

# **INVITATION FOR BIDS**

**for**

## **PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS**

**IFB #0169**

IFB Issued: December 13, 2017

Proposals Due: January 5, 2018

By:

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

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

**TABLE OF CONTENTS**

1. INTRODUCTION	4
1.1 OVERVIEW	4
1.2 IFB GOAL	4
1.3 TERM	4
1.4 IFB TIMELINE	4
2. DESCRIPTION OF WORK TO BE PERFORMED	4
2.2 SCOPE OF WORK	4
3. BID SUBMISSION	7
3.1 SUBMISSION TIMELINE	7
3.2 SUBMISSION METHOD	8
3.3 MINIMUM QUALIFICATIONS	9
3.4 MANDATORY CONTRACT REQUIREMENTS	9
3.5 BID FORM	10
4. EVALUATION	10
4.1 CONSIDERATION	10
4.2 DETERMINATION OF BID AWARD	10
4.2.1 DETERMINATION OF TIE BID SCORE	11
5. CONSIDERATIONS RELATED TO THIS PROCUREMENT	11
5.1 DEPARTMENT'S RESERVATION OF RIGHTS	11
5.2 SUBCONTRACTING	12
5.3 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATING BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN	12

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

5.4	PARTICIPATION OPPORTUNITIES FOR SERVICE DISABLED VETERAN-OWNED BUSINESSES	14
5.5	NOTIFICATION OF AWARD	15
5.6	DEBRIEFING PROCEDURES	15
5.7	BID PROTEST PROCEDURES	15
5.8	NEW YORK LAW	16
5.9	REQUIRED APPROVALS	16
5.10	VENDOR RESPONSIBILITY AND NYS VENDOR ID	16
5.11	COST LIABILITY	17
5.12	FREEDOM OF INFORMATION	17
5.13	PROCUREMENT LOBBYING LAW	17
6.	REQUIRED ASSURANCES	18
6.1	SUBMISSION DOCUMENTS	18
6.2	CONTRACT DOCUMENTS AND REQUIREMENTS	19
7.	RECOMMENDED SUBMISSIONS	19
	EXHIBIT 1 – SAMPLE CHECK	
	EXHIBIT 2 – SAMPLE NYS AGM CONTRACT	

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

**1. INTRODUCTION**

**1.1 OVERVIEW**

New York State Department of Agriculture and Markets administers the NYS Farmers' Market Nutrition Programs. The programs provide monetary benefits to participants in the programs in the form of paper checks (or vouchers) to purchase fresh, local unprocessed fruits and vegetables from authorized farms direct marketing their product at farmers' markets and farm stands in New York. The program serves various populations including, but not limited to, low-income seniors who are 60+ years of age or older and individuals enrolled in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

**1.2 IFB GOAL**

The objective of this IFB is to retain one contractor to annually print checks for the New York State Farmers' Market Nutrition Programs as further described below.

**1.3 TERM**

The contract resulting from this IFB will be for a two (2) year term. The contract will begin on April 1, 2018 and end on March 31, 2020. Price escalation will not be allowed and is specifically excluded from the terms and conditions of the IFB, its specifications and subsequent contract award. Subcontracting any portion of the services required by this IFB is not permitted.

**1.4 IFB TIMELINE**

Publication in Contract Reporter	December 13, 2017
Deadline for Submission of Written Questions	December 28, 2017 by 4 :30 p.m. (local time)
Last update of answers or issuance of IFB Addendum	December 29, 2017
Submission Deadline	January 5, 2018 by 3:00 p.m. (local time)
Bid Opening (tentative)	January 8, 2018

The Department intends to make an award within thirty (30) days of the Bid Response due date. The contract will require approval from the Office of the Attorney General of the State of New York (AG) and the Office of the State Comptroller of the State of New York (OSC) before it becomes effective.

**2. DESCRIPTION OF WORK TO BE PERFORMED**

**2.2 SCOPE OF WORK**

The contractor will annually print approximately 2 million individual checks, assemble those checks into checkbooks, package and deliver the checkbooks to approximately 300 distribution sites across the state. A sample check from the 2017 Senior Farmers' Market Nutrition Program is attached to this IFB as Exhibit 1.

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

**SPECIFICATIONS**

*Estimated Quantity*

400,000 checkbooks with 5 checks per checkbook annually or print 2,000,000 individual checks. Include in the quote pricing for each additional 1M above the base up to an additional 120,000 checkbooks.

