

NEW YORK STATE
DEPARTMENT OF AGRICULTURE AND MARKETS

RFP #0142 REQUEST FOR PROPOSALS

**SERVICES TO SUPPORT THE NYS SOIL AND WATER CONSERVATION
COMMITTEE (STATE COMMITTEE) NONPOINT SOURCE (NPS)
OUTREACH, EDUCATION AND COMMUNICATIONS PROGRAM WITHIN
THE NYS DEPARTMENT OF AGRICULTURE AND MARKETS**

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

SERVICES TO SUPPORT THE NYS SOIL AND WATER CONSERVATION COMMITTEE (STATE COMMITTEE) NONPOINT SOURCE (NPS) OUTREACH, EDUCATION AND COMMUNICATIONS PROGRAM WITHIN THE NYS DEPARTMENT OF AGRICULTURE AND MARKETS

1. INTRODUCTION

1.1 OVERVIEW:

The New York State Department of Agriculture and Markets seeks proposals from qualified County Soil and Water Conservation Districts (Districts) in New York State to provide a broad array of outreach, education and communications services to a wide audience, including County Districts and their Directors, New York State Soil and Water Conservation Committee (State Committee) partners, federal, state, and local agencies, environmental groups, citizen organizations, legislators, farmers, and the public. A communication program for County Soil and Water Conservation Districts will also be developed under this procurement, including the development and execution of a strategy involving a training curriculum, tools, and resources, outreach and evaluation components, as well as the coordination of media events.

1.2 BACKGROUND AND PURPOSE

Outreach and Education Program

Due to the broad responsibilities of the New York State Soil and Water Conservation Committee and the Department of Agriculture and Markets, a wide array of outreach, education and communications services are required. Audiences for outreach, education and communications include Districts and their Directors, State Committee partners, federal, state, and local agencies, environmental groups, citizen organizations, legislators, farmers and the public. The implementation of this program includes the development and distribution of annual reports on programs and accomplishments, website development, and the design and creation of visuals including program brochures and displays.

Communication Program

Districts deliver a diverse range of programs and services to farmers, landowners and municipalities that protect, preserve and enhance natural resources. The core mission of the State Committee is to promote a comprehensive natural resources conservation program for the State of New York through the coordination of District programs. In order to accomplish this mission, the State Committee seeks to provide Districts with communications and other relevant training. Implementation of this program will involve the development and execution of a strategy involving a training curriculum, tools and

resources, outreach and evaluation components, as well as the coordination of media events.

1.3 ELIGIBLE BIDDERS

Proposals will be considered only from individual New York State County Soil and Water Conservation Districts.

1.4 ELIGIBLE COSTS

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

Health and Dental Insurance
New York State Retirement System
Disability and Unemployment Insurance
Cell Phone Contract

Travel, Training, Outreach Materials, Equipment/Supply costs are set by the Department in the budget.

1.5 TERM

The contract resulting from this RFP will be for a one (1) year term with four (4) renewals. It is anticipated that the contract will be awarded on September 1, 2016. The tentative contract term will commence on October 1, 2016 and end on September 30, 2021

1.6 RFP TIME LINE

RFP Posted:	July 12, 2016
Questions regarding this RFP must be submitted by:	July 27, 2016 by 3:00 p.m. (local time)
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	August 6, 2016
Bidders' Responses due on:	August 12, 2016 by 3:00 p.m. (local time)
Tentative Award Date:	September 1, 2016
Contract Signed :	September 15, 2016
Contract Start Date:	October 1, 2016

2. DESCRIPTION OF WORK TO BE PERFORMED

The contractor will provide services to implement the following activities:

Develop and implement State Committee/Agricultural Environmental Management (AEM)/Nonpoint Source strategies for expanding partnerships, participation and public support.

