

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

INVITATION FOR BIDS

**Printing Checks for New York State
Senior Farmers' Market Nutrition Program**

IMPORTANT: SEE "BID SUBMISSION REQUIREMENTS" HEREIN.

BID OPENING:

DATE: February 18, 2011
TIME: 4:30 p.m. EST

CONTRACT PERIOD:

April 1, 2011 to
March 31, 2012

ADDRESS INQUIRIES TO:

Jonathan Thomson, Program Manager
New York State Farmers' Market Nutrition Program
Telephone No. (518) 457-7076
Email: Jonathan.Thomson@agmkt.state.ny.us

BIDDER'S CERTIFICATION

By signing you certify your express authority to sign on behalf of yourself, your company or other entity and full knowledge and acceptance of this INVITATION FOR BIDS and Appendix A (Standard Clauses for New York State Contracts) and that all information provided is complete, true and accurate.

Name of Company Bidding:	Bidder's Federal Tax Identification No.:		
Street	City	State	Zip
NOTE: Cash Discounts will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids.			
_____ % Cash Discount for payment within 15 days of delivery and/or receipt of voucher			
_____ % Cash Discount for payment within 30 days of delivery and/or receipt of voucher			

If you are not bidding, place an "x" in the box and return this page only.

WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____

Bidder's Signature:	Printed or Typed Name:
Title:	Date:
Phone:	
Fax:	
E-mail Address:	

BID SUBMISSION REQUIREMENTS

Each bidder must submit a bid package consisting of the original and one (1) copy of the proposal. (NOTE: See “Proposal Format” section of this IFB for detailed instructions on how to prepare the proposal package.) Packages **MUST BE RECEIVED** in the Department’s Albany Office not later than 4:30 P.M. EST on Tuesday, February 18, 2011. Late proposals will not be accepted. Applicants, not delivery services or other intermediaries, are responsible for the timely submission of proposals. 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: “Printing IFB – Checks for 2011 Farmers’ Market Nutrition Program”. Inside the envelope shall be two (2) envelopes which shall be identified as follows: 1) Bidder’s name, “Printing IFB – Checks for 2011 Farmers’ Market Nutrition Program -- Technical Component”; and 2) Bidder’s name, “Printing IFB – Checks for 2011 Farmers’ Market Nutrition Program -- Request for Bid Form”. Proposal packages shipped or mailed shall be addressed to:

Printing IFB – Checks for 2011 Farmers’ Market Nutrition Program
Lucy Roberson, Director
Division of Fiscal Management
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

Packages may be hand delivered to the receptionist in the Department’s Offices at 10B Airline Drive, Albany, NY. Proposals will NOT be accepted via FAX or email.

QUESTIONS CONCERNING THE IFB

Prospective bidders with questions concerning this IFB should present those questions in writing to:

Jonathan Thomson, Program Manager
New York State Farmers’ Market Nutrition Program
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235
FAX (518) 457-2716
Email: Jonathan.Thomson@agmkt.state.ny.us

All questions shall be submitted in writing (facsimile or e-mail will be accepted) to Mr. Thomson by 4:30 PM EST Wednesday, February 9, 2011. A list of questions about the IFB, answers to those questions, as well as an electronic version of this IFB and any changes, additions or deletions to the IFB will be posted on the Department’s website (www.agmkt.state.ny.us) under “Funding Opportunities”. Questions and responses will be posted on the website by Friday, February 11 2011. Applicants are urged to check the Department’s website frequently for notices of any changes, additions or deletions to the IFB. If you are unable to access the website, please contact Mr. Thomson to arrange for alternate

delivery. All questions and responses shall be incorporated into this IFB as a formal addendum. NOTE: Bidders are required to submit a signed copy of any addendums with the bid package.

BACKGROUND AND PURPOSE

The New York State Department of Agriculture and Markets administers both a Farmers' Market Nutrition Program for clients of the Women, Infants and Children (WIC) program and a Senior Farmers' Market Nutrition Program for income eligible seniors over age 60. Checks for the Senior Farmers' Market Nutrition Program are printed annually and distributed to approximately 330 sites statewide.

SCOPE OF WORK

The contractor will print and deliver approximately 80,000-150,000 Checkbooks for the Senior Farmers' Market Nutrition Program.

SPECIFICATIONS

ESTIMATED QUANTITY:

125,000 checkbooks with 5 checks per book.

SIZE:

Checks – 9 -1/8” x3-5/8”, no bleeds. No Front Cover. Back Cover - 9-1/8” x 3-5/8” - No printing on cover.