*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 MOCR bond & MOD9. Back cover -- 100# white tag. MICR position is critical and will be analyzed during the testing of the sample.

*Graphic Design Changes*

Graphic design changes to the checks will be necessary. For example, the check has the year printed on the face of the check, and every year this date must be updated. The contractor will satisfy all requested graphic design changes made by the Department prior to the main print run.

*Sample*

Samples of actual checks will be required for testing immediately prior to the main print run.

*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.

*Press Work*

Checks print 2 colors front plus magnetic ink for MOCR 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. MICR position is critical and cannot read high.

*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 MOCR 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

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

calculated using the modulus 9 DSR check digit system. The 9-digit serial numbers will be specified by the Department prior to the main print run.

*Perforation*

Each check to be vertically perforated 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 (e.g. polywrap) in lots of 20 checkbooks 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 serial numbers contained therein. Shipping must be included in quote.

*Delivery*

The contractor must ship the completed checkbooks to approximately 300 locations in New York State in quantities to be specified by the Department. The number of checkbooks per site will be in multiple batches of 20 checkbooks. 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, 2018. 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 May 25, 2018.**

*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.

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

*Price escalation*

Price escalation will not be allowed and is specifically excluded from the terms and conditions of the IFB, its specifications and subsequent contract award. Subcontracting any portion of the services required by this IFB is not permitted.

*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.

*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 Claim for Payment 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.

### **3. BID SUBMISSION**

#### **3.1 SUBMISSION TIMELINE**

All bid submission documents required to be responsive for bid evaluation must be received by the Department no later than 3:00 PM (local time) on January 5, 2018 in order to be considered. The Department reserves the right to request any missing information from those items marked with an asterisk (\*) on the Submission Documents Checklist. Bidder will have three (3) business days to provide any missing information requested by the Department for those items marked with an asterisk (\*) on the Submission Documents Checklist. All remaining forms and documents required to be completed after notification of selection is made shall be submitted to the Department by the selected contractor prior to execution of the contract.

Any questions concerning this IFB must be received by 4:30 PM (local time) on December 28, 2017. Questions must be submitted in writing via email to Carrie Lindemann, Contract Specialist 1 at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list "PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS IFB#0169" in the subject line.

A Question and Answer document will be posted to the Department website:

<https://www.agriculture.ny.gov/RFPS.html> under "Funding Opportunities" no later than December 29, 2017. No individual written responses will be provided.

Any revisions to this invitation will be posted on the Department's website, <https://www.agriculture.ny.gov/RFPS.html> under "Funding Opportunities". All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the IFB which will be part of the awarded contract. If you are unable to access the Department's

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

website, please contact Carrie Lindemann at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov) to arrange for alternate delivery, or at the following mailing address: New York State Department of Agriculture and Markets, Fiscal Department, Attn: Carrie Lindemann, 10B Airline Drive, Albany, New York, 12235.

### 3.2 SUBMISSION METHOD

Facsimiles or e-mailed copies are not acceptable. Materials received after the due date/time shall be returned unopened to the sender. See Section 6.1, Submission Documents, for information on completing a bid response.

Mail or hand deliver a bid response in one package containing the following three (3) separately labeled envelopes:

#### **Envelope 1 - Minimum Qualifications and Forms and Assurances:**

Mail original plus two (2) paper copies of the Minimum Qualifications in a separate envelope labeled "IFB#0169 Minimum Qualifications and Forms and Assurances - Do Not Open" and include all required documentation to demonstrate that the Proposer meets the Minimum Qualifications set forth in Section 3.3 of this IFB including:

**-Attachment 9-References Form (See Section 3.3.)**

All Forms and Assurances located in the Submission Documents packet (which follows the Exhibits), original plus one (1) copy, including original signatures, where necessary.

**-Cover Sheet and Submission Documents Checklist**

**-Attachment 2 - Mandatory Contract Requirements Certification Form (Original Signatures)**

**-Attachment 3 - Non-Collusive Bidding Certification (Original Signatures)**

**-Attachment 4 - MacBride Nondiscrimination Certification Form (Original Signatures)**

**-Attachment 5 - Procurement Lobbying Law Forms (Original Signatures)**

**-Attachment 6 - Vendor Responsibility (Original Signatures)**

**-Attachment 7 – Vendor Assurance No Conflict of Interest (Original Signatures)**

**-Attachment 8 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)**

#### **Envelope 2 – Bid Form:**

Mail original plus two (2) paper copies of the completed Bid Form in a separate envelope labeled "IFB #0169 Bid Form - Do Not Open" and include the following outlined below:

