



**New York State
Division of Criminal Justice Services (DCJS)
Office of Probation and Correctional Alternatives (OPCA)**

**AMENDMENTS TO
REQUEST FOR APPLICATIONS
APPLICATION AND INSTRUCTIONS
CJS 2012-03**

**Provision of Ignition Interlock Services
In New York State**

**ANDREW M. CUOMO
GOVERNOR**



**MICHAEL C. GREEN
EXECUTIVE DEPUTY COMMISSIONER**

**ROBERT M. MACCARONE
DEPUTY COMMISSIONER AND DIRECTOR
Publication date: June 28, 2013**

Introduction

The Office of Probation and Correctional Alternatives released an RFA with responses due December 24, 2012 (see Contract Reporter Advertisement attached) to secure certain services associated with Ignition Interlock Devices as more fully explained in the RFA. These devices require that a motor vehicle operator blow air into the device so that alcohol content can be determined. In addition to preventing an operator with blood alcohol content above the legal limit from starting the vehicle, the devices have been enhanced with cameras to capture the picture of the operator and most of these have the ability to transmit real time data through cellular networks.

These devices – Ignition Interlock Devices or IIDs are installed pursuant to Court Order and are monitored by law enforcement, principally sworn officers with the power of arrest. In certain instances law enforcement is alerted of specific operator's test failures so that they can take necessary action to stop the driver and impound the vehicle. Cases are typically managed by Probation Officers so that there is continued monitoring of driver progress.

On November 18, 2009 Chapter 496 of the Laws of 2009, commonly referred to as Leandra's Law, was signed into law. In general, the new law was groundbreaking in that it strengthened for prosecution purposes various laws relative to driving while intoxicated or while impaired by drugs to achieve greater offender accountability, promote public, especially child safety, and deter unsafe driving. Effective December 18, 2009, it increased criminal sanctions for individuals convicted of driving while intoxicated or under the influence of drugs (DWI) with children (under the age of 16) in the car, while also increasing penalties associated with other DWI related felonies. Effective August 15, 2010, the new law expanded the use of ignition interlock devices.

The first contracts to supply these devices in New York State were awarded in 2010 will expire in the middle of August of 2013. These contracts have been amended to include additional or replacement parts such as improved cameras and disposable mouthpieces. Technology is advancing at a rapid pace in this field and New York is in the forefront.

Of the initial seven contracts awarded, one vendor, Interceptor Ignition Interlock has been terminated by DCJS and will discontinue service at the end of May 2013. DCJS has been transitioning the Interceptor customer base to other vendors – all have been equally offered the chance. About 48,000 devices have been have been since inception in 2010, a little over 1000 are installed each month and the current average number of devices installed each month is slightly more than 7,000. Vendors do not install devices directly – they contract installations through retail outlets, typically higher end auto sound or custom shops. Six vendors remain and have expressed interest in continuing services in New York State.

Part of the supply chain process includes establishing cell service for the IID. This is telemetry not voice – the data is sent in bursts or packets and the average price per unit is around eleven dollars per month. As is more fully described in the procurement record, DCJS discovered that Interceptor Interlock had apparently been diverting cellular payments to other purposes. Our auditor estimates that about half a million dollars went unpaid resulting in termination of service.

Termination of service poses a grave public safety risk since inebriated drivers can start vehicles and drive without law enforcement getting real time data and alerts. Property damage, injuries and fatalities can occur if the offender is not held promptly accountable for his/her violative behavior.

Based on the experience with Interceptor, DCJS has determined that changes must be incorporated into the next set of contracts. There are four areas in which the December RFA is amended and which are documented here. We have informally advised the active contract vendors of these changes in the last two weeks of June by telephone, in discussions at the DCJS annual conference in June and other times. We will email the information to all known market participants. Three of the four amendments to the RFA received no objection. The fourth new requirement is a Standby Letter of Credit. Notably, Appendix C to the new Contracts – provide for price increases which we believe are sufficient to maintain the current gross margins of the vendors. Certain vendors with relatively good credit and good banking relationships will pay one to three percent, while vendors with greater risk may have to put up some other property, asset, or cash as security. That group would prefer performance bonds but, after consultation with OGS and other agencies we learned that these are disfavored. We are not imposing punitive charges; the purpose of the SLOC is to make funds available to the State in the event that there is another Contractor default and we need to cover the costs of removal of the old device as well as reinstallation. This often involves the installation of a new modem – a device that is contained within the IID – that engages and validates the IID on the Cellular provider network.

