

IFB0119 - Invitation for Bid

Tree Removal

for

The New York State Asian Longhorned Beetle Program

IFB Issued: December 18, 2015
Mandatory Pre-bid Conference: January 14, 2016
Proposal Due: February 16, 2016

By



State of New York
Department of Agriculture and Markets
Division of Plant Industry
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Albany, NY 12235
(518) 457-2087

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EXHIBITS

1. Mandatory Pre-Bid Conference Attendance Form
2. 1NYCRR Part 139
3. Garlon 4 Ultra and Pathfinder II labels
4. List of trees removed and hours work 8/11-12/14
5. PRC#2014010674
6. Appendix D Department’s General Contract Clauses
7. Appendix A Standard Contract Clauses
8. Long Island Spread Sheet
9. New York City Spread Sheet

SUBMISSION PACKAGE

Checklist

Attachment 1A: Bid Form for Long Island

Attachment 1B: Bid Form for New York City

Attachment 2: Minimum Qualifications and Mandatory Contract Requirements Certification Form (Signature Required)

Attachment 3: Non-Collusive Bidding Certification Form (Signature Required)

Attachment 4: MacBride Nondiscrimination Certification Form (Signature Required)

Attachment 5: Procurement Lobbying Law Forms (Return pages 4-7 – Signature Required)

Attachment 6: Vendor Responsibility (Signature Required)

Attachment 7: Substitute W-9 Form to obtain SFS Vendor ID (Return if ID needed –Signature Required)

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

**Invitation for
ASIAN LONGHORNED BEETLE PROGRAM**

1. INTRODUCTION

The Department of Agriculture and Markets is inviting bids for the removal and disposal of trees, shrubs, and stumps infested or exposed to infestation by the Asian Longhorned Beetle. Bids will be accepted for two regions. Bidders may bid on either one or both regions. The first region consists of the counties of Kings, and Queens. The second region consists of Suffolk and Nassau counties.

1.1 BACKGROUND AND PURPOSE

The Federal State Cooperative Asian Longhorned Beetle Program was established in 1996 after the discovery of Asian Longhorned Beetles on several hardwood trees in the Greenpoint section of Brooklyn, New York. The United States Secretary of Agriculture declared an extraordinary emergency in order to combat the infestation with regulatory and control actions.

Asian Longhorned Beetles are believed to have been introduced into the United States on solid wood packing material accompanying cargo shipments from Asia. The beetle infestation in New York spread to Amityville and Islip on Long Island, Queens, Manhattan and Staten Island. Asian Longhorned Beetle has been declared eradicated in Manhattan, Staten Island and Islip. Currently, USDA's Animal and Plant Health Inspection Service's (APHIS) Plant Protection and Quarantine Division is implementing quarantine and control strategies in NY, MA, and Ohio that seek to eradicate this serious pest from the United States.

The Asian Longhorned Beetle is classified in the wood boring beetle family (Cerambycidae). Adults are 1 to 1½ inches in length with long antennae and are shiny black with small white markings on the body and antennae. After mating, adult females chew depressions into the bark of various hardwood tree species in which they lay their eggs. Once the eggs hatch, small white larvae bore their way through the cambium into the tree, feeding on the sensitive vascular layer beneath. The larvae continue to feed deeper into the tree's heartwood forming tunnels, or galleries, in the trunk and branches. This damage weakens the integrity of the tree and will eventually kill it if the infestation is severe enough. Over the course of a year, larva will mature and then pupate near the surface, under the bark. From the pupa, an adult beetle emerges, chewing its way out of the tree; forming characteristic round exit holes approximately 3/8ths of an inch in diameter. Many of these holes will appear on a heavily infested tree frequently accompanied by sawdust and sap oozing from the holes. The emergence of the beetles typically takes place from June through October with adults then flying in search of mates and new egg-laying sites to complete their life cycle. (From www.aphis.usda.gov).

The objective of this contract is to remove trees infested or exposed to infestation by the Asian Longhorned Beetle as they are discovered. The Department may direct the contractor to remove trees on residential or other private properties and in some locations trees situated on streets or municipal properties. This contract provides for furnishing all labor, materials, supplies, and equipment, together with all work incidental thereto necessary or required, on an as needed basis, for the removal and disposal of trees and their stumps infested by the Asian Longhorned Beetle, as directed by the New York State Department of Agriculture and Markets. Payment will be made at an hourly unit price based on type of labor provided.

The work to be performed extends to the counties of Kings, Queens, Nassau and Suffolk. Kings and Queens will be bid together as one contract area (New York City) and Suffolk and Nassau Counties will be bid together (Long Island). Refer to the attached bid sheets in the Submission documents for details of work to be performed in each area.

The Department is responsible through its cooperative agreement with USDA-APHIS for identification of trees infested with the Asian Longhorned Beetle. The Department will secure approval from the property owner to access the site and remove the tree(s) and/or shrubbery. The Department will notify the successful bidder subsequent to property owner approval. Under the contract, the successful bidder will have a total of ten (10) business days from the point of Department notification to arrange access with the property owner/resident(s) and to cut, remove and dispose of the identified tree(s).

The description of the work is for general information only. It is not to be construed as an exclusive definition of the quantity or type of work that will be required.

1.2 CALENDAR

Publication in Contract Reporter	December 18, 2015
Mandatory Pre-Bid Conference	January 14, 2016
Deadline for Submission of Written Questions	February 5, 2016
Last update of answers or issuance of IFB Addendum	February 10, 2016
Submission Deadline	February 16, 2016, 4:00 p.m. local time
Bid Opening	February 17, 2016
Tentative Award Date	February 29, 2016

1.3 MANDATORY PRE-BID CONFERENCE

The Department will hold a mandatory pre-bid conference at 11:00 AM on January 14, 2016, located at 320 Merrick Road, Amityville, New York. The purpose of this conference is to brief bidders on the present program and answer questions regarding the IFB.

Potential bidders should notify the Department by January 12, 2016 of intent to attend by emailing or faxing the attached form (Exhibit # 1) as instructed. This notification will permit the Department to prepare handout materials for all participants.