**-Attachment 1 - Bid Form (Original Signatures)**

#### **Envelope 3 – MWBE/EEO Documents:**

Mail original plus one (1) paper copy of the completed MWBE/EEO Documents in a separate envelope labeled "IFB #0169 MWBE/EEO Documents - Do Not Open" and include the following outlined below:

**-Attachment 10 – MWBE/EEO Documents (Original Signatures)**



DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

To the following address:  
New York State Department of Agriculture and Markets  
Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
ATTN: Carrie Lindemann, IFB#0169

### **3.3 MINIMUM 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 (3) printing jobs (of similar size and scope) for three (3) different clients. These jobs must have been completed within the past three (3) years.

To be considered:

- 1) Work Samples – The bidder must provide a minimum of three (3) samples of items with similar specifications that were printed within the past three (3) years for three (3) different clients 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.
- 2) References: The bidder must provide the name of at least three (3) 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, email address, and fax number for the referenced account; and
  - Volume of business performed within the past three (3) years for each referenced account.

Please provide the above information using the References Form, Attachment 9 of the Submission Documents.

Note that the Department will contact the references provided and the bidder is solely responsible for the availability of the submitted references.

### **3.4 MANDATORY CONTRACT REQUIREMENTS**

Each bidder must certify that, if selected, the bidder will meet the following requirements:

No other obligation or engagement, contractual or otherwise, will impact the selected contractor's ability to provide printing services during the contract period.

The selected contractor will have full control of the personnel and supplies/equipment provided and associated services and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the supplies/equipment and services provided. The selected contractor will indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

property arising out of the acts of the selected contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.

The selected contractor agrees to comply with "Appendix A, Standard Clauses for New York State Contracts," a copy of which is included in the sample New York State AGM contract attached to this IFB as Exhibit 2.

### **3.5 BID FORM**

All bids must be submitted on the "Bid Form" included in the Submission Documents section. The cost proposal will be evaluated on and All bids must include the following:

- Price per M for 400,000 checkbooks (2,000,000 checks) with 5 checks per checkbook; and
- Price for additional M's for quantity adjustments to increase up to 120,000 checkbooks (600,000 checks).

**Incomplete Bids will be rejected.** The total quantities listed are estimated quantities. The actual quantity required by the Department could vary. The final quantity for the first year will be determined by May 3, 2018. Final quantity for subsequent years will occur on May 3 of that year. 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.

## **4. EVALUATION**

### **4.1 CONSIDERATION**

For a bidder to be eligible for consideration, it must meet the Minimum Qualifications. For the bid response to be evaluated, the bidder must certify that it will meet the Mandatory Contract Requirements.

### **4.2 DETERMINATION OF BID AWARD**

The contract will be awarded to a qualified responsible bidder with the lowest bid.

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.

DEPARTMENT OF AGRICULTURE AND MARKETS  
 IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

<input type="checkbox"/> Yes <input type="checkbox"/> No	Did the bidder provide at least three (3) references?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Did the bidder provide at least three (3) samples of the work done within the past three (3) years for three (3) clients identified on the list of references?
<input type="checkbox"/> Yes <input type="checkbox"/> No	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.
<input type="checkbox"/> Yes <input type="checkbox"/> No	Did bidder submit a signed copy of the required forms and addendum(s)?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Did the bidder provide a completed Request for Bid Form?

**4.2.1 DETERMINATION OF TIE SCORE**

In the event of a tie, the winning bidder will be determined by cash discounts of any size. For example, the percentage of cash discount for payment within 15 days of delivery and/or receipt of voucher and percentage cash discount for payment within 15 days of delivery and/or receipt of voucher as identified on the Mandatory Requirements Certification Form.

**5. CONSIDERATIONS RELATED TO THIS PROCUREMENT**

**5.1 DEPARTMENT'S RESERVATION OF RIGHTS**

The Department 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 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;

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

- 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.

## **5.2 SUBCONTRACTING**

Subcontracting any portion of the services required by this IFB is not permitted.

## **5.3 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations the Department is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of the Department contracts.

