this Contract for direct damages shall be two (2) times the charges rendered by the Offerer under the Contract.
- h. DCJS, and the State may, in addition to other remedies available to them at law, in equity, or under the Contract, and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the Contractor, as applicable, as may be necessary to satisfy any claim for damages, costs and the like asserted by or against them.

#### **11.19 Compliance with Laws**

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

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

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

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60.
- b. Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/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.

## **11.20 Security, Information Security, Breach and Notification Act**

The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Contract. The Contract may be terminated by the State for cause for a material breach of this section.

### **11.20.1 Security Procedures & Employee Dishonesty**

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

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

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or

potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures have been taken subject to approval of DCJS or such other applicable State agency to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation.

*State entities subject to Section 208 of the State Technology Law that experience breaches of computerized data which includes private information must file notices with the New York Attorney General; Department of State's Division of Consumer Protection; and the Office of Information Technology Services' Enterprise Information Security Office.*

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

Information relative to the law and the notification process is available at:

<http://its.ny.gov/eiso/breach-notification>

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

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

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

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

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

## **11.21 User Data is the Property of State of New York**

In the course of performance of its obligations pursuant to this RFP and any resulting Contract certain Contractor or Subcontractor personnel may be approved by appropriate

authorities to have access to or come into possession of data and information which is the property of the State of New York.

## **12.0 BIDDERS PROPOSAL SUBMISSION**

Bidders can bid on Group 1 which is comprised of 2 training topics, and/or Group 2 comprised of a single training topic. Bidders wishing to bid on both Group 1 and Group 2 must submit a separate bid for each group.

The Bidder must provide a detailed response that clearly and precisely provides all of the information required by the Division on which to base the evaluation. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and to completeness and clarity of the content.

Proposals that are not adequately detailed and/or do not comply with these instructions, or do not meet the full intent of all of the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed as non-responsive.

### **12.1. Organization of Proposal**

#### **12.1.1 Group 1 Organization of Proposal**

To facilitate the evaluation process, the Bidder must organize its proposal into two distinct volumes as follows:

- Volume One – Technical Proposal
- Volume Two – Administrative/Financial Proposal

#### **A. Volume One – Technical Proposal Format**

Volume One should contain a table of contents with page numbers and each section should be tabbed as follows and include the below referenced documents properly completed, signed and notarized, where appropriate:

Tab 1 Attachment B.1 Parts A, B, & C - Mandatory Technical Requirements Response Form

Tab 2 Attachment C.1 Parts A, B, & C – Research-Based Course Content Offerings and Trainee Materials Response Form

#### **B. Volume Two – Administrative/Financial Proposal Format**

Volume Two should contain a table of contents with page numbers and each section should be tabbed as follows and include the below referenced documents properly completed, signed and notarized, where appropriate:

#### **Tab 1 Administrative Requirements**

- Attachment A.1 Firm Information and Attestation Form
- Attachment E Formal Offer Letter (signed and notarized)

Appendix C	Encouraging Use of New York State Businesses in Contract Performance
Appendix D	Non-Collusive Bidding Certification (signed)
Appendix F	Procurement Lobbying Attachments 1 and 2; and Form 4 (signed)
Appendix G	Use of Service-Disabled Veteran- Owned Business Enterprise in Contract Performance
Appendix H	ST-220-CA (signed and notarized)
Appendix K	Vendor Responsibility Questionnaire or file the Vendor Responsibility Questionnaire online via the New York State VendRep System (signed and notarized)
Appendix L	Consultant Disclosure
Appendix M	EO 177 Certification
Appendix N	DCJS Non-Disclosure Agreement (signed and notarized)
Appendix O	EEO Policy Statement (signed and notarized)
Appendix P	Sexual Harassment Prevention Certification (signed)

Offerer's Proposed Extraneous Terms, if any  
Offerer's request for Exemption from Disclosure, if any

**Tab 2 Financial Requirements**

Attachment D.1 Financial Response Form: Decision Making and Human Factors Law Enforcement Training

**12.1.2 Group 2  
Organization of Proposal**

To facilitate the evaluation process, the Bidder must organize its proposal into two distinct volumes as follows:

- Volume One – Technical Proposal
- Volume Two – Administrative/Financial Proposal

