



Office of Children and Family Services

ANDREW M. CUOMO
Governor

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Acting Commissioner

New York State Office of Children and Family Services (OCFS)

The Child and Adult Care Food Program (CACFP) Outreach

Request for Proposals

November 12, 2015

Note:

Throughout this document the terms “proposal” and “application” are used interchangeably and the terms “applicant,” “bidder,” and “vendor” are used interchangeably.

Timetable of Key Events:

<u>Event:</u>	<u>Date:</u>
Submittal of Question Deadline	11/25/15 (3:00 PM)
Posted Date of Answers	12/2/15 (3:00 PM)
Proposals Due	12/11/15 (3:00 PM)
Awards Announced (Tentative)	12/23/15 (3:00 PM)
Contract Start Date (Projected)	2/1/2016

Inquiries:

From the issuance of this Request For Proposals (RFP) until contractors are selected, all contacts with the New York State Office of Children and Family Services personnel concerning this RFP, except as otherwise specified herein, must be made through Diane Miller via email at DianeDCCS.Miller@ocfs.ny.gov, with “*The Child and Adult Care Food Program (CACFP) inquiry*” in the subject line.

Section One.... BACKGROUND

NOTE: PREQUALIFICATION REQUIREMENT

Pursuant to the New York State Division of Budget Bulletin H-1032, dated June 7, 2013, New York State has instituted key reform initiatives to the grant contract process that require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process in order for their proposals to be evaluated. Information on these initiatives can be found on the [Grants Reform Website](#). Complete information on Prequalification is available in Section 1.7 Contract Readiness, of this RFP.

1.1 Introduction

The Office of Children and Family Services (OCFS) seeks proposals for the purpose of awarding a contract to a qualified not-for-profit organization. The available funding is for a state-wide outreach initiative to increase awareness of the CACFP Program. The resulting contract is for the purpose of increasing the number of Day Care Center/Home or Afterschool providers participating in the Child and Adult Care Food Program. This will result in an increase in the number of children who attend Day Care Center/Home or Afterschool Programs receiving the nutrition assistance they need. The funding amount of \$250,000 will be awarded through a competitive bid process to a not-for-profit organization that demonstrates the ability to implement this outreach initiative on a statewide basis.

OCFS is requesting applications from eligible organizations for the provision of CACFP Outreach services to New York State child care and afterschool programs. According to the United States Department of Agriculture Economic Research Service (USDA-ERS), food insecurity is defined as “a household-level economic and social condition of limited or uncertain access to adequate food” due to a lack of available financial resources, competing demands for those resources, and the cost of acquiring food. The goal of these outreach and education services is to minimize food insecurity by increasing participation in the CACFP.

1.2 Purpose and Funding Availability

OFCS's 2015-16 budget allocates \$250,000 to provide for a program to increase participation to a target population of afterschool, daycare, or other out-of-school care providers who are eligible to participate in CACFP. Funds will be available for one year.

1.3 Term of Contract

The contract awarded in response to this RFP will be for twelve months with an anticipated start date of 2/1/16 and end date of 1/31/2017. Contingent on funding availability in subsequent budgets and satisfactory performance of the contractor, the contract may be renewed for up to four additional years.

Terms and conditions for the contract can be found in the State Of New York Master Contract For Grants and Attachment A-1 documents, located in [Section Five: Contract Documents](#).

1.4 Eligible Applicants

Only not-for-profit organizations are eligible for funding announced in this RFP.

1.5 Standard Contract Language

The terms and conditions for all funded projects are specified in a detailed contract that must be signed by OCFS and approved by the Attorney General and the Office of the State Comptroller before any work is begun or payments made. This RFP includes all relevant contract terms and conditions, which can be found in **Section Five: Contract Documents**. Upon contract award and completion of negotiations, OCFS will send the successful applicant the complete contract for development and signature prior to submitting it to the Attorney General's Office and the Office of the State Comptroller for execution.