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15 percent for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this Invitation for Bids (IFB), the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this IFB, such finding constitutes a breach of contract and the Department may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Department’s MWBE Liaison at 518-457-4619 or [mwbe@agriculture.ny.gov](mailto:mwbe@agriculture.ny.gov). All MWBE Forms and Instructions are included in the Submission Documents.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

Upon award of contract an MWBE Utilization Plan. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. The Department will review the submitted MWBE Utilization Plan and advise the respondent of the Department acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Department may disqualify a respondent as being non-responsive under the following circumstances:

- A. If a respondent fails to submit an MWBE Utilization Plan;
- B. If a respondent fails to submit a written remedy to a notice of deficiency;
- C. If a respondent fails to submit a request for waiver; or
- D. If the Department determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

at any time during the term of the Contract to the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to the Department, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, (See Submission Documents, Form MWBE EE01), to the Department with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Department on a quarterly basis during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**5.4 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

integrating such businesses into New York State's economy. AGM recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of AGM contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, AGM conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

#### **5.5 NOTIFICATION OF AWARD**

The Department will notify the selected bidder verbally, followed by a written confirmation. Unsuccessful bidders will be notified in writing by the Department within ten business days after the award.

#### **5.6 DEBRIEFING PROCEDURES**

Pursuant to section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within fifteen (15) calendar days of notification by the AGM that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

#### **5.7 BID PROTEST PROCEDURES**

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

- 1) 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 the Department.
- 2) The protest must be filed within ten (10) business days of a debriefing, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with Carrie Lindemann at:

NYS Department of Agriculture and Markets  
Fiscal Management  
10B Airline Drive  
Albany, NY 12235  
Or via email: [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov)

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

- 3) 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 fourteen (14) 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.
- 4) 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/>.

### **5.8 NEW YORK LAW**

The provisions of New York law shall apply to the contract and to all claims, actions and other proceedings arising out of the contract.

### **5.9 REQUIRED APPROVALS**

Any contract award resulting from this solicitation will be subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

### **5.10 VENDOR RESPONSIBILITY AND NYS VENDOR ID**

#### **Prime Contractors:**

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, the Department must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a Vendor Responsibility Questionnaire. Public Authorities, BOCES, public colleges and universities are some of the exempt entities. For a complete list, see:

[http://www.osc.state.ny.us/vendrep/resources\\_docreq\\_agency.htm](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm)

All bidders must fully and accurately complete the Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"). All bidders acknowledge 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. If it is found by the Department that a bidder's responses to the Questionnaire were intentionally false or



DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

intentionally incomplete, 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: Bidders are encouraged 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](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department or the Office of the State Comptroller's Help Desk for a copy of the paper form.

**Subcontractors:**

For vendors using subcontractors, a Vendor Responsibility Questionnaire and a Department vendor responsibility review are required for a subcontractor where:

- the subcontractor is known at the time of the contract award;
- the subcontractor is not an entity that is exempt from reporting by OSC; and
- the subcontract will equal or exceed \$100,000 over the life of the contract

**Note: Bidders must acknowledge their method of filing their questionnaire by checking the appropriate box on the Response Sheet for Bids (Submission Documents).**

**5.11 COST LIABILITY**

The State of New York, the Department and the Division of the New York State Fair assume no responsibility or liability for the costs incurred by the Bidders in preparing and submitting their bids in response to this solicitation.

**5.12 FREEDOM OF INFORMATION**

The selected contractor's bid response and any contract resulting from this solicitation are subject to the provisions of Article 6 of New York State Public Officers Law, the Freedom of Information Law (NY FOIL). It is the responsibility of the Bidder to designate which components of the bid response are proprietary business information to be withheld from disclosure. A bidder may not designate its entire bid response as confidential, proprietary or copyrighted.

**5.13 PROCUREMENT LOBBYING LAW**

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 Documents Attachment 5 -- "Guidelines Regarding

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence”). An offeror/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the IFB 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 member to receive contacts pertaining to this Bid:

Carrie Lindemann  
New York State Department of Agriculture & Markets  
Division of Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
E-mail: [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov)

## 6. REQUIRED ASSURANCES

### 6.1 SUBMISSION DOCUMENTS

The documents listed below are included in the **Submission Documents** section, which follows. All documents requiring signature must be signed by an authorized representative of the Bidding entity. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the New York State Department of Agriculture and Markets. Please refer to Section 3.2, “Submission Method” for more information on how to package your proposal:

- **Bid Form and Subcontracting Form** (Signature Required - the form is included in the **Submission Documents as Attachment 1**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 3**)
- **MacBride Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 4**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents as Attachment 5**)

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

- **Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents as Attachment 6**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the **Submission Documents as Attachment 7**)
- **Substitute W-9 Form to obtain SFS ID** (Signature Required - Return if SFS Vendor ID is requested – the form is included in the **Submission Documents as Attachment 8**)
- **References Form** (the form is included in the **Submission Documents as Attachment 9**)
- **MWBE/EEO Documents** (the forms are included in the **Submission Documents as Attachment 10**)

## **6.2 CONTRACT DOCUMENTS AND REQUIREMENTS**

The successful bidder will be required to execute a written contract with the Department. A sample New York State Department of Agriculture and Market's contract is attached to this IFB as Exhibit 2. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department's contract including: Appendix A "Standard Clauses for New York State Contracts" (January 2014); Appendix D "General Conditions for Agreements New York State Department of Agriculture and Markets;" and Appendix E "Special Conditions for Agreements New York State Department of Agriculture and Markets."