Bids will only be accepted from firms that attend this conference. Questions and answers from this conference will be posted on the Department's website no later than February 10, 2016.

1.4 QUESTIONS CONCERNING THE IFB

Prospective bidders with questions concerning this Invitation for Bid (IFB) should present those questions in writing to:

Melissa Heath
Division of Plant Industry
NYS Department of Agriculture and Markets
Division of Plant Industry
10B Airline Drive
Albany, NY 12235
Fax: (518)-457-1204
E-mail: Melissa.health@agriculture.ny.gov

All questions shall be submitted in writing (fax or email will be accepted) by 4:30 P.M. local time February 5, 2016. Bidders should note that all clarifications are to be resolved prior to the submission of a bid. A list of questions about the IFB, answers to those questions (including questions from the pre-bid conference), as well as any addenda to the IFB, will be posted in the "Funding Opportunities" section of the Department's website, <http://www.agriculture.ny.gov/RFPS.html> along with the electronic version of this IFB. Questions and responses will be posted on the website by February 10, 2016. If you are unable to access the website, please contact Melissa Heath to arrange for alternate delivery. All questions and answers shall be incorporated into this IFB as a formal addendum.

2. SCOPE OF WORK

2.1 WORKING HOURS

All work under this contract shall be performed five (5) days per week, 8 hours per day, from Monday to Friday, inclusive, beginning at 8:00 A.M. except for legal holidays or unless otherwise directed by the Department. The workday starts and ends at the job site. Travel to and

from the job site from the successful bidder's place of business, yard, vehicle storage facility or other similar location will not be compensated under the contract.

Due to the emergency nature of potential infestation, the Department may require the successful bidder to apply to the NYS Department of Labor for a dispensation permitting additional hours or days to be worked. All overtime must be approved in advance by the Department. Overtime worked without prior approval will not be reimbursed to the successful bidder. The overtime rate shall be determined by the Prevailing Wage Rate Schedule.

In the event that the successful bidder is unable to gain access to the tree/stump/shrub(s) to be removed at the scheduled time due to the actions of the homeowner, the successful bidder may invoice two (2) hours of time under the appropriate item.

2.2 TREE REMOVAL METHOD

Tree removal is defined as cutting the infested or exposed trees, chipping all branches, boughs, and trunks, grinding all stumps (including surface and buttress roots) to a depth of six inches (6") below grade level, and filling any remaining hole or dip with topsoil and seeding, along with any other incidental work. All wood must be chipped, ground, or shredded inside the quarantine zone to a size of less than one inch (1") in at least two dimensions. Chips of this size are not subject to federal or State regulations and may be disposed of at the successful bidder's discretion.

Tree removal activities will require Federal and State oversight to ensure that tree removal work is limited to infested or suspect trees, to provide verification of infestation or exposure to infestation and to certify the proper handling and disposal of tree debris in accordance with 1 NYCRR Part 139 (Exhibit #2). The contractor must not commence removal activities without a Department representative on site.

The successful bidder shall become familiar with restrictions and regulations established by all governing authorities having jurisdiction. Implementation of restrictions and regulations will not be considered as grounds for any additional costs over the contract sum.

At each marked tree location, the successful bidder will perform the following work:

- a. Cut trees, grind stumps to six inches (6") below grade. All trees shall be topped and limbed prior to felling. Where appropriate, ropes shall be used to avoid damage to surrounding property. Excavate and backfill as required after removal. The successful bidder shall remove all branches, sweep and restore to original condition all paved areas, parking areas, lawns and sidewalks that have been disturbed by the work performed during the day by the end of that day's work.
- b. Fill the excavated area with topsoil. The topsoil shall be firmly tamped. Topsoil shall be mounded to three inches (3") above the existing grade to account for further settling. Perennial grass seed will be applied where necessary.

- c. Chipping, grinding, or shredding of all branches, boughs, and the trunk of each tree must occur on site or at an approved central location within the Quarantine Zone. Debris must be chipped, ground, or shredded to a size of less than one inch (1”) in two or more dimensions. Wood chips that exceed this size must be rechipped to meet that specification or transported to a Department approved incineration site. Cost of incineration due to chip size being exceeded and the cost of transportation to the incineration facility will be the responsibility of the successful bidder.
- d. Grind stumps to a depth of six inches (6”) below grade, backfill with topsoil and apply perennial grass seed where necessary. Tree stumps that are not associated with removal of a tree or that are not ground the same day in which removal is scheduled will be billed at the rate for stump grinding.
- e. Treat tree stumps that are unable to be ground to a depth of six inches (6”) below grade because of imbedded objects or obstructions with an undiluted Garlon 4 Ultra or Pathfinder II (herbicide) solution and applied per label instructions using the treatment method under the Cut Stump Treatment heading. (See labels Exhibit #3) Application is only to be made under the direction of the Department’s representative and by a New York State certified commercial pesticide applicator. All applications are to be made in accordance with New York State pesticide laws and regulations.
- f. Complete and submit tracking forms for material brought to an approved incineration site which record and document loads, load sizes, points of origin, times of departure, points of chipping, times received, points of incineration, and volumes of materials at each facility. Each form must contain a place for signature of the Department representative to verify information listed.
- g. Remove and replace any obstructing objects that limit accessibility to the tree, shrub or stump to be removed. If the object is one that provides its owner with privacy or security, it shall be replaced to its original condition or better, prior to the onset of darkness and prior to the end of the removal operation. The successful bidder shall be responsible for said security and all losses, etc. until security has been restored equal to its original form.
- h. Protect adjoining structures, adjoining areas, etc. from damage from tree removal. If damage occurs, the successful bidder shall immediately return the damaged areas to original condition at no additional cost to the State.

All work shall be performed in a professional manner and in accordance with the most current version of the American National Standards Institute (ANSI) for Tree Care Operations: Tree, Shrub, and other Woody Plant Maintenance and Standard Practices A-300 (2012), and the American National Standards for Arboricultural Operations/Safety Requirements Z133.1 (2012) published by the American National Standards Institute (ANSI).