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

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

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

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

1.7 Contract Readiness

The state's Prompt Contracting and Vendor Responsibility provisions require all state agencies to complete contract development and the signatory process within state-prescribed timeframes. Awardees will need to be available and prepared to respond within required timeframes. If selected, awardees may be required to travel to Rensselaer for contract development and will be expected to cover the costs of that travel. Awardees who cannot meet prescribed timeframes for contract development and/or signature will, at OCFS's discretion and barring extenuating circumstances, lose funds awarded.

Prior to submitting an application for funding, applicants are responsible for various verifications that validate their capacity and organizational authority to receive public funding and operate as a not-for-profit corporation in the State of New York. These verifications include prequalification in the **New York State Grants Gateway System (GGS)**. Pursuant to the New York State Division of Budget Bulletin H-1032 revised, dated July 16, 2014, New York State has instituted key reform initiatives to the grant contract process, which require not-for-profits to register in the Grants Gateway and complete the Vendor Prequalification process in order for proposals to be evaluated. Information on these initiatives can be found on the [Grants Reform Website](#).

Proposals received from not-for-profit applicants that have not Registered and are not prequalified in the Grants Gateway by the proposal due date and time listed at the beginning of the RFP cannot be evaluated. Such proposals will be disqualified from further consideration.

Below is a summary of the steps that must be completed to meet registration and prequalification requirements. The [Vendor Prequalification Manual](#) on the Grants Reform Website details the requirements and an [online tutorial](#) is available to walk users through the process.

1) Register for the Grants Gateway.

On the Grants Reform Website, download a copy of the [Registration Form for Administrator](#). A signed, notarized original form must be sent to the Division of Budget at the address provided in the instructions. You will be provided with a Username and Password, allowing you to access the Grants Gateway.

- If you have previously registered and do not know your Username, please email grantsreform@budget.ny.gov. If you do not know your Password, please click the [Forgot Password](#) link from the main log-in page and follow the prompts.

2) Complete your Prequalification Application.

- Log in to the [Grants Gateway](#). **If this is your first time logging in**, you will be prompted to change your password at the bottom of your Profile page. Enter a new password and click SAVE.
- Click the *Organization(s)* link at the top of the page and complete the required fields including selecting the state agency with which you have the most grants. This page should be completed in its entirety before you SAVE. A *Document Vault* link will become available near the top of the page. Click this link to access the main Document Vault page.
- Answer the questions in the *Required Forms* field and upload *Required Documents*. This constitutes your Prequalification Application. Optional Documents are not required unless specified in this Request for Proposals.
- Specific questions about the prequalification process should be referred to your agency representative or to the Grants Reform Team at grantsreform@budget.ny.gov.

3) Submit Your Prequalification Application

- After completing your Prequalification Application, click the ***Submit Document Vault*** link located below the Required Documents section to submit your Prequalification Application for state agency review. Once submitted, the status of the Document Vault will change to *In Review*.
- If your Prequalification reviewer has questions or requests changes, you will receive email notification from the Gateway system.
- Once your Prequalification Application has been approved, you will receive a Gateway notification that you are now prequalified to do business with New York State.

Vendors are strongly encouraged to begin the registration/prequalification process as soon as possible in order to participate in this opportunity.

Recipients of grants must also be registered in the New York Statewide Financial System (SFS) Central Vendor Registry File and provide their identification number at the time of contracting. To register and for additional information on the Vendor File, visit: http://www.osc.state.ny.us/vendor_management/index.htm

Not-for-profit vendors must be registered with the Attorney General's Office as a charitable organization, and the registration must be up to date at the time of contracting. Vendors must be sure all their documents are up to date and comply with the Vendor Responsibility requirements as outlined below. To determine the status of your Charities Registration information, contact: http://www.charitiesnys.com/RegistrySearch/show_details.jsp?id

Section Two.... GENERAL REQUIREMENTS / INSTRUCTIONS

2.1 Proposal Submission Process

All applicants must be registered with the **New York State Grants Gateway System (GGS)** and **all Not- for-Profit agencies must be prequalified prior to proposal submission.**

If you are not already registered:

REGISTER WITH THE GRANTS GATEWAY – Registration forms are available at the **GGS** website: www.grantsreform.ny.gov.

