



Release Date: 1/5/2022

## Request for Proposals

# Disability Advocacy Program III

Submission Deadline: 3/1/2022

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## **IMPORTANT INFORMATION**

This page contains information regarding the Disability Advocacy Program (DAP) Request for Proposals (RFP) that is essential for any prospective applicant. Since the RFP is released through the New York State Grants Gateway system, the customary manner of submitting hard copy applications to OTDA is no longer permitted. As a result, OTDA has tailored the design of this RFP to assist applicants in navigating and submitting proposals through the Grants Gateway system correctly. The RFP is categorized into four sections listed below:

PART A: RFP Summary Information

PART B: Application Instructions

PART C: Required Uploaded Documents

PART D: Printed Version of Gateway Application

### **Part A: RFP Summary Information:**

This section of the RFP is the customary 20 to 30 pages explaining the requirements of the RFP. This section details the timelines, summary, program and contract information, proposal requirements and other aspects of the procurement.

### **Part B: Application Instructions:**

All agencies submitting a proposal for this procurement must use the New York State Grants Gateway system at [grantsgateway.ny.gov](http://grantsgateway.ny.gov). Because some agencies may not have experience navigating and using the system, we have included this section to assist applicants in utilizing the system efficiently.

It is important to note that while anyone with a Grantee, Grantee Payment Signatory, Grantee Contract Signatory or Grantee System Administrator user role may work on the application, only someone with a Grantee Contract Signatory or a Grantee System Administrator role can submit the application to the State. Please develop and submit your application as early as possible to avoid last-minute problems.

Applications will not be accepted outside of the Grants Gateway System.

### **Part C: Required Uploaded Documents:**

This section will list all documents and forms that must be submitted with the application. Where there is a document requested, a link is provided so the applicant can download the form, complete, and upload it as required.

### **Part D: Printed Version of Gateway Application:**

This section will contain a complete copy of the application questions contained in the Grants Gateway system.

## **OTHER IMPORTANT INFORMATION**

### **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 which require nonprofits to register in the Grants Gateway System and complete the Vendor Prequalification process for proposals to be evaluated. Information on these initiatives can be found on the [Grants Reform Website](#).

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

### **Register for the Grants Gateway**

On the Grants Reform Website, download a copy of the Registration Form for Administrator. Registration forms are now only being accepted electronically via email at [GrantsReform@its.ny.gov](mailto:GrantsReform@its.ny.gov). A signed, notarized original form must be sent to this email address. 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@its.ny.gov](mailto:GrantsReform@its.ny.gov), from the email address which was registered with your request. If you know your username but don't remember your password, please click on 'Forgot Password' from the login page. You will be prompted to enter your user ID and your email address that you registered with. The system will send you a temporary password to log in with one time then prompt you to change your password to something only you will remember. NOTE: If you copy and paste the temporary password from the email to the Gateway, make sure you are not capturing a blank space after the last character. The system will read this as another character and tell you the password is wrong.

### **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 you have the most grants with. 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 and upload Required Documents. This constitutes your Prequalification Application. Optional Documents are not required unless specified in this Request for Proposal.

Specific questions about the prequalification process should be referred to your agency representative or to the Grants Reform Team at [GrantsReform@its.ny.gov](mailto:GrantsReform@its.ny.gov)

### **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. The system will send you an email

confirming that your Document Vault has been submitted for review. If you do not receive an email, you may not have actually submitted the vault.

If your Prequalification reviewer has questions or requests changes you will receive email notification from the Gateway system.

Once your Prequalification Application is approved, you will receive a Gateway notification that you are now prequalified to do business with New York State.

**Other helpful information:**

Live webinars on the Prequalification Process and on how to complete an application using the Grants Gateway are provided every Tuesday and Thursday. Please see the Resources for Grant Applicants page of the Grants Management website to sign up for a webinar or for additional resources including instructional videos and step by step documents to help navigate the system.

For any technical questions regarding the Grants Gateway, the Help Desk is available Monday – Friday, 8am – 5pm via phone at (518) 414-2784 or email at [GrantsReform@its.ny.gov](mailto:GrantsReform@its.ny.gov)

## Part A : RFP Summary Information

### I. Timelines and Proposal Submission

#### A. Questions Concerning this Request for Proposals (RFP)

Bidders may submit typed questions via electronic mail, fax, or by mail to the address provided below. Questions regarding the RFP will be accepted until 5:00 p.m. January 19, 2022. No telephone inquiries will be accepted. Answers to all questions received by this date will be posted on the New York State Office of Temporary and Disability Assistance's website at [www.otda.state.ny.us](http://www.otda.state.ny.us) no later than February 1, 2022.

New York State Office of Temporary and Disability Assistance  
Center for Employment and Economic Supports  
Attn: Patricia Stefanik  
40 North Pearl Street, 8<sup>th</sup> Floor  
Albany, New York 12243  
[PatriciaM.Stefanik@otda.ny.gov](mailto:PatriciaM.Stefanik@otda.ny.gov)

#### B. Proposal Due Date

All proposals must be submitted via the Grants Gateway at [IntelliGrants - Grant Opportunity Portal \(ny.gov\)](https://intelligrants.ny.gov) and be received no later than 2:00 p.m., March 1, 2022. Once the deadline has passed, the Grants Gateway system will no longer accept applications. Eligible applicants should complete and submit all answers to questions and submit any forms required by this RFP. Failure to submit all required forms and answer all required questions may adversely affect the proposal's competitive score or make the proposal ineligible.

#### C. RFP Timetable

- RFP Release Date – January 5, 2022
- Deadline Date for Questions – January 19, 2022
- Deadline Date for Responses to Questions – February 1, 2022
- Proposal Due Date – March 1, 2022
- Date of Notification of Award – May 1, 2022
- Project Start Date – July 1, 2022

## II. Summary of the RFP

### A. Introduction/Purpose

The Disability Advocacy Program (DAP) was established in 1983 pursuant to Chapter 627, Section 35 of the Social Services Law to provide legal representation of individuals whose federal disability benefits have been denied or may be discontinued.

The purpose of this RFP is two-fold. The Office of Temporary and Disability Assistance (OTDA) seeks bidders to provide legal representation services to help eligible persons obtain or retain federal disability benefits. We will award **multiple** contracts for the direct services component of DAP.

In addition, we are seeking proposals for **one** entity to provide statewide legal support and administrative services to OTDA for its DAP.

**IMPORTANT NOTE:** Applicant organizations may choose to bid on one or both components of this RFP; however, a separate and complete application must be submitted for each. If applying for both components, one application must be submitted for Direct Services and one application for Administrative Services. Do not combine the two applications into one, or reference one bid from the other.

### B. Available Funds/Award Amount

A total of \$5,260,000 in funding is anticipated to support selected DAP projects for a 12 month period beginning July 1, 2022. The Administrative contract will be limited to no more than 15% of the total funding (no more than \$789,000).

Funding is contingent upon budget appropriations. Funds will be reimbursed on a cost basis, as expenses are incurred.

Should additional funds be made available to support this RFP, OTDA reserves the right to make awards in excess of the amount listed above to extend program services and/or fund additional applicants. Unless good cause can be shown for not achieving the performance goals outlined in this RFP, OTDA may, in its discretion, adjust the allocation of funds and/or terminate the contract for poor performance.

In the event the amount requested by the selected organizations exceeds the amount available, OTDA will reduce the award amounts to stay within the overall funding limit. OTDA seeks to provide services statewide. OTDA will determine final award amounts for any one entity taking into consideration the population residing in the geographic area served.

For the DAP Direct Services Program:

- OTDA anticipates awarding approximately 50% of DAP funds to New York City-area providers and 50% for the rest of the state. More information is available in the Description of Services section.



- If there are other viable proposals, no one applicant outside of New York City will be awarded more than 25% of the total available rest of state funds. In New York City, no one applicant will be awarded more than 75% of the total funding available if there are two other viable proposals.
- OTDA may elect not to fund an applicant based on the proposal score and based on the availability of funds. Awards may be proportionately reduced to ensure the availability of DAP funds statewide.
- The highest scoring proposals for each geographic region will be awarded funds prior to awards being made to bidders that intend to provide services in the same geographic region. In general, regions are defined as the ten Regional Economic Development Councils. [About REDC | Regional Economic Development Councils \(ny.gov\)](#)

For the Administrative Services Contract, the award is limited to no more than 15% of the total funding (no more than \$789,000).

For both components, the requested amount may be reduced by all ineligible expenses.

### C. Contract Period

The successful applicants will receive a multi-year contract with 12 month contract periods beginning July 1, 2022, and ending on June 30, 2027. Funding for this project is contingent on the continued availability of funding and satisfactory performance of the contractor.

Notwithstanding any other provision herein, upon expiration of the initial contract period, OTDA may elect to extend the term of the Contract Agreement for up to four additional years.

