

# REQUEST FOR PROPOSALS

## ENTERTAINMENT BOOKING and RELATED SERVICES

New York State Fair  
2011-2015

New York State Department of Agriculture and Markets

This Request for Proposals (RFP) is issued by the New York State Department of Agriculture and Markets (Department) to invite qualified proposers to submit a proposal to provide entertainment booking and related services and, together with the Department's current advertising agency, entertainment advertising, marketing and promotion services for the entertainment presented at each of the New York State Fairs during the period 2011-2015.

Proposals must be received in hand by the Department no later than 3:00 pm local time on November 1, 2010. Proposals shall be addressed to:

Lucy Roberson, Director  
Fiscal Management  
New York State Department of  
Agriculture and Markets  
10B Airline Drive  
Albany, New York 12235

Submit an original and three (3) copies of your proposal in a sealed envelope, or package, marked "2011-2015 State Fair Entertainment Booking". Proposals may not be submitted electronically, nor by fax. Your proposal will consist of three parts: minimum qualifications, background and experience, and cost. Inquiries about this request shall be directed to Lucy Roberson, in writing at the above address, or via email to [lucy.roberson@agmkt.state.ny.us](mailto:lucy.roberson@agmkt.state.ny.us) and received no later than October 20, 2010. No telephone inquiries will be accepted. All questions and answers will be posted on the Department's website, [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us) in the "Funding Opportunities" section. Answers will be posted as quickly as possible, but no later than October 22, 2010. The questions and answers, when posted, are part of this Request.

### **Addenda to the Request for Proposal**

If it becomes necessary to revise any portion of the RFP, the revision will be posted on the Department's website, [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us) under "Funding Opportunities". All proposers are responsible for keeping informed of any revisions to this RFP.

## **Introduction**

The Empire Expo Center, in Syracuse, New York, is a 375 acre site which is home to the annual New York State Fair, a twelve day event ending on Labor Day each year. The State Fair drew 999,845 persons in 2010.

Entertainment will be presented at the outdoor grandstand, which can seat 17,000 persons. Admission to the grandstand requires the purchase of a ticket. Approximately 76,526 persons attended seven entertainment events at the grandstand during the 2010 State Fair, with an average paid attendance per event of 10,575.

Entertainment is also presented daily over the 12 day State Fair at an outdoor venue currently known as Chevy Court (Chevy Court), where admission is free.

For informational purposes only, attached is a list of the entertainers, acts and personalities who appeared at the grandstand and at Chevy Court during the 2010 State Fair.

## **Objective**

The objective of this RFP is to retain a proposer to: (i) provide entertainment booking services for entertainment at the grandstand, the cost of the entertainment to be at the Department's expense, for a maximum of twelve (12) nights during each New York State Fair, (ii) provide, at the expense of the Department, entertainment booking for a maximum of twenty four (24) entertainment events at Chevy Court, one to be held each afternoon and each evening during each New York State Fair held during the Term of the contract resulting from this RFP, with entertainment mutually agreed upon by the Department and the proposer and (iii) together with the Department's current advertising agency, advertise, market and promote entertainment events at the grandstand and Chevy Court, subject to the prior approval of the Department.

## **Scope of Services**

The selected proposer shall, for the grandstand during each New York State Fair in the period 2011-2015:

1. Identify, evaluate and recommend entertainment events to be presented at the grandstand, including the prospective cost of each event and suggested ticket pricing;
2. Upon the approval of the Department, negotiate contracts with each artist or act for entertainment to be presented at the grandstand with the total guarantee to all artists and acts not to exceed four million dollars (\$4,000,000).

The selected proposer shall, for Chevy Court during each New York State Fair during the 2011-2015 period:

1. Identify, evaluate and recommend entertainment events to be presented at Chevy Court, including the prospective cost of each event.

2. Upon the approval of the Department, negotiate contracts with each artist or act for entertainment to be presented at Chevy Court, with the total cost for such artists or acts not to exceed two million dollars (\$2,000,000).

