

**NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS
REQUEST FOR PROPOSALS**

**SERVICES TO SUPPORT THE NYS DEPARTMENT OF AGRICULTURE AND MARKETS
STATE AID TO CONSERVATION DISTRICTS PROGRAM**

INTRODUCTION

The New York State Department of Agriculture and Markets seeks proposals from County Soil and Water Conservation Districts (Districts) in New York State to provide a broad array of services to support the State Aid to Conservation Districts Program. The Program provides reimbursement to Districts for technical assistance, special projects, and performance based activities. The services to support the State Aid to Districts Program will include developing program documents, coordinating the release of program applications, tracking program data and reporting activities pursuant to program goals and objectives.

PROPOSAL SUBMISSION REQUIREMENTS

Proposals *MUST BE RECEIVED* by the Department's Division of Fiscal Management by 4:30 p.m. local time on January 6, 2012.

Proposal Submission Requirements

The cost and technical components must be submitted in separate sealed envelopes. The entire proposal shall be submitted in an envelope that is clearly marked as follows: "Proposal for State Aid." Inside the envelope shall be two (2) separate envelopes which must be identified as follows: 1) Proposer's name, "Proposal for State Aid-Technical Component"; 2) Proposer's name, "Proposal for State Aid – Budget Form."

Submit an original and one (1) copy of your proposal, in a sealed package, to:

Lucy Roberson, Director
Division of Fiscal Management
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Failure to follow the submission instructions may result in the rejection of the proposal. Proposers are solely responsible for insuring the timely delivery of their RFP response. Electronically submitted proposals (e.g. facsimile, e-mail) and proposals received after the deadline will not be accepted.

QUESTIONS CONCERNING THE RFP

All questions about requirements contained in this RFP must be submitted in writing (facsimile or e-mail will be accepted) to:

Brian Steinmuller
Assistant Director
NYS Soil and Water Conservation Committee
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235
E-mail: brian.steinmuller@agriculture.ny.gov
Fax: (518) 457-3412

All questions must be submitted to Mr. Steinmuller by 4:00 p.m. local time on December 23, 2011. Proposers should note that all clarifications are to be resolved prior to the submission of a proposal. A list of questions about the RFP and answers to those questions, as well as any addenda to the RFP, will be posted in the "Funding Opportunities" section of the Department's website, www.agriculture.ny.gov by December 29, 2011. Proposers are urged to check the Department's website frequently for notices of any changes, additions, or deletions to the RFP. If you are unable to access the website, please contact Mr. Steinmuller to arrange for alternate delivery. All questions and answers will become a formal addenda to this RFP.

BACKGROUND AND PURPOSE

Soil and Water Conservation Districts Law section 11-a authorizes the State Committee to provide State Aid to 58 Conservation Districts. Three elements of this aid are:

- Direct reimbursement to Soil and Water Conservation Districts for 50 percent of their eligible expenditures, up to a maximum of \$30,000
- Up to \$6,000 annually in support of local "Conservation Projects"
- Additional resources as available awarded competitively on a performance basis

Currently, the New York State Soil and Water Conservation Committee (State Committee) collects data and information regarding Conservation District accomplishments through the annual State Aid to District solicitation. The services provided pursuant to this RFP will allow the Division to administer the State Aid more effectively and to use the data and information to evaluate the program.

SCOPE OF SERVICES

- Solicit applications and claims for the State Aid to Conservation Districts. This includes collecting, analyzing, and managing conservation project data, and Conservation District financial information.

- Coordinate the delivery of state technical assistance funding for conservation work across the state.
- Coordinate the development and management of annual Conservation District performance measures.
- Document Conservation District activities in the appropriate formats to conservation partners to record shared accomplishments, including coordinating data collection and entering into the relevant NRCS data sets such as Protracts, Toolkit and the Performance Results System (PRS).

To accomplish these tasks, the selected Conservation District (Contractor) will hire and supervise one full time employee who meets one of the following minimum requirements:

a) Two years of work experience in a position that involved:

- Agricultural land use analysis including review of farm operations and farmland resources, analyzing project impact statements, maps, reports, and other information documents; performing on-site investigations; interviewing involved parties, discussing and negotiating alternatives, preparing written assessments, and providing expert testimony on farm resource issues.