This amendment contains the four changes. We will incorporate them into the contracts in the process of contract negotiation. The RFA provided for such an event at Section XIV(C):

C. Certain State's Rights

The State reserves the right:

1. To reject all applications and re-issue a modified version of this RFA.
2. Utilize any or all ideas submitted in the applications received unless those ideas are covered by legal patent or proprietary rights.
3. Amend RFA specifications to correct errors or oversights, and to supply additional information as it becomes available. All applicants who have received this RFA will be supplied with all amendments or additional information issued.
4. Make typographical corrections to applications with the concurrence of the applicant.
5. Correct computational errors with the written concurrence of the applicant.
6. Change any of the scheduled dates stated herein with written notice to all applicants who have received this RFA.
7. Negotiate with manufacturers responding to this RFA within the RFA requirements to serve the best interests of the State.
8. Disqualify applications that fail to meet mandatory requirements.

RFA Amendments are as follows, each more fully described in sections which follow:

1. Inclusion of mandatory language concerning Vendor Responsibility pursuant to directive from Governor's Office ("the three paragraphs").
2. Inclusion of a "CHANGE FORM" to allow for more efficient implementation when change is basically in the nature of IID parts – example – new camera.
3. Inclusion of new termination language so that the State's rights are clearer with respect to termination in the event of Vendor non compliance.
4. Implementation of a Graduated Standby Letter of Credit to provide funding in the event that it becomes necessary to implement changes to a new vendor and/or cellular provider.

1. Inclusion of mandatory language concerning Vendor Responsibility pursuant to a directive from Governor's Office ("the three paragraphs")

On April 3, 2013, Secretary to the Governor Larry Schwartz directed all agencies to include the "three vendor responsibility paragraphs" in Agency Contracts. While there were standard VendRep requirements in the RFA and past contracts in this area, since these contracts will be executed after April 3, 2013, it is necessary to incorporate these three paragraphs in future contracts and the amended RFA. The three paragraphs are added to the Contract at Section VI Paragraphs 21, 22, 23. DCJS takes Vendor Responsibility very seriously, especially since this is a public safety program. We are in favor of any additions and controls which better ensure NYS has financially viable vendors who can provide the required level of service delivery without interruption regardless of cash flow problems or other issues.

2. Inclusion of a "CHANGE FORM" to allow for more efficient implementation when change is basically in the nature of IID parts – example – new disposable mouthpiece.

While historically many Agency contracts contain fixed terms and conditions which have been stable over a defined period of time, these Ignition Interlock Devices are continually being upgraded primarily with the addition of new or refined technological features. DCJS has determined that provided a manufacturer's changes do not result in a major deviation in features, pricing costs associated with IIDs or gross margins, that it consumes too many resources to do contract amendments with OSC and AG approval where something as minor as a small disposable mouthpiece, a wiring harness, even a modem, memory or an upgrade to camera software is being changed. The contract negotiation process will establish parameters – currently at Section II Paragraphs B and C – where major changes must still be accomplished by formal amendment, but minor changes such as the ones mentioned here can be accomplished by use of a change form located at Appendix CR of the draft of the new Contract agreement. This form captures the relevant information between information between the parties and allows DCJS to determine if the changes can be handled in this expedited manner without the process of OSC preapproval. ALL changes will still be sent to OSC. Use of this method is limited to changes in pricing not to exceed ten percent.

3. Inclusion of new "termination language" to strengthen the ability of DCJS to end the agreement and effectuate necessary transition services. This is a public safety agreement and, therefore, it is imperative that contractual services incorporate provisions which address law enforcement traffic safety concerns and holds offenders accountable. The services provided are critical to law enforcement and this new language better ensures continuity of service delivery, especially law enforcement notification of operators who may be inebriated in

order to safeguard the public from injuries and/or death as well as property damage. Appropriate data reporting of test failures and/or omissions will help monitors enforce ignition interlock compliance and collaborate with other law enforcement to achieve successful prosecution of criminal behavior where circumstances warrant further action.

DCJS strengthened contractual termination language to include provisions related to additional state rights and remedies. It recognizes DCJS's right to suspend or terminate the agreement in whole or in part, demand corrective action, proceed against the Standby Letter of Credit, pursue equitable remedies to compel performance, and/or exercise other rights. If there is termination to ensure continuity of service delivery to the criminal justice system and the best interests of NYS and Public Safety, it further recognizes that the State in its sole judgment may procure services from another acceptable Contractor services to the defaulting Contractor's customers, and/ pursue any other action(s) provided by law or in equity for remedies, and for administrative costs incurred by NYS in procuring and/or transitioning and monitoring alternate services. See Section VI of the agreement.