All work shall be performed by skilled persons directly employed and supervised by the successful bidder.

2.3 AMOUNT OF WORK

The Department has no obligation to order any particular amount of work. Exhibit #4 lists the number of trees removed and the number of hours worked during the last contract. A further breakdown of information by location will be made available at the mandatory pre-bid conference.

2.4 SUBCONTRACTING

Subcontracting of work, other than for Garlon or Pathfinder application, is specifically prohibited in this project, unless prior written approval is granted by the Department. If approved, the subcontractor shall be bound by the terms and conditions of the contract. The Department reserves the right to require the successful bidder to terminate the services of a subcontractor at any time. All required notices, work orders, directives, and requests for emergency services will be directed to the successful bidder. The subcontractor must also possess the same qualifications for which the successful bidder is responsible.

2.5 PREVAILING WAGES/PAYROLL CERTIFICATION

The work under this contract has been determined to be a public work pursuant to Article 8 of the New York State Labor Law. That law requires prevailing wages to be paid. A willful violation of Article 8 may result in civil penalties and debarment from public contracting in the State of New York.

The applicable Prevailing Wage Rate Schedule for this bid and subsequently awarded contract is PRC # 2014010674. This schedule covers the period from July 1, 2015 to June 30, 2016. The schedule can be found on our website as Exhibit #5 to the electronic Invitation for Bid or at <http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=1113921> . If you require a printed copy of this document, please contact:

Melissa Heath
Division of Plant Industry
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235
Melissa.heath@agriculture.ny.gov
Phone - (518) 457-2087

Payroll certification reports must be submitted with each invoice. Failure to provide this documentation shall result in non-payment of invoices. Additional requirements can be found in

the Prevailing Wage Rate Schedule. Bidders are encouraged to thoroughly review the schedule and ask any questions by February 5, 2016.

Please NOTE:

Bidders must submit a bid based upon a percentage markup of the prevailing wage for the listed items. New prevailing wage rates will be applied as effective to the contract. The percentage markup will be calculated based on the current prevailing wage. (See Sections 3.4 and 3.5 for further information.) It will be the responsibility of the successful bidder to obtain a copy of the new annual determination of wages from the NYS Department of Labor prior to the June 30 expiration date each year. The current wage schedule includes increases that are effective on April 4 and June 1, 2016.

2.6 QUALITY CONTROL AND RISK MANAGEMENT

The successful bidder must take precautions against any injury to people and damage to property. All work shall be done to minimize inconvenience to the public and property owner. The successful bidder must also prevent interference with traffic by erecting barricades, lights or signs at his/her own expense. Lowering ropes and guidelines are to be used where appropriate. The successful bidder is required to follow the rules and regulations of all other agencies and all authorities who have jurisdiction to safeguard the public. No thoroughfare of any kind shall be closed without the written consent of the proper authorities.

The successful bidder shall cooperate with public agencies and utility companies to ensure that service is not disrupted. The successful bidder is responsible for giving prior notification to all agencies and utility companies whose services may be impacted by the work.

2.7 "NO PARKING" SIGNS

The successful bidder is advised to post "No Parking" signs prior to commencing work. Signs will be taped, not stapled, nailed or tacked to trees. All signs are to be removed upon completion of work.

2.8 REPRESENTATIVE

The successful bidder or his/her/its representative is required to be present at the work site during all times work is being performed whether by the successful bidder or a sub-contractor.

2.9 EMERGENCY TELEPHONE NUMBERS

The successful bidder shall maintain communication with the Department's representative. The successful bidder shall furnish twenty-four (24) hour telephone, cellular, and beeper numbers of at least three (3) responsible employees or members of the company who can be reached in connection with the work performed under this contract.

2.10 SAFETY PROCEDURES

- a. No scaffolds or ladders shall be left unattended at any time. At night, ladders and scaffolds shall be stored in a safe manner so residents and the public cannot climb on them. All surplus material from sites shall be cleaned up and disposed of in accordance with the applicable requirements. All areas shall be kept clear. The successful bidder shall clean, sweep and restore to original condition, all areas of paving, parking, lawns and sidewalk that have been disturbed or dirtied by the work of this contract. This material is to be disposed of in a manner acceptable to authorities having jurisdiction. All necessary associated materials and equipment will be provided so that contract work can be completed, whether or not specifically enumerated.
- b. At the end of each work day, safety/security items such as doors, fences and alarm systems components that were damaged or required removal, replacement or adjustment to perform the removal work will be restored, unless otherwise directed in writing by the Department's representative.
- c. All tools, materials and equipment from work areas not attended by workers will be removed at the end of the workday and tools will be stored in a locked toolbox or other secure and safe manner.
- d. All barriers, signs, flags, flagmen/flashers, temporary fencing, temporary facility (light, electric, hoisting, etc.) and all other measures required to protect workers/employees and to protect the public as required by code, law and all authorities having jurisdiction and to separate work areas from non-work areas will be provided and maintained.
- e. When working within ten (10) feet of energized conductors, at least one member of the crew must be a qualified line clearance tree trimmer.

2.11 DAMAGE CLAIMS

It is the successful bidder's responsibility for repairing any damages to buildings, sidewalks, cars and any other property caused by the successful bidder's operation. The successful bidder shall notify the Department of any damages by the end of the business day on which such damage occurred. All damage shall be repaired within two (2) weeks to original condition at no additional cost to the State. The successful bidder shall supply, on company letterhead, an original of the release agreement signed by the injured party and counter-signed by a Principal of the successful bidder indicating that the damage claim has been resolved. An alternate acceptable release shall be a letter from the successful bidder's insurance company indicating policy number, successful bidder's name and address, contract number, location, claimant's name and address, and a statement saying that they are processing said claim and releasing the

Department from any and all liabilities. The successful bidder has three (3) weeks from the time the damage occurred to submit the release to the Department for final approval.

3. BID SUBMISSION

3.1 DELIVERY

Bids **MUST BE RECEIVED** in the Department of Agriculture and Market's Albany office not later than 4:00 P.M. local time on February 16, 2016. Bids received after the scheduled date and time will not be accepted.