## **7. RECOMMENDED SUBMISSIONS**

The following forms are not required to be submitted with the bid response. Nevertheless, Bidders are encouraged to submit these forms in order to expedite contract execution if the bidder is awarded the contract.

### **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

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

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, Division of the New York State Fair, 581 State Fair Boulevard, Syracuse, NY 13209 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.

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0169: PRINTING CHECKS FOR THE FARMERS' MARKET NUTRITION PROGRAMS

**Sales and Compensating Use Tax Certification (Tax Law § 5-a)**

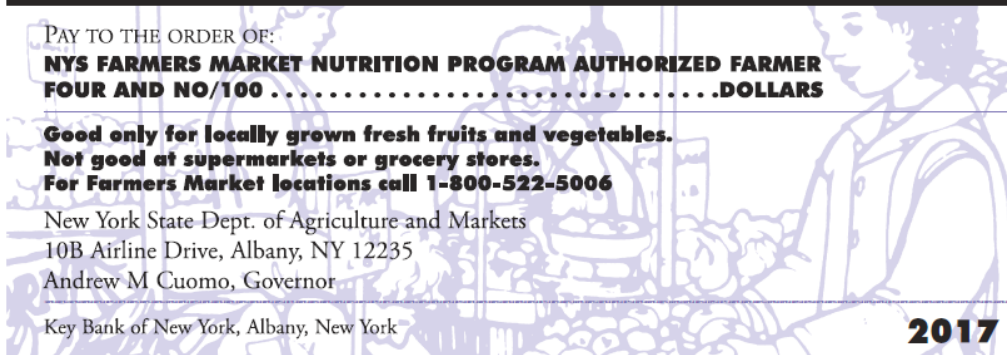
Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency within 48 hours of notification of selection for award) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance’s website, available through this link: [www.tax.ny.gov/pdf/publications/sales/pub223.pdf](http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf). Forms are available through these links:

- ST-220 CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
- ST-220 TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

**Please note that although these forms are not required as part of the bid submissions, the Department encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.**

EXHIBIT 1 – 2017 SFMNP CHECK

<b>NEW YORK STATE FARMERS MARKET NUTRITION PROGRAM</b> FOR SENIOR NUTRITION PROGRAM PARTICIPANTS	194000001
<b>CHECK MUST BE USED BY NOVEMBER 30, 2017 AT AUTHORIZED FARMERS MARKETS ONLY NO CHANGE NO CAMBIO</b>	
PAY TO THE ORDER OF: <b>NYS FARMERS MARKET NUTRITION PROGRAM AUTHORIZED FARMER</b> <b>FOUR AND NO/100 .....</b> DOLLARS	\$ <b>4.00</b>
<b>Good only for locally grown fresh fruits and vegetables.</b> <b>Not good at supermarkets or grocery stores.</b> <b>For Farmers Market locations call 1-800-522-5006</b>  New York State Dept. of Agriculture and Markets 10B Airline Drive, Albany, NY 12235 Andrew M Cuomo, Governor  Key Bank of New York, Albany, New York	<b>AUTHORIZED FARMER NUMBER</b>     NO PAYMENT WITHOUT OFFICIAL STAMP <small>Farmer must negotiate by December 15, 2017</small>
	<span style="font-size: 1.5em; font-weight: bold;">2017</span>

⑈ 19400000 1X ⑈ ⑆ 021300705⑆ 710 03 393 5⑈

Use this check to buy locally grown fruits and vegetables from farmers at authorized Farmers Markets in your community. Buy only from farmers who display this sign. The locations, days, and hours of these Farmers Markets can be obtained at your Senior site. *This check cannot be used at supermarkets or grocery stores.*