### D. Eligible Applicant Organizations

Section 35 of the Social Services Law stipulates that entities that are eligible to apply for the RFP are as follows:

1. Eligible applicant organizations are not-for-profit legal services corporations, not-for-profit agencies serving individuals with disabilities, and social services districts (Districts).
2. OTDA encourages applications from social services districts to provide such legal representation to persons residing in the District whose federal disability benefits have been denied or may be discontinued. When OTDA has contracted with a social services district to provide such representation, the legislative body of such District may authorize and make provision for the Commissioner of Social Services of the District to obtain necessary legal services on a fee for services basis or other appropriate basis, which OTDA may approve. Not-for-profit legal services corporations, not-for-profit agencies serving individuals with disabilities or private attorneys, may provide such legal services. All eligible applicants who respond to this RFP **may bid on either or both contracts.**
3. In addition to being eligible under the provisions of Section 35 of the Social Services Law to participate in this procurement, applicant organizations must clearly demonstrate the capacity through past experience to perform the number and types of services specified in this RFP. Past experience may include demonstrated knowledge of Social Security Law, the ability to provide

legal representation, statewide legal support and other administrative services to individuals with disabilities and prior participation as a DAP contractor.

4. Proposals from organizations without demonstrated substantial experience in the delivery of legal services to low-income persons may be rejected. OTDA reserves the right to disqualify from consideration any organization that it has reason to believe is not capable of performing the services as specified in this RFP.
5. All not for profit applicants must be prequalified on the Grants Gateway as described on page 2 of this RFP. If your Document Vault is not in a status of Prequalified by the due date and time of the grant application, you are not eligible and your application will not be reviewed. Governmental entities are not required to be prequalified.
6. Nonprofit applicants must be registered and in good standing with the Charities Bureau of the Attorney General's Office.

### **III. Program and Contract Information**

#### **A. Program Background**

OTDA is authorized by Section 35 of the Social Services Law to award grants for the provision of legal representation and related services for individuals whose federal disability benefits have been denied or may be discontinued. DAP services reduce the economic impact of denials and discontinuances of federal disability benefits on taxpayers of the social services district and the State of New York, who otherwise bear the cost of providing public assistance programs and services for persons found ineligible for federal disability benefits. The Commissioner of OTDA will make grants, within the amounts appropriated by the New York State Legislature to provide for such representation. OTDA determines annual grant awards for each DAP provider selected through the initial procurement process consistent with the annual State Budget appropriations. DAP providers are required to submit case closing information on a monthly basis using a statistical collection report form prescribed by OTDA. The amount of the actual award DAP providers can claim is determined after vouchers are submitted for all the quarters in the applicable program year; however, the claims cannot exceed the annual contract award amount. The DAP meets the purpose of Section 35 of the Social Service Law and has been a successful and cost-effective component of New York State's efforts to help individuals with disabilities secure appropriate income supports.

#### **B. Description of Services Sought**

The purpose of DAP is to provide State and local financial participation to help eligible organizations provide legal representation to persons whose benefits, when sought or provided under either the Disability Insurance Program (Title II of the Social Security Act) or the Supplemental Security Income Program (Title XVI), have been denied or may be discontinued. It is the expectation of OTDA, based on past experience with the program, that such legal services will result in a higher rate of successful outcomes as a result of challenges to these determinations of the Social Security Administration and thereby reduce the burden such determinations place upon the State and its localities to provide public assistance and other support and services to affected individuals. Additionally, permitting individuals to obtain or retain disability benefits generally provides a more appropriate benefit for these individuals who

are limited in their ability to supplement benefits with paid employment. OTDA seeks to continue DAP services in all areas of the State.

OTDA currently operates the DAP program through designated providers which provide legal representation services in all counties in the State. Additionally, OTDA has one contract to provide administrative support for the program. This RFP encourages proposals for the continued provision of legal representation services statewide. Organizations are encouraged to propose the provision of legal services in all counties within their respective jurisdiction, either directly or by way of subcontractors. Furthermore, OTDA encourages proposals from those eligible organizations which have the administrative capacity to deliver or coordinate the delivery of services on a multiple county basis, and which possess expertise in the administration of grant programs to assure that the services provided under the terms of the grant will be provided in an efficient and cost-effective manner.

**C. Client Eligibility**

DAP service providers represent eligible clients at appeal stages of the Social Security disability determinations process. Clients must have incomes at or below 200% of the federal poverty level to be eligible for representation by DAP contractors and/or be in receipt of public assistance (Safety Net Assistance or Family Assistance).

To be eligible to receive DAP services, individuals must:

- Be a resident of New York State;
- Have gross family income that does not exceed 200% of the federal poverty as listed in the table below. These amounts are adjusted annually. Selected organizations will be provided with updated income guidelines yearly.

| <b>200% of Federal Poverty Guidelines Chart<br/>TANF Program Year June 1, 2021 through May 31, 2022</b> |  |                |                  |               |
|---|--|----------------|------------------|---------------|
| Family Size   | Annual Income                                      | Monthly Income | Bi-Weekly Income | Weekly Income |
| 1   | \$25,760   | \$2,146        | \$990            | \$495         |
| 2   | \$34,840   | \$2,903        | \$1,340          | \$669         |
| 3   | \$43,920   | \$3,660        | \$1,689          | \$844         |
| 4   | \$53,000   | \$4,416        | \$2,038          | \$1,019       |
| 5   | \$62,080   | \$5,173        | \$2,388          | \$1,193       |
| 6   | \$71,160   | \$5,930        | \$2,737          | \$1,368       |
| 7   | \$80,240   | \$6,686        | \$3,086          | \$1,542       |
| 8   | \$89,320   | \$7,443        | \$3,436          | \$1,717       |
|   | For family units with more than eight members, add |                |                  |               |
|   | \$9,080  | \$756          | \$349            | \$174         |

**D. Legal Representation (Direct) Services**

**Programmatic Considerations:**

The applicant organization must have the ability to develop a working relationship with other human services agencies, including social services districts, and the private legal profession within its area of operations to permit the exchange of referrals of persons in need of DAP

services. Priority for DAP services must be given to referrals received from a social services district.

The applicant must be capable of providing a full range of quality legal services, including, but not limited to, intake, analysis, evidence and record collection, presentation of the client's case at all levels of administrative and judicial review (including complex multi-district litigation in the courts of the United States), and post-determination services. These services may be provided, when appropriate by paralegals, law students and others in similar positions acting under the supervision of an attorney.

The applicant agrees not to enter into any subcontracts for the performance of the obligations contained herein without the prior written approval of OTDA. If an applicant organization does enter into a subcontract, the applicant assumes all responsibility for the performance monitoring of its subcontractors and must have a detailed monitoring plan in place and available for review by OTDA. The applicant must have the capability to timely collect and accurately report its performance (and that of subcontractors, if any) as measured against the goals, which are to be attained by the applicant. Performance, as measured by both individual goals and comparative performance, may be considered in determining award amounts. A critical measure will be the number of persons eligible for public assistance who are able to secure federal disability benefits following DAP services. OTDA will review the applicant's performance against contract requirements in six-month intervals and require justification and corrective action plans from those contractors not meeting contract requirements.

Each applicant must indicate which services are to be provided in each year of the contract and the levels of such services, including the number of cases to be opened and closed. A client who has withdrawn their case without receiving any service beyond basic intake or information is not counted as a unit of service, although the time spent with such a client is a reimbursable expense. Expenditures associated with the initial application forms for Social Security Disability are not a reimbursable expense nor should they be counted as a unit of service. **For reporting purposes, applicant organizations must be able to differentiate outcomes resulting from DAP contract funds as opposed to other funding sources that may be used for similar services.**

The applicant organization will specify income eligibility standards for clients and the process to ascertain that those served meet those standards and to assure that a priority for services is given to impoverished and low-income persons who are otherwise likely to become in need of public assistance. **Under no circumstances are services to be provided to individuals with income over 200% of the federal poverty level.** Eligibility guidelines are outlined in section III C of this RFP.

The applicant must have the capacity to be substituted as attorney of record in the cases currently being represented by the present providers at the time of contract start-up, if necessary. Any substitution of attorneys is subject to client and court approval.

The applicant must have the capacity to adequately document each DAP case closed, submit case closing information in a timely manner, and to maintain adequate documentation to support closed cases for inspection and financial audit.

The applicant must have the capacity to assume DAP contract services immediately upon contract commencement.

## **Organizational Requirements:**

In general, applicants must have the capacity to provide legal representation services and to be capable of evaluating the merits and likelihood of success of cases undertaken at intake and throughout the administrative and judicial review process. More specifically, the applicant must have the capability or capacity:

- To appear on behalf of and provide legal representation to claimants at all stages of the administrative and judicial review process;
- To work collaboratively with social services districts to obtain and prioritize referrals for DAP services;
- To research and prepare all necessary legal work product for these cases;
- To develop sources for securing medical evidence of record and medical opinions to support the claims of the clients whose representation they undertake;
- To compile and analyze data concerning the outcome of cases of clients whose representation they undertake;
- To compile and transmit data into an electronic database that contains case closing and monthly activities information that DAP providers submit on a monthly basis using a statistical collection report form prescribed by contract. The electronic database will be the property of New York State; and,
- To provide reports and other documentation on a quarterly basis, or other periods as determined necessary by OTDA, following contract execution regarding achievement of performance goals for the legal representation services provided by the contractor and any subcontractors under this contract.