To ensure that each bid is handled correctly upon receipt and remains unopened until the due date, bidders shall clearly mark each package of materials submitted with the following: "Tree Removal IFB." This marking may appear either on the shipping container or on a secured package inside the shipping container. Bid packages shipped or mailed shall be addressed to:

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

Packages may be hand delivered to the receptionist in the Department's office at 10B Airline Drive, Albany NY. Proposals will not be accepted via fax or e-mail.

3.2 CONTENTS

Bidders must submit all forms and Assurances located in the Submission Documents packet (which follows the Exhibits), original plus one (1) copy, including original signatures where necessary:

- Checklist for Bid Response and Minimum Qualifications
- Bid form(s) for appropriate region(s)
- Bidder Minimum Qualification and Mandatory Contract Requirements Certification Form (Original Signatures)
- Non-Collusive Bidding Certification (Original Signatures)
- MacBride Nondiscrimination Certification Form (Original Signatures)
- Procurement Lobbying Law Forms (Original Signatures)
- Vendor Responsibility (original signature)

- Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)

3.3 MINIMUM QUALIFICATIONS

The Department is seeking proposals from experienced companies with the personnel, equipment, and organization to meet the demands of a contract of this type. Bidders shall comply with the laws of the State of New York and shall possess or obtain any required licenses, permits or authorizations.

The Department will only consider bidders who meet the following minimum qualifications:

- a. At least one employee of the company must be a qualified line clearance tree trimmer. Qualifications must be included with the bid document.
- b. At least one employee of the company must be certified as a New York State commercial pesticide applicator or the bidder must furnish the name and certification of a subcontractor to apply Garlon 4 Ultra or Pathfinder II herbicide to stumps not ground below grade. The information must be provided with the bid documents.
- c. At least one member of the company must possess either a certificate as an “Arborist” from the International Society of Arboriculture (ISA) or an equivalent certification or experience. The information must be provided with the bid documents.
- d. Bidders must affirm that the majority of the company’s work for the past three (3) years has been primarily in the performance of tree removal/maintenance work.
- e. Bidders must provide three (3) references from previous clients proving that the company performed work on contracts of comparable scope.
- f. Before commencing work, the successful bidder shall be certified by the Department to perform work within the Asian Longhorned Beetle Quarantine Zone.

3.4 BID INFORMATION

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

ITEM 1. – Tree Removal With Chipping – Hourly rate for crew and equipment

A basic tree removal crew shall consist of, at a minimum, one crew leader, one climber, one groundsman, one tree truck with aerial lift bucket having a minimum reach of not less than 50’, chipper truck, brush chipper, at least two power saws with a minimum 20” cutting bar, one

stump grinder with conveyance and any other incidental tools required to complete this type of work including warning signs and safety devices as may be required. The crew leader shall determine the number of workers above the minimum necessary for the tree removal operation. Additional crew will be charged under Items 2, 3 and 4. Work under Item 1 is for tree removal, chipping, stump grinding “below grade” and disposal and shall include any and all charges associated with performing the work including but not limited to restoration, topsoil, perennial grass seed, equipment, overhead and profit, cost of protection, permits, and all incidental charges. Any other costs associated with this project not specifically mentioned shall be included in the bid price.

This item will be weighted at 65%.

ITEM 2 – Hourly Rate for Additional Climbers

The crew leader will notify the contract representative of the need for additional climbers 48 hours before work commences.

This item will be weighed at 2%.

ITEM 3 – Hourly Rate for Additional Groundsman

The crew leader will notify the contract representative of the need for additional groundsman 48 hours before work commences.

This item will be weighed at 2%.

ITEM 4 –Hourly Rate for Electric Line Clearance Tree Trimmer

The crew leader will notify the contract representative of the need for an electric line clearance tree trimmer 48 hours before work commences. This item will be weighed at 2%.

ITEM 5 – Stump Grinding with Disposal – Hourly Rate for crew and equipment

A stump grinding crew shall include one crew leader, one laborer, one stump removal machine, and any other incidental tools required to complete this work, including warning signs and safety devices as may be required and necessary. Item 5 is for stump removal that is either not part of the Item 1 or is part of the work of Item 1, but the stump is not ground the same day as the tree removal is performed. The bid shall include any and all charges associated with performing the work included but not limited to grinding the stump to six inches below grade, applying topsoil and perennial grass seed as necessary, disposal of the stump debris, restoration, equipment, overhead and profit, cost of protection, permits and all incidental charges. Any other costs associated with this project not specifically mentioned shall be included in the bid price.

This item will be weighed at 28%.

Item 6 – Herbicide Treatment of Stumps – Hourly Rate for Application and Supplies

An herbicide treatment item shall include one NYS Certified commercial pesticide applicator and required supplies and equipment. Item 6 is for the herbicidal treatment of stumps not ground to six inches below grade due to obstructions or imbedded materials. The bid shall include any and all charges associated with performing the work and materials, including but not limited to having a New York State certified commercial pesticide applicator apply per label instructions, undiluted Garlon 4 Ultra or Pathfinder II herbicide to the surface of the freshly cut stump using the treatment method under the Cut Stump Treatment heading (See Exhibit #3). Treatment is to be made under the direction and in the presence of the Department representative. Any other costs associated with this project not specifically mentioned shall be included in the bid price.

This item will be weighed at 1%.

3.5 METHOD OF AWARD

In the sole discretion of the Department, the award of the contract in each region will be made to the lowest responsive, responsible and qualified bidder to perform the work as outlined in these specifications. The successful bidder must possess the qualifications outlined in this IFB. The successful bidder will be found not responsive to the bid specification if the Department finds that he/she does not have sufficient resources.

The Department reserves the right to award this contract to the next lowest responsive, responsible and qualified bidder if the original successful bidder is found to be non-responsive and/or non-responsible. 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 Department will determine the lowest bid based on the weighted total bid on the bid sheets for each region. The Department will utilize the spread sheets attached as Exhibits 8 and 9 to calculate each bidder's weighted total.