Or

- Natural resources conservation management including the design, planning, administration or implementation of soil and water conservation projects, or water quality or nonpoint source abatement and control projects, or soil and water conservation techniques, biodiversity management, or farm resources management practices.

Or

b) A Bachelor's Degree or higher in Agronomy, Soil Science, Soil Conservation, Engineering, Environmental Sciences, Plant Sciences, Biology, Ecology, Forestry, Geography, Urban or Regional Planning, Agricultural Business, Environmental Policy, or related fields.

Or

c) Two years work experience as either a Soil and Water Conservation District Technician, or Manager; Natural Resources Conservation Service (NRCS) District or Resource Conservationist; Farm Service Agency County Executive Director; or Cooperative Extension Agent.

Services will be coordinated with the Assistant Director of the State Committee.

LOCATION

The official workstation will be located at the New York State Soil and Water Conservation Committee office, 10B Airline Drive, Albany, New York. Personnel assigned to this contract will be expected to report to the New York State Soil and Water Conservation Committee office Monday through Friday to perform duties as described in the scope of services.

ELIGIBLE APPLICANTS

Proposals will be considered only from individual N.Y.S. County Soil and Water Conservation Districts.

ELIGIBLE COSTS

Eligible costs consist of salary, fringe benefits, equipment and supplies, administration, and associated costs.

Travel and training costs are set by the Department in the budget.

PROPOSAL CONTENT

The proposer is solely responsible for the content and completeness of the proposal. The Department may request clarification from the proposer regarding items in the proposal.

The proposal shall be organized in the following format (submit original and (1) copy):

Section 1: Technical Proposal

- a) All technical proposals must be submitted on the attached application form (Attachment #3)
- b) Other Required Documents (signed and notarized, if applicable)
 - Signed and Notarized Non-Collusive Bidding Certification (Attachment #5)
 - Offeror's Affirmation of Understanding and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6) (Attachment #6-Form 2)
 - Offeror's Certification of Compliance Pursuant to State Finance Law §139-k(5) (Attachment #6-Form 3)

Submit the technical proposal in a separate sealed envelope labeled as follows: Proposer name, "Proposal for State Aid– Technical Component".

Section 2: Cost Proposal

Cost proposals must be submitted on the attached Budget Form (Attachment #4).

Submit a separate sealed envelope labeled as follows: Proposer's name, "Proposal for State Aid- Budget Form."

Incomplete proposals may be rejected.

SELECTION CRITERIA

The Department will award the contract based on evaluation of all aspects of the project according to the needs of the Department and the best interest of the State. The award will go to the proposer whose proposal provides the best value as determined by the highest score received based upon the selection criteria specified below.

Technical Component (80 points): The Department will evaluate the technical component of the proposal based on the extent of demonstrated experience that qualifies the proposer to complete the scope of work described in this RFP including:

- Experience fulfilling State Aid to Conservation Districts Program requirements.
- Ability to efficiently hire and retain qualified staff for the purposes of carrying out comprehensive conservation projects.
- Experience planning, designing, and implementing a variety of conservation projects on various types of landscapes, including agricultural, municipal, residential, etc.
- Experience holding state contracts specific to State Soil and Water Conservation Committee (State Committee) activities and programs.
- Experience reviewing budget expenditures and program status for verification of payment requests.
- Experience with Federal Farm Bill Programs policies, procedures and tracking systems.
- Experience reviewing program documents for consistency with contract and program rules and expectations.
- Ability to organize overall project development for program activities commensurate with agency goals and guidelines for the initiative.

- Ability to collaborate with Soil and Water Conservation Districts and other local partners to perform comprehensive conservation activities.
- Experience collecting, recording, analyzing, and reporting conservation project accomplishments in various data sets (e.g. Access, Excel, GIS) to document achievements with local and regional watershed initiatives, or statewide and/or federal reporting and tracking systems.

Cost Component (20 points):

The basis for the cost proposal evaluation rankings will be the total cost received from each offeror using the “Budget Form” (Attachment #4). The proposal will be ranked with the lowest cost awarded the maximum total of 20 points. The remaining proposals will be assigned scores based on the following formula:

$$\frac{\text{Low cost}}{\text{Cost being evaluated}} \quad \times \quad 20 \text{ points}$$

After completion of the technical and cost evaluation, a composite score will be assigned to each proposal with the technical score weighted at 80 points and cost score weighted at 20 points. The award will be made to the proposal with the highest composite score.