## **E. Statewide Legal Support and Administrative Services**

OTDA requests proposals from not-for-profit legal services corporations and not-for-profit agencies serving individuals with disabilities and social services districts for one entity to provide statewide legal support and administrative services for the DAP. The entity selected must have the administrative capacities to coordinate the delivery of statewide legal support and administrative services for individuals seeking to obtain or retain federal disability benefits. The entity selected must have extensive expertise in Social Security Law, including the capacity to provide training, information, consultation, electronic database administration and reporting, and legal services to DAP contractors. On a monthly basis, DAP contractors will transmit case opening and closing data to the selected administrative services organization. The selected administrative services organization will have responsibility for maintaining monthly case closing data in a computer program, as required by OTDA. OTDA retrieves the data for reporting purposes, assessment of provider outcomes, computation of county chargeback amounts and general program oversight.

## **DAP Administrative Contract Program Description**

Applicants must have the capacity to provide an array of training events and activities, including the capacity to provide comprehensive training on the federal disability application and appeals process to contract providers and District staff, as approved by OTDA. A certification to provide continuing legal education for attorneys is preferred. Applicants must have the capability or capacity to provide:

- A periodic disability law newsletter, which highlights statewide and national litigation, legislation and advocacy strategy to assist DAP advocates in providing legal representation in Social Security cases;
- Legal advice to disability advocates representing individuals seeking disability benefits;
- Legal research for DAP advocates, including computer assisted legal research;
- Co-counsel representation of clients in individual cases, and in all cases involving systemic issues in the SSI/SSD disability programs;
- Drafting and review of legal documents, briefs and memoranda for DAP advocates;
- Informational clearinghouse functions regarding matters such as disability litigation, laws, regulations, policies and hearing decisions;
- Liaison with OTDA on substantive legal issues concerning the disability determination process and the administration and operation of the DAP;
- Maintain and monitor the accuracy of an electronic database that contains case closing and monthly activities information that DAP providers submit electronically on a monthly basis using a data collection report form prescribed by contract. The electronic database will be the property of New York State;
- Retrieve and transmit to OTDA designated staff, at least quarterly, or otherwise upon request, case closing data to be used for reporting purposes, computation of county charge-back amounts, periodic review of contractors' outcomes and general oversight of the Program;
- Assist OTDA in the provision of technical assistance to improve contractor outcomes;
- Provide assistance to contractors regarding problems with data collection and case reporting, including having a mechanism to inform contractors on a quarterly basis of the information reflected in the case-closing database and to reconcile resolved cases;
- Provide reports on a quarterly basis, or otherwise as determined necessary by OTDA regarding the win/loss rate of each contractor and subcontractor, and to provide consultation and assistance to OTDA in obtaining improvements in win/loss rates. Reports must include statistics regarding the number of Safety Net and Family Assistance cases and their associated win/loss rate;
- Provide assistance, pursuant to the direction of OTDA, in the preparation of the biennial DAP Report to the Legislature required by Section 35 of the Social Services

Law, which describes the Disability Advocacy Program activities, including the number of cases appealed by social services district and the disposition of such appeals;

- Provide periodic reports, and other documentation, as determined necessary by OTDA regarding the statewide legal support services provided under this contract; and,
- Identify, when applicable, the funding sources an entity uses to administer DAP. An applicant must be able, for reporting purposes, to separate out case closing information and other data that funding from this contract made possible.

#### **IV. Proposal Requirements – Format and Content**

##### **A. Evaluation of Proposals**

Proposals will consist of two parts – a narrative section and a budget section. The specific details are outlined in the evaluation criteria. OTDA's Division of Employment and Income Support Programs will establish Review Committees to evaluate the proposals. Each DAP component has its own separate set of questions. Only complete one. All applicants must answer questions 1 through 5. Direct Services applicants must also answer questions number 6 through 9 in the Grants Gateway. Administrative Services applicants must also answer questions number 10 through 14 in the Grants Gateway. If you are applying for both components, you must complete two separate proposals.

##### **B. Evaluation Process**

The evaluation process will abide by the following rules:

- All bidders that are determined not to be responsive or responsible will be disqualified after completing a review.
- Proposals that fail to meet the requirement to respond to all RFP questions or complete the budget may be disqualified after completing a full review.
- Applicant organizations must meet the prequalification requirements set forth on pages 5 and 6 of this RFP. If your organization's document vault is not in a status of Prequalified by the application due date and time, you are not eligible and your application will not be reviewed.

##### **C. Evaluation Criteria**

OTDA will evaluate proposals based on the criteria outlined below. The points assigned are reflective of the importance of each item as it relates to the total narrative score. Specific information regarding the evaluation criteria is included below and in Part D, which contains a printed version of the Gateway Application and the points associated with each question.

Organization Qualifications and Documentation of Need (25 points): Describe the program to be funded by the proposal. Include supporting information regarding the magnitude of the need for services in the county or counties in which the program is proposed to operate.

Describe your organization and why your organization is uniquely qualified to provide the services sought through the RFP. OTDA seeks organizations with significant experience providing legal representation in the appeals process for low or no-income individuals seeking federal disability benefits and an organization with significant experience providing statewide support services for organizations providing such legal representation. OTDA seeks the services of organizations with past experience serving recipients of public assistance and other low-income populations. Priority will be given to organizations with significant experience and with positive outcomes for clients. Describe and provide evidence (i.e., letter from funding agency that includes performance information) of the applicant organization's experience and accomplishments.

The applicant should provide documentation of the operational readiness to begin the program on the proposed start date.

**Direct Services:** Describe the proposed program's operation. Include a discussion of how the programmatic considerations and program requirements will be met. If other eligible entities are to be involved in the program, the application should set forth the relationship contemplated between the various organizations. This section also should contain the strategy for providing services to persons with a variety of disabling conditions within the coverage area, and should identify how the organization has or will establish strong working relationships with social services districts to prioritize services for recipients of public assistance. Provide evidence of prior services and client outcome statistics.

**Administrative Services:** Briefly describe the history of your agency and provide a general description of your agency's structure. Describe the resources and skills your organization will specifically commit to carry out the proposed DAP-funded activities. Provide evidence that your organization has the ability to administer all aspects of this initiative. Provide evidence of your agency's experience in providing administrative oversight and technical assistance for legal representation services or similar programs.

Program Operation and Services Plan (55 points):

**Direct Services:** OTDA seeks programs that provide quality services and strong case-management as needed to attain positive program outcomes. Describe the areas of the State to be served. Priority will be given to organizations that serve larger areas. Describe the services to be offered, including the expected numbers and types of cases for which legal representation will be undertaken during the contract period. Include a description of service delivery for each step, from referral to case closing, detailing the steps in the process. Describe the mechanism to engage and provide quality services to individuals in the coverage area and the ability to provide services to individuals with both physical and mental disabilities. Describe how referrals of individuals in receipt of public assistance from social services districts will be given priority of service. How are services prioritized? Is there an appropriate cross-referral option for individuals who are unable to be served, due to funding limitations? Describe expected measurable and quantifiable results of the program and the strategies to be employed to achieve and maintain the required performance goals, including the strategies to be employed by any subcontractors. Describe how you would expect to meet or exceed a goal of a 65% win rate with at least



30% of cases served being recipients of Safety Net Assistance for which a win rate of at least 50% is attained.

**Administrative Services:** OTDA seeks the services of an organization with significant experience providing legal services for low or no-income individuals and with significant administrative experience in managing services provided by a number of entities over a large geographic region, preferably statewide. Describe the strategies and methods to provide training and technical assistance on the federal disability benefits application and appeals process to DAP contractors and social services district staff. Organizations credentialed in providing continuing legal education for attorneys are preferred. Describe your capability to provide legal services, including but not limited to providing legal research for DAP advocates, providing co-counsel representation of disability clients, and drafting and review of legal documents. Describe the strategies you will employ to timely collect , maintain and monitor the accuracy of a database that contains case monthly services and closing activities information from DAP providers and the ability to provide periodic reports to OTDA in a timely manner. Describe your capacity to help OTDA in the preparation of the biennial DAP Report to the New York State Legislature as required by section 35 of Social Services Law.

The application must describe how the program will be staffed to operate a viable program. Describe the qualifications and number of staff to be dedicated to deliver the services requested. Describe whether funds will be allocated in your budget to support these staff or if services will be provided in part or full from other resources.

**Budget** (20 points): The operating budget will be examined to determine the extent to which expense projections are reasonable, necessary and allowable. Priority will be given to budgets that minimize administrative costs in favor of direct program costs.

The budget proposal will be developed within the Grants Gateway and will outline the amounts and types of budget items that the applicant requires to operate the program for the one-year period beginning July 1, 2022.

#### **D. Method of Selection**

The method of selection will be based on a point system. OTDA will select bidders that provide the best value taking into consideration the most beneficial combination of factors including qualifications, experience, and goals. Selections will be based on the highest total points earned.

#### **Funding Guidelines**

OTDA requires a program applicant to ensure that administrative costs do not exceed 15% of their total award. In order to adhere to this restriction, OTDA is requiring that no more than 15% of the total operating budget (i.e., final expenditures) be expended on administrative expenses. No indirect cost rates will be allowed.