The bids will be weighted as follows:

- Item 1 – Basic crew 65%
- Item 2 – Additional Climber 2%
- Item 3 – Additional Groundsman 2%
- Item 4 – Electric Line Clearance Tree Trimmer 2%
- Item 5 – Stump Grinding Crew 28%
- Item 6 – Garlon Application 1%

In the event of a tie, the bidder with the lowest bid for Item 1 will be chosen. If those bids are the same, then the bidder with the lowest bid on Item 5 will be chosen.

4. TERMS OF AGREEMENT

4.1 ORDER OF PRECEDENCE

The Order of Precedence for this Agreement is as follows:

Appendix A

Contract Language (Cover Page, Appendix D – Department’s General Conditions, and Appendix E- Department’s Special Conditions)
Entire Invitation for Bids (IFB)
Vendor Proposal/Bid

The Department will award a contract to the successful bidder for a five (5) year term. The contract will incorporate this IFB and the successful bidder’s proposal among its provisions. A copy of the standard clauses that set forth the general terms and conditions required in all contracts awarded by the Department as well as any special conditions that will be required for this contract is attached to this IFB. (See Exhibit #6) The contract is contingent on availability of funding, and approval of the Department, the Attorney General’s Office and the Office of the State Comptroller.

4.2 INVOICING AND PAYMENTS

The Department shall conduct an inspection of all work to ensure compliance with contract specifications. The Department’s representative has final discretion for approving all work for payment. No partial payments will be made for incomplete or unsatisfactory work. After the inspection is completed and the successful bidder is notified in writing by the Department, the successful bidder has two (2) weeks from the date of notification to complete any incomplete or unsatisfactory work.

The Department reserves the right to hold the final Claim for Payment if there is any incomplete or unsatisfactory work outstanding. The Department will not pay any interest on claims that are held due to unsatisfactory or incomplete performance of the successful bidder.

To comply with the Department’s prompt payment policies, the successful bidder shall submit Claims for Payment within one month after the completion of the work. To ensure prompt payment, the following information shall be included with all claims:

- 1) Contractor Name, Address and Telephone Number
- 2) Department Contract Number
- 3) Contractor’s Tax Identification Number
- 4) Invoice Number
- 5) Dates of Service
- 6) Description of Service(s)
- 7) Summary of the total quantities completed within each unit item

- 8) Complete list of all items completed.
- 9) Total Amount Due
- 10) Certified Payroll

Payment for claims 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 claims 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.

4.3 INSURANCE

The successful bidder, throughout the term of the contract, or as otherwise required by the contract, shall obtain and maintain in full force and effect on an occurrence form, the following insurance with limits not less than those described in this article, and as required by the terms of the contract, or as required by law, whichever is greater. If such insurance contains an aggregate limit, it shall apply separately on a per job, per location basis.

a. Workers' Compensation Coverage and Debarment

New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State and additional requirements which provide for the debarment of vendors that violate certain sections of WCL. The WCL requires, and has required since introduction of the law in 1922, the heads of all municipal and State entities to ensure that businesses have appropriate workers' compensation and disability benefits insurance coverage *prior* to issuing any permits or licenses, or *prior* to entering into contracts.

Workers' compensation requirements are covered by WCL Section 57, while disability benefits are covered by WCL Section 220(8). The Workers' Compensation Benefits clause in Appendix A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS states that in accordance with Section 142 of the State Finance Law, a contract shall be void and of no force and effect unless the contractor provides and maintains coverage during the life of the contract for the benefit of such employees as are required to be covered by the provisions of the WCL.

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is

barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

PROOF OF COVERAGE REQUIREMENTS

The Workers' Compensation Board has developed several forms to assist State contracting entities in ensuring that businesses have the appropriate workers' compensation and disability insurance coverage as required by Sections 57 and 220(8) of the WCL. *Please note – an ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.*

Proof of Workers' Compensation Coverage

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a State contract submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage:

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- **Form DB-155**- Certificate of Disability Benefits Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at: <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp> . Alternatively, questions relating to either workers' compensation or disability benefits coverage should be directed to the NYS Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

- b. Commercial General Liability, and if necessary, Commercial Umbrella Liability Insurance with a limit of not less than \$5,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, and shall cover liability resulting in bodily injury, property damage, personal injury or loss of use arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assuming in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage.
- c. Comprehensive Business Automobile Liability, and if necessary, Commercial Umbrella Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile, including owned, leased, hired and non-owned automobiles.

Should the successful bidder fail to provide or maintain any insurance required by law the contract will be considered null and void. No subcontractor will be permitted to access the project sites without providing proof of proper insurance to the Department representative. No payments will be authorized by the Department if the successful bidder fails to comply with the provisions of this section.

The successful bidder shall be solely responsible for the payment of all deductibles and self-insured retentions.

Not less than thirty (30) days prior to the expiration date or renewal date of any insurance policies reflected on such certificates, the successful bidder shall supply the Department updated replacement Certificates of Insurance, and amendatory endorsements.

Before commencing the work and until the established physical completion date, all required insurance shall be obtained at the sole cost and expense of the successful bidder and the successful bidder shall furnish to the Department a certificate of insurance in a form satisfactory to the Department showing that the successful bidder has complied with this section. Insurance shall be maintained with insurance carriers licensed to do business in New York State and

acceptable to the Department; shall be primary and non-contributing to any insurance or self-insurance maintained by the Department; and shall provide that written notice be given to the Department at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States certified mail, shall be addressed to:

Division of Fiscal Management
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

The notice shall name the Department, The People of the State of New York, its officers, agents, and employees as additional insured thereunder. This additional insured shall be primary and non-contributory. (General Liability Additional Insured Endorsements shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 and a copy of which shall be furnished along with the certificate of insurance).

All policies shall be issued by insurance companies licensed to conduct such business under the laws of the State of New York, shall be written for the benefit of the Department and the State of New York and for the successful bidder as their interests may appear, and shall run until the contract physical completion date. The State of New York and the Department must be listed as loss payee pursuant to this policy. Policies expiring on a fixed date before physical completion must be renewed and refiled not less than thirty (30) days before such expiration date.