- Include your SFS Vendor ID on the form; if you are a new vendor and do not have a SFS Vendor ID, include a Substitute for W-9 with your signed, notarized registration (also available from the website).
- All registration applications must include an Organization Chart in order to be processed.
- When you receive your initial log in information, log in and change your password.

If you have problems complying with this provision, please contact the **GGS** help desk via email: helpdesk@agatesoftware.com -- **OR** -- by telephone: 1-800-820-1890.

How to Submit a Proposal

Proposals must be submitted online via the Grants Gateway by the date and time posted on the cover of this RFP. Tutorials (training videos) for use of the Grants Gateway are available at the following web address (and upon user log in):

https://www.grantsgateway.ny.gov/IntelliGrants_NYSGG/module/nysgg/goportal.aspx .

To apply, log into the Grants Gateway and click on the View Opportunities button under View Available Opportunities. To get started, in the Search Criteria, enter the Grant Opportunity name provided on the cover page of this RFP, select the Office of Children and Family Services as the Funding Agency, and hit the Search button. Click on the name of the Grant Opportunity from the search results grid and then click on the APPLY FOR GRANT OPPORTUNITY button located at bottom left of the Main page of the Grant Opportunity.

In order to access the online proposal and other required documents such as the attachments, you MUST be registered and logged into the NYS Grants Gateway system in the user role of either a “Grantee” or a “Grantee Contract Signatory”.

For further information on how to apply, please access the Grantee Quick Start Guide under the Pre-Submission Upload Properties for this opportunity.

Reference materials and videos are available for Grantees applying for funding opportunities on the NYS Grants Gateway. Please visit the Grants Reform website at the following web address: <http://grantsreform.ny.gov/Grantees> and select the “Grantee Quick Start Guide” from the menu. There is a more detailed “Grantee User Guide” available on this page as well.

Proposals submitted via fax, e-mail, hard copy or hand delivery will not be accepted. Late proposals will not be accepted.

Helpful Links

Some helpful links for questions of a technical nature are below. Questions regarding specific opportunities or proposals should be directed to the OCFS contact listed on the cover of this RFP.

www.grantsreform.ny.gov/grantees

Grants Reform Videos (includes a document vault tutorial and an application tutorial) on YouTube: <http://www.youtube.com/channel/UCYnWskVc7B3ajjOVfOHL6UA>

Agate Technical Support Help Desk
Phone: 1-800-820-1890
Hours: Monday thru Friday 8am to 8pm
Email: helpdesk@agatesoftware.com
(Technical questions)

Grants Team Email: Grantsreform@budget.ny.gov
(Proposal Completion, Policy, and Registration questions)

www.grantsgateway.ny.gov

Proposal Due Date

The due date and time for the submission of this proposal into the Grants Gateway is stated in the Timetable of Key Events above. **The GGS will not accept proposals submitted after the due date and time.**

- Proposals are to be submitted into the GGS only.
- Proposals may not be submitted via email, postal delivery, or facsimile

2.2 Selection Criteria

Mandatory Requirements

- a) All vendors must be pre-qualified in the GGS on or before the due date and time for the proposal. OCFS strongly encourages vendors to pre-qualify well before the due date to ensure that all requirements are complete.

- b) Vendors must have experience with statewide projects similar to the project described in this RFP; they must submit documentation of their experience on the similar project(s) with their proposals.
- c) All vendors must be not-for-profit organizations.

Proposals will be rated by a Review Team, which will evaluate the following information, which each applicant must submit:

a) Program Narrative:

Provide documentation of your experience on similar project(s) with regard to the project's successes and lessons learned, presenting a clear plan on how to increase success in a future project. Also, document your organizational capacity to meet the requirements of the CACFP project as described immediately below under the heading "Workplan," including the ability to complete the project within the contract term.

b) Workplan:

The organization awarded this grant must fulfill each of the following:

- a) Perform a statewide assessment of CACFP, which includes, but is not limited to, analyzing CACFP participation compared to programs that are eligible, but not participating, for each region of the state.
- b) Provide outreach, including, but not limited to, developing an online and social media campaign.
- c) Provide information to the target population, including, but not limited to website building and development.
- d) Provide education, including, but not limited to, developing and recording webinars/podcasts specific to the target population.
- e) Provide Technical Assistance to the target population to increase participation in CACFP.
- f) Build public support for CACFP.
- g) Produce interim and Final Reports, as requested by OCFS.

c) Budget: Applicants must submit a budget that clearly ties into the work plan.

