



ALBANY COUNTY LEGISLATURE  
HAROLD L. JOYCE OFFICE BUILDING  
112 STATE STREET, ROOM 710  
ALBANY, NEW YORK 12207  
(518) 447-7168 - FAX (518) 447-5695  
WWW.ALBANYCOUNTY.COM

SEAN E. WARD  
CHAIRMAN

PAUL T. DEVANE  
CLERK

## AGENDA

### LAW COMMITTEE

OCTOBER 13, 2016

1. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION AND AN AGREEMENT REGARDING THE MOTOR VEHICLE THEFT AND INSURANCE FRAUD PREVENTION PROGRAM
2. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION AND AN AGREEMENT REGARDING THE CRIMES AGAINST REVENUE PROGRAM
3. AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION AND AN AGREEMENT WITH THE NYS DIVISION OF CRIMINAL JUSTICE SERVICES REGARDING THE AID TO PROSECUTION PROGRAM

1



P. DAVID SOARES  
DISTRICT ATTORNEY

COUNTY OF ALBANY  
OFFICE OF THE DISTRICT ATTORNEY  
COUNTY COURT HOUSE  
ALBANY, NEW YORK 12207  
(518) 487-5460  
(518) 487-5093 - FAX

DAVID M. ROSSI  
CHIEF ASSISTANT DISTRICT ATTORNEY

CHERYL K. FOWLER  
DEPUTY CHIEF ASSISTANT DISTRICT  
ATTORNEY

September 13, 2016

F. Patrick Jeffers, Majority Counsel  
Majority Counsel, Albany County Legislature  
112 State Street, Rm. 700  
Albany, N.Y. 12207

Arnis Zilgme, Minority Counsel  
Albany County Legislature  
112 State Street, Rm. 1360  
Albany, N.Y. 12207

Dear Sirs:

I am requesting legislative action to further the mission of the Office of the Albany County District Attorney. The attached resolution seeks permission to:

- Apply for and accept funding from the New York State Division of Criminal Justice Services for the Motor Theft and Insurance Fraud Program;
- Apply for and accept funding from the New York State Division of Criminal Justice Services for the Crimes Against Revenue Program; and
- Apply for and accept funding from the New York State Division of Criminal Justice Services for the Aid to Prosecution Program

Attached is the request for legislative action and supporting documents. If you have any questions, please feel free to contact me at 275-4706.

Thank you for your assistance.

Sincerely,

P. David Soares  
Albany County District Attorney

<b>FOR COUNSEL USE ONLY</b>	
_____	
Date Received:	<u>9-14-16</u>
Received By :	<u>PM</u>
Method: Hand:	_____
Courier:	<input checked="" type="checkbox"/> _____
Mail :	_____

**REQUEST FOR LEGISLATIVE ACTION**

**DATE:** September 13, 2016

**DEPARTMENT:** Office of the District Attorney

Contact Person: Heather Orth

Telephone: 275-4704

Dept. Representative Attending  
Committee Meeting: District Attorney David Soares and/or Heather Orth

**PURPOSE OF REQUEST:**

Adopting of Local Law	_____
Amendment of prior Legislation	_____
Approval/Adoption of Plan/Procedure	_____
Bond Approval	_____
Budget Amendment (See Below)	_____
Contract Authorization (See below)	<u>X</u>
Environmental Impact	_____
Home Rule Request	_____
Property Conveyance	_____
Other: (State briefly if not listed above)	<u>X Permission to submit an application for state funds</u>

**CONCERNING BUDGET AMENDMENTS**

**STATE THE FOLLOWING:**

Increase Account/Line No. \_\_\_\_\_

Source of Funds: \_\_\_\_\_

Title Change: \_\_\_\_\_

**CONCERNING CONTRACT AUTHORIZATION**

**STATE THE FOLLOWING: N/A**

**TYPE OF CONTRACT**

Change Order/Contract Amendment	_____
Purchase (Equipment/Supplies)	_____
Lease (Equipment/Supplies)	_____
Requirements	_____
Professional Services	_____
Education/Training	_____
Grant	_____
New	_____
Renewal	<u>X</u>
Settlement of a Claim	_____
Release of Liability	_____
Other: (State briefly)	_____

**CONCERNING CONTRACT AUTHORIZATION (Cont'd)**

**STATE THE FOLLOWING :N/A**

Contract Terms/Conditions:

Party (Name/Address):

Division of Criminal Justice Services, Office of Program Development and Funding,  
80 South Swan Street, NY 12207

Amount/Raise Schedule/Fee: \_\_\_\_\_

Term: January 1, 2017 – December 31, 2017

Scope of Services: These funds will support the Motor Vehicle Theft and Insurance Fraud  
Prevention program.