- **Develop and coordinate AEM/Nonpoint Education:**
 - Develop, coordinate, and facilitate AEM media events, statewide conferences and trainings.
 - Prepare speeches, presentations, press releases, talking points, sound bites and quotes for the Commissioner, State Committee Chairman and senior staff.
 - Author AEM articles in agricultural publications, newsletters and reports.
 - Provided leadership to the AEM Outreach Committee, Water Quality Symposium Conservation Education Planning Committee, and NYSCDEA Envirothon Committee.
 - Direct statewide distribution of State Committee outreach and materials.
 - Develop and maintain the State Committee website.
 - Assist the Department of Agriculture and Markets with promotion of AEM for participation in the New York State Grown Certified initiative.
- **Develop and produce State Committee Program/AEM/Nonpoint Outreach and Materials:**
 - Compose and produce the AEM Annual Report and other documents.
 - Compose and produce the SWCC Annual Report of Conservation District accomplishments.
 - Document Ag NPS program accomplishments.
 - Document Climate Resilient Farming accomplishments.
 - Manage all aspects of publication from concept development, research and writing to design, layout, photography, graphics and publishing.
 - Design and create outreach and materials, logos, branding items, signage, displays, banners and other visuals.
- **Advance Local AEM/Nonpoint Programming:**
 - Develop, coordinate and facilitate regional program outreach and training workshops for Districts, farmers, and local conservation partners.
 - Create and compile outreach training materials and deliver presentations.
 - Oversee all aspects of outreach training including preparation and distribution of agenda, outreach and to generate participation, and arrangements for venue, meals and branding materials.

- Establish recognition program to encourage and recognize leading efforts of Districts and evaluate program results.
- Maintain NPS pollution prevention and restoration recognition programs including *AEM Signage Awards*, *AEM Agriculture in the News Award*, and assist with *Statewide AEM Award*.
- **Other Services as assigned:**
 - Assistance with office related responsibilities (e.g. photocopying, answering phones, setting up teleconferences and meetings, and developing other training materials).
- **Location:**

The official workstation will be located at the State Committee office, 10B Airline Drive, Albany, New York. Personnel assigned to this contract will be expected to report to the State Committee office on a daily basis to perform duties as described in the scope of services. Personnel are expected to work a minimum of 7.5 hours daily, excluding travel time to and from official work station.

3. PROPOSAL FORMAT, CONTENTS AND SUBMISSION

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

3.1 SUBMISSION TIMELINE

All proposal submission documents required to be responsive for proposal evaluation must be received by AGM no later than **3:00 p.m. on August 12, 2016** in order to be considered.

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 3.7, 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 - Forms and Assurances:

- Mail original plus two (2) paper copies of the Forms and Assurances in a separate envelope labeled "RFP #0142 Forms and Assurances - Do Not Open" and include all Forms and Assurances located in the Submission Documents packet (which follows the Attachments), original plus two (2) copy, including original signatures, where necessary.
 - **Cover Sheet and Submission Documents Checklist**
 - **Attachment 1 - Application Form**
 - **Attachment 2 – Bid Form/Cost Proposal**
 - **Attachment 3 - Non-Collusive Bidding Certification Certification (Original Signatures)**

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

Envelope 2 - Technical Proposal:

- Mail original plus three (3) paper copies of the completed Application Form (Attachment 3) in a separate envelope labeled “RFP #0142 Technical Proposal - Do Not Open.”

Envelope 3 - Cost Proposal:

- Mail original plus three (3) paper copies of the completed Bid Form/Cost Proposal (Attachment 4) in a separate envelope labeled “RFP #0142 Bid Form/Cost Proposal - Do Not Open.”

To the following address:

New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Judy Giovannetti (RFP#0142)

3.3 TECHNICAL PROPOSAL

- a. Contract Experience – Provide contract number(s) of contract(s) held with the State Committee and the contract time periods.
- b. Work Experience – provide a detailed description of service provider’s ability to meet the deliverables listed in the scope of services.

All Technical Proposals must be submitted on the attached Application Form (Attachment 3).

3.4 COST PROPOSAL (Submit a separate sealed envelope labeled as follows: Proposer’s name, “Cost Proposal for Consulting Services to Support the NYS SWCC NPS Outreach, Education and Communications Program –Budget Form”)

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

Incomplete proposals may be rejected.

3.5 OTHER REQUIRED DOCUMENTS (signed and notarized, if applicable)

- **Cover Sheet and Submission Documents Checklist**
- **Attachment 1 - Application Form**
- **Attachment 2 – Bid Form/Cost Proposal**
- **Attachment 3 - Non-Collusive Bidding Certification (Original Signatures)**
- **Attachment 5 – Procurement Lobbying Law Forms (Original**

Signatures)

3.6 QUESTIONS CONCERNING THE RFP

All questions about requirements contained in this RFP must be submitted in writing via e-mail to:

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

All questions must be submitted to Mr. Steinmuller by 3:00 p.m. local time on July 27, 2016. Proposers should note that all clarifications are to be resolved prior to the submission of a proposal. A list of questions about the RFP and answers to those questions, as well as any addendums to the RFP, will be posted in the "Funding Opportunities" section of the Department's website, www.agmkt.state.ny.us by August 6, 2016. If you are unable to access the website, please contact Mr. Steinmuller to arrange for alternate delivery. All questions and answers will become a formal addendum to this RFP.