Expenses eligible for funding are the operational costs and administrative costs that are reasonable and necessary to conduct approved CACFP Outreach Services. Allowable expenses generally include:

- Salary and benefits of personnel related to program delivery and administrative support;
- Office equipment and supplies, postage, telephone, and computer;
- Reproduction, and/or the development and production of outreach material;
- Lease or rental costs necessary for conducting project activities;
- Maintenance expenses;
- Training expenses;
- In-state travel necessary to achieve the project's objectives and;
- Administrative costs, as limited by EO#38

d) Scoring:

Proposals will be evaluated and a selection will be made based on: the completeness of the application, responsiveness to the RFP, organizational capacity and experience to deliver statewide programming as outlined in the RFP, and the cost-effectiveness of the proposal. Proposal scores will be based on the following competitive scoring breakout:

The following is provided as the relative weight for each section of the application:

Program Narrative	50%
Work Plan	25%
Budget	25%

Regardless of score, OCFS reserves the right to:

- Fund or not fund an application based on the availability of funds and/or other relevant information, an agency's financial position, an agency's prequalification status in Grants Gateway, and/or vendor responsibility determination.
- Award all, some, or none of the monies available for the CACFP Outreach;
- Seek clarification and revisions of applications;
- Negotiate with applicants the scope of work to best serve the interests of the state; and
- Amend the specifications of this RFP, prior to application opening, should federal guidance or funding related to CACFP Outreach activities or programming be revised.

Proposals will be scored and ranked from highest to lowest. The proposal with the highest score will be given the award.

2.3 Charities Registration- Not-for-Profit Corporations Only

Not-for-profit corporations that submit proposals must comply with Article 7-A of the State Executive Law and the Estates, Powers and Trusts Law, Solicitation and Collection of Funds for Charitable Purposes.

2.4 Vendor Responsibility Requirements

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

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

Enrolling in VendRep and completing the questionnaire online through the New York State VendRep System is the best method of submitting the questionnaire because the questionnaire and your answers are stored in the system. Thus, if your agency is required to submit subsequent questionnaires for a contract or Request For Proposals from any state agency, it would only need to update the questionnaire in the system.

To access or enroll in the VendRep System, or to update your existing online questionnaire, click here: [On-line Questionnaire](#). Questionnaires in the VendRep System that have been completed

within six months of the due date of a proposal do not need to be updated. If the vendor is using the hardcopy notarized questionnaire, then it also has to be current within six months of the due date of the proposal.

Vendors opting to complete a paper questionnaire can access the questionnaire by clicking the following link: [Paper Questionnaire](#). Please note that there are different Vendor Responsibility Questionnaires depending on the contractor status. The Vendor Responsibility Questionnaire – Not-For-Profit Business Entity form must be used by not-for-profit vendors, and the Vendor Responsibility Questionnaire – For Profit Business Entity Form must be used by for-profit vendors.

Vendors are also encouraged to have subcontractors file the required Vendor Responsibility Questionnaire on line through the New York State VendRep System. Subcontractors are required to submit a questionnaire when the value of the subcontract is \$100,000 or more.

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

Vendors must provide their New York State Vendor Identification Number when enrolling. To request a Vendor Identification Number or for direct VendRep System user assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

The New York State VendRep System offers the following benefits:

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

Note: All Vendor Responsibility Questionnaires must be dated within six months of the proposal due date. Any subcontractors under a proposed contract must also complete a Vendor Responsibility Questionnaire when the value of the subcontract is projected to be \$100,000 or more for the contract term. Refer to Section 2.8 for information about general Vendor Responsibility Questionnaire Requirements and the automated New York State VendRep System.