Use este cheque para comprar frutas y vegetales frescas cultivadas localmente en los Mercados de Agricultores autorizados en su comunidad. Compre solamente de agricultores que muestren este rotulo. Información sobre el lugar, el día, y las horas de operación de los Mercados se puede conseguir en la oficina de su centro de Personas Mayores. *Este cheque no se puede usar en ningún otro lugar en donde venden frutas y hortalizas.*

The New York State Farmers Market Nutrition Program is sponsored by:  
 N.Y.S. Department of Agriculture & Markets      N.Y.S. Department of Health  
 U.S.D.A. Food and Nutrition Service                      Cornell Cooperative Extension



**FOR NEGOTIATION ONLY**  
**BY THE NYS FARMER-AUTHORIZED FARMER**  
**WHOSE AUTHORIZATION NUMBER IS STAMPED**  
**ON THE FACE OF THIS CHECK.**  
**NO SIGNATURE REQUIRED.**

N.Y.S. Office of the Aging

FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

**EXHIBIT 2 - SAMPLE AGREEMENT**

<b>New York State Department of Agriculture and Markets 10B Airline Drive Albany, NY 12235-0001 Agency Code 06110</b>	Contract Number:  Amount of Agreement: \$  Contract Period: to  NYS Vendor ID:
<b>Contract Authority: AML §</b>	

Contractor Legal Name: (SAMPLE)

Street: City: State: Zip:

Billing Address (if different from above):  
 Street: City: State: Zip:

Title/Description of Project: **Printing Checks for the Farmers' Market Nutrition Program**

AGREEMENT TYPE	FOR AMENDMENTS CHECK THOSE THAT APPLY:	
<input type="checkbox"/> Entertainment <input checked="" type="checkbox"/> Expense <b>THIS AGREEMENT INCLUDES THE FOLLOWING:</b> <input checked="" type="checkbox"/> This Coversheet <input checked="" type="checkbox"/> Appendix A (Standard Clauses for all New York State Contracts) <input checked="" type="checkbox"/> Appendix B (Budget/Fee/Bid Form/Cost Proposal) <input checked="" type="checkbox"/> Appendix C (Entire IFB/Scope of Work and Contractor's Proposal) <input checked="" type="checkbox"/> Appendix D (The Department's General Conditions) <input checked="" type="checkbox"/> Appendix E (The Department's Special Conditions) <input checked="" type="checkbox"/> Appendix E-1 (MWBE Requirements and Procedures)	<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"/> Renewal: Remaining <input type="checkbox"/> Revised Budget <input type="checkbox"/> Revised Scope of Work <input type="checkbox"/> Other <input type="checkbox"/> Appendix A (Standard Clauses for all New York State Contracts-_____)	If Increase/Decrease in Amount:  Previous Amount: \$ Increase/decrease _____ New Total: \$
<b>ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.</b>		

**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:	Signature of Authorized Official:
Date:	Date:
Typed or Printed Name of Above Representative:	Typed or Printed Name of Above Official:
Title of Authorized Representative:	Title of Authorized Official:
STATE OF _____ ss.: County of _____ 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.	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 A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.**



**TABLE OF CONTENTS**

	<b>Page</b>
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor

understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section

January 2014

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract;

or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884 email:  
[opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable,

Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of

the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a 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" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regsg/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contract agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency 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 state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**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.**

**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,  
Appendix E – Department's Special Conditions, Appendix E-1-MWBE Requirements)  
Entire Invitation for Bids (IFB)  
Contractor Proposal/Bid

**PAYMENT**

In consideration of the services to be performed by the **Contractor** pursuant to this Agreement, the **Department** agrees to pay and the **Contractor** agrees to accept a sum not to exceed the period amount specified on the cover sheet of this agreement. All payments shall be in accordance with the budget contained in Appendix B for the applicable period. Payment under this Agreement is conditional upon the continued availability of funds.

If the amount of this Agreement exceeds \$50,000, payments cannot be made until the Agreement is approved by the Office of the State Comptroller (OSC). Expenditures cannot precede the start date of the Agreement. If the Contractor makes expenditures subsequent to the Agreement start date, but prior to OSC approval, it does so at its own risk. In the event OSC does not approve the Agreement, the **Department** shall have no obligation to pay the **Contractor** for any such expenditure.

Any goods or services ordered by the **Contractor** prior to the start date of the Agreement must be received and paid for during the Agreement period in order for the cost of such goods and/or services to be reimbursed using funds from this Agreement. The **Department** will not reimburse the **Contractor** for the cost of goods and/or services received or paid for prior to the start date of the Agreement period. If OSC approval of the Agreement is required, and the **Contractor** orders any goods and/or services prior to OSC's approval of the Agreement, it does so at its own risk.