The following table may be used as a tool to assist in distinguishing program from administrative costs, and is intended to provide guidance in the preparation of the DAP project budget:

| Administrative Costs  | Program Costs   |
|---|---|
| <p>Costs for the general administration and coordination of this program, including contract costs for administrative functions. Examples of administrative costs include:</p> <ul style="list-style-type: none"> <li>• The salaries and benefits of staff performing administrative and coordination functions;</li> <li>• Costs associated with the preparation of program plans, budgets, and schedules;</li> <li>• Costs involved in the monitoring or tracking of programs and projects;</li> <li>• Procurement activities;</li> <li>• Services related to accounting, audits, management of property, payroll and personnel. Costs for the goods or services required for the delivery of the administrative functions, such as the costs for supplies, equipment, travel, postage, utilities, rental and maintenance of office space.</li> </ul> | <p>Examples of program costs include:</p> <ul style="list-style-type: none"> <li>• Salary and benefit costs for staff providing program services and direct costs associated with providing direct services, such as costs for supplies, equipment, travel, postage, utilities, rental and maintenance of office space;</li> <li>• Work supports and case management, including the costs of contracts devoted entirely (including incidental administrative costs) to these activities.</li> </ul> |

**E. Restrictions on the Use of Funds**

The following are illustrative of the types of items that **are not** allowable costs:

- supplanting other federal, State or locally funded programs or duplicating existing resources for transportation service(s) from the social services district;
- paying for fines;
- planning and coordination studies;
- constructing or purchasing facilities or building;
- advertising costs, except for recruitment of personnel or procurement of scarce items; or those specifically relating to the RFP;
- capital expenditures for improvement or acquisition of facilities;
- interest costs incurred by provider agencies;
- costs of organized fund raising;
- medical costs;
- costs for attendance at conferences or meetings of professional organizations, unless attendance is necessary in connection with the project; and
- costs for preparation of continuation agreements and other proposal development costs.

**F. Required Pre-Submission Uploads**

Following are explanations of the forms that applicants are required to upload prior to submitting a WSP application. Download all forms by following the links available in the Grants Gateway Upload Properties section. If you are unable to produce required information, you must upload an explanation in its place.

- **District Partnership Form** – This form must be signed by the district representative for each district the applicant is proposing to serve. Completion of the District Partnership Form substantiates that the district has participated in the design of the proposal and agrees to identify and/or refer participants in receipt of PA during the program period.

- **M/WBE Goal Requirements Certification of Good Faith Efforts** – This form must be signed to certify agreement to document good faith efforts to provide meaningful participation by New York State certified M/WBE subcontractors or suppliers/vendors in the performance of this contract.
- **Staffing Plan** – The staffing plan should be completed based on the composition of staff working on the project. Enter the numbers or count in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on M/WBE participation requirements or overall participation goals.
- **M/WBE-EEO Policy Statement** – This is an acknowledgement that New York State is an Equal Employment Opportunity employer, and by extension it expects all vendors, contractors, and subcontractors that hold contracts with New York State to ensure the same standard of equal opportunity in their employment practices. Applicants must sign and return the M/WBE – EEO Policy Statement with their proposals.
- **M/WBE Utilization Plan** – This form must be submitted with any bid, proposal, or proposed negotiated contract, or within a reasonable time thereafter, but prior to contract award. The Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) under the contract. A dually certified firm cannot be counted toward both the MBE and WBE participation goals.
- **M/WBE Subcontractor and Suppliers Letter of Intent to Participate** – This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. The form serves as an agreement with the vendors that will provide supplies and/or services under the approved contract. Letters of Intent must be submitted for each MBE and WBE indicated on the M/WBE Utilization Plan.
- **Subcontractor and Supplier Identification Form** – This form for OTDA For-Profit and Nonprofit procurements (IFB/RFP/Contract Reporter \$50,000 or more) was created for applicants to complete as part of the bid solicitation. The form requires applicants for each new procurement (IFB/RFP/Contract Reporter Purchases of \$50,000 or more) to list all subcontractors and the requested information for each that is in place to provide the goods and services required by that contract. This form was created to provide OTDA with a list of all subcontractors and key information, including dollar value of the subcontracts over the contract term, to assist OTDA in assessing the discretionary portion of each contract and overall compliance with NYS/OTDA M/WBE requirements.
- **Not for Profit Contract Attestations** – The following forms are available in the Grants Gateway and must be signed and submitted with all applications: EO177 Certification, Non-Collusive Bidding Certification, Acknowledgement of Understanding of Post-Employment Provision, Assurance of No Conflict of Interest, and Sexual Harassment Prevention Certification.

## **G. Terms and Conditions Governing this RFP**

1. Awards will be made to applicants whose proposals are determined to best meet the criteria for proposal evaluation and selection set forth in this RFP. NYS OTDA reserves the right to terminate the contract in whole or in part, or to modify the contract at its discretion or due to the unavailability of funds. If additional funding becomes available, OTDA reserves the right to subsequently reconsider eligible proposals submitted in response to this RFP at that time, using the same scoring criteria and award

methodology. Updated information may be requested as deemed necessary by OTDA. OTDA also reserves the right to issue a new RFP to solicit new proposals.

2. This RFP does not commit OTDA to award any contracts or to pay any costs incurred in the preparation of a response to this RFP, or to procure or contract for any services. OTDA reserves the right to amend, modify, or withdraw this RFP and to reject any and all proposals submitted, and may exercise such right at any time and without notice or liability to any applicant or other parties for any expenses incurred in the preparation of a proposal.

3. This RFP and any resulting contracts are subject to all applicable laws, rules, and regulations promulgated by any federal, State and municipal authority having jurisdiction over the subject matter thereof. Any contract awarded pursuant to this RFP will be subject to the Office's processing procedures for contracts of this type, including approval as to form by the State's Attorney General, as to award by the DOB, and by the OSC. The successful applicant will receive the complete standard contract for execution in the Grants Gateway. The applicant is encouraged to review sections of the contract that are attached before submitting an application.

4. It is the policy of OTDA to encourage the employment of qualified applicants/recipients of PA by both public organizations and private enterprises that are under contractual agreement with OTDA for provision of goods or services. OTDA may require applicants to demonstrate how they have complied or will comply with the aforesaid policy.

5. The proposal of the successful applicant will serve as the basis for the contract, the terms of which will be modified within the context of this RFP. Applicants may view a sample contract on the OTDA Procurement page. The following will be incorporated into any contracts resulting from this RFP:

- NYS Master Contract Terms and Conditions;
- Attachment A-1 (Program Specific Terms and Conditions);
- Attachment A-2 (Federally Funded Grants Terms and Conditions);
- Attachment B-2 (Expenditure-Based Budget);
- Attachment C (Work Plan); and
- Attachment D (Payment and Reporting Schedule).

6. Submission of a proposal will be deemed to be the consent of the applicant to any inquiry made by OTDA of third parties regarding the applicant's experience or other matters relevant to the proposal. OTDA reserves the right to request and consider additional information from any applicant beyond that presented in the initial proposal. The award of the contract, if any, may be made in reliance on additional information requested. Such information may include budget justification, program information, operation details, verification of past performance, personnel information, or other funding source information.

7. All products, deliverable items and working papers resulting from this contract will be the sole property of OTDA, and the applicant is prohibited from releasing these documents to any persons other than the Commissioner of OTDA or his/her designee unless authorized by the Office to do so. The proposal shall be signed by an official authorized to bind the applicant and shall contain a statement to the effect that the proposal is a firm offer for a 180-day period. The proposal shall also provide the name, title, address, telephone number and area code of individuals with authority to negotiate and contractually bind the applicant, and who may be contacted during the period of proposal evaluation.

## V. General Information for Successful Bidders

### A. Contracting Terms/State Payment

If you are awarded a contract, you will be required to submit certain forms and comply with the following information:

- 1. Cost of Proposal Preparation** – The OTDA will not be liable for any costs of work performed in the preparation and production of a proposal, or for any work performed prior to the formal execution of a contract. By submitting a proposal, the bidder agrees not to make any claims for, or have any right to, damages because of any misunderstanding or misrepresentation of the specifications, or because of any misinformation or lack of information. The proposals shall become property of the State of New York.
- 2. Assurances** – The applicant warrants that it has carefully reviewed the needs of the State as described in the RFP, its attachments and other communications related to the RFP, and that it has familiarized itself with the specifications and requirements of the RFP.

The applicant warrants that it can provide such services as represented in their proposal. The applicant agrees that it will perform all of its obligations in the resultant contract in accordance with all applicable federal, State and local laws, regulations and policies now or hereafter in effect.

The bidder affirms that the terms of the RFP and the attachments do not violate any contracts or agreements to which it is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under the contract.

- 3. Electronic Files or Data** – If electronic files are to be exchanged as a part of this proposal or as a product of the contract, they must conform to agency policy and guidelines.
- 4. Conflict of Interest** – Applicants may be requested to provide evidence that the award of the contract from this RFP will not result in a conflict of interest with regard either to other work performed by the contractor, or to a potential conflict of interest among specific contractor staff or subcontractors.
- 5. Ownership of Materials** – All materials developed with funding provided by the State and all proposals, work plans and budgets become property of New York State. All materials produced, either in whole or in part, through funding provided by New York State shall belong exclusively to OTDA and to the State of New York. OTDA may use any of the materials developed with program funds for any OTDA or other State purpose.
- 6. Equal Employment Opportunity** – By submission of its bid, the successful applicant warrants that it is an Equal Opportunity Employer, and that it does not discriminate in its employment and business practices on any of the bases provided in the New York State Human Rights Law or any applicable federal laws.
- 7. Prompt Payment Provisions** – The payment of interest on certain payments due and owed by the State may be made in accordance with the criteria established in Article XI-A of the State Finance Law.
- 8. Contract Award** – Upon receipt of necessary State approvals, an award letter will be issued by OTDA to the successful applicant advising them of a contract award. A contract defining all deliverables and the responsibilities of the contractor and OTDA will then be developed for signature by both parties and

for approval and processing in accordance with State policy and practice. The contract does not become legally binding upon the State of New York until it is executed by the OSC.