2.5 Workers Compensation Law

New York State Workers' Compensation Law (WCL) and Section 142 of the State Finance Law requires that businesses contracting with New York State HAVE and MAINTAIN workers' compensation and disability insurances. In the event that an award is made from this RFP,

updated proof of coverage must be provided during contract development. Failure to submit the proof will delay the contract development process. Please note that the OSC has determined that municipalities are not required to show proof of coverage.

Proof of Workers' Compensation Coverage

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

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

Proof of Disability Benefits Coverage

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

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

2.6 OCFS Rights

OCFS reserves the right to:

1. Place a monetary cap on the funding amount made in each contract award.
2. Change any of the schedule dates stated in this RFP.
3. Request all bidders who submitted proposals to present supplemental information clarifying their proposals, either in writing or by formal presentation.
4. Require that a bidder demonstrate, to the satisfaction of OCFS, any feature(s) present as a part of their proposal, which may include an oral presentation of their proposal, and may be considered in the evaluation of the proposal.
5. Direct all bidders who submitted proposals to prepare modifications addressing RFP amendments and/or amend any part of this RFP with notification to all bidders. These actions are without liability to any bidder or other party for expenses incurred in the preparation of any proposals or modifications submitted in response to this RFP.
6. Make funding decisions that maximize compliance with and address the outcomes identified in this RFP.
7. Fund only one portion, or selected activities, of the selected bidder's proposal; and/or adopt all or part of the selected bidder's proposal based on federal and state requirements.
8. Eliminate any RFP requirements unmet by all bidders, upon notice to all parties that submitted proposals.

9. Waive procedural technicalities, or modify minor irregularities, in proposals received, after notification to the bidder involved.
10. Correct any arithmetic errors in any proposal, or make typographical corrections to proposals, with the concurrence of the bidder.
11. Negotiate with the selected bidder(s) prior to contract award.
12. Award the contract to the next highest bidder, if contract negotiations with the selected bidder(s) cannot be accomplished within an acceptable time frame. No bidder will have any rights against OCFS arising from such actions.
13. Award contracts to more than one applicant, or to other than the lowest bidder.
14. Require that all proposals be held valid for a minimum of 180 days from the closing date for receipt of proposals, unless otherwise expressly provided for in writing.
15. Fund any or all of the proposals received in response to this RFP. However, issuance of this RFP does not commit OCFS to fund any proposals. OCFS can reject any proposals submitted and reserves the right to withdraw or postpone this RFP, without notice, and without liability, to any bidder, or other party, for expenses incurred in the preparation of any proposals submitted in response to this RFP, and may exercise these rights at any time.
16. Use the proposal submitted in response to this RFP as part of an approved contract. At the time of contract development, awardees may be requested to provide additional budget and program information for the final contract.
17. Make additional awards based on the remaining proposals submitted in response to this RFP and/or to provide additional funding to awardees if additional funds become available.
18. Make inquiries of third parties, including, but not limited to, bidders references, with regard to the applicants' experience, or other matters deemed relevant to the proposal by OCFS. By submitting a proposal in response to this RFP, the applicant gives its consent to any inquiry made by OCFS.
19. Require contractors to participate in a formal evaluation of the program to be developed by OCFS. Contractors may be required to collect data for these purposes. The evaluation design will maintain confidentiality of participants and recognize practical constraints of collecting this kind of information.
20. Consider statewide distribution and regional distribution within New York City, including borough distribution methodology, in evaluating proposals.

2.7 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, bidder/contractor (or any assignee) certifies 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" list ("Prohibited Entities List") posted on the OGS website at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, bidder/contractor is advised that should it seek to renew or extend a contract awarded in response to the solicitation, it must provide the same certification at the time the contract is renewed or extended.

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

OCFS 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.