STOCK:

Checks -- 24# White MICR bond. Back cover -- 100# white tag.

COPY:

Camera ready copy will be furnished - tints, surprints, and reverses are required. *NOTE: Center portion of check to contain a faint background design (picture). Area on right front approximately 5/8” x 1-1/2” to contain security pantograph that will show the word “VOID” (in letters approximately 1/4” high) when run through a color copier.*

WORK:

Checks print 2 colors front plus magnetic ink for MICR line - 1 color black. Back cover is blank. *Sample checks must be provided to the Department for approval at least 48 hours prior to main print run.*

INK:

Front - Two PMS colors (to be specified). Back - One PMS color. Pantograph - One PMS color. *NOTE: Back will be one of the PMS colors used on front. Pantograph will be one of the PMS colors used on front.*

NUMBERING:

Each check must be consecutively numbered on front in red with 9-digit numbers in the upper right corner. Sequence of numbers must be guaranteed. Missing, duplicate, or skipped numbers are not acceptable. 9-digit consecutive MICR numbering must be identical to the 9-digit preprinted number at the upper right of each check except for the addition of an 10th digit calculated using the modulus 9 DSR check digit system.

PERFORATION:

Each check to be vertically perfed 1/2" from left edge to produce a binding stub.

CONSTRUCTION:

Checks must be stapled in binding stub in sets of five (5) checks with back cover. Checks must be collated in ascending order with lowest numbers on top.

OVERRUNS:

Overruns up to 3% of the quantity specified will be accepted. The Department, at its option, may either accept or reject additional quantities beyond the allowable overrun. If overruns beyond the allowable percentage are accepted, they will be at a negotiated price. No underruns are acceptable.

PACKING & SHIPPING:

Shrink wrap checkbooks in lots of 20 books in numerical order. Ship in new corrugated cartons not to exceed 40 pounds gross. Mark all cartons on end with item, quantity, P.O. number, and beginning and ending check numbers contained therein.

DELIVERY:

The contractor must ship the completed checkbooks to approximately 300 senior nutrition sites in New York State in quantities to be specified by the Department. The number of checkbooks per site will range from 50 to 12,000 and will, in most cases, be in multiple batches of 20. The balance of the checkbooks must be sent to an address to be specified by the Department.

The Department will provide the contractor with a master list of the specific delivery addresses, the number of checkbooks and the specific sequences of checkbooks that must be shipped to each address. This information will be provided to the contractor by May 3, 2011. The contractor may elect to use their own labeling system however the addresses must be identical to those specified by the Department. Each shipment to a local agency must contain the checkbook sequences specified by the Department.

Shipments must be made by UPS or equivalent service that can track the status of the shipment and ensure delivery to a responsible **individual** and not to an unsupervised delivery point.

Delivery must be completed no later than June 16, 2011.

PREPARATORY MATERIALS:

All mechanicals, negatives, disks and magnetic cartridges are or will become the property of the Department, and must be delivered to the Department within fifteen (15) days after completion of job.

CONTRACT TERMS

The Department is seeking bids for a 12-month contract beginning April 1, 2011. 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 hereto (*see* Attachment 2) and is hereby expressly made a part of this IFB as fully as if set forth at length herein. The contract is contingent on the availability of funding and approval by the Department, the Attorney General's Office and Office of the State Comptroller. Price escalation will not be allowed and is specifically excluded from the terms and conditions of the Invitation for Bid, its specifications and subsequent contract award. Subcontracting of any portion of the services required by this IFB shall not be permitted.

Appendix A (Standard Clauses for All State Contracts)

Appendix A, which is posted on the Department's website at www.agmkt.state.ny.us, is hereby expressly made a part of this IFB as fully as if set forth at length herein. The successful contractor will be responsible for complying with the terms and conditions contained therein.

Cancellation/Discharge of Contractor

The Department reserves the right to cancel the services under this contract at any time upon determination by the Department that the Contractor is unable or incapable of performing the service to the satisfaction of the Department, and in the event of such stoppage the Department shall have the right to arrange for completion of the service in such manner as it may deem advisable. If the costs of such completion exceed the amount of the contract, the Contractor shall be liable to the Department for all excess costs.

Contract Liaisons

The contractor will designate an employee to act as the primary contact person in all matters regarding this contract. Upon notification of award, contractor must provide the name, title, telephone and fax numbers of their contact person to the Department.