- 9. Advances** - To the extent allowed by Federal law and regulation, OTDA may grant advances up to 25% of the contract value if requested and with sufficient justification. Any unexpended advance balance at the end of the contract period will be refunded by the Contractor to OTDA. In the event either party terminates the contract prior to its expiration, the Contractor agrees to refund any outstanding advance balance to OTDA immediately. The repayment schedule is part of the Master Contract, Attachment D, Payment and Reporting Schedule
- 10. Publicity** – Includes, but is not limited to, news conferences, news releases, advertising, brochures, reports, discussions and/or presentations at conferences or meetings. The inclusion of our materials, our agency name, or other such reference to New York State and/or OTDA in any document or forum is considered publicity. News releases or any other public announcements regarding this project may not be released without prior approval from OTDA.
- 11. Freedom of Information Law and Bidder's Proposals** – The purpose of New York State's Freedom of Information Law (FOIL), which is contained in Public Officers Law Sections 84-90, is to promote the public's right to know the process of governmental decision making and to grant maximum public access to governmental records. Thus, a member of the public may submit a FOIL request for contracts awarded by the State, or for the proposals submitted to the State in response to Requests for Proposals. After formal contract award, the proposal of the successful applicant and the proposals of non- successful applicants are subject to disclosure under FOIL. However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful applicant's contract which "are trade secrets or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Please note that information which you may claim as proprietary, copyrighted or rights reserved is not necessarily protected from disclosure under FOIL. If there is information in your proposal which you claim meets the definition set forth in Section 87(2)(d), you must so inform us in a letter accompanying your proposal.
- 12. Americans with Disabilities Act (ADA)** – The successful applicant shall comply with all applicable requirements of the ADA, codified at Title 42 of the United States Code, section 12101 et seq. and associated regulations, including, but not limited to, those located in 28 C.F.R. Part 36. The successful applicant shall comply with all applicable requirements of the New York State Human Rights Law, codified in the Executive Law sections 290-301 and applicable regulations implemented pursuant to that law. The successful applicant shall warrant to OTDA that the successful applicant is in compliance with both the ADA and its regulations, and the New York State Human Rights Law and its regulations. Any products developed as a result of this RFP must be in a format that can be converted for use by individuals with disabilities to meet the reasonable accommodation standards established by the ADA.
- 13. Contract Modification** – The contract budget can be modified, upon mutual agreements of the parties, during any term by written amendment. Budget modifications over 10% require external approvals by both the NYS Office of the Attorney General and the OSC.
- 14. Contract Cancellation** – OTDA reserves the right to cancel the contract or any part thereof, at any time, upon 30 days written notice. If, in the judgment of OTDA, the selected contractor fails to perform the work in accordance with the contract, OTDA may terminate the contract immediately by written notice for cause. OTDA may elect to suspend contract performance or provide a cure period prior to termination.

- 15. Responsibility Determination** – Article 11 of the New York State Finance Law requires that competitive bids be awarded to responsive and responsible bidders. In order to fulfill this requirement, you must complete the Vendor Responsibility Questionnaire in the VendRep system at <http://www.osc.state.ny.us/vendrep/index.htm>. By signing the bid proposal, you hereby authorize OTDA to review any records in its possession concerning your organization including, but not limited to, wage records, unemployment insurance records, public works records, labor standards, and safety and health records. Based on the responses you provide, OTDA will determine whether your organization is a responsible bidder. If you are disqualified based on a determination of non-responsibility, you will be notified in writing and may appeal the determination in writing within 10 days to the Commissioner. If you fail to identify a violation and OTDA discovers the failure to disclose such violation, your contract may be terminated immediately upon written notice.
- 16. Insurance Coverage** - Successful bidders must provide acceptable proofs of disability and worker's compensation insurance coverage before their contract can be executed by the New York State Office of the State Comptroller.
- 17. Iran Divestment Act** – By submitting a bid in response to this solicitation, or by assuming the responsibility of a contract awarded hereunder, the contractor (or any assignee) certifies that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors Pursuant to the New York State Iran Divestment Act of 2012" list (Prohibited Entities List) posted on the OGS website at <https://ogs.ny.gov/iran-divestment-act-2012> and further certifies that it will not utilize for such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, the 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 OTDA receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certification, OTDA 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 OTDA 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. OTDA 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.
- 18. OTDA Bid Protest Procedure** – It is the policy of the OTDA to provide all applicants with an opportunity to resolve complaints or inquiries related to bid solicitations or pending contract awards administratively. The OTDA encourages all successful or unsuccessful applicants who desire a debriefing to contact Employment and Income Support Programs directly. All such matters will be accorded impartial and timely consideration. Detailed procedures are as follows:
- **Formal Written Protests** – Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any applicant or prospective applicant who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of this RFP, proposal evaluation, or contract award phases of the procurement, may present a formal complaint to the OTDA and request administrative relief concerning such action ("formal protest"). A formal protest must be submitted in writing to the OTDA, by ground mail (except where alternate arrangements have been made), to the Director of the OTDA Bureau of Contract Management (BCM), Jason Wilkie, 40 North Pearl Street, 12th Floor, Section D, Albany, NY 12243. A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OTDA specification or purchasing

decision, a description of all remedies or relief requested, and copies of any and all applicable supporting documentation.

- **Deadline for Submission of Formal Protests or Omissions in the Procurement Process** The OTDA must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the RFP specifications or documents, at least 10 calendar days before the proposal due date.
- **Deadline for Submission of Formal Protests of Contract Award** – The OTDA must receive a formal protest concerning a contract award within 10 business days of the issuance of notice of contract award.
- **Review and Final Determination of Protests** – Protests will be resolved through written correspondence. However, the protestor may request a meeting to discuss a formal protest or the OTDA may initiate a meeting on its own accord, at which time the participants may present their concerns. Either the protestor or the OTDA may decline such a meeting. Where further formal resolution is required, the Director of BCM may designate an OTDA employee (“designee”) to determine and undertake the initial resolution or settlement of any protest. The designee will conduct a review of the records involved in the protest and provide a memorandum to the Director of BCM summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Director of BCM shall: (a) evaluate the designee’s findings and recommendations, and the evaluation team’s reports and recommendations; (b) review the materials presented by the protesting party and/or any materials required of or submitted by other Offerors; (c) if necessary, consult with the OTDA Counsel’s Office; and (d) prepare a response to the protest. A copy of the protest decision, stating the reason(s) upon which it is based and informing the protestor of the right to appeal an unfavorable decision to the OSC shall be sent to the protestor or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protestor such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to the OSC upon issuance.
- **Appeals** – Specifics on the Nonprofit Contract Appeal Process can be found at: <http://otda.ny.gov/contracts/>. Upon receipt of the OTDA’s determination of a protest, a protestor has 10 business days to file an appeal of determination with the OSC, Bureau of Contracts. The appeal must be filed with Ms. Charlotte Breeyear, Director, Bureau of Contracts, New York State Office of the State Comptroller, 110 State Street, 11th Floor, Albany, NY 12236. The protestor’s appeal must contain an affirmation in writing that a copy of the appeal has been served on the OTDA, the successful applicant (except where the contracting agency upholds the protest and the successful applicant is the appealing party), and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the OTDA’s determination. The OSC Bureau of Contracts will conduct a formal review and issue its determination of the appeal in accordance with its established policy and procedures.
- **Reservation of Rights and Responsibilities of the OTDA** – The OTDA 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 and the OTDA. If the OTDA determines that there are compelling circumstances, including the need to proceed immediately with the contract award in the best interest of the State, then these protest procedures may be suspended, and such decision shall be documented in the procurement record. The OTDA 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.

- **Procurement Activity Prior to Final Protest Determination** – Receipt of a formal bid protest shall not stay action on a procurement unless otherwise determined by the OTDA. If a formal protest or appeal is received by the OTDA on a recommended award prior to the underlying contract being forwarded to the OSC, notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC.

If a final protest decision or final decision on appeal has been reached prior to transmittal to the OSC, a copy of the final decision must be included in the procurement record and forwarded with the recommendation for award. If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under State Finance Law §112, a copy of the final OTDA decision shall be forwarded to the OSC when issued, along with a letter either: (a) confirming the original OTDA recommendation for award and supporting the request for final §112 approval; (b) modifying the proposed award recommendation in part and supporting a request for final §112 approval as modified; or (c) withdrawing the original award recommendation.

- **Record Retention of Bid Protests** – All records related to formal applicant protests and appeals shall be retained for at least one year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

**19. Contractor Requirements and Procedures for Participation by New York State- Certified Minority and Women-Owned Business Enterprises (M/WBEs) and Equal Employment Opportunity (EEO) for Minority Group Members and Women and Workforce Utilization Reporting** – Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, OTDA is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OTDA contracts.

**Business Participation Opportunities for M/WBEs** – For purposes of this solicitation, OTDA hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15% for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that OTDA may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OTDA will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE

serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and OTDA may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Contract's program manager at OTDA.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OTDA for review and approval.