All proposals submitted in response to this RFP will become the property of the New York State Department of Agriculture and Markets.

TERMS OF AGREEMENT

The Department will award a contract to the successful proposer for a one year term, with the possibility of four additional one year renewals. A copy of the standard clauses that set forth the general terms and conditions required in all contracts awarded by the Department as well as any special conditions that will be required for this contract is attached to this RFP (Attachment #2). The initial contract and subsequent renewals are contingent on availability of funding, and approval of the Department, the Attorney General’s Office and the Office of the State Comptroller. At the end of the negotiated contract term, if a replacement contract has not yet been approved in accordance with State law, any contract awarded hereunder may either be extended unilaterally by the State, upon notice to the contractor, at the same terms and conditions for a period of one month or with the concurrence of the contractor for a period of up to 3 months, so long as the total contract term does not exceed 5 years. However, any extension will terminate immediately upon approval of the replacement contract except where a period for transition of contractors has been previously provided.

Payment

Payment will include an advance payment of 25% of the contract amount upon initial execution, and upon the execution of any renewal, followed by monthly reimbursement of expenses as

needed. Invoices for payment shall be submitted to the Department on a New York State Standard Voucher provided by the Department.

Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the Comptroller of the State of New York's procedures to authorize electronic payments. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Price Escalation

On each anniversary date of the contract, the Contractor may request an increase in its cost for salary and fringe benefits equal to any increase granted to other technical employees of the contractor. Equipment/supplies and administration costs may be increased equal to the consumer price index for urban wage earners and clerical workers average increase from the previous year. Travel and training costs will be predetermined by the Department on each anniversary date. Any increases will be made only upon mutual agreement of the Contractor and the Department.

Travel Reimbursement

Costs for travel and associated meals and lodging for those assignments that require such shall not exceed the prevailing maximum rates established by the Office of the State Comptroller, which correspond to the rates provided by the Federal Government to its employees. To access information related to travel, including the current reimbursement amounts, refer to the following website:

<http://www.osc.state.ny.us/agencies/travel/travel.htm>

Appendix A (Standard Clauses for All State Contracts)

Appendix A, which is attached to this RFP (Attachment #1) and also posted on the Department's website at www.agriculture.ny.gov, contains standard clauses that are required in all State contracts. Appendix A will be a part of any contract awarded under this RFP, and the successful contractor(s) will be responsible for complying with the terms and conditions contained therein.

Minority and Women Owned Businesses Equal Employment Opportunities and Goals

See Clause 12, Equal Employment Opportunities for Minorities and Women, in Appendix A.

For the contract(s) awarded under this RFP, the Department has established the following goals:

Minority business enterprises	1%
Women owned business enterprises	1%

Consultant Services Contractor's Employment Reports (Attachment #7)

The successful Proposer will be required to submit the attached Form A: "State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term" to the Department upon signing the contract. In addition, the successful Proposer will be required to submit the attached Form B: "State Consultant Services Contractor's Annual Employment Report" to the Department, the Office of the State Comptroller and the Department of Civil Service on or before May 15th of each year of this Agreement. Such report shall include employment data for the most recently concluded State fiscal year (April 1-March 31).

Summary of Department's Policy Regarding State Finance Law Sections 139-J and 139-K

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (Attachment 6 -- "Guidelines Regarding Permissible Contacts During a Procurement and The Prohibition of Inappropriate lobbying Influence".) An offeror/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period; the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department's Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Department has designated the following staff members to receive contacts pertaining to this RFP:

Emma Graham
Division of Fiscal Management
Telephone: (518) 457-0864
Fax: (518) 485-7750
E-mail: emma.graham@agriculture.ny.gov

Judy Giovannetti
Division of Fiscal Management
Telephone: (518) 457-6172
Fax: (518) 485-7750
E-mail: judy.giovannetti@agriculture.ny.gov

NOTIFICATION OF AWARD

The Department will notify the successful proposer verbally, followed by a written confirmation. Each proposer whose proposal is not selected will be notified in writing by the Department.

Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful proposer has the right to a debriefing regarding the reasons its proposal was not selected for an award. An unsuccessful proposer must request a debriefing within thirty (30) days from the date of the notification stating that its proposal has not been selected. To request a debriefing an unsuccessful proposer should contact Emma Graham, Division of Fiscal Management, in writing or via e-mail at emma.graham@agriculture.ny.gov .

The Department and the Office of the State Comptroller reserve the right to audit the selected contractor's books and records relating to the performance of the plan of work during and up to three years after the completion of the plan of work.

LIABILITY

The Department shall not be held liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel or other expenses incurred in the preparation or submission of this proposal. Further, the Department is not liable for any costs incurred prior to formal approval of the contract.

FREEDOM OF INFORMATION

All proposals submitted and all related contracts and reports may be subject to disclosure under the Freedom of Information Law.

OTHER CONSIDERATIONS

Only proposers that have submitted complete information will be considered. The Department reserves the right to:

- reject any or all proposals received with respect to this RFP;
- waive or modify minor irregularities in proposals received;
- request from a proposer additional information as deemed necessary to more fully evaluate its proposal;
- amend the specifications contained in this RFP after its release, with appropriate written notice posted on the Department's website;
- negotiate the terms of the budget; and
- make all final decisions with respect to the amount of State funding and the timing of payments to be provided to a successful proposer.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an

amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a)

discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as

a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall

have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally

identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal

employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division

of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any

governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992.

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

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING.

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally

false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

GENERAL CONDITIONS FOR CONTRACTS**NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS**

These general conditions apply to the administrative aspects of the agreement and reflect New York State's contract record keeping and payment procedures. These general conditions cannot be changed.

PAYMENT

An advance payment of not more than twenty-five percent (25%) of the amount to be paid under this Agreement may be made to the **Contractor** after approval of this Agreement by the State Comptroller. Subsequent payments shall be made to the **Contractor** under this Agreement upon the submission of a payment request (standard voucher), and a budget report in the format prescribed by the **Department**.

The **Contractor** shall submit all requests for payment and reports to the following address: NYS Department of Agriculture and Markets, Division of Fiscal Management, 10B Airline Drive, Albany, NY 12235. Invoices, Standard Vouchers and any reports will not be considered received by the **Department** and any interest which may be due the **Contractor** will not begin to accrue until they have been received by the Division of Fiscal Management.

The advance payment to the **Contractor** under this Agreement shall not be made unless the **Contractor** shall have submitted to the **Department** a written payment request together with such information as required by the Agreement. The advance payment shall not be due until the latter of either the last day of the **third** calendar month of the term of this Agreement, or the thirtieth calendar day after receipt of the payment request, where contract funds have been appropriated and made available to the **Department**.

Payment for invoices submitted by the **Contractor** shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The **Contractor** shall comply with the Comptroller of the State of New York's procedures to authorize electronic payments. **Contractor** acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Upon examination of the **Contractor's** payment requests and supporting material, the **Department** may, in its sole discretion, modify or adjust the amount requested to reflect contract funds expended with the terms of this Agreement, including the budget annexed as Appendix B, as of the date of the request. Subsequent to its review and approval of the payment request, the **Department** will transmit the request to the Comptroller for payment.

The total payment made under this Agreement will not exceed the **Contractor's** actual costs and expenses arising from the completion of the work under this Agreement.

Final payment, including payment of retained amounts, if any, shall not be made until work under the Agreement is completed and **Contractor's** final performance report and a final budget report detailing receipt and expenditure of all funds received pursuant to this Agreement by major budget category are received in conformance with established standards for such reports and in conformance to the attached plan of work.

PROGRESS REPORTS

The **Contractor** shall file written progress reports with the **Department with each voucher**. Progress reports shall provide a detailed narrative description of the work that has been completed under this Agreement and shall include an identification of specific objectives that have been accomplished to date.

PAYMENT CONTINGENCY

Funds for payment under this Agreement are provided to the **Department** through appropriations from the New York State Legislature. These appropriations are made on a fiscal year basis. New York State's fiscal year begins on April 1 of each calendar year and ends on March 31 of the following calendar year. Funds for payments under this Agreement were or are expected to be appropriated to the **Department** during fiscal year **XXXX** and were or are expected to be reappropriated during fiscal year **XXXX**. Payments made after fiscal year **XXXX** for payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year **XXXX** is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

RETAINAGE

The **Department** shall retain ten (10) percent of the budget amount of this Agreement once payment to the **Contractor** equals ninety (90) percent of the budget amount to ensure completion of the work under this Agreement. The total amount retained shall be paid to the **Contractor** together with the final payment under this Agreement and shall be subject to the same conditions as the final payment.