Specific transition service delivery provisions have been added to better enhance public safety and to protect the State's interest. Features include submission and final NYS approval of a transition plan, transferring all leasing rights, or license rights as necessary to allow for timely de-installation, turning over pertinent data files and documentation to Ignition Interlock monitors relative to customers subject to Ignition Interlock devices, ensuring installation/service providers act expeditiously to facilitate a seamless transition of services, that alternate contractors will agree to render services at reduced or waived rates, and that the terminated contractor cannot assert any claims for damages or loss arising out of and in connection with de-installation of their devices and cannot claim any charges or costs with respect to de-installation upon any driver or vehicle owner.

Grounds for cancellation, suspension, and revocation of contractor, qualified manufacturers, installation/service providers, and certified ignition interlock devices were further strengthened and among provisions added were general language as to vendor responsibility and DCJS' discretionary right to suspend or terminate work for vendor non-responsibility. The new vendor responsibility language is consistent with the April 3, 2013 written communication from the Secretary to the Governor to State agencies.

- 4. Implementation of a Standby Letter of Credit to provide funding in the event that it becomes necessary to implement changes to a new vendor and/or cellular provider.**

This requirement was extensively researched and discussed within DCJS. Performance Bonds have fallen out of favor as a recommended practice since an affected agency would have to likely wind up suing the Bond Company. This has become an issue for us because one of the first seven original contract vendors has had severe financial problems and appears to have been diverting cash flow from paying the monthly cellular service charges which provided real time data telemetry reporting services. Any lapse or failure of such timely cellular service notification can jeopardize law enforcement personnel in taking swift action to locate the operator and dispatch nearby law enforcement to prevent further driving by such operator and such other action to hold the offender accountable. In such an event cash is needed immediately not when a lawsuit is settled months or years later.

The failure of one vendor and the need to transition some 500 operator to a new cellular provider can be catastrophic. Fortunately when DCJS was recently faced with such a predicament, our agency had established relationships with certain other vendors who agreed to waive or reduce costs to operators in need of replacement IIDs. There is no assurance that costs would be satisfactorily contained should this occur again and transition costs should not be borne upon the operator customer, local and/or State Government, or other vendors if feasible.

It is apparent that the profit margins on these devices can be substantial. These devices can rent for \$110-120 dollars per month and de-installation and installation is typically \$100 for each separate service. The cellular telemetry service costs about \$11 per month, and the cost of the device is approximately \$1,000. These numbers can vary by manufacturer, but DCJS believes that there is a sufficient gross margin available. It should be noted that recently DCJS approved an approximate 10% increase in maximum prices on pricing originally approved just three years ago.

New York is not the first state to use a surety and we have found that some states use performance bonds. While performance bonds cost manufacturers with reasonable credit a relatively low interest rate, when there is an incident, and the bond is called, the Bonding Company's investigation takes time, there is often a dispute mechanism, and if successful, payments occur slowly. When there is an incident with a manufacturer, DCJS does not have time to wait for monies to continue service delivery without disruption. The SLOC is not punitive in any way. It is valued based on what DCJS believes from actual experience with a failed vendor that it will cost us to make a transition from failed vendor to new provider.

The specific cost of a SLOC to a vendor depends on the business' credit rating. Most of these manufacturers have sufficiently good relationships with their banks that they can pledge an existing credit line or open a new one or use other types of collateral for securing the SLOC. We have advised the vendors of this requirement. Only one has asked that they be able to substitute a performance bond because apparently their bank requires dollar for dollar collateral. The primary reason for this requirement is to provide funds in the event we need to transition to another vendor. This amount will offset costs associated with de-installation and new installation, cellular service continuity, shipping

costs, and administrative costs incurred by monitors and DCJS in carrying out transition activities. See Section IV of the agreement. DCJS has established a graduated SLOC based upon number of IIDs a Qualified Manufacturer has to address the affordability issues raised with a set higher dollar amount for all regardless of number of IIDs installed. Vendors with 500 or more Ignition Interlock Devices (IIDs) installed must maintain a SLOC in the amount of \$200,000. If the Vendor's installed base is less than 500 the SLOC amount drops to \$100,000. Procedures will be implemented to monitor the number of IID's.