OTDA will review the submitted MWBE Utilization Plan and advise the respondent of OTDA acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the OTDA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OTDA may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If OTDA determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OTDA, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to OTDA, by the 7<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity (EEO) and Workforce Utilization Reporting Requirements** – By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of [Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A]. The respondent is required to ensure that it and any subcontractors awarded a subcontract 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 respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, 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 New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form OTDA-4970, to OTDA with its bid or proposal.

If awarded a Contract, respondent shall submit form OTDA-4971 Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by OTDA on a QUARTERLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis. Note – NFP grantees are exempt from Executive Order #162. Further, pursuant to Article 15 of the 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, sex, national origin, 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.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**20. Participation Opportunities for New York State Certified Service-Disabled Veteran- Owned Businesses** – Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran- Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OTDA recognizes the need to promote the employment of service- disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OTDA contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. For purposes of this procurement, OTDA conducted a comprehensive search and

determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at (518) 474-2015, or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

**ATTACHMENT E**  
SECURITY AND CONFIDENTIALITY TERMS  
Last Updated: June 2019

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**The Security and Confidentiality Terms set forth in this Attachment E are made part of the Agreement between OTDA and the Contractor.**

## Definitions

For purposes of this Attachment E the following terms shall have the following meanings:

**“Protected Information”** means data or information to which the Contractor is given access which OTDA creates, receives, or maintains, which is, pursuant to federal and/or state laws, rules, regulations, policies or agreements, deemed confidential, personal, private and/or sensitive. Such data or information may be present or stored in any form or medium and includes, but is not limited to:

- a. Data or information obtained from sources outside of OTDA;
- b. Data or information maintained in and/or obtained from OTDA-owned applications, systems, networks and/or databases;
- c. Data or information identifying an individual, particularly where such disclosure could result in an unwarranted invasion of personal privacy;
- d. Computer codes or other electronic or non-electronic data or information, the disclosure of which could jeopardize the compliance stature, security or confidentiality of OTDA’s information technology solutions, applications, systems, networks or data;
- e. Any other material designated by OTDA as being “Confidential,” “Personal,” “Private,” or otherwise “Sensitive.”

**“Authorized Persons”** means the Contractor’s employees, subcontractors or other agents who are authorized and have a business justification to access Protected Information to enable Contractor to perform the services pursuant to the Agreement.

**“Information Security Incident”** means any allegation or suspicion held by or brought to the attention of an OTDA employee or Authorized Persons involving inappropriate or unauthorized access to, or disclosure of, Protected Information.

**“Information Security Breach”** means the unauthorized access by a non-Authorized Person of Protected Information as defined in New York State Information and Security Breach Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**“OTDA Contact”** means the person or persons designated in writing by OTDA to receive Information security incident or Information security breach notifications.

## Data Protection

**“Continental United States (CONUS)”** – the 48 contiguous States and the District of Columbia

**“Follow the Sun”** – Follow-the-sun is a type of global workflow in which tasks are passed around daily between work sites that are many time zones apart. All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

## Data to be Disclosed

While a listing of specific data elements and/or information required to effectuate the Agreement may be more specifically set out in the solicitation, the obligations set out apply not only to such data elements and/or information but to all Protected Information, as defined herein.

## Purpose of Data

Contractor represents that it is requesting and/or providing Protected Information solely for purposes specified in this solicitation. OTDA will release Protected Information to Contractor exclusively for this purpose. Contractor shall use the Protected Information only for the authorized purposes specified in this Agreement.

## Ownership of Data

Contractor agrees that OTDA shall be deemed the “owner” of Protected Information disclosed by OTDA to Contractor under this Agreement including for purposes of complying with the requirements of General Business Law Section 899-aa.

## Data Exchange Details

Prior to OTDA’s sharing of any data pursuant to this Agreement, Contractor and OTDA shall work together to provide and establish a secure, encrypted (both in transit and at rest) method of data exchange for any transfer of such data which shall, at a minimum, comport with the standards set and required by the [New York State Chief Information Security Office](#) (NYS CISO) and, where required, any additional heightened compliance obligations applicable to and necessitated by the data involved in any such exchange. The NYS CISO’s office shall, as OTDA deems appropriate, be provided with details of such proposed method of exchange for review and approval. The Parties agree that they will work together to create and keep current a Technical Service Description, to be made part of this Agreement, which sets forth the details of the Protected Information which OTDA shall furnish to Contractor, including, at a minimum, the frequency of the disclosure, timing, technical details of the method of data exchange (including all relevant details), and the format of any response as between the Parties.

Safeguarding of Protected Information shall be an integral part of the business requirements and activities of the Contractor to ensure there is no inappropriate or unauthorized use or exposure of Protected Information at any time. Contractor shall safeguard the confidentiality, integrity, and availability of Protected Information and comply with the following conditions:

- a. Implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure, or theft of Protected Information. Such security measures shall comply with industry best practices and shall, at a minimum, comply with those requirements set forth by the [NYS CISO](#), and must comply with all applicable state and federal law, rules, regulations, and policies.
- b. All Protected Information shall be encrypted at rest and in transit, in accord with, at a minimum, the standard set forth by the [NYS CISO](#), all applicable state and federal law, rules, regulations and policies and, as appropriate, industry best practices.
- c. At no time shall any Protected Information be copied, disclosed or retained by the Contractor for any purpose other than performing the services under this Agreement.
- d. Contractor and Authorized Persons shall not disseminate, use, or permit the dissemination or use of Protected Information in any manner not described in this Agreement without express prior written consent from OTDA.
- e. Host all Protected Information and maintain and implement procedures to logically segregate and secure Protected Information from Contractor's data and data belonging to the Contractor's other customers, including other governmental entities.
- f. All data center(s) used to perform the services under the resulting Contract must, at a minimum, meet or exceed Tier 3 standards for redundancy and resilience, which can be found at the Uptime Institute website.
- g. The contractor must carefully, thoroughly, and thoughtfully vet all software solutions and hardware used to verify that they are compliant with the requirements set forth by the NYS CISO and fulfill the compliance obligations for the protection of OTDA's Protected Information. This vetting process shall also extend to all software solutions and hardware used by Authorized Persons.

## **Data Security**

Contractor shall immediately disclose its non-proprietary security processes and technical limitations to OTDA such that adequate protection for Protected Information is attained. At a minimum Contractor represents and warrants that the security requirements and processes shall comport with the security standards and protocols set by the [NYS CISO](#). In addition, the Contractor shall also comply with any state and/or federal laws, rules, regulations and/or policies that are applicable to the data being exchanged under this Agreement, including any heightened compliance obligations. The system and procedure that the Contractor will maintain for handling, storage, use, and destruction of Protected Information governed by this agreement will be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.

## **Data Location**

Contractor shall provide its services to OTDA and OTDA's end users solely from data centers physically located within the continental United States (CONUS), meaning the 48 contiguous States and the District of Columbia. Storage of Protected Information at rest shall be located solely in data centers in the United States. The Contractor shall not store, access, maintain, or process Protected Information on a mobile or portable device. The Contractor will store and maintain Protected Information in a place and manner that is physically secure from unauthorized access (e.g., locked cabinets or storage room) and will store and process electronic Protected Information in such a way that it will be secure from unauthorized access by any means.

## **Contract and Data Center Audit**

The Contractor shall allow OTDA and any other authorized government agency to audit the Contractor's compliance with the security procedures set forth in this section. Contractor shall perform an independent audit of its data centers which contain Protected Information at least annually and provide OTDA a copy of such audit report. Any non-critical deficiencies identified in the audit report or where the Contractor is found to be noncompliant with Agreement safeguards must be remedied, within 90 days of the issue date of the audit report with proof of remediation provided to OTDA. Critical deficiencies must be immediately remedied within a timeframe that OTDA approves. The completion of these requirements is at the Contractor's expense with no additional cost to OTDA.

The contractor will maintain a formal policy and procedures for the handling, storage, use, and destruction of Protected Information governed by this Agreement which must be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.

The contractor will permit OTDA, or their agent, to enter upon Contractor's premises at reasonable times to inspect and review their safeguards and procedures for protecting the confidentiality, privacy, security, and compliance of the Protected Information. The contractor will also cooperate with OTDA, or their agent, in connection with any request for access to staff, information, or material related to an OTDA confidentiality, privacy, security, or compliance review, audit, or monitoring visit.

The contractor will provide, at Contractor's expense, an independent third-party audit of all data center(s) used to perform the services under the resulting Contract showing no deficiencies. Thereafter on an annual basis, at the contractor's expense, a full version of the



audit report will be provided to the State, within 30 days of the anniversary date of the Agreement. A Service Organization Control (SOC) 2 Type 2 audit report or approved equivalent sets the minimum level of a third-party audit.

## **Access**

The contractor will limit access to Protected Information to Authorized Persons who have a legitimate business justification for access to such data for the purposes described in this Agreement.

For Protected Information with heightened compliance requirements, including but not limited to Unemployment Insurance Benefit information, Federal Parent Locator Services information, Federal Tax information, and Social Security Association information, Contractor will provide a listing of such Authorized Persons to OTDA at intervals determined by OTDA. The contractor will ensure that this list is kept current with any additions, changes, or removal of Authorized Persons needing access.