Section Three.... CONTRACT POLICY INFORMATION

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

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

New York State Executive Law (Article 15-A)

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

In 2006, the State of New York commissioned a disparity study to evaluate whether M/WBEs had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of M/WBEs in state procurement contracting versus the number of M/WBEs that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified M/WBE Program. The recommendations from the Disparity Study culminated in the enactment and implementation of New York State Executive Law Article 15-A, (which requires, among other things, that OCFS establish goals for maximum feasible participation of New York State certified M/WBEs and the employment of minority group members and women in the performance of New York State contracts. In order to be recognized as a certified MWBE, a vendor must be for-profit and certified by the Empire State Development Corporation.

Business Participation Opportunities for M/WBEs – OCFS Established Goals

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

A contractor must document good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of the contract, and agrees that OCFS may withhold payment pending receipt of the required M/WBE documentation. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com>. This website

(known as New York State Contract System – NYSCS) was developed to facilitate New York State's Minority - and Women-Owned Business Enterprise (M/WBE) initiatives as set forth in Article 15-A of Executive Law. NYSCS offers tools that can be used by businesses, as well as New York State Agencies, to expand the role of minorities and women-owned businesses in the economic activities of New York State. This website contains:

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

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

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

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

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

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

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

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

If OCFS issues a **Notice of Deficiency**, the contractor must respond to the notice within seven (7) business days of receipt, by **submitting a written remedy to (NYS Office of Children and**

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

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

Required Documentation

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

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

- [OCFS-4629 - Project Staffing Plan Form](#) (Submit with Proposal)
This form is to be completed by the bidder and submitted as part of the proposal identifying the anticipated work force to be utilized on the contract. Any modifications or changes to the Project Staffing Plan form after a contract is awarded must be reported on a revised Project Staffing Plan form, on a quarterly basis. **Submit with proposal to (*Program contact name, division and bureau, address*)**. If there are no personnel service dollars committed to the contract, then the Project Staffing Plan form is not required.
- [OCFS-3460 – M/WBE – Equal Employment Opportunity Policy Statement](#) (Applies to Contract Awardees ONLY)
This document is to be completed by the contractor and submitted to OCFS, pursuant to Article 15-A of the NYS Executive Law. OCFS-3460 is provided to contractors/subcontractors as a model Policy Statement and may be used if the contractor/subcontractor lacks an M/WBE-EEO Policy Statement that is acceptable pursuant to Article 15-A. The contractor/subcontractor has the option to use this model statement or create an appropriate M/WBE–EEO Policy Statement to be submitted to OCFS for approval. More information on the M/WBE-EEO Policy Statement can be found in the [MWBE Appendix](#). **Completed Document: To be signed and emailed to:** mwbeinfo@ocfs.ny.gov.
- [OCFS-4631 – Subcontracting/Suppliers Utilization Form](#) (Applies to Contract Awardees ONLY)
This form is to be completed and submitted by the contractor during the contract development stage for the purpose of identifying anticipated M/WBE utilization and during the term of a contract to report actual M/WBE participation goals achieved. Contractors should

attempt to utilize, in good faith, any MBE or WBE identified on the Subcontracting/Suppliers Utilization Form, during the performance of the Contract. **Completed Form: To be signed and emailed to: mwbeinfo@ocfs.ny.gov.**

- [OCFS-4630 - Subcontractors and Suppliers Letter of Intent to Participate Form](#) (Applies to Contract Awardees ONLY)

This form is to be completed and submitted by the proposed M/WBE Subcontractor/Supplier during the contract development stage, **and attached** to the [OCFS-4631 – Subcontracting/Suppliers Utilization Form](#) for each certified M/WBE the contractor proposes to utilize as subcontractors, service providers or suppliers. If the MBE or WBE proposed for any portion of this proposal/contract is a part of a joint venture or other temporarily-formed business arrangement, the name and address of the joint venture or the temporarily formed business entity should be indicated. If the subcontractors are unknown at the time of the award, enter prime contractor information and enter “unknown” in the “subcontractor/supplier” section. **Completed form: To be signed and emailed to: mwbeinfo@ocfs.ny.gov.**

- [OCFS-4441 - M/WBE Quarterly Report Form](#) (Applies to Contract Awardees ONLY)