## **Contract Period**

The contract awarded will be for a period beginning on or about January 1, 2011 and ending on September 30, 2015. There will be no extension or renewal of the contract.

## **Restrictions on Communications with Department of Agriculture and Markets and Division of the State Fair Staff**

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department and an offeror/bidder during the procurement process. 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 to other than the Department personnel identified in this request 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 are identified in this solicitation.

## **Schedule**

The Department and Division reserve the right to change any of the following dates. Any changes will be posted on the Department's website, [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us) under "Funding Opportunities". Proposers are responsible for keeping informed of any changes in the schedule.

### Event Date

RFP Issued	October 11, 2010
Last Date for Inquiries	October 20, 2010
Responses to Inquiries	October 22, 2010
Proposals Due	November 1, 2010
Selection	Within 30 days

## **Proposal Submission**

Sealed written proposals responding to this RFP must be received **in hand** by the Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235 by 3:00 p.m. local time on November 1, 2010. Proposals must be addressed to Lucy Roberson, Director of Fiscal Management and shall be clearly marked "2011-2015 State Fair Entertainment Booking". An original and three (3) copies of the proposal shall be submitted. Within the sealed envelope, place three (3) separate sealed envelopes, one marked and containing your "Minimum Qualifications", one marked and containing your "Background and Experience", and one marked and containing your "Cost".

## Modification and Withdrawal of Proposals

All proposals and all terms in proposals shall be firm and not revocable for a period of thirty (30) days from the date proposals are due, unless withdrawn as provided below.

Any modification of a proposal must be submitted in a sealed envelope clearly marked as "Modification to 2011-2015 State Fair Entertainment Proposal Submitted by [Proposer Name]." Modifications must be in writing, dated and signed by the person who signed the original proposal.

Withdrawal of a proposal must be submitted in a sealed envelope clearly marked as "Withdrawal of 2011-2015 State Fair Entertainment Proposal Submitted by [Proposer Name]". The withdrawal must be in writing, dated and signed by the person who signed the original proposal.

The modification or withdrawal of a proposal will not be effective unless received, **in hand**, by Lucy Roberson, the Director of Fiscal Management for the Department, or her designee, prior to the date and time for receipt of proposals. The Department is located at 10B Airline Drive in the Town of Colonie, Albany County, New York.

## Late Proposals

Proposals received after 3:00 pm on November 1, 2010 will be rejected and will be returned unopened to the Proposer.

## Selection of Proposal(s)

Only qualified proposers that have submitted complete information will be considered.

The Department reserves the right to:

- reject any or all proposals, or separable portions of proposals, received with respect to this RFP;
- waive or modify minor irregularities in proposals received;
- request from a proposer additional information deemed necessary to more fully evaluate its proposal;
- request that proposers provide missing information where that information is not a material part of the proposal; and
- amend this RFP after its release, with appropriate written notice posted on the Department's website.

## **Proposal - Minimum Qualifications**

Submit in a separate sealed envelope marked:

### **2011-2015 State Fair Entertainment Booking – Minimum Qualifications [Proposer Name]**

The proposer must (1) document that, as of the date of submission of its proposal, it has provided the services sought by this RFP to clients operating venues of similar capacity as the grandstand and Chevy Court for a period of at least five (5) years, (2) submit, at a minimum, a copy of one agreement showing the provision of services at a venue of similar capacity as the grandstand and similar to those sought by this RFP for each of the last five (5) calendar years and (3) provide financial statements to which an independent accountant has provided an opinion covering the proposer's operations for the last three fiscal or calendar years, prepared in accordance with generally accepted accounting principles or tax returns for the same period.