The **Contractor** shall submit all Claims for Payments and reports to the following address: BSC Accounts Payable Unit, P.O. Box 2117, Albany, New York, 12220-0117, or via e-mail at [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov). Claims 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 at the address referenced herein.

The **Contractor** shall submit all Claims for Payment under this Agreement, together with supporting fiscal documentation and required reports within fifteen (15) business days after the end of each quarter. All Claims for Payment must be accompanied by a summary of services rendered. All obligations must be incurred on or before the end date of this Agreement. The final Claim shall be submitted within thirty (30) business days of the end of each annual contract period or the termination of this Agreement.

For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, payments shall be due 45 days after the end of each quarter or 30 days after submission of a Claim for Payment deemed acceptable by the **Department** and OSC, whichever is later.

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.

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.

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.

Payment for invoices submitted by the **Contractor** shall only be rendered electronically unless payment by paper check is expressly authorized by the **Department**, in the **Department'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 State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. The **Contractor** acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the **Department** has expressly authorized payment by paper check as set forth above.



## **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 appropriated to the **Department** during fiscal year **2017-2018**. Payments made after fiscal year **2017-2018** or payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year **2017-2018** is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

## **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.

## **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.

## **CONTRACT EXPENDITURES**

Expenditures under this Agreement shall conform to the budget annexed as Appendix B. Any Budget variance shall be made only upon the prior written approval of the **Department** and the Comptroller of the State of New York. The **Contractor** cannot increase the total amount of the Agreement.

## **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**

If subcontractors are used it shall be understood that the bid price includes the cost of the subcontractor(s) and no additional markups will be allowed. No subcontract entered into by the **Contractor** shall relieve the **Contractor** of any liabilities or obligations in this Agreement. The **Contractor** accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of this Agreement. The **Contractor's** use of subcontractors shall not diminish the **Contractor's** obligations to complete the work in accordance with the contract. The **Contractor** shall coordinate and control the work of the subcontractors. The **Contractor**

shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

**Contractor** shall not subcontract any work required under this procurement without first obtaining prior written approval from the **Department**. Any proposed subcontract under this Agreement shall be provided to the **Department** in writing on or before April 1<sup>st</sup> each year, and shall be approved in writing by the **Department**, and shall clearly describe the goods or services to be provided and the total cost of such goods or services. Subcontracts for services only shall separately state the rate of compensation on a per-hour or per-day basis. The **Contractor** shall promptly furnish information as requested by the **Department** concerning the proposed subcontractor's ability and qualifications.

## **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, including but not limited to: certified payroll records, cancelled checks, bank statements, and general ledger etc. 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, the amount of time expended upon such services, and a description of the services/deliverable provided to the **Department** pursuant to this Agreement.

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**.

## RESPONSIBILITY REQUIREMENTS

- A. The **Department** is required to undertake an affirmative review of the responsibility of any vendor to which it proposes to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor is responsible. In undertaking such review, the **Department** must comply with the following standards:
  - a. In all cases, the **Department** must consider any information that has come to its attention from the proposed contractor or any other source that would raise issues concerning the proposed contractor's responsibility.
  - b. In the case of any contract valued at \$100,000 or more, the **Department** must affirmatively require disclosure by the proposed contractor of all information that the **Department** reasonably deems relevant to a determination of responsibility by completing a Vendor Responsibility Questionnaire.
- B. The **Contractor** shall at all times during the **Agreement** term remain responsible. The **Contractor** agrees, if requested by Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- C. The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this **Agreement**, at any time, when he or she discovers information that calls into question the responsibility of the **Contractor**. In the event of such suspension, the **Contractor** will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the **Contractor** must comply with the terms of the suspension order. **Agreement** activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the **Agreement**.
- D. Upon written notice to the **Contractor**, and a reasonable opportunity to be heard with appropriate Commissioner officials or staff, the **Agreement** may be terminated by Commissioner or his or her designee at the **Contractor's** expense where the **Contractor** is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

## TERMINATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party.

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.

**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**.

**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.

**DELIVERY DELAYS**

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

**SUBCONTRACTS**

Subcontracting of any portion of the services under this Agreement is not be permitted.

## APPENDIX E-1

### PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

#### *I. General Provisions*

- A. The **Department of Agriculture and Markets** (“**Department**”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State Agreements, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The **Contractor** to the subject Agreement (the “**Contractor**” and the “Agreement” or “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the **Department**, to fully comply and cooperate with the **Department** in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The **Contractor’s** demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Agreement, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies available to the **Department** pursuant to the Agreement and applicable law.