**Contract Funding:**

Anticipated in Current Budget: Yes Yes X No \_\_\_\_\_

Funding Source: State Funds

County Budget Accounts

Revenue: A31165.0.3498

Appropriation: A91165, 22050, 44039, 12010; 89010; 89030; 89060

Bond (Res.No. & Date of Adoption) \_\_\_\_\_

**CONCERNING ALL REQUESTS:**

Mandated Program/Service: Yes \_\_\_\_\_ No X \_\_\_\_\_

If Mandated Cite: Authority \_\_\_\_\_

Anticipated in Current Adopted Budget: Yes X No \_\_\_\_\_

If yes indicate Revenue/Appropriation Account: A31165.0.3498

A91165 22050, 44039, 12010; 89010; 89030; 89060

**Fiscal Impact - Funding: (Dollars or Percentages)**

Federal \_\_\_\_\_

State \$65,825

County \_\_\_\_\_

Term/Length of Funding One Year

Other Reimbursement: \_\_\_\_\_

**Previous Requests for Identical or Similar Action:**

Resolution /Law Number 16-15

Date of Adoption: February 9, 2016

**Justification: (State briefly why legislative action is requested)**

This resolution is requested to provide the authority to apply, accept and enter into the contract with the Department of Criminal Justice Services for the Motor Vehicle Theft and Insurance Fraud Prevention Program.

**Back-up Material Submitted:** Grant Award Letter, and Resolution 16-15.

Submitted By: Heather Orth

Title: Confidential Assistant to the District Attorney

INSTRUCTION SHEET FOR CONTRACT DEVELOPMENT OF THE MVTIFP AWARDS -  
August 2016

The 2016-2017 award will be processed as a renewal of your 2015-2016 MVTIFP contract and will appear in GMS as an amendment to that contract. Please note and/or complete the following within 30 days of receiving this notice to further facilitate the development of your contract:

- Reporting deadlines for both program and fiscal reports are due 30 days after the end of each calendar quarter.
- Ensure that all prior year contracts are in compliance with contract conditions (up-to-date progress reports, vouchers, fiscal cost reports and detailed itemization forms).
- Grantees receiving in excess of \$25,000 must submit:
  - Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS- 3301)
  - Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309)

All of these forms can be located at:

<http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>

- Grantees receiving in excess of \$250,000 must also submit the Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300).

This form can be located at: <http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>

- Vendor Prequalification: Prequalification is required prior to contract approval for all Not-for-Profit organizations. To review your documentation status, please go to the Grants Reform website at <http://www.grantsreform.ny.gov/grantees>.
  - Vendor Responsibility: Not-for-Profit organizations that are receiving an award of \$100,000 or greater are required to complete an *updated* Vendor Responsibility Questionnaire on-line. The questionnaire and additional information are available on the NYS OSC website at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm).
  - Charities Registration: Not-for-Profit organizations must ensure that their filing status is up to date with the Charities Bureau of the NYS Attorney General's Office. Requirements may be obtained at <http://www.charitiesnys.com/home.jsp>.
  - Proof of Workers Compensation **and** proof of Disability Insurance are required for all Not-for-Profit entities. Both of these insurance documents must list DCJS as the certificate holder. Please attach a copy of these two documents to your contract record in GMS.
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**Division of Criminal  
Justice Services**

**ANDREW M. CUOMO**  
Governor

**MICHAEL C. GREEN**  
Executive Deputy Commissioner

September 1, 2016

The Honorable David Soares  
Albany County District Attorney  
County Judicial Center  
6 Lodge St.  
Albany, NY 12207

**Re: 2016 Motor Vehicle Theft and Insurance Fraud  
Prevention Program  
Project ID # MV15-1022-D01**

Dear District Attorney Soares:

I am pleased to announce that the Albany County District Attorney's Office will receive a grant award in the amount of \$65,825 from the Motor Vehicle Theft and Insurance Fraud Prevention (MVTIFP) program for the contract period beginning January 1, 2017 to December 31, 2017. This award will be processed as a renewal of your current MVTIFP grant contract.

Please see the attached *Contract Instruction Sheet* for additional information and note that items are required within 30 days of receiving this letter to further facilitate the development of your contract.

Should you have any questions, please contact Joann Tierney-Daniels at (518) 457-8404 or by email at [Joann.Tierney-Daniels@dcjs.ny.gov](mailto:Joann.Tierney-Daniels@dcjs.ny.gov). Congratulations on your award. We look forward to working with you on this important project.

Very truly yours,

A handwritten signature in black ink that reads "Michael C. Green".