FINANCIAL LIMIT

The financial limit of State appropriated funds under this Agreement shall not exceed the amount indicated on the latest executed version of the signature page of this Agreement and the **Department** shall not be obligated to make any payment to the **Contractor** in excess of that amount.

CONTRACT EXPENDITURES

Expenditures under this Agreement shall conform to the budget annexed as Appendix B, provided however, that **Contractor** may vary budget amounts by not more than ten percent (10%) within each specific budget category. Any budget variance in excess of ten percent (10%) shall be made only upon the prior written approval of the **Department** and if the financial limit under the contract exceeds Fifty Thousand Dollars (\$50,000), the Comptroller of the State of New York. This paragraph does not apply to budget amounts of one thousand dollars (\$1,000.00) or less.

NON-DUPLICATION OF PAYMENTS

The payments received by **Contractor** under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, **Contractor** shall remit to the **Department** the amount which duplicates payment received from other sources.

SUBCONTRACTS

Any subcontract under this Agreement shall be in writing and shall clearly describe the goods or services to be provided and the total cost of such goods or services. Subcontracts for services only shall separately state the rate of compensation on a per-hour or per-day basis.

FINAL REPORT

Not later than sixty (60) days from completion of the work under this Agreement, **Contractor** shall file with the **Department** a final written report summarizing **Contractor's** performance of the work under this Agreement detailing receipt and expenditure of all funds received pursuant to this Agreement.

RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The **Contractor** shall maintain records and accounts in specific detail to identify all contract funds received and expended under this Agreement. The **Contractor** shall maintain a daily written record which contains the name(s) of the officer(s) and employee(s) providing services under this Agreement and the amount of time expended upon such services.

The **Contractor** shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury (including death) and real and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement,

provided that the **Department** timely notifies the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

NON-SECTARIAN PURPOSE

The **Contractor** shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no contract funds shall be expended directly or indirectly for any private or sectarian purpose.

CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, nor its agents, employees, suppliers or subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

DEVIATION FROM WORK

The **Contractor** shall perform the work under this Agreement as outlined in the scope of work annexed as Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of the **Department**.

TERMINATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party. Upon receipt of such notice from the **Department**, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for cause upon giving one (1) days written notice.

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The **Contractor** is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

MODIFICATION

This Agreement may not be modified unless such modification is made in writing, executed by the **Department** and the **Contractor** and approved by the Attorney General and Comptroller of the State of New York.

NECESSARY SIGNATURES

If the financial limit under this Agreement exceeds Fifty Thousand Dollars (\$50,000) this Agreement shall not be binding and effective upon the **Department** unless and until approved by the Attorney General and the Comptroller of the State of New York.

APPENDIX E

SPECIAL CONDITIONS FOR AGREEMENTS

ADVANCE PAYMENT

An advance payment of not more than twenty-five percent (25%) of the amount to be paid under this Agreement may be made to the **Contractor** after approval of this Agreement by the State Comptroller.

TRAVEL

Travel expenses may be reimbursed at rates not to exceed rates applicable to State employees provided that such expenses: (1) conform, subject to the contract expenditures provision, to the Budget approved by the **Department** and annexed as Appendix B; and (2) are necessary for the performance of the work under this Agreement.

INSURANCE

The **Contractor** shall obtain and keep in force during the term of this Agreement insurance policies, naming the State of New York and the **Department** as additional insured as follows:

TYPE	AMOUNT
COMMERCIAL AUTOMOBILE LIABILITY INSURANCE	\$1,000,000

Certificates of insurance showing the above coverage shall be provided to the **Department** within ten (10) business days from the date the **Contractor** executes the Agreement. The certificates shall provide that the policies shall not be amended or cancelled upon less than ten (10) days written notice to the **Department** from the policy issuer

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE

For this Agreement the **Department** has established the following goals:

- Minority business enterprises 1%
- Women owned business enterprises 1%

TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K

The **Department** reserves the right to terminate this Agreement in the event it is found that the certification filed by the **Contractor** in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the **Department** may exercise its termination right by providing written notification to the **Contractor**.

**NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS**

**SERVICES TO SUPPORT THE NYS DEPARTMENT OF AGRICULTURE AND MARKETS STATE AID
TO CONSERVATION DISTRICTS PROGRAM**

**Application Form
Technical Component
PLEASE ANSWER ALL QUESTIONS**

Proposer's Name: _____

ALL PROPOSERS MUST COMPLETE AND SUBMIT THIS FORM

Technical Proposal

Selection Criteria – service provider has demonstrated ability in meeting the deliverables listed in the scope of services. **Please provide detailed responses in the spaces provided below to demonstrate ability to meet the following scope of services:**

EVALUATION CRITERIA	POINTS
Experience fulfilling State Aid to Conservation Districts Program requirements _____	15
Ability to efficiently hire and retain qualified staff for the purposes of carrying out comprehensive conservation projects _____	10
Experience planning, designing, and implementing a variety of conservation projects on various types of landscapes, including agricultural, municipal, residential, etc. _____	10
Experience holding state contracts specific to State Soil and Water Conservation Committee (State Committee) activities and programs _____	5

<p>Experience reviewing budget expenditures and program status for verification of payment requests</p>	<p>5</p>
<p>Experience with Federal Farm Bill programs policies, procedures and tracking systems</p>	<p>10</p>
<p>Experience reviewing program documents for consistency with contract and program rules and expectations</p>	<p>5</p>
<p>Ability to organize overall project development for program activities commensurate with agency goals and guidelines for the initiative</p>	<p>5</p>
<p>Ability to collaborate with Soil and Water Conservation Districts and other local partners to perform comprehensive conservation activities</p>	<p>5</p>
<p>Experience collecting, recording, analyzing, and reporting conservation project accomplishments in various data sets (e.g. Access, Excel, GIS) to document achievements with local and regional watershed initiatives, or statewide and/or federal reporting and tracking systems</p>	<p>10</p>

**NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS**

**SERVICES TO SUPPORT THE NYS DEPARTMENT OF AGRICULTURE AND MARKETS STATE AID
TO CONSERVATION DISTRICTS PROGRAM**

BUDGET FORM

ALL PROPOSERS MUST COMPLETE AND SUBMIT THIS FORM

COST CATEGORY	Total
Salary & Wages	
Fringe Benefits	
*Travel	\$4,500
Equipment and Supplies	
Training	\$3,000
Administration	
Other (please specify):	
**Total:	

**Only includes expenses for travel to perform services under the scope of work. Does not include travel to and from the official work station on a daily basis.*

***Except for administration, all costs are estimates and contract shall only reimburse for actual expenses accrued*

*** The Department reserves the right to negotiate the total contract cost subject to the actual services required and the availability of State funds.*

I hereby certify that these prices will be held firm for 60 days from the date of bid opening.

Bidder's Firm Name

Federal Identification Number

Street Address

City, State, Zip

Bidder's Signature

Official Title

Printed or Typed Signature's Name

Telephone Number

E-Mail Address

Fax Number

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

BY SUBMISSION OF THIS BID, ANY BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER(S) SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE.

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 2011

Notary Public

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 2011

Notary Public



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

Attachment #6

**Guidelines Regarding Permissible Contacts During a
Procurement and
the Prohibition of Inappropriate Lobbying Influence**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 and Chapter 4 of the Laws of 2010 (collectively referred to as the “Lobbying Law”), made major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law created two new sections in the State Finance Law: Section 139-j addresses the disclosure of “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of Offerors¹ during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement’s restricted period² the only Department employee(s) that the Offeror may “Contact” is/are the Department designated contact person(s) for that procurement. In this regard, “Contact” means any oral, written or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the procurement. Exceptions to this rule include:

- submission of a written proposal in response to an RFP, IFB or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all Offerors;
- participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an Offeror that the Department designated contact for a procurement fails to respond in a timely manner;
- negotiations with the Department following tentative award;
- contacts between designated Department staff and Offeror to request the review of a contract award; and
- communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

An Offeror shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies.

