

# PROCUREMENT INSTRUCTIONS

1. An Authorized User shall review the list of locations to determine what region is applicable for the required service.
2. An Authorized User shall check the list of Preferred Source offerings. Authorized Users are reminded that they must comply with State Finance Law §162 which requires that agencies afford first priority to the commodities/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such commodities/services meet the form, function and utility of the Authorized User.
3. An Authorized User is reminded that it must obtain approval from the State of New York Office of the Attorney General prior to engaging the services of outside counsel. Please refer to Appendix D, #10 – Outside Counsel Contracts Memorandum.
4. An Authorized User shall seek to engage the services of the Primary Contractor in the appropriate Lot for their region. An Authorized User shall submit a request to the Contractor by means of the contact information provided in Appendix D, #9 – Contractor Contact Information; Locations; Procurement Card; and, Online Portal, or other acceptable means established between the Contractor and the Authorized User. The request shall consist of:
  - a. Job title(s);
  - b. Location;
  - c. Duration;
  - d. Start date;
  - e. Additional specifications;
  - f. Authorized User information;
  - g. Order priority (normal – 7 days, priority – 3 days, overnight – next day, immediate – same day); and
  - h. Other information necessary for the particular engagement.
5. The Primary Contractor is required to recommend Candidate(s) according to the performance standards set forth in Appendix D, #7 – Required Service Levels. If the Primary Contractor is unable to fill the Authorized User’s request in accordance with the Required Service Levels, the Secondary Contractor shall be engaged. If the Secondary Contractor is unable to fill the Authorized User’s request in accordance with the Required Service Levels, the Tertiary Contractor shall be engaged.
6. The Contractor shall supply potential Candidates and the Master File for each Candidate. The Authorized User shall make a selection of the Candidate they prefer and request that a background check be completed for the Candidate. Contractor shall provide the Authorized User with the results of the background check. Upon receipt of the background check, the Authorized User shall make a suitability determination following the below guidelines.

In cases of Employee replacement, a background check must be run on the replacement Candidate before they begin working as provided in Appendix D#3 – Background Check Requirements. However, the Authorized User can elect to allow a Candidate to begin working prior to receiving their background check. The Authorized User must provide the Contractor with a written waiver if it elects to waive the completion of a background check before a replacement commences work.

## Suitability Determination Guidelines

A. In making a suitability determination, the Authorized User shall consider the information obtained through the background check for the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to its organization in accordance with NYS Correction Law §752:

- a) Any loyalty or terrorism issue;
- b) Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
- c) Dishonorable military discharge;
- d) Felony and misdemeanor offenses;
- e) Drug manufacturing/trafficking/sale;
- f) Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
- g) Criminal sexual misconduct;
- h) Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
- i) Illegal use of firearms/explosives;
- j) Employment related misconduct involving dishonesty, criminal or violent behavior; and
- k) Misrepresentation of information including educational and professional background, legal status or valid licensure

B. The Authorized User shall evaluate any adverse information about a Candidate by considering the following factors before making a suitability determination:

- a) The nature, extent and seriousness of the conduct;
- b) The circumstances surrounding the conduct;
- c) The frequency and decency of the conduct;
- d) The individual's age and maturity at the time of the conduct;
- e) The presence or absence of rehabilitation and other pertinent behavior changes;
- f) The potential for pressure, coercion, exploitation, or duress;
- g) The likelihood of continuation of the conduct;
- h) How, and if, the conduct bears upon potential job responsibilities; and
- i) The Employee's employment history before and after the conduct.

**A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the Employee from a governmental site. The Authorized User should consult with its legal counsel regarding any questions on the suitability determination.**

- 7. An Authorized User and the Contractor shall develop the exact cost or estimated cost if an exact cost cannot be determined at that time. An Authorized User shall issue a purchase order or other written order for work, which is effective and binding on the Contractor at time of order in accordance with Appendix B §44. A Contractor shall not initiate services until the order is issued, and an Authorized User shall not request performance of services until the purchase order has been issued. Note: for services, purchase orders may be issued for an estimate for the entire year.
- 8. An Authorized User shall monitor the Contractor's quality of work. A list of deficiencies and non-compliance that shall result in a Contractor Deficiency Report are set forth in Appendix D, #7 – Required Service Levels. In case of deficiencies, an Authorized User shall complete a Contractor Deficiency Report and send to OGS and the Contractor. Each Authorized User shall designate an individual who is authorized to submit Contractor Deficiency Reports to OGS for the Authorized User. Each Authorized User shall inform OGS of the individual authorized to submit Contract Deficiency Reports to OGS for the Authorized User. A template for the Contractor Deficiency Report is set forth in Appendix D, #8 – Contractor Deficiency Report.