Michael C. Green  
Executive Deputy Commissioner

MCG:jtd:kaf  
Attachment (1)

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<b>FOR COUNSEL USE ONLY</b>	
_____	
Date Received:	<u>9-14-16</u>
Received By :	<u>PAE</u>
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Courier:	<u>✓</u>
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**REQUEST FOR LEGISLATIVE ACTION**

**DATE:** September 13, 2016

**DEPARTMENT:** Office of the District Attorney

Contact Person: Heather Orth

Telephone: 275-4704

Dept. Representative Attending  
Committee Meeting: District Attorney David Soares and/or Heather Orth

**PURPOSE OF REQUEST:**

Adopting of Local Law	_____
Amendment of prior Legislation	_____
Approval/Adoption of Plan/Procedure	_____
Bond Approval	_____
Budget Amendment (See Below)	_____
Contract Authorization (See below)	<u>X</u>
Environmental Impact	_____
Home Rule Request	_____
Property Conveyance	_____
Other: (State briefly if not listed above)	<u>X Permission to submit an application for state funds</u>

**CONCERNING BUDGET AMENDMENTS**

**STATE THE FOLLOWING:**

Increase Account/Line No. \_\_\_\_\_

Source of Funds: \_\_\_\_\_

Title Change: \_\_\_\_\_

**CONCERNING CONTRACT AUTHORIZATION**

**STATE THE FOLLOWING: N/A**

**TYPE OF CONTRACT**

Change Order/Contract Amendment	_____
Purchase (Equipment/Supplies)	_____
Lease (Equipment/Supplies)	_____
Requirements	_____
Professional Services	_____
Education/Training	_____
Grant	_____
New	_____
Renewal	<u>X</u>
Settlement of a Claim	_____
Release of Liability	_____
Other: (State briefly)	_____

**CONCERNING CONTRACT AUTHORIZATION (Cont'd)**

**STATE THE FOLLOWING :N/A**

Contract Terms/Conditions:

Party (Name/Address):

Division of Criminal Justice Services, Office of Program Development and  
Funding, Alfred E. Smith Building, 80 S. Swan Street. Albany NY 12210

Amount/Raise Schedule/Fee: \_\_\_\_\_

Term: January 1, 2017 – December 31, 2017

Scope of Services: These funds will support the Crimes Against Revenue Program.

**Contract Funding:**

Anticipated in Current Budget: Yes Yes X No \_\_\_\_\_

Funding Source: State Funds

County Budget Accounts

Revenue: A31165.0.3335

Appropriation: A91165 12010; 89010; 89030; 89060

Bond (Res.No. & Date of Adoption) \_\_\_\_\_

**CONCERNING ALL REQUESTS:**

Mandated Program/Service: Yes \_\_\_\_\_ No X

If Mandated Cite: Authority \_\_\_\_\_

Anticipated in Current Adopted Budget: Yes X No \_\_\_\_\_

If yes indicate Revenue/Appropriation Account: A31165.0.3335

A91165 19954; 44046; 22050; 44039; 12010; 89010;  
89030; 89060

**Fiscal Impact - Funding: (Dollars or Percentages)**

Federal \_\_\_\_\_

State \$286,700

County \_\_\_\_\_

Term/Length of Funding One Year

Other Reimbursement: \_\_\_\_\_

**Previous Requests for Identical or Similar Action:**

Resolution /Law Number 15-130

Date of Adoption: 4/13/2015

**Justification: (State briefly why legislative action is requested)**

This resolution is requested to provide the authority to apply, accept and enter into the contract with the Department of Criminal Justice Services for the Crimes Against Revenue Program.

**Back-up Material Submitted:** Grant Award Letter, Certification, MOU and Resolution 15-130.

Submitted By: Heather Orth

Title: Confidential Assistant to the District Attorney



**Division of Criminal  
Justice Services**

**ANDREW M. CUOMO**  
Governor

**MICHAEL C. GREEN**  
Executive Deputy Commissioner

August 26, 2016

The Honorable David Soares  
Albany County District Attorney  
County Justice Building  
Albany, NY 12207

**Re: 2016 Crimes Against Revenue Program (CARP)**  
**Contract Number: C444446**

Dear District Attorney Soares:

I am pleased to announce that the Albany County District Attorney's Office will receive a grant award in the amount of \$286,700 from the Crimes Against Revenue Program (CARP) for the contract period beginning January 1, 2017 to December 31, 2017. The CARP program is administered jointly by the NYS Division of Criminal Justice Services (DCJS) and the NYS Department of Taxation and Finance (DTF). This award will be processed by DCJS as a renewal of your current CARP grant contract.

Please see the attached *Contract Instruction Sheet* for additional information and note that items are required within 30 days of receiving this letter to further facilitate the development of your contract.

Should you have any questions, please contact Joann Tierney-Daniels at (518) 457-8404 or by email at [Joann.Tierney-Daniels@dcjs.ny.gov](mailto:Joann.Tierney-Daniels@dcjs.ny.gov). Congratulations on your award. We look forward to working with you on this important project.