Access to Protected Information by Authorized Persons shall be closely monitored by Contractor and shall be removed in the event such access is no longer justified by a legitimate business need or where the person separates from service. Such removal must be immediate but in no event later than the close of business on the date of the triggering event.

Notice of all such changes will be sent to:

### **OTDA General Counsel**

40 North Pearl Street, 16C  
Albany, New York 12243  
(518) 474-9502  
Otda.sm.iso@otda.ny.gov

The contractor may not assign or subcontract the Agreement, its obligation or interest hereunder, without the express, written consent of OTDA. Any assignment or subcontract made without such consent will be null and void and will constitute grounds for immediate termination of the Agreement by OTDA.

Contractor expressly represents and agrees that it will not re-disclose Protected Information provided by OTDA under this Agreement to third parties, including contractors or subcontractors, without the prior, written approval from OTDA. Authorized Persons shall not disseminate, use, or permit the dissemination or use of Protected Information in any manner not provided for in this agreement without the express prior, written consent from OTDA.

The contractor will undertake precautions to limit access to disclosed Protected Information to Authorized Persons only. The contractor will adopt safeguards and procedures to limit dissemination only to authorized individuals with a legitimate business need/purpose related to the purpose of this project as set out in this Agreement.

## **Training**

The Contractor will ensure that all Authorized Persons who have access to any Protected Information for authorized purposes set forth in this Agreement have been instructed in a manner approved by OTDA regarding the confidential nature of the Protected Information, the safeguards required to protect such data, and the sanctions in applicable state, federal, and local laws, rules, regulations and/or policies for unauthorized disclosure of Protected Information. Contractor will annually sign an acknowledgement that all Authorized Persons with access to Protected Information have been instructed in a manner approved by and as set out above. Contractor will provide this acknowledgement upon request to OTDA and prior to the disclosure of any Protected Information hereunder and annually, as required, to continue the disclosure of Protected Information hereunder.

## **Confidentiality Agreements**

Contractor shall require Authorized Persons to sign a confidentiality and non-disclosure agreement provided by OTDA in relation to access to Protected Information. Such signed agreements must be obtained prior to Authorized Persons commencing work. Contractor shall maintain such agreements for the duration of the audit period as set out in this Agreement and for the duration of any state, federal, and local laws, rules, regulations and policies applicable to the Protected Information being exchanged under this Agreement, whichever is longer, and shall provide them to OTDA upon request.

## **Background Investigation and Fingerprinting**

Contractor shall have a written personnel security policy that ensures a background investigation is completed for any individual who will need access to perform his/her job duties to Protected Information with heightened compliance obligations. The policy will identify the process, steps, and timeframes for determining whether an employee may be granted access to such Protected Information. The

results of the background check will be reviewed by the Contractor to determine whether the applicant is suitable for access to such Protected Information. Suitability is defined as having verified citizenship or residency and no prior criminal offense or offenses where the nature of the offense creates a risk of misuse of such Protected Information as defined within this Agreement. Written background investigation policies and procedures must be provided to OTDA for review and approval. Policies and procedures, as well as a sample of completed background investigations, must be available for inspection upon request by OTDA or its agents.

### **Notification of Legal Requests**

The Contractor shall immediately inform OTDA in writing upon receipt of any legal, investigatory, or other mode or method of demand (including but not limited to FOIL or FOIA requests, electronic discovery, litigation holds, and discovery searches) for access to Protected Information that is not otherwise authorized under this Agreement and shall take and vigorously pursue all necessary legal action to prevent any disclosure including, but not limited to, moving to quash subpoenas issued for such information. The Contractor will keep OTDA's General Counsel fully and timely notified of all developments related to such legal actions and their response thereto, and provide appropriate, robust legal assistance as may be required, as requested by OTDA. The notification shall be directed to:

**OTDA General Counsel**  
40 North Pearl Street 16 C  
Albany, NY 12243  
(518) 474-9502  
Otda.sm.iso@otda.ny.gov

### **Report or Publication**

Contractor will ensure that any study, report, publication, or other disclosure for which Protected Information shared by OTDA is the basis and which is permitted under this Agreement is limited to the reporting of aggregate, de-identified data, which means it will not contain any information that might lead to the identification of a private person or entity. OTDA shall have the right to review and approve any such study, report, publication, or other disclosure prior to disclosure or publication.

### **Return/Destruction of Protected Information**

In the event of termination or expiration of the Agreement, Contractor shall immediately implement an orderly return of all Protected Information, whether in digital or any other form, in a mutually agreeable format at a time agreed to by the parties and/or at the direction of OTDA. Thereafter, the Contractor shall, unless otherwise advised in writing by OTDA, immediately destroy and/or sanitize, as appropriate to the medium, such data and any extracts, copies, or backups of same thoroughly and irretrievably. The method for the sanitization of data shall, at a minimum, comport with the standards set by the [NYS CISO](#) for the sanitization of data. Contractor shall thereafter certify in writing and provide proof that these actions have been completed within 30 days of termination or expiration of this Agreement or within seven days of the request of an agent, employee or officer of OTDA, at the discretion of OTDA. The Contractor will not make, retain, copy, duplicate, or otherwise use any copies of Protected Information after completion of the purpose for which the data disclosed is served without prior written permission from OTDA.

### **Data Retention**

Notwithstanding any other obligation under this Agreement, Contractor agrees that it will preserve the Protected Information in a manner that complies with all applicable federal, state and local laws, rules, regulations, and policies for the purposes of ensuring applicable data records retention obligations are met.

### **Compliance with Information Security Breach Notification Act and other Laws**

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Protected Information does and will comply with all applicable federal, state and local privacy, confidentiality, security, data protection and compliance laws, rules, regulations, policies, and directives. Contractor warrants that it will comply with the applicable New York State Information and Security Breach Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The contractor ensures that it and all Authorized Persons will be in compliance with the aforementioned state, federal, and local laws, rules, regulations, policies, and directives.

### **Vulnerability Scanning**

The contractor must perform appropriate and required environment vulnerability scanning in accordance with Industry best practices and standards. The contractor must address all high and medium vulnerabilities found during scanning in a reasonable timeframe as agreed upon with OTDA.

OTDA, through ITS, will have the option to perform application scanning and web server scanning, as needed. The contractor must address all high and medium vulnerabilities found during scanning in a reasonable timeframe as agreed upon with OTDA.

When software vulnerabilities are revealed and addressed by a vendor patch, the Contractor will obtain the patch from the applicable vendor and categorize the urgency of application as either "critical" or "non-critical" in nature. The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of OTDA in consultation with ITS and Contractor. The contractor will apply all critical security patches, hotfixes, or service packs as they are tested and determined safe for installation after consultation with OTDA and ITS.

## **Information Security Incident and Information Security Breach**

If the Contractor or any Authorized Person becomes aware of or has knowledge of either any potential Information Security Incident (Security Incident) or Information Security Breach (Security Breach), then the Contractor shall within 30 minutes of becoming aware or having knowledge of any potential Security Incident or Security Breach, notify the OTDA contact listed below of the Security Incident or Security Breach via the email address noted, and OTDA will direct what further action is necessary for response to the same. At such time, Contractor shall provide OTDA with the name and contact information for an employee of Contractor who shall serve as Contractor's primary security contact and shall be available to assist OTDA 24 hours a day, seven days per week, in keeping OTDA fully and timely notified of all developments relating to any such potential or actual Security Incident or Security Breach utilizing the following contact information:

**OTDA General Counsel**  
40 North Pearl Street 16 C  
Albany, NY 12243  
(518) 474-9502  
otda.sm.iso@otda.ny.gov

Should an Information Security Incident or Security Breach occur, immediately following the requisite notification to OTDA, Contractor shall 1) promptly investigate and utilize best efforts and IT industry best practices to determine the cause(s) of same and devise a proposed resolution and report the cause(s) and suggested remedies to OTDA; (2) promptly implement necessary remedial measures as OTDA deems necessary; (3) document responsive actions taken, including any post-incident review of events and actions taken to make changes in business practices to prevent similar instances in the future; 4) provide reports within the timeframes as requested by OTDA; 5) promptly notify OTDA of the steps taken to prevent similar instances in the future ; and 6) take any other action as may be directed by OTDA.

### Notification and Assistance to Affected Persons.

Contractor shall be responsible for:

- a. Promptly notifying individuals whose Protected Information was compromised by an Information Security Breach ("Affected Persons") or, as OTDA deems appropriate, an Information Security Incident. The contractor is to first seek consultation and receive authorization from OTDA prior to issuing such notifications. OTDA shall approve the content of and the method by which such notifications must be provided (e.g., regular mail, e-mail, and/or website posting);
- b. If requested by OTDA and/or required by law, provide credit monitoring services, identity theft consultation and restoration, identity theft insurance, public records monitoring, toll free number and call center, payday loan monitoring, and any other services deemed reasonably necessary by OTDA to Affected Persons for a minimum of one year or longer, as determined by OTDA, (together referred to as "Affected Persons Assistance");
- c. Costs. The Contractor shall bear all costs associated with providing Affected Persons Assistance. OTDA may reduce any Contractor invoice by an amount attributable to the Contractor's failure to satisfactorily provide Affected Persons Assistance.