The Department's contact for questions regarding the specifications and requirements of the contract as well as questions regarding composition related matters and final approval of copy, proofs, and end product is Jonathan Thomson, Program Manager, New York State Farmers' Market Nutrition Program, 10B Airline Drive, Albany, NY 12235, Telephone: (518) 457-7076, FAX (518) 457-2716, Email: Jonathan.Thomson@agmkt.state.ny.us

All inquiries or correspondence regarding this contract must be through the appropriate contact person or their designees.

Invoicing and Payments

Payment will be made on a reimbursement basis. Invoices for payment shall be submitted to the Department on a New York State Standard Voucher provided by the Department.

Notification of Problems by Contractor

If the contractor anticipates any delays or problems which may affect the quality, construction, manufacturing, or processing of the any of the required items, they must immediately serve written notification to the Department stating specifically the problem and/or delay and expeditiously pursue any remedies that may be necessary.

MacBride Fair Employment Principles (See Attachment 4)

Chapter 807 of the Laws of 1992 prohibits a State department from contracting for the supply of goods and services or construction with any contractor who does not agree to stipulate that it either has no business operations in Northern Ireland, or if it does have such business operations, it shall take lawful steps in good faith to conduct such operations in accordance with the MacBride Fair Employment Principles, if there is another contractor who will execute such stipulation and provide the goods and services or construction of comparable quality at a comparable price.

Minority and Women Owned Business Enterprises

The Department of Agriculture and Markets recognizes the need to take affirmative action to insure that Minority and Women Owned business enterprises and minority and women employees are given the opportunity to participate in providing goods and services sought by the Department. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy. Accordingly, it is the policy of the Department to foster and promote the full participation of such individuals and business firms in the Department's contracting program.

The bidder, by bidding on this contract, acknowledges his or her understanding and support for the social policy herein stated and pledges to fully cooperate with the State of New York in the implementation of this policy, and further to exert a good faith effort to solicit and obtain the participation of such individuals and firms as subcontractors, suppliers and employees on this contract.

For this contract the Department has established the following goals:

Minority-Owned business enterprises	1%
Women-Owned business enterprises	1%

QUALIFICATIONS

Bids will be considered only from bonafide printing companies possessing printing equipment capable of producing the printing requirements described in this invitation for bids. Bidders must have completed at least three printing jobs (of similar size and scope) for two different clients. These jobs must have been completed within the past two years.

PROPOSAL FORMAT

The bidder is solely responsible for the content and completeness of the proposal. The Department may request clarification from the bidder regarding items in the proposal. However, the Department is under no obligation to solicit information missing from the proposal.

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

Section 1: Qualifications of Bidder

1.1 Completed Bidder's Certification (*See Cover Page*)

1.2 Work Samples -- Provide a minimum of three samples of items with similar specifications that were printed by the bidder. Include a short narrative (no more than one page) describing the jobs in terms of printing, deadlines, and any problems encountered in carrying out the work.

1.3 References -- Provide a list of at least three references from clients for whom you have provided printing services, including references for each work sample submitted. References should demonstrate the ability of the bidder to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the:

- Name, address, contact person, telephone number, and fax number for the referenced account; and
- Volume of business performed within the past three years for each referenced account.

The Department reserves the right to contact any or all of the clients listed to verify the information provided.

1.4 Attach a signed copy of any addendums obtained from Department website.

Section 2: Financial Proposal

All bids must be submitted on the attached Request for Bid Form (Attachment 1). All bids must include the following:

- Price per 1,000 for 100,000 checkbooks with 5 checks per book; and
- Price for additional M's for quantity adjustments to increase up to 150,000 books.

Incomplete Bids will be rejected. The total quantities listed are estimated quantities. The actual quantity required by the Department could vary. The final quantity will be determined by May 19, 2011. Any subsequent adjustments, due to extenuating circumstances, will be negotiated with the contractor. Prices quoted are to be firm for the entire period of the contract.

OTHER REQUIRED DOCUMENTS

1. Signed and Notarized Non-Collusive Bidding Certification (Attachment 3)
2. MacBride Stipulation (Attachment 4)
3. A completed Contractor Responsibility Questionnaire (see http://www.osc.state.ny.us/vendrep/forms_agency_vresp.htm#vrq).

4. Offeror’s Affirmation of Understanding and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6) (Attachment 5-Form 2)

5. Offeror’s Certification of Compliance Pursuant to State Finance Law §139-k(5) (Attachment 5-Form 3)

DECISION CRITERIA

The Department will evaluate the proposals in two stages. If deemed to be in the best interest of the Department and the State, a contract will be awarded to the single qualified responsible bidder whose proposal represents the lowest total cost to the Department.