4. EVALUATION CRITERIA AND METHOD OF AWARD

4.1 SELECTION CRITERIA

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

- Technical Component (80 points): The Department will evaluate the technical component of the proposal based on the following criteria:
 - the extent of demonstrated experience that qualifies the proposer to complete the scope of work described in this RFP; and
 - the proposer's overall knowledge and understanding of State Committee and District programs and the scope of services outlined in this RFP.
- Cost Component (20 points):

The basis for the cost proposal evaluation rankings will be the total bid received from each offeror using the "Cost Proposal Form" (Attachment 4). The bids will be ranked with the low bid awarded the maximum total of 20 points. The remaining bids will be assigned scores based on the following formula:

$$\frac{\text{Low bid}}{\text{Bid being evaluated}} \quad \times \quad 20 \text{ points}$$

4.2 METHOD OF AWARD

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

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

4.3 NOTIFICATION OF AWARD

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

5. CONTRACT

5.1 The Department will award a contract to the successful bidder for a one year term, with the possibility of four additional one-year renewals. The contract will incorporate the successful bidder's proposal among its provisions. A copy of the standard clauses that set forth the general terms and conditions required in all contracts awarded by the Department as well as any special conditions that will be required for this contract is attached to this RFP. (See Attachments 1 & 2) The initial contract and subsequent renewals are contingent on availability of funding, and approval of the Department, the Attorney General's Office and the Office of the State Comptroller.

a. Payment

Payment will include a one-time initial payment of 25% of the contract amount upon execution, followed by monthly reimbursement of expenses as needed. Claim for payment shall be submitted to the Department.

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

b. Price Escalation

On each anniversary date of the contract, the Contractor may be granted an increase in its bid for salary and fringe benefits equal to any increase in the general salary to other employees of the sponsoring Soil and Water Conservation District for the appropriate year. The Non Personal Services section of the budget may be

increased up to 5%, at the sole discretion of the Department, on each anniversary date including travel, training, outreach material, equipment/supply costs. These costs are to be predetermined by the Department for the first contract period.

c. Travel Reimbursement

Costs for travel and associated meals and lodging for those assignments that requires such shall not exceed the prevailing maximum rates established by the Office of the State Comptroller, which correspond to the rates provided by the Federal Government to its employees. To access information related to travel, including the current reimbursement amounts, refer to the following website: <http://nysosc3.osc.state.ny.us/agencies/travel/travel.htm>.

d. Appendix A (Standard Clauses for All State Contracts)

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

e. Minority and Women Owned Businesses Equal Employment Opportunities And Goals

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

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

Minority business enterprises	15%
Women owned business enterprises	15%

f. Consultant Services Contractor's Employment Reports (Attachment 7)

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

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

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (See Attachment 6 -- "Guidelines Regarding Permissible Contacts During a Procurement and The Prohibition of Inappropriate lobbying Influence".) An offeror/bidder is restricted from making contacts

from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Designated staff, as of the date hereof, is identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period; the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department’s Guidelines, which are attached, and on the Office of General Services Website at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

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

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

Kimberly Carr
Division of Fiscal Management
Telephone: (518) 457-6172
Fax: (518) 485-7750
E-mail: kimberly.carr@agriculture.ny.gov

Record Retention

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

6. CONSIDERATIONS

6.1 LIABILITY

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

6.2 FREEDOM OF INFORMATION

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

6.3 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 15 calendar days of notification by the Department 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.

6.4 DEPARTMENT'S RESERVATION OF RIGHTS

Only proposers that have submitted complete information will be considered.