The successful bidder may provide the required proof of insurance on industry forms provided that no other endorsements exclude, delete or restrict those coverages provided for this by section. It is required that companies affording coverage list the company name in full as filed with the New York State Insurance Department. The contract number and project location must be provided in order to approve the certificate.

4.4 TERMINATION/CANCELLATION

Should the successful bidder breach or fail to comply with any of the provisions of the contract, its bid, including requisite basic crew size or equipment, or any federal, State or local law, or any regulation or order of the Department affecting the contract, the Department may, in writing, order the successful bidder to remedy such breach. The Department may also, in writing, order the successful bidder to comply with such provision, law, rule, regulation or order. Within five (5) days from the receipt of the written order, successful bidder will notify the Department that it has complied with such order or notify the Department that it is unable to comply with such orders due to unavoidable delays beyond the reasonable control of the successful bidder. The successful bidder may request an extension of time for compliance. Extensions will only be granted at the discretion of the Department. The successful bidder's failure to comply with the terms of this section will result in automatic termination of the contract. The Department shall give written notification to the successful bidder specifying when termination becomes effective.

The successful bidder will be paid for all work that is satisfactorily completed before termination.

4.5 APPENDIX A

Appendix A, which is attached as Exhibit 7. Appendix A will be a part of any contract awarded under this IFB, and the successful bidder will be responsible for complying with the terms and conditions contained therein.

4.6 CERTIFICATION PURSUANT TO NEW YORK STATE TAX LAW SECTION 5-A

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applied to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect State sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms can be found at <http://www.tax.ny.gov>. Form No. ST 220-TD must be filed with and returned directly to DTF. Unless information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA should be filed with the bid certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two (2) business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Vendors may call DTF at 1-800-698-2909 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF.

4.7 NON COLLUSIVE BID CERTIFICATION

Section 139-d of the State Finance Law requires that bidders submit a non-collusive bid certification with their bid. The Statement is included in the Submission Package.

4.8 MACBRIDE FAIR EMPLOYMENT PRINCIPLES

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. The stipulation is included in the Submission Package.

4.9 DIESEL EMISSION REDUCTION ACT OF 2006

On February 12, 2007 the Diesel Emissions Reduction Act took effect as the (the “Law”). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law (“NYECL”) it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008. sixty-six (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2011. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstance at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the successful bidder will be required to certify and warrant that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by New York Department of Environmental Conservation. Qualification and application for a waiver under this Law will be the responsibility of the contractor.

4.10 NEW YORK STATE STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE

Contractor agrees to fully and accurately complete a Vendor Responsibility Questionnaire (hereinafter the “Questionnaire”). The Contractor acknowledges that the Department’s execution of the contract will be contingent upon the Department’s determination that the Contractor is responsible, and that the Department will be relying upon the Contractor’s responses to the Questionnaire in making that determination. The Contractor agrees that if it is found by the Department that the Contractor’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.

Contractors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. 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 <https://portal.osc.state.ny.us> . For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email athelpdesk@osc.state.ny.us . Contractors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the State Agency or the Office of the State Comptroller for a copy of the paper form.

4.11 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 Submission Package “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:

Judy Giovannetti
Division of Fiscal Management
Telephone: (518) 457-2080
Fax: (518) 485-7750
judy.giovannetti@agriculture.ny.gov

4.12 IRAN DIVESTMENT ACT REQUIREMENTS

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012.

By entering into this **Agreement**, the **Contractor** certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the **Agreement** any subcontractor that is identified on the Prohibited Entities List. The **Contractor** agrees that should it seek to renew or extend this **Agreement**, it must provide the same certification at the time the **Agreement** is renewed or extended. The **Contractor** also agrees that any proposed assignee of the **Agreement** will be required to certify that it is not on the Prohibited Entities List before the **Department** may approve a request for assignment of **Agreement**.

During the term of the **Agreement**, should the **Department** receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the **Department** will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the **Department** shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the **Contractor** in default.

The **Department** reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the **Agreement**, and to pursue a responsibility review with the **Contractor** should it appear on the Prohibited Entities List hereafter.

5. OTHER CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DEBRIEFING PROCEDURES:

Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful bidder has the right to a debriefing. An unsuccessful bidder must request a debriefing within five (5) business days of receiving a notice of non-award from the Department. Bidders may request a debriefing letter on the selection process regarding this RFP by submitting a written request to the Fiscal Management Contact:

Judy Giovannetti
NYS Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, NY 12235
Or via email: judy.giovannetti@agriculture.ny.gov.

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposal's strengths and weaknesses, as well as recommendations for improvement. Within ten (10) business days of receipt of the request, the program staff will issue a written debriefing letter to the bidder.

5.2 BID PROTEST PROCEDURES:

Bidders who receive a notice of non-award may protest the award decision subject to the following:

- a. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by AGM.
- b. The protest must be filed within ten (10) business days of receipt of a debriefing letter, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with: NYS Department of Agriculture and Markets, Fiscal Management, Contracts Unit, 10B Airline Drive, Albany, NY 12235. Please include the title and number of the AGM solicitation in any correspondence.

Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and, and Fiscal Management will advise OSC that a protest was filed.

Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, New York 12236. More information on the Office of the State Comptroller's (OSC) Contract Award Protest Procedures can be found in OSC's Guide to Financial Operations (GFO), Chapter XI.17, available on the internet at <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

5.3 RESERVATION OF RIGHTS

The Department of Agriculture and Markets reserves the right to:

- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Prior to the *bid opening*, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening; and,
- Require clarification at any time during the procurement process and/or require

correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department's interpretation is final.