Note: The Department reserves the right to reject all proposals and to seek new proposals if it is determined that it is in the best interest of the Department and the State.

The evaluation of the proposals will be done in 2 stages as follows:

Stage 1- Evaluation of Financial Proposal

The low bidder will be determined based on the Weighted Grand Total Bid.

Stage 2 – Evaluation of the Bidder Qualifications

The Department will screen the proposal received from the lowest bidder using the criteria below. A “No” response to any of the evaluation standards below will result in disqualification of the bidder.

<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	<p>1. Did the bidder provide a list of at least 3 clients? Did the bidder provide at least 3 samples of the work done within the past 2 years for at least 2 separate clients identified on the list of references? Does the bidder have experience in providing the services required to satisfy the IFB? The Department reserves the right to contact the references to verify that the bidder did perform the services for the clients and performed those services in a timely manner.</p>
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p>2. Did bidder submit a signed copy of the required forms and addendum(s)?</p>
<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>4. Did the bidder provide a completed Request for Bid Form?</p>

Debriefing

An unsuccessful bidder has the right to a debriefing regarding the reasons its bid was not selected for an award. Upon request, the Department will provide a debriefing to any unsuccessful bidder regarding the reason that the bid submitted was not selected for an award. A debriefing must be requested by the bidder within thirty (30) days of the date of the notice that its bid was not selected for an award. To request a debriefing, an unsuccessful bidder should contact Ms. Emma Graham, Division of Fiscal Management, by phone at: (518) 457-0864 or via e-mail at emma.graham@agmkt.state.ny.us.

FREEDOM OF INFORMATION

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

NYS STANDARD CONTRACTOR RESPONSIBILITY QUESTIONNAIRE

Bidder agrees to fully and accurately complete the Vendor Responsibility Questionnaire, which can be found on the New York State Office of the State Comptroller's website at http://www.osc.state.ny.us/vendrep/forms_agency_vresp_htm#vrq (hereinafter the "Questionnaire"). The Bidder acknowledges that the Department's execution of the Contract will be contingent upon the Department's determination that the Bidder is responsible, and that the Department will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is found by the Department that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract by providing ten (10) days written notification to the Contractor. In no case shall such termination of the Contract by the Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

NOTE: Proposers are invited to file the Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <http://www.osc.state.ny.us/vendrep/login.htm>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email athehelpdesk@osc.state.ny.us.

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. (See Attachment 5 -- "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 IFB:

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

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

**State of New York
Department of Agriculture and Markets
Checkbooks for New York State
Senior Farmers' Market Nutrition Program**

BID OPENING**DATE: February 18, 2011****TIME: 4:30 P.M.****Contact: Jonathan Thomson**

(518) 457-7076

Bids must be on this form. The Department reserves the right to reject any/all bids.

PRICE INCLUDES ALL CUSTOMS DUTIES AND CHARGES AND IS NET, F.O.B. DESTINATION INCLUDING ALL COSTS NECESSARY OR INCIDENTAL TO PROPER EXECUTION OF JOB INCLUDING DELIVERY TO APPROXIMATELY 310 SITES THROUGHOUT NEW YORK STATE.

5 checks per book	Price Per M	Total	Weighted Factor	Weighted Total
100,000 Books*	\$	\$	90%	\$
Additional M's up to 150,000*	\$	\$	10%	\$
GRAND TOTAL BID :		\$		\$

** All quantities listed are estimated and contract shall be only for the actual quantities ordered during the course of the contract.*

I hereby certify that 1) the prices quoted above are the same as or lower than those quoted other corporations, institutions and government agencies on similar services, quantities, terms and conditions; and 2) all prices include the cost of packing and shipping.