An Offeror who contacts the Department regarding a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and whether the person/organization making the contact is the Offeror or is retained, employed or designated by or on behalf of the Offeror to appear before or contact the Department about the procurement. The Department’s Report of Contact Form is attached as Form 1.

An Offeror that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must:

- Affirm that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. (The Offeror’s Affirmation of Understanding and Agreement is attached as Form 2.);
- Certify that all information provided to the Department with respect to the Lobbying Law is complete, true, and accurate. (The Offeror’s Certification of Compliance is attached as Form 3.);

¹ An Offeror is an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

² The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals “RFP”, Invitation for Bids “IFB”, solicitation of proposals or any other method for soliciting responses from Offerors intending to result in a procurement contract by the Department, and ending with the final contract award and approval by the Department, and OSC (if required).



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

Attachment #6

**Guidelines Regarding Permissible Contacts During a
Procurement and
the Prohibition of Inappropriate Lobbying Influence**

- Disclose whether any governmental entity has, within the prior four years, found the Offeror non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. (Included in the Contractor Responsibility Questionnaire.)

Further, all Department procurement contracts will contain a provision authorizing the Department to terminate the contract in the event such Certification of Compliance is found to be intentionally false or incomplete.

Any alleged violations of the Department's guidelines or the Lobbying Law regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence will be reported to the Department's Ethics Officer for investigation. If there is sufficient evidence to indicate the allegation may be true, the Department shall give the Offeror reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation. At the Department's discretion, the opportunity to be heard may be provided either by giving the Offeror the opportunity to meet with the Department staff conducting the investigation or by convening a hearing before an impartial hearing officer at the Department's Albany office. In either case, a written report including findings, conclusions, and a recommended decision will be forwarded to the Commissioner or his or her designee for review and a final determination. A determination that an Offeror has knowingly and willfully committed such a violation may result in a finding that the Offeror and its subsidiaries are non-responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four years of the first such determination may render the Offeror and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> where Frequently Asked Questions "FAQ's" adopted by the Council have been posted.



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

Attachment #6 -Form 1

**Report of Contact Regarding Procurement Pursuant to State
 Finance Law §139-k**

Instructions:

State Finance Law §139-k(4) requires Agriculture and Markets' staff to make a written record of any "Contacts" made regarding a procurement during the procurement's "Restricted Period", which runs from the date bids are first solicited to the date of the contract's final approval. A "Contact" is any oral, written or electronic communication that a reasonable person would infer to be an attempt to influence the governmental entity's conduct or decision regarding the procurement. Additionally, staff must inquire and record whether the person that made the "Contact" was the Offeror or was retained, employed or designated on behalf of the Offeror to appear before or contact Agriculture and Markets. However, communications received from members of the State legislature, or legislative staffs, when acting in their official capacity, are not considered to be a "Contact" and shall not be recorded. A separate form must be completed for each permissible and impermissible "Contact" received, including each of multiple "Contacts" by a single person or Offeror.

To: Fiscal Management/Contracts _____
 (title of procurement)

From: _____ Date: _____
 (name and title)

I was contacted by the below named individual regarding the above identified procurement.

Name: _____

Address: _____

Telephone Number: _____

Place of Principal
 Employment: _____

Occupation: _____

Date(s) of Contact: _____

Form of Contact:
 correspondence in person by telephone electronic mail other _____

Was the person making the Contact informed that the contact would be documented?
 yes no

Is the above-named person/organization the Offeror in this procurement? yes no

If no, was the above-named person/organization retained, employed or designated by the Offeror to:
 - appear before Agriculture and Markets about the governmental procurement?
 yes no

- contact Agriculture and Markets about the governmental procurement?
 yes no



State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

Attachment #6 -Form 1

Report of Contact Regarding Procurement Pursuant to State
Finance Law §139-k

Additional notes (optional):

This form should be completed and forwarded to Fiscal Management. Fiscal Management will maintain a record of all such contacts and will make it part of the procurement/contract record.



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

Attachment #6 – Form 2
 Offeror’s Affirmation of Understanding and Agreement
 Pursuant to State Finance Law §139-j(3) and §139-j(6)

Instructions:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the procurement’s “Restricted Period” (from the issuance of the solicitation document until the date of the contract’s final approval by the State Comptroller) to other than designated staff, unless the contact falls within certain statutory exceptions (“permissible contacts”). Agriculture and Markets’ employees are required to obtain certain information from Offerors and others whenever there is a contact about the procurement during the Restricted Period, and are required to make a determination of the Offeror’s responsibility that addresses the Offeror’s compliance with the statutes’ requirements. Findings of non-responsibility result in rejection of contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. Further information about these requirements can be found at: <http://www.ogs.state.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html>.