The Department reserves the right to:

- Reject any or all proposals received with respect to this invitation;
- Withdraw the RFP at any time, at the Department's sole discretion or otherwise decline to award a contract from this invitation;
- Make an award in whole or in part;
- Require clarification from any bidder to assure a full understanding of the responsiveness to the requirements of the invitation;
- Disqualify any bidder whose conduct and/or bid response fails to conform to the requirements of the RFP;
- 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 Department's request for clarifying information in the course of evaluation and/or selection under the RFP;
- Waive or modify minor irregularities in bids received;
- Request additional information from bidders as deemed necessary to more fully evaluate bids or to obtain omitted required forms. Bidders will have three (3) business days to respond to the request;
- Prior to the bid opening, amend this solicitation after its release, with appropriate written notice posted on the Department's website to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit bid response modifications addressing subsequent RFP amendments;
- Change any of the scheduled dates;
- Eliminate any minimum or mandatory, non-material specifications that cannot be complied with by all of the bidders;
- Waive any requirements that are not material;

- Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected bidder; and
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 days from the bid opening.

6.5 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 receipt of a debriefing letter, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with 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

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/>.*

6.6 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.

6.7 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.

6.8 DIESEL EMISSIONS REDUCTION ACT 2006

In 2007 New York State passed legislation establishing the Diesel Emissions Reduction Act 2006 (DERA). This Act amended the Environmental Conservation Law (ECL) by adding Section 19-0323 which requires the use of best available retrofit technology (BART) and ultra low sulfur diesel fuel (ULSD) for heavy duty vehicles owned or operated by, including on behalf of, state agencies and state or regional public authorities. The **Department** has promulgated regulations (6NYCRR Part 248) to provide guidance on provisions of the law. The regulations may be found on the **Department's** website at: <http://www.dec.ny.gov/regs/2492.html> .

The **Contractor** will be required to certify that they are in compliance with the provisions of ECL Section 19-0323 by providing the necessary reporting information and attesting to the following:

The Contractor certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) Section 19-0323, to be used under this Contract, will comply with the specifications and provisions of ECL Section 19-0323 and the regulations promulgated thereto, which requires the use of Best Available Retrofit Technology (BART) and Ultra Low Sulfur Diesel (ULSD), unless specifically waived by the Department. Qualifications for a waiver under this law will be the responsibility of the Contractor.

6.9 IRAN DIVESTMENT ACT REQUIREMENTS

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

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

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

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

Appendix A Exhibit 1
INSERT MASTER CONTRACT

Or
Standard Clauses

GENERAL CONDITIONS FOR CONTRACTS

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

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

ORDER OF PRECEDENCE

The Order of Precedence for this **Agreement** is as follows:

- Appendix A
- Contract Cover Page
- Appendix D
- Appendix E
- Appendix C
- Appendix B

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: NYS Department of Agriculture and Markets, Division of Fiscal Management, 10B Airline Drive, Albany, NY 12235. 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 by the Division of Fiscal Management.

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

PROGRESS REPORTS

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

PAYMENT CONTINGENCY

Funds for payment under this Agreement are provided to the **Department** through appropriations from the New York State Legislature. These appropriations are made on a fiscal year basis. New York State's fiscal year begins on April 1 of each calendar year and ends on March 31 of the following calendar year. Funds for payments under this Agreement were or are expected to be appropriated to the **Department** during fiscal year **2016-2017** and were or are expected to be reappropriated during fiscal year **2016-2017**. Payments made after fiscal year **2016-2017** for payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year **2016-2017** is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

RETAINAGE

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

FINANCIAL LIMIT

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

CONTRACT EXPENDITURES

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

NON-DUPLICATION OF PAYMENTS

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

SUBCONTRACTS

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

FINAL REPORT

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

RECORDS MAINTENANCE, EXAMINATION AND RETENTION

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

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

INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury 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** promptly notify the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

NON-SECTARIAN PURPOSE

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

CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

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

DEVIATION FROM WORK

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

TERMINATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30)

days written notice to the other party. Upon receipt of such notice from the **Department**, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

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

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

COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

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

MODIFICATION

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

NECESSARY SIGNATURES

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

APPENDIX E
SPECIAL CONDITIONS FOR AGREEMENTS

INITIAL PAYMENT

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

RENEWAL

This Agreement may be renewed by the **Department** in its sole discretion for successive terms not to exceed four (4) years, subject to the approval of the Attorney General and Comptroller of the State of New York.

TRAVEL

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

PUBLICATION

Contractor agrees to use best efforts to provide copies of any planned publication, release or dissemination of findings arising from **Contractor's** performance under this Agreement for the **Department's** prior review.

INSURANCE

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

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

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

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**.