#### *II. Contract Goals*

- A. For purposes of this Agreement, the **Department** hereby establishes an overall goal of thirty percent (30%) for MWBE participation, fifteen percent (15%) for New York State-certified minority-owned business enterprise (“MBE”) participation and fifteen percent (15%) for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Section II-A hereof, the **Contractor** should reference the directory of MWBEs at the following internet address:  
<https://ny.newnycontracts.com>.

Additionally, the **Contractor** is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Agreement.

- C. The **Contractor** understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of an Agreement with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the Agreement.
  
- D. The **Contractor** must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Agreement. Such documentation shall include, but not necessarily be limited to:
  - 1. Evidence of outreach to MWBEs;
  - 2. Any responses by MWBEs to the **Contractor's** outreach;
  - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the **Department** with MWBEs; and,
  - 5. Information describing specific steps undertaken by the **Contractor** to reasonably structure the Agreement's scope of work to maximize opportunities for MWBE participation.

### ***III. Equal Employment Opportunity ("EEO")***

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Agreement.
  
- B. In performing the Agreement, the **Contractor** shall:
  - 1. Ensure that each **Contractor** and subcontractor performing work on the Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The **Contractor** shall submit an EEO policy statement to the **Department** within seventy-two (72) hours after the date of the notice by the **Department** to award the Agreement to the **Contractor**.

3. If the **Contractor**, or any of its subcontractors, does not have an existing EEO policy statement, the **Department** may require the **Contractor** or subcontractor to adopt a model statement (see Form MWBE EE01 – MWBE and Equal Employment Opportunity Policy Statement).
4. The **Contractor's** EEO policy statement shall include the following language:
  - a. The **Contractor** will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The **Contractor** shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The **Contractor** shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the **Contractor's** obligations herein.
  - d. The **Contractor** will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Agreement.

#### C. Form MWBE/EEO2 - Staffing Plan

To ensure compliance with this Section, the **Contractor** shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Agreement by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The **Contractor** shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by the **Department**.

#### D. Form MWBE/EEO3 - Workforce Employment Utilization Report

1. The **Contractor** shall submit a Workforce Employment Utilization Report, and shall require each of its subcontractors to submit a Workforce Employment Utilization Report, in such form as shall be required by the **Department** on a **quarterly** basis during the term of the Agreement.
2. Separate forms shall be completed by the **Contractor** and any subcontractors.



- E. The **Contractor** shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The **Contractor** and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A. The **Contractor** represents and warrants that the **Contractor** has submitted an MWBE Employment Utilization Plan, or shall submit an MWBE Employment Utilization Plan at such time as shall be required by the **Department**, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the **Contractor** may arrange to provide such evidence via a non-electronic method to the **Department**, either prior to, or at the time of, the execution of the Agreement.
- B. The **Contractor** agrees to adhere to such MWBE Employment Utilization Plan in the performance of the Agreement.
- C. The **Contractor** further agrees that failure to submit and/or adhere to such MWBE Employment Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the **Department** shall be entitled to any remedy provided herein, including but not limited to, a finding that the **Contractor** is non-responsive.

#### **V. Waivers**

- A. If the **Contractor**, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the **Contractor** may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the **Department**. Such waiver request must be supported by evidence of the **Contractor’s** good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the **Department** shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the **Department**, upon review of the MWBE Employment Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the **Contractor** is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the **Department** may issue a notice of deficiency to the **Contractor**. The **Contractor** must respond to the notice of deficiency within seven (7) business days of

receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### ***VI. Quarterly MWBE Contractor Compliance Report***

The **Contractor** is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the **Contractor** may arrange to provide such report via a non-electronic method to the **Department** by the 10<sup>th</sup> day following the end of each quarter during the term of the Agreement.

#### ***VII. Liquidated Damages - MWBE Participation***

- A. Where the **Department** determines that the **Contractor** is not in compliance with the requirements of this Appendix and the **Contractor** refuses to comply with such requirements, or if the **Contractor** is found to have willfully and intentionally failed to comply with the MWBE participation goals, the **Contractor** shall be obligated to pay to the **Department** liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the **Contractor** achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Agreement.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the **Department**, the **Contractor** shall pay such liquidated damages to the **Department** within sixty (60) days after they are assessed. Provided, however, that if the **Contractor** has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the **Contractor** following the complaint process.