EXHIBIT 1



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B Airline Drive, Albany, New York 12235

Registration for Mandatory Pre-Bid Conference
To be held
January, 14 2016
320 Merrick Road
Amityville, New York

Official Contact	
Company Name	
Street Address	
City, State, Zip	
Phone Number	
Fax Number	
E-mail Address	
Other Attendees	

Form should be received by 4:30pm, January 12, 2016

Fax form to Jackie Mannato at 518-457-1204 or e-mail form to jackie.mannato@agriculture.ny.gov

A fax or e-mail confirmation will be sent to the Official Contact. If you do not receive a confirmation within one business day, please call Jackie Mannato at 518-457-2087.

EXHIBIT 2

1NYCRR PART 139

1 CRR-NY III C 139 NotesNY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 1. DEPARTMENT OF AGRICULTURE AND MARKETS

CHAPTER III. PLANT INDUSTRY

SUBCHAPTER C. PREVENTION AND CONTROL OF DISEASE IN TREES AND PLANTS; INSECT PESTS; SALE OF FRUIT-BEARING TREES(ARTICLE 14, AGRICULTURE AND MARKETS LAW)

PART 139. CONTROL OF THE ASIAN LONG HORNED BEETLE

1 CRR-NY III C 139 Notes

1 CRR-NY III C 139 Notes

(Statutory authority: Agriculture and Markets Law, §§ 18, 164, 167)

Current through November 30, 2014

1 CRR-NY 139.1NY-CRR

1 CRR-NY 139.1

1 CRR-NY 139.1

139.1 Definitions.

For the purpose of this Part, the following words, names and terms shall be construed, respectively, to mean:

(a) Asian Long Horned Beetle.

The insect known as the Asian Long Horned Beetle, *Anoplophora glabripennis*, in any stage of development.

(b) Infestation.

This term refers to the presence of the Asian Long Horned Beetle in any life stage or as determined by evidence of activity of one or more of the life stages.

(c) Regulated area.

The quarantined area to which this Part applies.

(d) Inspector.

An inspector of the New York State Department of Agriculture and Markets, or of the United States Department of Agriculture, when authorized to act in that capacity.

(e) Moved; movement.

Shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved from the regulated area into or through any nonregulated portion of the State.

(f) Certificate.

EXHIBIT 2

1NYCRR PART 139

A valid form certifying the eligibility of products for intrastate movement under the requirements of this Part.

(g) Limited permit.

A valid form authorizing the restricted movement of regulated articles from a regulated area to a specified destination for specified processing, handling or utilization.

(h) Compliance agreement.

An approved document, executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

1 CRR-NY 139.2NY-CRR

1 CRR-NY 139.2

1 CRR-NY 139.2

139.2 Regulated area.

(a) That area in the boroughs of Brooklyn and Queens in the City of New York that is bounded by a line beginning at the point where Robert F. Kennedy/Tri-borough Bridge intersects with the Queens shoreline; then north and east along the Queens shoreline to its intersection with the City of New York/Nassau county line; then southeast along the City of New York/Nassau county line to its intersection with the Grand Central Parkway; then west on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway to Hamilton Avenue and the Hugh L. Carey/Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Hugh L. Carey/Brooklyn Battery Tunnel; then north along the Brooklyn and Queens shoreline of the East River to the point of beginning.

(b) That area in the Villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, North Lindenhurst, East Farmingdale, Farmingdale, Bethpage, Old Bethpage, Melville, Massapequa, Massapequa Park, East Massapequa, Wyandanch and Wheatley Heights; in the Towns of Babylon, Oyster Bay and Huntington; in the Counties of Nassau and Suffolk and bounded by a line beginning at a point where West Main Street intersects the west shoreline of Carl's River, then west along West Main Street to its intersection with Route 109, then northwest along Route 109 to its junction with Little East Neck Road, continuing northwest along Little East Neck Road to its junction with Belmont Avenue, then north along Belmont Avenue

EXHIBIT 2

1NYCRR PART 139

to its intersection with Essex Street, then west and north on Essex Street to its junction with Mount Avenue, then northwest along Mount Avenue to its intersection with Straight Path, then northeast along Straight Path to its intersection with S. 18th Street, then north along S. 18th Street to the point it becomes N. 18th Street, then north along N. 18th Street to its intersection with Lee Avenue, then west along Lee Avenue to its intersection with Conklin Avenue, then north along Conklin Avenue to the point it becomes Bagatelle Road, then north along Bagatelle Road to its intersection with the south service road of the Long Island Expressway, following the south service road of the Long Island Expressway west to its intersection with Round Swamp Road, then south on Round Swamp Road to its junction with Bethpage Road, then crossing Bethpage Road and continuing southwest on Thomas Powell Blvd to its intersection with Merritt('s) Road, continuing south on Merritt('s) Road to its intersection with (Route 24) Hempstead Turnpike, then west along Hempstead Turnpike to its intersection with Hemlock Drive, then south along Hemlock Drive to its intersection with Cheryl Lane North, then east and south along Cheryl Lane North to its intersection with Boundary Avenue, then east on Boundary Avenue to its intersection with North Broadway, then south on North Broadway and Broadway to its junction with Hicksville Road then south along Hicksville Road to the point it becomes Division Avenue continuing south along Division Avenue to its intersection with South Oyster Bay, then east along the shoreline to Carll's River, then north along the west shoreline of Carll's River to the point of beginning.

1 CRR-NY 139.3NY-CRR

1 CRR-NY 139.3

1 CRR-NY 139.3

139.3 Articles under regulation.

(a) Prohibited movement.

The intrastate movement of living Asian Long Horned Beetles in any stage of development, whether moved independent of or in connection with any other article, is prohibited, except as provided in section 139.9 of this Part.

(b) Regulated movement.

The following articles shall not be removed from a quarantined area except under a limited permit or unless accompanied by a certificate indicating freedom from infestation:

(1) Firewood (all hardwood species) and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following genera: Acer (Maple); Aesculus (Horse Chestnut); Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry); Fraxinus (Ash); Cercidiphyllum japonicum (Katsura); Platanus (Plane Tree, Sycamore) and Sorbus (Mountain Ash) are regulated articles.

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1NYCRR PART 139

(2) Any other commodity or article when found on inspection to be infested with, or show evidence of, the Asian Long Horned Beetle in any stage of development.