This form is to be completed and submitted by contractor within 15 days following the end of each applicable reporting quarter over the term of the contract, documenting the progress made toward achievement of the MWBE goals of the contract. **Completed Form: To be signed and emailed to mwbeinfo@ocfs.ny.gov.**

Equal Employment Opportunity (EEO) Requirements

By submission of this proposal, the bidder/contractor agrees with all of the terms and conditions of the State of New York Master Contracts for Grants, including Section IV. Additional Contractor Obligations, Representations and Warranties, Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises and Appendix M/WBE. The contractor is required to ensure that any subcontractors awarded a subcontract over \$100,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "work") except where the work is for the beneficial use of the contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed (religion), color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the contract; or (ii) employment outside of New York State.

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

3.2 Omnibus Procurement Act

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, New York 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/frontend/vendorsearchpublic.asp>

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

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

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

1. The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State of New York.
2. Document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors by showing that they have:
 - Solicited bids, in a timely and adequate manner, from New York State Empire State Development business enterprises, including certified minority/ women-owned businesses, or
 - Contacted the New York State Empire State Development to obtain listings of New York State business enterprises and MWBEs, or
 - Placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or
 - Participated in bidder outreach conferences.
 - If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.

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

3.3 OCFS Procedure for Handling of Formal Protests and Appeals

Section A: Applicability

Section B: Definitions

Section C: Informal Complaints

Section D: Formal Protest and Appeal Procedure

Section E: Appeal to Office of the State Comptroller

Section A: Applicability

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

Section B: Definitions

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

6. "Formal protest determination" shall mean the determination of a formal protest by the Associate Commissioner for Financial Management of OCFS or his or her designee.
7. "Decision after appeal" shall mean the decision on the appeal of a formal protest by the Executive Deputy Commissioner of OCFS or his or her designee.

Section C: Informal Complaints

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

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

Section D: Formal Protest and Appeal Procedure

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

A. Submission of Bid or Award Protests

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

B. Review and Formal Protest Determination

1. Formal protests must be filed with the OCFS Associate Commissioner for Financial Management. Any protests filed with the OCFS Program Division responsible for the procurement will be forwarded to the Associate Commissioner for Financial Management. Copies of all formal protests will be provided by the Associate Commissioner for Financial Management to the OCFS Division of Legal Affairs and other necessary parties within OCFS, as determined by the Associate Commissioner for Financial Management.

2. Formal protests shall be resolved through written correspondence; however, either the protesting party or OCFS may request a meeting to discuss a formal protest. Where further formal resolution is required, the program division responsible for the procurement may designate a state employee not involved in the procurement ("designee") to determine and undertake the initial attempted resolution or settlement of any formal protest.
3. The OCFS program division responsible for the procurement will conduct a review of the records involved in the formal protest, and provide a memorandum to the Associate Commissioner for Financial Management or the Associate Commissioner's designee summarizing the facts, an analysis of the substance of the protest, and a preliminary recommendation including: (a) an evaluation of the findings and recommendations, (b) the materials presented by the protesting party and/or any materials required of or submitted by other bidders, (c) the results of any consultation with the OCFS Division of Legal Affairs, and (d) a draft response to the formal protest.
4. The OCFS Associate Commissioner for Financial Management or his or her designee shall hear and make a formal protest determination on all formal protests. A copy of the formal protest determination, stating the reason(s) upon which it is based and informing the protesting party of the right to appeal an unfavorable decision to the OCFS Executive Deputy Commissioner, shall be sent to the protesting party or its agent within thirty (30) business days of receipt of the formal protest, except that upon notice to the protesting party such period may be extended by OCFS. The formal protest determination will be recorded and included in the procurement record, or otherwise forwarded to the OSC.