Very truly yours,

A handwritten signature in black ink that reads "Michael C. Green".

Michael C. Green  
Executive Deputy Commissioner

MCG:jtd:kaf

Attachment (3)



**Division of Criminal  
Justice Services**

**Department of  
Taxation and Finance**

**ANDREW M. CUOMO**  
Governor

**MICHAEL C. GREEN**  
Executive Deputy Commissioner

**JERRY BOONE**  
Commissioner

August 26, 2016

The Honorable David Soares  
Albany County District Attorney  
County Justice Building  
6 Lodge Street  
Albany, NY 12207

Dear District Attorney Soares:

Thank you for your office's partnership with the Department of Taxation and Finance (DTF) and the Division of Criminal Justice Services (DCJS) in administering the State's Crimes Against Revenue Program (CARP), through which your office received a 2016 grant award of \$286,700. We write this letter to inform you of our thoughts on how we intend to assess CARP grantee performance during the next CARP grant solicitation (i.e., Request for Proposals (RFP) process), which we expect to take place two years from now.

The purpose of the CARP program is to facilitate the investigation and prosecution of those who commit crimes that result in the loss of State revenues, such as criminal failure to pay tax obligations associated with both legal and illegal activities. The program's primary goals include the specific and general deterrence of such revenue related crimes and the payment of restitution to the State of New York. CARP is a self-sustaining program, funded by proceeds from prosecutions that result in tax revenues, fines, and restitution being returned to the State.

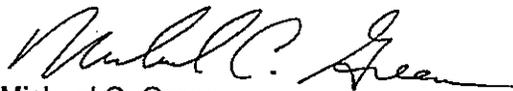
As with the RFP issued last year to determine 2016 CARP grant recipients and amounts, eligibility and performance evaluation criteria for future CARP RFPs will strongly emphasize historic revenue generation by individual applicants, more stringently comparing prior grant funding to CARP revenue generation. For your reference, the most recent CARP revenue report is attached, which reflects the most up to date eligible revenue collected by grant recipients, as of June 30.

Each individual grantee's prior program performance will also be assessed in future RFPs based on the achievement of contract work plan goals and performance measures, as indicated by the qualitative and quantitative data included in Quarterly Progress Reports and CARP Quarterly Program Summary Worksheets that are regularly submitted through the DCJS grants management system (GMS). Of course, each grantee's prosecution of cases that have significant indirect value beyond revenue collection will also be considered. Such cases may include, for example, prosecutions of corrupt tax preparers. Finally, compliance with grantees' Memorandum of Understanding with DTF will also be considered in the performance assessment process.

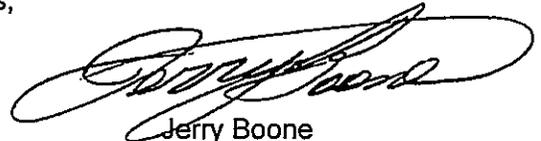
In the interest of directly supporting grantee efforts to improve or sustain strong CARP program performance, in October DTF and DCJS will again co-host an annual CARP Symposium. This will provide an opportunity to review and discuss promising practices being used by CARP grantees and DTF to successfully investigate and/or prosecute CARP cases, and other potential means by which DTF and/or DCJS might assist CARP grantees in improving their CARP program performance. In the meantime, you should feel free to contact DTF or DCJS with any CARP related questions or suggestions you may have.

DTF and DCJS remain deeply committed to the continued success of the Crimes Against Revenue Program. We believe significant opportunities exist to increase not just the number of revenue crime cases that can be jointly developed by DTF and CARP grantees, but also to advance the type of cases that support the State's overall objectives of tax compliance and fairness. We look forward to our continued collaboration on this important initiative and to seeing you at the October symposium.

Very truly yours,



Michael C. Green  
Executive Deputy Commissioner



Jerry Boone  
Commissioner

Attachment (1)

## INSTRUCTION SHEET FOR CONTRACT DEVELOPMENT OF THE CARP AWARDS

August 2016

The 2016 CARP award will be processed as a renewal of your 2015-2016 CARP contract and will appear in GMS as an amendment to that contract. Please note and/or complete the following within 30 days of receiving this notice to further facilitate the development of your contract:

- Reporting deadlines for both program and fiscal reports are due 30 days after the end of each calendar quarter.
- Ensure that all prior year contracts are in compliance with contract conditions (up-to-date progress reports, vouchers, fiscal cost reports and detailed itemization forms).
- Grantees receiving in excess of \$25,000 must submit:
  - Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS- 3301)
  - Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309)

All of these forms can be located at:

<http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>

- Grantees receiving in excess of \$250,000 must also submit the Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300).