## **Proposal - Background and Experience**

Submit in a separate sealed envelope marked:

### **2011-2015 State Fair Entertainment Booking – Background and Experience [Proposer Name]**

1. The name, address, telephone number, e-mail address and fax number of the proposer and the proposer's contact person.
2. An organizational chart of the proposer including all executives, public relations, talent buyer and other personnel the proposer will use to provide the requested services together with a brief description of the person's background and experience.
3. Company name, address, telephone number and contact name of the proposer's current similar clients or venues, and a detailed description of the services the proposer provides to the client.
4. A list of acts, events and performances the proposer has booked in the United States during the two years immediately preceding submission of the proposal, including, as references, the name or identity of three venues and the name and contact information of a person at each venue who is familiar with your services. The Department may contact the references you provide as part of the evaluation of your proposal.

## Proposal – Cost

Submit in a separate sealed envelope marked:

### 2011-2015 State Fair Entertainment Booking – Cost

State the fixed amount you will charge to the Department for booking each entertainment event at the grandstand and each entertainment event at Chevy Court during the Term of the contract. You must use the attached “Cost” sheet. Do not make any changes to it.

#### IMPORTANT

- For 2011-2015 the Department has budgeted up to \$4.0 million **each** year for guaranteed payments to artists and acts performing at the grandstand, and up to \$2.0 million **each** year for artists and acts at Chevy Court.
- The Department will provide a stage at the grandstand. There is a permanent stage at Chevy Court. The Department will provide production, backline, sound and lights and catering at the grandstand and Chevy Court.
- As of the date of issuance of this RFP, tickets for grandstand entertainment must be sold through Ticketmaster pursuant to a written agreement between the Department and Ticketmaster.

## Evaluation Criteria and Procedure

The Background and Experience portion of your proposal will be evaluated by a 3 member team composed of Department staff. This portion is worth 60 points.

The Cost portion of your proposal will be evaluated by the Department’s Division of Fiscal Management. This portion is worth 40 points.

Qualifying proposals will be evaluated by comparing and ranking each proposal with respect to:

- Background and Experience (60 points total)
  - Does the proposer demonstrate the ability and have the experience to provide the requested services? (25 points total)
  - Does the proposer have the organizational capacity to provide the requested services? (20 points total)
  - Do the proposer’s bookings and references show the proposer’s ability to provide the requested services. (15 points)

- Cost (40 points total)
  - Cost. (40 points)

Your proposed cost for booking entertainment at the grandstand and at Chevy Court during the five (5) year Term will be totaled. The lowest offered cost will receive the maximum points. The next lowest and succeeding costs will be awarded points as follows:  $\text{lowest cost} / \text{cost being evaluated} = \% \times 40 \text{ points} = \text{points awarded}$ .

## **Cost Liability**

The State of New York and the Department assume no responsibility or liability for costs incurred by the proposers in preparing and submitting their proposals in response to this RFP.

## **Acceptance of Proposal Content**

The selected proposer's proposal and this RFP will become part of any contract awarded.

## **Subcontracting**

The selected proposer may not convey, assign or otherwise dispose of the contract, or the proposer's right, title, or interest in the contract, or its power to execute the contract, to any other person, company, corporation, or entity without the prior written consent and written approval of the Department.

## **Accounting Records**

The selected proposer shall maintain all financial and accounting records and other documents relating to the contract in accordance with generally accepted accounting principles and all such records shall be made available, upon request, to the Department and the Comptroller of the State of New York, at all reasonable times during the contract period and for six (6) years from the expiration of the contract.

## **Freedom of Information**

The selected proposer's proposal and any contract resulting from this RFP are subject to the provisions of New York's Freedom of Information Law, Public Officers Law, Article 6. In so far as permitted under Article 6, the selected proposer's financial and proprietary business information will not be subject to disclosure.

## Standard Contract Provisions

The Standard Contract Provisions which are attached to this RFP will be part of the contract.

Please read and execute them where required, and return the Standard Provisions with your proposal.