 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

AGREEMENT

**New York State
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235-0001
Agency Code 06000**

Contract Number:
Amount of Agreement: \$
Contract Period:
Federal ID: **FederalID**

Contract Authority: **Agriculture and Markets Law § 16(32)**

Contractor Name/Project Sponsor:

Street: _____ City: _____ State: **NY** Zip: _____

Billing Address (if different from above):

Street: _____ City: _____ State: _____ Zip: _____

Title/Description of Project:

THIS AGREEMENT INCLUDES THE FOLLOWING:

- This Coversheet
- Appendix A (Standard Clauses for all New York State Contracts)
- Appendix B (Project Budget)
- Appendix C (Invitation for Bids)
- Appendix D (The Department's General Conditions)
- Appendix E (The Department's Special Conditions)
- Appendix F Other (Identify)

FOR AMENDMENTS CHECK THOSE THAT APPLY:

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Additional Work <input type="checkbox"/> Extension of Time
From _____ to _____ <input type="checkbox"/> Increase Amount <input type="checkbox"/> Decrease Amount <input type="checkbox"/> Revised Budget <input type="checkbox"/> Revised Scope of Work <input type="checkbox"/> Other | <p>If Increase/Decrease in Amount:</p> <p>Previous Amount: \$ _____</p> <p>Increase/decrease _____</p> <p>New Total: \$ _____</p> |
|---|---|

The Contractor and the Department agree to be bound by the terms and conditions contained in this Agreement.

CONTRACTOR

NYS DEPARTMENT OF AGRICULTURE & MARKETS

Signature of Contractor's Authorized Representative:

Date: _____
Typed or Printed Name of Above Representative:

Title of Authorized Representative:

Notary Public: On this ____ day of _____, 20____ before me personally appeared _____, to me known, and known to me to be the same person who executed the above instrument and duly acknowledged the execution of the same.

Signature of Authorized Official:

Date: _____
Typed or Printed Name of Above Official:

Title of Authorized Official:

State Agency Certification: In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Attorney General:

Approved: Thomas P. DiNapoli, State Comptroller
By:
Date:

APPENDIX D

GENERAL CONDITIONS FOR AGREEMENTS

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

Payment shall be made to the **Contractor** under this Agreement upon the submission of a payment request (standard voucher), the required progress report 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.

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.

Initial 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. Initial payment shall not be due until the latter of either the last day of the _____ 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**.

Payments shall not be made if the **Contractor** fails to file the progress reports and budget reports, if any, as required by this Agreement. The **Contractor's** payment requests shall include a statement of expenses and charges by major budget category for work actually performed or expenses incurred in accordance with the terms of this

Agreement during the period covered by the request.

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 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 to the satisfaction of the **Department** and the **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 and accepted by the **Department**. Satisfactory completion and acceptance shall be defined as conformance to established standards for such reports and conformance to the attached plan of work.

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 **2010-2011**. Payments made after fiscal year **2010-2011** or payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year **2010-2011** 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 the **Contractor** may vary budget amounts by not more than fifteen percent (15%) within each specific budget category. Any budget variance in excess of fifteen percent (15%) shall be made only upon the prior written approval of the **Department** and 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 the **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, the **Contractor** shall remit to the **Department** the amount which duplicates payment received from other sources.

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 **Contractor**. This Agreement may be terminated at any time upon mutual written consent of the **Department** and the **Contractor**. Upon termination, 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.

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
NEW YORK STATE DEPARTMENT OF
AGRICULTURE AND MARKETS

These special conditions apply to the administrative aspects of this particular agreement. These special conditions cannot be changed.

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 GENERAL LIABILITY INSURANCE	\$1,000,000

Certificates of insurance showing the above coverages 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 issuers.

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%

DELIVERY DELAYS

The **Contractor** shall notify the **Department** promptly if they anticipate any delays in meeting the deadlines for delivery set forth in the Invitation for Bids.

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**.

**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

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

STIPULATION

Chapter 807 of the Laws of 1992 prohibits a State department from contracting for the supply of goods and services or construction with any **Contractor** who does not agree to stipulate that it either has no business operations in Northern Ireland, or if it does have such business operations, it shall take lawful steps in good faith to conduct such operations in accordance with the MacBride Fair Employment Principles.

PLEASE READ AND INITIAL EITHER STATEMENT #1 OR STATEMENT #2. DO NOT INITIAL BOTH STATEMENTS.

- _____ 1. The Contractor, and any individual or legal entity in which the Contractor holds a 10% or greater ownership interest and any individual or legal entity that holds a 10% or greater ownership interest in the Contractor has no business operations in Northern Ireland.

- _____ 2. The Contractor, and any individual or legal entity in which the Contractor holds a 10% or greater ownership interest and any individual or legal entity that holds a 10% or greater ownership interest in the Contractor shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles and shall permit the independent monitoring of their compliance with such principles.

Dated:



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

Attachment 5

**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 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 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 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

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).



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Attachment 5

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

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.);
- 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

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 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

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
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 10B Airline Drive
 Albany, NY 12235

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

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:		