This form can be located at: <http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>

- Vendor Responsibility: Not-for-Profit organizations that are receiving an award of \$100,000 or greater are required to complete an *updated* Vendor Responsibility Questionnaire on-line. The questionnaire and additional information are available on the NYS OSC website at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm).
  - Memorandum of Understanding Between the New York State Department of Taxation and Finance and the District Attorney's Office
  - Crimes Against Revenue Program Certification: Awardees must file an annual certification to DCJS attesting that all personnel supported by this grant will work on CARP activities for the percentage of time that is commensurate with the portion of their salary that is budgeted to be supported by the CARP contract.
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# Division of Criminal Justice Services

## CRIMES AGAINST REVENUE CERTIFICATION

By signing the certification at the bottom of this document, the grantee agrees that CARP funds will be used to supplement<sup>1</sup>, and not supplant, existing funds and services, and that all personnel supported by this contract will work on CARP activities for the percentage of time that is commensurate with the portion of their salary that is paid by this grant.

Please answer the following questions:

- ✓ How many positions (including full- and part-time positions and consultants) will be supported under this grant (total)? \_\_\_\_\_
- ✓ How many of these positions were supported under your most recent CARP contract? \_\_\_\_\_
- ✓ How many of these positions will be used:
  - a) to hire new, additional people (including to fill existing vacancies that are no longer funded in your agency's budget) \_\_\_\_\_
  - b) to rehire people who have already been laid off (by January 1, 2017) as a result of state, local, or federal budget reductions \_\_\_\_\_
  - c) to rehire people who are (by January 1, 2017) currently scheduled to be laid off on a specific future date as a result of state, local, or federal budget reductions \_\_\_\_\_
  - d) to continue the same CARP staff currently funded under the last contract \_\_\_\_\_

"I certify that all funds received under this contract will not be used to supplant state, local or federal funds, but will be used to increase the amounts of such funds that would, in the absence of state funds, be made available for CARP activities. Furthermore, daily time records will be maintained for each individual paid under this contract, documenting the percentage of their time devoted to CARP activities."

\_\_\_\_\_  
*Signature*

### **1 What is Supplanting?**

**General Definition.** For a unit of local government to reduce local or federal funds for an activity specifically because state funds are available (or expected to be available) to fund that same activity. State funds must be used to supplement existing state, local or federal funds for program activities and may not replace state, local or federal funds that have been appropriated or allocated for the same purpose. In those instances where a question of supplanting arises, the grantee will be required to substantiate that the reduction in non-state resources occurred for reasons other than the receipt or expected receipt of state funds.

As a practical matter, the non-supplanting requirement means that all positions supported under this grant that were not paid for under the previous CARP contract must either be new hires (on or after the official contract start date); rehires of people who have already been laid off prior to the effective date of this contract; or rehires of people who are (at the start date of the contract) currently scheduled to be laid off on a future date as a result of state, local, or federal budget cuts.



**Memorandum of Understanding Between the  
New York State Department of Taxation and Finance  
and the County District Attorney's Office**

This agreement ("MOU") by and between the **New York State Department of Taxation and Finance** ("DTF") and the \_\_\_\_\_ **County District Attorney's Office** (the "DA's Office") is to be effective as of the date signed by both parties.

**WHEREAS**, the State of New York ("State") and DTF share with the District Attorney's Office a strong interest in robust enforcement of the tax laws, effective deterrence so as to increase voluntary compliance with those laws, and the recovery of revenues properly due the State and other units of government; and

**WHEREAS**, the State has, through its Division of Criminal Justice Services ("DCJS"), offered a contract and grant award to the DA's Office (the "grant") under the Crimes Against Revenue Program ("CARP") for the period from on or about January 1, 2017 to December 31, 2017; and

**WHEREAS**, the DA's Office has sought to accept that offer and has applied for the grant through the DCJS Grants Management System, and it is a condition of the grant, as set forth in the contract, that the DA's Office enter into this MOU with DTF;

Now, **THEREFORE**, DTF and the DA's Office hereby agree as follows:

**I. Purpose and principles**

This agreement is intended to set forth roles and responsibilities, as between the parties, with respect to the investigation and prosecution of tax crimes and other fraud that can adversely affect government revenues. The prosecutorial function is the responsibility of the DA's Office, as dictated by the Constitution and laws of this State. The parties to this MOU recognize and acknowledge that the District Attorney's responsibility and discretion to prosecute crimes in \_\_\_\_\_ County, as derived from the Constitution and laws of this State, remain unaffected by any provision in this MOU, and that DTF cannot require the DA's Office to exercise its prosecutorial discretion in any particular way. However, the DA's Office, by accepting the grant and entering into this MOU, agrees to abide by the terms thereof, and acknowledges and agrees that non-compliance with those terms may result in diminution or denial of grant funds to be provided.