1 CRR-NY 139.4NY-CRR

1 CRR-NY 139.4

1 CRR-NY 139.4

139.4 Conditions governing the intrastate movement of regulated articles.

(a) Movement from regulated area.

Unless exempted by administrative instructions of the Commissioner of Agriculture and Markets of the State of New York, regulated articles shall not be moved intrastate from the regulated area to or through any point outside thereof unless accompanied by a valid certificate or limited permit issued by an inspector, authorizing such movement.

1 CRR-NY 139.5NY-CRR

1 CRR-NY 139.5

1 CRR-NY 139.5

139.5 Conditions governing the issuance of certificates and permits.

(a) Certificates may be issued for the intrastate movement of regulated articles under one or more of the following conditions:

- (1) when they have been inspected and found apparently free from infestation;
- (2) when they have been treated, fumigated, or processed by approved methods; or
- (3) when they have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infestation would be transmitted thereby: provided, that subsequent to certification, the regulated articles will be loaded, handled, and shipped under such protection and safeguards against reinfestation as are required by the inspector.

(b) Limited permits.

Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements to maintain such sanitation safeguards against the establishment and spread of infestation and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in its cancellation.

(c) Cancellation of certificates or limited permits.

EXHIBIT 2

1NYCRR PART 139

Certificates or limited permits issued under these regulations may be withdrawn or canceled by the inspector and further certification refused whenever in his or her judgment the further use of such certificates or permits might result in the dissemination of infestation.

1 CRR-NY 139.6NY-CRR

1 CRR-NY 139.6

1 CRR-NY 139.6

139.6 Inspection and disposition of shipments.

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the regulated area, which contains, or which the inspector has probable cause to believe may contain, infestations of the Asian Long Horned Beetle, or articles or things regulated under this quarantine, may be examined by an inspector at any time or place. When articles or things are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he deems necessary to eliminate the danger of dissemination of the Asian Long Horned Beetle. If found to be infested, such articles or things must be freed of infestation without cost to the State except that for inspection and supervision.

1 CRR-NY 139.7NY-CRR

1 CRR-NY 139.7

1 CRR-NY 139.7

139.7 Assembly of regulated articles for inspection.

(a) Persons intending to move intrastate any of the articles covered by these regulations shall make application for certification as far in advance as possible, and will be required to prepare and assemble materials at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments applied. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

EXHIBIT 2

1NYCRR PART 139

1 CRR-NY 139.8NY-CRR

1 CRR-NY 139.8

1 CRR-NY 139.8

139.8 Marking requirements.

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with these regulations: provided, that:

- (a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and
- (b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

1 CRR-NY 139.9NY-CRR

1 CRR-NY 139.9

1 CRR-NY 139.9

139.9 Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.

1 CRR-NY 139.9

EXHIBIT 3

GARLON 4 ULTRA AND PATHFINDER II LABELS

EXHIBIT 4
HISTORICAL TREE REMOVAL
ASIAN LONGHORNED BEETLE PROGRAM
FROM 8/01/11 TO 12/31/14

8/1/2011 TO 12/31/2011

AREA	TREES REMOVED	REMOVAL HOURS	CATEGORY	HOURS
			Item #1- Tree removal	0
NEW YORK CITY	0	0		
			Item #5 -Stump removal	0
LONG ISLAND	0	0		
			Item #6- Herbicide	0
TOTAL	0	0		0

1/1/2012 TO 12/31/2012

AREA	TREES REMOVED	REMOVAL HOURS	CATEGORY	HOURS
			Item #1- Tree removal	0
NEW YORK CITY	0	0		
			Item #5 -Stump removal	0
LONG ISLAND	0	0		
			Item #6- Herbicide	0
TOTAL	0	0		0

1/1/2013 TO 12/31/2013

AREA	TREES REMOVED	REMOVAL HOURS	CATEGORY	HOURS
			Item #1- Tree removal	113.25
NEW YORK CITY	0	0		
			Item #5 -Stump removal	38.00
LONG ISLAND	63	151.25		
			Item #6- Herbicide	0.00
TOTAL	63	151.25		151.25

1/1/2014 TO 12/31/2014

AREA	TREES REMOVED	REMOVAL HOURS	CATEGORY	HOURS
			Item #1- Tree removal	1208.00
NEW YORK CITY	0	0		
			Item #5 -Stump removal	823.00
LONG ISLAND	808	2,095.00		
			Item #6- Herbicide	64.00
TOTAL	808	2095.00		2095.00

	TREES	HOURS		
TOTAL CONTRACT PERIOD	871	2246.25		2246.25

EXHIBIT 5

Prevailing Wage

PRC32014010674

<http://wpp.labor.state.ny.us/wpp/publicViewProject.do?method=showIt&id=1113921>

EXHIBIT 6

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. Payroll certification reports must be submitted with each invoice. Failure to provide certification will result in non-payment of invoices.

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 **3rd** 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 **2011-2012**. Payments made after fiscal year **2011-2012** or payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year **2011-2012** is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

Funding for this Agreement was provided to the **Department** from the United States Department of Agriculture, Animal Plant Health Inspection Service pursuant to Cooperative Agreement No. 11-8236-0184-CA. Payments are subject to the receipt of funds pursuant to that cooperative agreement.

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 ten percent (10%) within each specific budget category. Any budget variance in excess of ten percent (10%) shall be made only upon the prior written approval of the **Department** and 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.

SUBCONTRACTS

Subcontracting of work is specifically prohibited unless prior written approval is granted by the **Department**. If approved, the subcontractor shall be bound by the terms and conditions of this Agreement. The **Department** reserves the right to require the **Contractor** to terminate the services of a subcontractor on this Agreement at any time. All required notices, work orders, directives, and requests for emergency services will be directed to the **Contractor**. The subcontractor must also possess the same qualifications for which the **Contractor** is responsible.

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.

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**.

COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

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

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.

EXHIBIT 7

APPENDIX A

Standard Clauses for New York State Contracts

EXHIBIT 8

Long Island Spread Sheet

EXHIBIT 9

New York City Spread Sheet