**A. Volume One – Technical Proposal Format**

Volume One should contain a table of contents with page numbers and each section should be tabbed as follows and include the below referenced documents properly completed, signed and notarized, where appropriate:

Tab 1 Attachment B.2 Parts A, B, & C – Mandatory Technical Requirements Response Form

Tab 2 Attachment C.2 Parts A, B, & C – Research-Based Course Content Offerings and Trainee Materials Response Form

**B. Volume Two – Administrative/Financial Proposal Format**

Volume Two should contain a table of contents with page numbers and each section should be tabbed as follows and include the below referenced documents properly completed, signed and notarized, where appropriate:

**Tab 1 Administrative Requirements**

Attachment A.2	Firm Information and Attestation Form
Attachment E	Formal Offer Letter (signed and notarized)
Appendix C	Encouraging Use of New York State Businesses in Contract Performance
Appendix D	Non-Collusive Bidding Certification (signed)
Appendix F	Procurement Lobbying Attachments 1 and 2; and Form 4 (signed)
Appendix G	Use of Service-Disabled Veteran- Owned Business Enterprise in Contract Performance
Appendix H	ST-220-CA (signed and notarized)
Appendix K	Vendor Responsibility Questionnaire or file the Vendor Responsibility Questionnaire online via the New York State VendRep System (signed and notarized)
Appendix L	Consultant Disclosure
Appendix M	EO 177 Certification
Appendix N	DCJS Non-Disclosure Agreement (signed and notarized)
Appendix O	EEO Policy Statement (signed and notarized)
Appendix P	Sexual Harassment Prevention Certification (signed)

Offerer's Proposed Extraneous Terms, if any  
Offerer's request for Exemption from Disclosure, if any

**Tab 2 Financial Requirements**

Attachment D.2 Financial Response Form: Decision Making and Human Factors Law Enforcement Training

**12.2 Submission of Proposals**

The Bidder must submit one (1) bound paper copy which must contain original notarized signatures and be marked as "ORIGINAL", of Volume One (1) and Two (2). All volumes must be bound separately and clearly identified. To facilitate requests for information under the Freedom of Information Law, two (2) electronic copies on USB Drives of each submission, Volume One (1) and Two (2), shall also be submitted on a Portable USB Drive. In total, four (4) Portable USB Drives must be included in the submission. In the event of a discrepancy, the "ORIGINAL" hard copy shall govern.

Proposals must be received no later than the due date and time listed in the Calendar of Events. The Technical and the Administrative/Financial Volumes must be bound separately and clearly identified as such. All bids are to be packaged, sealed and submitted to the following:

**Mr. Sanford Fader  
Procurement Officer  
Office of Financial Administration  
New York State Division of Criminal Justice Services  
Alfred E. Smith Office Building, 10<sup>th</sup> Floor  
80 South Swan St,  
Albany, NY 12210-8001**

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

**BID ENCLOSED**  
**Group 1 or Group 2**

Decision Making & Human Factors Law Enforcement Training RFP#CJS2020-01 Bid Submission  
Do not open

Label: "Administrative/Financial Proposal" or "Technical Proposal" (as applicable)

Bidders submitting a bid for both Group 1 and Group 2 must submit separate packages and must clearly state on the label the group number for which the bid is associated with.

In the event that a package is not labeled properly as described in this section, the Division reserves the right to inspect the contents of the package(s) to determine the contents. The Bidder shall have no claim against the Division arising from such inspection and such inspection shall not affect the validity of the procurement. Notwithstanding, the Division's right to inspect the contents of the package(s), the Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

**Faxed or electronically transmitted proposals will not be accepted. Proposals received by the State after the proposal due date and time will be rejected.**

### **13.0 EVALUATION AND SCORING METHOD**

Pursuant to Article XI of the New York State Finance Law, the basis for this contract Award is **best value**. A best value optimizes quality, cost and efficiency among responsive and responsible Bidders and is consistent with the best interests of the State of New York.

The Division evaluates proposals for goods and services in an objective, comprehensive manner designed to benefit both the State and participating Bidders. Throughout this process, the Division identifies Contractors who will best meet our needs and will be cost effective. The Division further intends that all proposals will be evaluated uniformly and consistently, ensuring Bidders an equal opportunity to be considered.