**II. Definitions of terms**

- A. "Referral" shall mean a request by the Commissioner of DTF, or by an authorized designee on behalf of the Commissioner, that in a particular matter, the DA's Office institute an action or proceeding relating to allegations of violations of the tax laws or tax obligations.
- B. "Prosecutor's Request" shall mean a written request by a prosecutor in the DA's Office that DTF make a Referral to the DA's Office in a particular matter.

- C. "Tax crime" shall mean any crime defined in the Tax Law, and also any crime arising from violation of obligations under the Tax Law.

### III. Liaison

Each party will designate a member of its legal staff to serve as the primary liaison with the other party, and will notify the other party as to any changes in its designated liaison.

### IV. Prosecutors' requests

- A. The DA's Office shall direct each Prosecutor's Request to the DTF liaison, with a copy to the relevant district office of the Criminal Investigations Division of DTF.
- B. A Prosecutor's Request should include reasons to believe that it would be appropriate for the DA's Office to investigate or prosecute one or more tax crimes, and a representation that such information will in fact be used to investigate at least one potential tax crime for possible prosecution.
- C. Before issuing a grand jury subpoena to DTF, the DA's Office will, unless impracticable, first try to obtain the desired records by Prosecutor's Request, and will allow a reasonable amount of time for DTF to act upon that Prosecutor's Request.
- D. DTF shall make good faith efforts -- upon the receipt of sufficient information to reach a determination -- to answer a Prosecutor's Request (by making a Referral or a denial of such request) with reasonable promptness.

### V. Judicial process

- A. When the DA's Office serves a grand jury subpoena for tax information from DTF, the DA's Office shall include therewith a certification that the subpoena may lawfully require production of the information sought. For example, a subpoena seeking a personal income tax return or portion thereof should include or be accompanied by a certification that in accordance with Tax Law §697(e)(2), the grand jury investigation in question is one under the provisions of article 22 of the Tax Law, and the materials sought are directly involved in and pertinent to such investigation.
- B. Grand jury subpoenas for tax information from DTF should have return dates far enough in the future so that production of responsive materials will not be unduly burdensome. Unless extraordinary circumstances require otherwise, return dates should allow at least two weeks for production in a routine case and correspondingly longer if the matter is more extensive or complicated.
- C. When the DA's Office intends that a DTF employee actually appear in person to testify in response to a grand jury subpoena, the DA's Office, when serving the subpoena, shall provide separate written notice of that requirement.

## VI. Referrals

- A. When DTF intends to refer a matter for investigation or prosecution by the DA's Office, then when feasible and appropriate, DTF will, before making an arrest in that matter:
1. Make a Referral of that matter to the DA's Office at least two weeks prior to arrest; provide relevant tax returns to the DA's Office; and make DTF staff available to meet with the DA's Office to provide further information and assistance. In determining the appropriateness and timing of prior Referral, DTF may consider the simplicity of a matter, any urgency, the preferences of the DA's Office, and other factors. In more complex matters, DTF will seek to provide Referrals further in advance. In some matters, such as "sweeps" of vendors selling goods subject to sales tax who do not have a certificate of authority, and routine excise tax enforcement (including arrests resulting from retail inspections, vehicle stops and street encounters), there is no presumption that there will be a Referral prior to arrest.
  2. Consult with the DA's Office about how the arrests will be made, including which agency, or agencies jointly, should be responsible for making them. The parties recognize that circumstances can vary from case to case, and the availability of resources can vary from time to time, so there is no general presumption that arrests should be made by any one agency to the exclusion of others. In cases in which DTF ultimately determines that it will make an arrest, it will try to provide advance notice of such arrest to the DA's Office to the extent feasible and appropriate under the circumstances of the case.
  3. In good faith consider any general preferences that have been expressed by the DA's office as to procedures for Referrals and arrests, and any concerns expressed by the DA's Office in the particular matter, including concerns as to factual or legal issues and concerns as to time limits under the Criminal Procedure Law.
- B. The DA's Office will timely communicate any decision to decline prosecution of any case referred by DTF, and upon request by DTF will provide the rationale of such decision so that DTF may explore alternative methods of enforcement. The DA's Office shall typically inform DTF within three months after a Referral, or earlier, as to whether or not it intends to proceed with the Referral. Proceeding with the Referral means further investigating the facts by if necessary and prosecuting the case if appropriate.

## VII. Assistance

- A. The DA's Office may, either before or after charges are filed in a particular tax matter, make requests for DTF assistance in that matter (including the designation of a DTF lawyer as a Special Assistant District Attorney) to the DTF liaison or to the relevant district office of the Criminal Investigations Division of DTF.
- B. When assistance is requested, DTF will try to make a prompt response as to whether it will provide the requested assistance.