## **Business Continuity and Disaster Recovery**

The Disaster Recovery system shall be accessible by all users 24 hours a day, seven days a week, 365 days a year and available 99.982% of the time (uptime) per month and must not be rendered inoperable for any longer period for the purposes of maintenance, upgrades or hardware additions. OTDA will work with the Contractor to provide a listing of all essential functions related to the Agreement that must be sustained and maintained for the duration of the agreement. The Contractor shall have no less than one redundant data centers separated by at least 100 miles and on separate network fiber and separate power grids.

Contractor shall failover application to alternate hardware to perform planned maintenance, patches, code revisions, etc. to one instance, thoroughly test, then switch back to the upgraded instance before repeating the planned maintenance, patch, code revision, etc. on the second instance.

The contractor will provide OTDA with a business continuity and disaster recovery plan. This plan will include detailed precautions to minimize the effects of any disaster or interruption of service so that OTDA can rapidly continue to operate and resume mission-critical functions. OTDA will work with the Contractor to provide an analysis of business processes and continuity needs. The contractor will provide technical support staff with the skills required to interface with OTDA's application, network, hardware, and software during

planning and preparation for disaster recovery and business continuity testing and/or during any declaration of an actual disaster. Minimum recovery time objective (RTO) and recovery point objective (RPO) will be determined by OTDA.

### **Suspension/Termination**

OTDA agrees to provide Protected Information pursuant to this Agreement subject to the representations and agreements by the Contractor contained in this document. OTDA will suspend the Agreement and the further disclosure of any Protected Information hereunder if: (i) Contractor fails to comply with any provision of this Agreement or (ii) OTDA General Counsel believes in good faith that the Contractor has violated its obligations to maintain the confidentiality, privacy, security and/or compliance status of such data or limit properly limit dissemination of such data. Such suspension will continue until corrective action, approved by OTDA, has been taken. In the absence of prompt and satisfactory corrective action, OTDA may, at its sole discretion, terminate the Agreement. Upon termination, the Contractor must immediately return all Protected Information obtained by the Contractor or Authorized Persons under the Agreement pursuant to the terms and conditions of the Return/Destruction of Protected Information section within this Agreement.

### **General Terms**

In addition to suspension or termination of the Agreement as provided herein, OTDA reserves the right to undertake, without limitation, any other action under the Agreement, or state or federal law, rule, or regulation, to enforce the Agreement and secure satisfactory corrective action and/or return and/or destruction of the Protected Information furnished hereunder, including seeking damages, penalties, and restitution from Contractor or its affiliates as permitted under law.

The Contractor's and Authorized Person's confidentiality and related assurances and obligations hereunder shall survive the termination or expiration of the Agreement.

### **Assignment or Subcontracting**


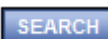


The Contractor may not assign or subcontract the obligations or interests outlined in this Section of this Agreement, without the express, prior written consent of OTDA. Any assignment or subcontract made without such consent will be null and void and shall constitute grounds for immediate termination of the Agreement by OTDA.



### **Cloud Computing Provisions**

All privacy, confidentiality, security and compliance requirements set out in this Agreement shall apply to any cloud computing solution proposed for use by the Contractor to accomplish any obligation under this Agreement.



## PART B: Instructions for Completing the Application:


The Disability Advocacy Program must be submitted in Grants Gateway. Eligible entities are not-for-profit community-based organizations and governmental entities. Applicants should submit one application per agency. Read and apply all instructions while completing the screens in Grants Gateway. A printed version of the application appears in Section D. Please note; though others may work on the application, only someone with a Grantee Contract Signatory or a Grantee System Administrator role can submit the application to the State. Applications may not be accepted outside of the Grants Gateway system.

1. Find . Enter your search criteria then click .
2. Click the link for your opportunity.
3. From the  [Forms Menu](#), complete the following Forms/Screens listed below. Sections from the  [Forms Menu](#) do not have to be completed in any particular order. You must save your work before moving onto a new screen. If you do not complete it all in one session, search for the application in progress from the application link at the top of the screen when you return.



After each section is completed and , return to the  [Forms Menu](#) and click on the next section to be completed.

### Forms/Screens

Project Site Address Screen: Enter all site addresses, one site per screen. Click . Click  for additional screens.

Program Specific Questions Screen: Follow instructions at top of screen. Answer all questions in this section. Note that most narrative answer spaces allow 4000 characters; however, OTDA expects answers to be concise. Upload forms when required. Click .

### Expenditure Budget:

Personal Services – Salary screen: List all positions that provide direct services and will be supported with grant funds. Each position should be entered on a separate screen. Briefly describe the role/responsibility of the position in relation to the DAP program. Click . Click  to open a new screen for listing the next position.

Personal Services – Fringe screen: Provide a brief explanation of the percentage and composition of your fringe benefit structure. Fringe should not exceed the Office of the State Comptroller's rate, currently set at 56.86%. If fringe is not applicable, leave this section blank.

Contractual Services screen: List services that are provided under a formal or written agreement and will be supported with grant funds. Provide both a description of the services and justification for the services. Each type of contractual cost must be listed on its own screen and the cost justified. Only the pro-rated portion of the entire expenditure that is related to the DAP program is allowed. This line includes institutions, individuals or organizations external to the contractor which have entered into an agreement with the contractor to provide any services outlined in or associated with the DAP contract and whose services are to be funded under the DAP budget. This includes any other not-for-profits performing work under the proposed DAP contract. All such

agreements are to be bona fide written contracts: NYS OTDA reserves the right to request these documents at any time in the future.

Travel screen: This category includes travel costs for personnel listed under Personal Services Costs, participant travel and other travel expenses. Mileage costs may be reimbursed up to the NY State rate. In the justification field, explain which staff will be traveling in relation to the project, the destination, purpose and frequency of the travel.

Equipment screen: This category includes the purchase, rental and leasing of equipment. Equipment is any non-consumable, tangible property having a useful life of more than one year. Substantial equipment purchases (costing more than \$5,000) should be avoided. Acquisition costs must be in accordance with NYS requirements and may be evaluated to determine if leasing is a practical and cost-effective alternative. If the only alternative is to purchase equipment using contract funds, an applicant organization is required to obtain 3 competitive bids and must receive OTDA prior approval. All things being equal, the contractor must purchase equipment from the lowest bidder. Complete the Equipment form for requested equipment. Complete the Equipment Narrative form if there is any substantial equipment costing more than \$5,000 per item. Requests in support of this grant category, if not with another not-for-profit or unit of local government, are required to demonstrate how they will use these purchases to meet MWBE goals.

Other screen: This category should include grant-funded program items that do not fit in the other categories such as postage, copies, office supplies and administrative costs. Each cost must be listed on its own screen. Allowable administrative costs are those directly related to administering the DAP program, as detailed in Part A, Section IV-C of the RFP. The total combined administrative costs may not exceed 15% of the annual requested funds. Administrative costs must be itemized. Indirect Cost Rates are not allowed.


Work Plan: Grant Opportunity Defined Screens: Section consists of the workplan overview form, objectives, tasks and performance measures.

Workplan Overview Screen: This section will be used to create the Work Plan portion of the contract. Some of the information requested will be duplicative of information provided earlier in the application. You may copy/paste previous responses where appropriate when developing your Project Summary and/or Organizational Capacity narratives. **Please ensure your responses to questions number 2 through 5 are copied and pasted into the Project Summary section. For Direct Services, also copy and paste your answers to questions 6 through 9. For Administrative Services, also copy and paste your answers to questions 10 through 14.** This section should be completed from an annual perspective. Therefore, the first annual Work Plan should be July 1, 2022 – June 30, 2023.


In the Project Summary section, include a high level overview of the project as instructed. The narrative should also identify:

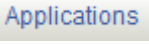





- Service area
- Target population and annual number of individuals to be served
- Client eligibility guidelines
- Services offered
- How the program operates and a description of what funds will pay for
- How the success of the program is determined/evaluated

In the Organizational Capacity section, include the information requested and a brief description of any other services/programs offered by the organization.

Objectives and Tasks: Type the objective name again and in the narrative section, enter the estimated goal. Click .

Pre-Submission Uploads Screen: Download all forms by following the links available on the Upload Screen, or print the forms from Part C of this application. Upload all required forms in the places designated throughout the application. If required information is not available or cannot be produced, an explanation must be uploaded.

Application Submission: When you have completed your application, click . If you receive any error messages, all items must be addressed prior to submitting your application. The system will let you know when there are no outstanding items.

Remember only the Grantee Contract Signatory or Grantee System Administrator may submit the application. To do so, the appropriate person must sign into the Gateway with their credentials. To submit the application, click  and  for your application. When you find it, click . When you are ready to submit, click  Status Changes then . Prior to submission, you will need to certify the agreement as stated. You must click I Agree for your application to be submitted. You will know your application has been submitted successfully if you hover your mouse over  Status Changes and it shows "There are no available status options at this time."

### **PART C: List of Required Upload Documents**

All required forms are available in the Upload Properties section of the Grants Gateway and must be submitted with your application.

1. **District Partnership Form**
2. **Excel Workbook**
3. **Contractor/Subcontractor Background Questionnaire**
4. **Equal Employment Opportunity Staffing Plan**
5. **M/WBE – EEO Policy Statement**
6. **Subcontractor and Supplier Identification Form**
7. **Required Attestations**

### **Part D: Printed Version of Gateway Application**