C. Appeal of Formal Protest Determination

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

D. Reservation of Rights and Responsibilities of OCFS

1. OCFS reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State.
2. If OCFS determines that there are compelling circumstances, including the need to proceed immediately with contract award and development of final contracts in the best interests of the state, then these protest procedures may be suspended and such determination shall be documented in the procurement record.
3. OCFS will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action, including solicitation of bids,

or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

4. OCFS will continue procurement and contract award activity prior to the final protest determination. The receipt of a formal bid protest will not stop action on the procurement and award of the contract(s) or on development of final contracts.
 - a. The procurement record and awarded contract(s) will be forwarded to OSC, and a notice of the receipt of a formal protest and any appeal will be included in the procurement record. If a formal protest determination, or a decision after appeal, has been reached prior to transmittal of the procurement record and the contract(s) to OSC, a copy of the formal protest determination or decision after appeal will be included in the procurement record and with the contract(s).
 - b. If a formal protest determination or decision after appeal is made after the transmittal of the procurement record and contract(s) to OSC, but prior to OSC approval, a copy of the formal protest determination or decision after appeal will be forwarded to OSC when issued, along with a letter either: a) confirming the original OCFS recommendation for award(s); b) modifying the proposed award recommendation; or c) withdrawing the original award recommendation.
5. All records related to formal protests and appeals shall be retained for at least one (1) year following resolution of the formal protest. All other records concerning the procurement shall be retained according to the applicable requirements for records retention.

Section E: Appeal to the Office of the State Comptroller

If the protesting party is still not satisfied with the result of its protest after conclusion of the formal protest and appeal procedure described above, the protesting party **must** file a written appeal with the OSC no more than fifteen (15) business days after the date a decision after appeal is sent to the protesting party. An appeal to the OSC, Bureau of Contracts, must be in writing and must contain the specific factual and/or legal allegations setting forth the basis upon which the protesting party challenges the contract award by OCFS. Such appeal must be filed with the Director of the Bureau of Contracts at the Office of the State Comptroller, 110 State Street, 11th Floor, Albany, NY 12236

Section Four.... DESCRIPTION OF PROGRAM AND ALLOWABLE ACTIVITIES AND COSTS

I. Program Description

Food insecurity - where there is limited or uncertain availability of food for an active, healthy life - is strongly associated with income. Many American households experience food insecurity at times during the year because their access to adequate food is limited by a lack of money and other material resources to produce or obtain food. Food insecurity increases the risk for poor nutrition, especially among children. Children from food-insecure households are more likely to suffer health, mental and developmental problems that can negatively impact their growth and ability to learn than children with continuous access to nutritious food.

Government sponsored food assistance programs are the first line of defense against hunger and food insecurity. These programs are intended to increase the access of eligible low-income households to food and a nutritious diet—thereby improving their food security, health, and well-being. Recognizing the importance of reducing food insecurity in New York State, the legislature and governor included in the state's 2015/16 budget funds to be allocated to a special outreach effort to increase CACFP participation, directed towards NYS child care and afterschool providers. OCFS expects to make an award of approximately \$250,000, to be available for one year beginning 2/1/2016, to one statewide contractor for the purpose of providing CACFP outreach and education services designed to increase the availability and utilization of CACFP in child care and afterschool settings. Contingent on funding availability in subsequent budgets and satisfactory performance of the contractor, the contract may be renewed for up to four additional years.

II. Identifying Target Populations and Service Areas

The statewide contractor selected under this Request for Proposals will be required to provide outreach activities targeted towards child care and after-school providers in New York State. This will enable children who attend the Day Care Center/Home or Afterschool Program to receive the nutrition assistance they need.

III. Evaluate Impact

The statewide contractor will be expected to evaluate the impact of outreach activities related to food assistance program participation at both the state and local levels. The contractor will be expected to produce a final report in a format acceptable to OCFS.

Section Five.... CONTRACT DOCUMENTS

The Contract Documents consist of the documents listed below. These documents are located in the **NYS Grants Gateway System (GGS)**:

http://www.grantsreform.ny.gov/sites/default/files/docs/nys_master_contract_for_grants_8_14.pdf

1. Face Page
2. Signatory Page
3. NYS Standard Terms and Conditions (State of New York Master Contract for Grants)
4. Attachment A-1 (Agency Specific Terms and Conditions)
5. Attachment B: Budget and Instructions
6. Attachment C: Work Plan
- 7 Attachment D: Payment and Reporting Schedule