As a prerequisite for participating in this procurement, an Offeror must provide the following Affirmation of Understanding and Agreement to comply with these procurement lobbying restrictions in accordance with State Finance Law §§139-j and 139-k.

Offeror Affirmation and Agreement

The Offeror affirms that it understands the procurement lobbying requirements set forth in State Finance Law §§139-j and 139-k, and agrees to comply with the Agriculture and Markets’ guidelines regarding permissible Contacts as required thereby.

Name of Offeror:		
By:		
	(Signature)	
Name:		
Title:		
Address:		
Date:		



State of New York
 Department of Agriculture and
 Markets
 10B Airline Drive
 Albany, NY 12235

Attachment #6 – Form 3

**Offeror's Certification of Compliance
 Pursuant to State Finance Law §139-k(5)**

Instructions:

New York State Finance Law (SFL) §139-k(5) require that every contract award subject to the provisions of SFL §§139-k or 139-j shall contain a certification by the Offeror that all information provided to Agriculture and Markets with respect to SFL §139-k is complete, true and accurate.

At the time an Offer or Bid is submitted to Agriculture and Markets, the Offeror/Bidder must provide the following certification that the information it has and will provide to Agriculture and Markets pursuant to SFL §139-k is complete, true and accurate including, but not limited to, disclosures of findings of non-responsibility made within the previous four years by any State governmental entity where such finding of non-responsibility was due to a violation of SFL §139-j or due to the intentional provision of false or incomplete information to a State governmental entity.

Offeror Certification

I certify that all information provided to the Department of Agriculture and Markets with respect to State Finance Law §139-k is complete, true and accurate.

Name of Offeror:		
By:		
(Signature)		
Name:		
Title:		
Address:		
Date:		

CONSULTANT SERVICES CONTRACTOR'S EMPLOYMENT REPORTS*Instructions for Completing Forms A and B*

- **Scope of Contract (Form B only):** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the United States Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)
- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.
- **Number of hours (to be) worked:** for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.
- **Amount payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Reports that are submitted to the Department must be transmitted as follows:

By mail: NYS Department of Agriculture & Markets
Division Fiscal Management
10B Airline Drive
Albany, NY 12235

By fax: (518) 485-7750

Reports that are submitted to the Office of the State Comptroller must be transmitted as follows:

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street. 11th Floor
Albany, NY 12236
Attn: Consulting Reporting

By fax: (518) 474-8030 or (518) 473-8808

Reports that are to be submitted to the Department of Civil Service must be transmitted as follows:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

FORM A

OSC Use Only: Reporting Code: Category Code: Date Contract Approved:
--

**State Consultant Services - Contractor's Planned Employment
From Contract Start Date Through The End Of The Contract Term**

State Agency Name:	Agency Code:
Contractor Name:	Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	
Grand Total			

Name of person who prepared this report:		
Title:	Phone #:	
Preparer's Signature:		
Date Prepared:		
/ /		

FORM B

OSC Use Only: Reporting Code: Category Code:

State Consultant Services Contractor's Annual Employment Report Report Period: April 1, to March 31,
--

Contracting State Agency Name:	Agency Code:
Contract Number:	
Contract Term: / / to / /	
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

Scope of Contract (Choose one that best fits):

Analysis Evaluation Research Training
 Data Processing Computer Programming Other IT consulting
 Engineering Architect Services Surveying Environmental Services
 Health Services Mental Health Services
 Accounting Auditing Paralegal Legal Other Consulting

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	
Grand Total			

Name of person who prepared this report:	
Preparer's Signature: _____	
Title: _____	Phone #: _____
Date Prepared: / /	

Please submit one copy of this form to the following:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consulting Reporting
Fax: (518) 474-8030 or (518) 473-8808

NYS Dept. of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

NYS Dept. of Agriculture & Markets
Division of Fiscal Management
10B Airline Drive
Albany, NY 12235
Fax: (518) 485-7750