## Certification Pursuant to New York State Tax Law Section 5-A

Pursuant to Tax Law Section 5-a, you are required to certify to the Tax Department that you are registered to collect New York State and local sales and compensating use taxes, if you made sales of tangible personal property, delivered by any means, to locations within New York State or you provided taxable services, having a cumulative value in excess of \$300,000 measured over a specified period. In addition, you must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. You must also certify to the procuring state agency that affiliates and subcontractors have filed a correct and complete certification with the Tax Department. The successful proposer will be required to complete and sign, under penalty of perjury, the Contractor Certification Form ST-220-TD and the Contractor Certification to Covered Agency Form ST-220-CA. The Contractor Certification Forms are available from the Department of Tax and Finance web site at: [http://www.tax.state.ny.us/forms/sales\\_cur\\_forms.htm#Other%20Sales%20Tax%20Forms](http://www.tax.state.ny.us/forms/sales_cur_forms.htm#Other%20Sales%20Tax%20Forms).

The selected proposer will be required to complete and submit the Contractor Certification Forms within three (3) business days from the date of the request. Failure to respond timely may render a proposer non-responsive and non-responsible. Proposers shall take the necessary steps to provide properly certified forms, within a timely manner, to ensure compliance with the law. You may call the Tax Department at 1-200-698-2931 for all questions regarding Tax Law §5-a, and relating to a company's registration status with the Tax Department. For additional information and frequently asked questions, please refer to the Department of Tax and Finance web site: <http://www.tax.state.ny.us/pdf/publications/sales/pub223-507.pdf>.

## Minority and Women Owned Businesses Equal Employment Opportunities and Goals

See Clause 12, Equal Employment Opportunities for Minorities and Women, in Appendix A. For this contract the Department and the Division have established the following goals:

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

## Notification of Award - Debriefing

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, subd. 9(c) of the State Finance Law, an unsuccessful proposer may request a debriefing regarding the reasons their proposal was not selected for an award. An unsuccessful proposer must request a debriefing within thirty (30) days from the date of notification stating that their proposal has not been selected. To request a debriefing an unsuccessful proposer should contact Lucy Roberson, Division of Fiscal Management, by phone at: (518) 457-2080 or via e-mail at [lucy.roberson@agmkt.state.ny.us](mailto:lucy.roberson@agmkt.state.ny.us).

October 7, 2010

New York State Department  
of Agriculture and Markets

# 2010 New York State Fair

## Chevy Court

### Early Show

En Vogue  
Blue Oyster Cult  
Trailer Choir  
Steve Lippia  
Herman Hermits  
Eli Young Band  
Justin Moore  
Mitchel Musso  
Katharine McPhee  
Jackyl

### Late Show

Kool and the Gang  
Kansas  
Styx  
Blues Traveler  
Thirty Seconds to Mars  
1964 The Tribute Band  
Lady Antebellum  
Little Big Town  
Coheed & Cambria  
Robert Randolph  
Keith Sweat  
Marc Broussard

## Grandstand

Aerosmith  
Jeff Dunham  
Rihanna  
Justin Bieber  
Rush  
Tim McGraw  
Rascal Flatts

# ENTERTAINMENT BOOKING and RELATED SERVICES

New York State Fair  
2011-2015

New York State Department of Agriculture and Markets

## COST SHEET

### COST PER SHOW PER YEAR

	Grandstand	Chevy Court
2011		
2012		
2013		
2014		
2015		

\_\_\_\_\_  
Proposer Name

\_\_\_\_\_  
Signature of Proposer Authorized Representative and Title

\_\_\_\_\_  
Print Name and Title of Representative Signing Above

\_\_\_\_\_  
Date

**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' procedures regarding permissible Contacts as required thereby.

Name of Offeror: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Date: \_\_\_\_\_

## Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

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

**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.

<b>Offeror Certification</b>	
<i>I certify that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate.</i>	
Name of Offeror:	_____
By:	_____
	(Signature)
Name:	_____
Title:	_____
Address:	_____
	_____
Date:	_____

**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 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses the disclosure on “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of Offerors<sup>1</sup> 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 period<sup>2</sup> 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 a 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

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<sup>1</sup> 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.

<sup>2</sup> 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).



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 Department'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 Department's Certification of Compliance is attached as Form 3.);
- 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 Vendor 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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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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, licenser, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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.

**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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (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 -- 7<sup>th</sup> 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. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.



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