The State reserves the right to verify information presented in the proposal through the clarification process as well as interviews with key staff, including technical reference checks. The State reserves the right to reduce technical scores or to disqualify, as non-responsive, any firm based upon information brought to the attention of the State through such interviews or clarification process.

#### **13.1 Proposal Clarification**

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

#### **13.2 References**

The Bidder is solely responsible for providing references who are readily available to be contacted by DCJS and will respond to reference questions. If DCJS is unable to contact any reference, the Bidder will be provided **one** opportunity, with a deadline, to assist in obtaining cooperation from those clients who have not responded.

### 13.3 Evaluation Process

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

1. **Completeness Review**

After the bid opening, each proposal will be screened for completeness and conformance with requirements for bid submission as specified in Section 12.0 of this RFP. Proposals that do not meet the requirements as set forth in this RFP may be deemed nonresponsive and denied further consideration. Proposals meeting the requirements will proceed to the Mandatory Qualifying Technical Requirements Evaluation.

2. **Mandatory Qualifying Technical Requirements Evaluation (Pass/Fail)**

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

3. **Technical Evaluation (80 Points)**

The Bidder is required to demonstrate quantitative and qualitative experience providing training. The technical evaluation will proceed concurrently and separately from the financial evaluation.

i. **Research-Based Course Content**

The required outline/lesson plan and the citations for the research utilized as a basis for the course content will be evaluated and points will be awarded based on the depth and breadth of the course content and the validity of the research. In addition, DCJS will evaluate and award points on the variety and type of materials and aids which are offered by the Bidder to the participants.

**Attachment C.1 Part A (Research-Based Course Content Offerings and Trainee Materials Response Form)** has instructions for Bidders who wish to bid on Group 1. The responses under **Attachment C.1 Part B** and **Part C** will be reviewed and evaluated.

**Attachment C.2 Part A (Research-Based Course Content Offerings and Trainee Materials Response Form)** has instructions for Bidders who wish to bid on Group 2. The responses under **Attachment C.2 Part B** and **Part C** will be reviewed and evaluated.

ii. **Client References**

This part of the technical evaluation will be based on the Client

Reference Questionnaire submissions obtained from the Bidder client references identified on **Attachment B.1 Part C (Mandatory Technical Requirements Response Form)** by Bidders submitting a bid on Group 1 and on **Attachment B.2 Part C (Mandatory Technical Requirements Response Form)** by Bidders submitting a bid on Group 2.

References will be contacted by DCJS and will be asked a series of questions that will be evaluated and scored. Bidders may use the same client references if bidding on Group 1 and 2 but must include the appropriate completed response forms in each package.

4. **Financial Evaluation (20 Points)**

The Financial Evaluation will be evaluated independently by the Financial Evaluation Team and separately from the Technical Evaluation. The Financial Evaluation for Group 1 will be based on the Bidder's financial response provided on **Attachment D.1 (Financial Response Form: Decision Making and Human Factors Law Enforcement Training)** while the Financial Evaluation for Group 2 will be based on the Bidder's financial response provided on **Attachment D.2 (Financial Response Form: Decision Making and Human Factors Law Enforcement Training)**.

For evaluation purposes, the bidder's score will be calculated by dividing the lowest total proposed cost of all bidders by the proposed cost provided by the bidder being evaluated and multiplying by 20.

5. **Final Ranking/Contract Award**

A contract for each group will be awarded to the Bidder whose proposal(s) obtains the highest aggregate score within each group. The Division will award a single contract per group. Bidder's scores from the Technical Evaluation and the Financial Evaluation will be totaled to produce a combined score. The proposals will be ranked based on the combined scores.

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

- The Bidder's Research-Based Course Content score.
- The Bidder's Client Reference score.
- The Bidder's Financial score.
- Determination by the Commissioner.

**DCJS reserves the right not to make award. The approved bid award(s) between the State and the successful Bidder(s) will not be binding until it has been approved in accordance with New York State's contract approval process.**

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE  
CONTRACTS**

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

**October 2019**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least

the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

of such audit by the State agency, its representatives, or the State Comptroller.

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax

administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

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

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

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

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

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

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

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

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable.

Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100

Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwb certification@esd.ny.gov](mailto:mwb certification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of

October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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

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

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

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