## VIII. Dispositions

In tax cases, DTF represents the victim of the crime and should receive the same consideration as other crime victims. Prior to resolving a tax case, the DA's Office shall confer with DTF and give DTF notice of any proposed resolution. This will help ensure that appropriate restitution is ordered, collected, and directed to the victim, and that there is appropriate consideration of global settlement (that is, of both the defendant's criminal and civil tax liabilities) and whether there should be additional settlement terms to insure future tax compliance. In addition, DTF shall be considered a "victim" as that term is defined in CPL section 380.50(2). The DA's Office recognizes that only DTF can settle the defendant's civil tax liability, and any disposition that purports to resolve the defendant's total tax liability requires the consent of DTF.

Unless there is a global settlement, the DA's Office will place language on the record and in any plea agreement specifically stating that the plea and sentence does not resolve the defendant's total tax liability and DTF may pursue other remedies including, in the case of Sales Tax matters, the suspension and/or revocation any Certificate of Authority.

In tax cases, the District Attorney's offices will endeavor to obtain a plea to a Tax Crime.

## IX. Coordination

- A. Regular and open communication between the DA's Office and DTF is an essential component of this agreement. Signatories must honor reasonable requests to confer.
- B. To maximize a collaborative working relationship between DTF and the DA's Office, the parties will meet monthly or as otherwise agreed to discuss matters of mutual interest including cases referred by DTF to the DA's Office.
- C. Provide quarterly revenue collection documentation on eligible non-tax cases to DTF.

## X. CARP

- A. The DA's Office will comply with all the conditions of the grant, including the work plan.
- B. The District Attorneys will assist DTF to develop and implement an effective enforcement strategy in order to detect, prosecute and deter revenue crimes.
- C. The District Attorneys will undertake appropriate investigations of allegations at the request of DTF.
- D. The District Attorneys will maintain effective coordination and cooperation with DTF in the investigations and prosecution of revenue crimes.
- E. The DA's Office will regularly communicate to DTF as to its efforts to investigate and prosecute tax crimes, and information as requested, to help DTF assess compliance with this MOU and the performance of the DA's Office under the grant.

- F. Performance under the grant will be measured by an assessment of a variety of factors reflecting efforts to investigate and prosecute revenue crimes during the grant period. The recovery of monetary restitution, while an important consideration, is only one factor to be considered.

XI. Public information

- A. The parties recognize the importance of deterring tax crimes, and other frauds against the government, through successful, appropriate and well-publicized prosecutions.
- B. Either party may issue news releases in any matter. The parties recognize that it is ordinarily the best practice for the parties to confer and cooperate as to whether releases should be issued, and by whom, or whether to join in a single release.

XII. Amendment

This MOU may be amended only in writing and by the agreement of both parties hereto. This MOU supersedes any prior MOU between the parties on the same subjects. The MOU shall continue in effect, as amended from time to time, until and unless a party hereto gives the other party written notice that the MOU shall be terminated on a specified date at least thirty days after the date of such notice.

\_\_\_\_\_  
District Attorney

\_\_\_\_\_ County

Dated: \_\_\_\_\_, 201

\_\_\_\_\_  
Jerry Boone  
Commissioner  
Department of Taxation and Finance

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FOR COUNSEL USE ONLY

Date Received: 9-14-16  
Received By: AM  
Method: Hand: \_\_\_\_\_  
Courier:   
Mail: \_\_\_\_\_

**REQUEST FOR LEGISLATIVE ACTION**

**DATE:** September 13, 2016

**DEPARTMENT:**

Contact Person: Heather Orth  
Telephone: 275 4704  
Dept. Representative Attending  
Committee Meeting: Heather Orth and/or David Soares, District Attorney

**PURPOSE OF REQUEST:**

- Adoption of Local Law \_\_\_\_\_
- Amendment of Prior Legislation \_\_\_\_\_
- Approval/Adoption of Plan/Procedure \_\_\_\_\_
- Bond Approval \_\_\_\_\_
- Budget Amendment (See below) \_\_\_\_\_
- Contract Authorization (See below) X
- Environmental Impact \_\_\_\_\_
- Home Rule Request \_\_\_\_\_
- Property Conveyance \_\_\_\_\_

Other: (State briefly if not listed above) X Authorization to submit an application and accepts funds from the NYS Division of Criminal Justice Services to continue the Aid to Prosecution Program.

**CONCERNING CONTRACT AUTHORIZATION (Cont'd)**

**STATE THE FOLLOWING:**

Contract Terms/Conditions:

Party (Name/Address):  
NYS DCJS  
80 South Swan Street  
Albany, NY 12210

Amount/Rate Schedule/Fee:  
\$126,100

Term: 10/1/16 – 9/30/17

Scope of Services: Funds will be used to enhance the prosecution of repeat violent and serious felony offenders

Contract Funding:

Anticipated in Current Budget: Yes X No \_\_\_\_\_

Funding Source: State Funds

County Budget Accounts:

Revenue: A9116503325  
Appropriation: A91165 12010; 89010; 89030; 89060  
Bond (Res. No. & Date of Adoption) \_\_\_\_\_

**CONCERNING ALL REQUESTS:**

Mandated Program/Service: Yes \_\_\_\_\_ No X

If Mandated Cite: Authority \_\_\_\_\_

Anticipated in Current Adopted Budget: Yes X No \_\_\_\_\_

If yes, indicate Revenue/Appropriation Accounts:

Revenue: A9116503325

Appropriation: A91165 12010; 89010; 89030; 89060

Fiscal Impact – Funding: (Dollars or Percentages)

Federal \_\_\_\_\_

State 100%

County \_\_\_\_\_

Term/Length of Funding 10/1/16 – 9/30/17 - 12 months

Previous Requests for Identical or Similar Action:

Resolution/Law Number: 15-248

Date of Adoption: 7/13/15

Justification: (State briefly why legislative action is requested)

The Office of the District Attorney requests legislative authority to seek funds from NYS DCJS to continue the Aid to Prosecution program.

Back-up Material Submitted: 2015/2016 Aid to Prosecution Award Information, previous resolution.

Submitted By: Heather Orth

Title: Confidential Assistant to the District Attorney



**Division of Criminal  
Justice Services**

**ANDREW M. CUOMO**  
Governor

**MICHAEL C. GREEN**  
Executive Deputy Commissioner

August 25, 2016

The Honorable David Soares  
Albany County District Attorney  
County Justice Building  
6 Lodge Street  
Albany, NY 12207

Dear District Attorney Soares:

The NYS Division of Criminal Justice Services (DCJS) is pleased to advise you of the 2016-2017 Aid to Prosecution (ATP) award to your office in the amount of \$126,100 for the contract period October 1, 2016 to September 30, 2017. As always, this grant is contingent upon the availability of state funds for the entirety of the contract term.

A DCJS Office of Program Development and Funding (OPDF) Program Representative will contact your office to assist in the development of the grant contract. Please see the attached *Contract Instruction Sheet* for additional contract information and note that items are required within 30 days of receiving this letter.

Should you have any questions, please contact Joann Tierney-Daniels at (518) 457-8404 or email at [Joann.Tierney-Daniels@dcjs.ny.gov](mailto:Joann.Tierney-Daniels@dcjs.ny.gov). We look forward to working with your office throughout this year. Thank you for your continued efforts to make New York the safest state in the nation.

Very Truly Yours,

A handwritten signature in black ink that reads "Michael C. Green".

Michael C. Green  
Executive Deputy Commissioner

MCG:jtd:nb  
Attachment – Contract Instruction Sheet



## Division of Criminal Justice Services

### 2016-17 DCJS Office of Program Development and Funding Contract Instruction Sheet

Please note and complete the following information within 30 days of receiving the award letter to further facilitate the development of your contract:

- Ensure all prior year contracts are in compliance with contract conditions (up-to-date progress reports, vouchers, fiscal cost reports and detailed itemization forms).
- Grantees receiving in excess of \$25,000 must submit:
  - Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form (DCJS- 3301)
  - Local Assistance MWBE NPS Discretionary Budget Determination Worksheet (DCJS-3309)

These forms can be located at:

<http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>

- Grantees receiving in excess of \$250,000 must also submit the Local Assistance MWBE Equal Employment Opportunity Staffing Plan (DCJS-3300). This form can be located at:  
<http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm>

#### NOT-FOR-PROFIT GRANTEES ONLY:

- Vendor Prequalification: Prequalification is required prior to contract approval. To review your documentation status, please go to the Grants Reform website at <http://www.grantsreform.ny.gov/grantees>.
  - Vendor Responsibility: Not-for Profit organizations that are receiving an award of \$100,000 or greater are required to complete an *updated* Vendor Responsibility Questionnaire on-line. The questionnaire and additional information are available on the NYS OSC website at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm).
  - Charities Registration: Not-for-Profit organizations must ensure that their filing status is up-to-date with the Charities Bureau of the NYS Attorney General's Office. Requirements may be obtained at <http://www.charitiesnys.com/home.jsp>.
  - Proof of Workers Compensation and Proof of Disability Insurance are required for all Not-for-Profit entities. Both of these insurance documents must list DCJS as the certificate holder. Please attach a copy of these two documents to your contract record in GMS.
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