

RESTAURANT AND FOOD SERVICE
CENTER OF PROGRESS BUILDING RESTAURANT
New York State Department of Agriculture and Markets
Division of the State Fair

This Request for Proposals (RFP) is issued by the New York State Department of Agriculture and Markets (Department) to invite qualified proposers to submit a proposal to renovate, improve and operate a themed restaurant (Restaurant) located in the Center of Progress Building at the Empire Expo Center, home of the New York State Fair, in Syracuse (Town of Geddes, Onondaga County) New York.

Proposals must be received in hand by the Department no later than 3:00 pm local time on November 30, 2009. Proposals shall be addressed to:

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

Submit an original and three (3) copies of your proposal in a sealed envelope or package. Mark "Center of Progress Building Restaurant" on your proposal. Proposals may not be submitted electronically or by fax. Your proposal will be in two parts, Part I consisting of your license fee, and Part II consisting of your background experience and technical submission.

Inquiries about this RFP shall be directed to Emma Graham, in writing at the above address, or via email to emma.graham@agmkt.state.ny.us and received no later than October 29, 2009. No telephone inquiries will be accepted. All questions and answers will be posted on the Department's website, www.agmkt.state.ny.us in the "Funding Opportunities" section. Answers will be posted as quickly as possible, but no later than October 30, 2009. The questions and answers, when posted, are part of this RFP.

Addenda to the Request for Proposals

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

Introduction

The Empire Expo Center, in Syracuse, New York, is a 375 acre site which is home to the annual New York State Fair, a twelve day event ending on Labor Day each year. The State Fair draws 850,000 – 950,000 persons.

The Empire Expo Center also hosts many other events year round, drawing approximately 500,000 to 750,000 persons in total. The Center of Progress Building Restaurant provides varying levels of food service to the public during events at the Empire Expo Center. A list of those events is attached to this RFP and shows the amount paid by the former Licensee to the Department under the prior License.

Schedule

The Department reserves the right to change any of the below scheduled event dates. Any changes will be posted on the Department's website, www.agmkt.state.ny.us under "Funding Opportunities". Proposers are responsible for keeping informed of any changes in the schedule.

Event Dates

RFP Issued - October 13, 2009
Mandatory Meeting and Tour – October 22, 2009
Last Date for Inquiries – October 29, 2009
Responses to Inquiries – October 30, 2009
Proposals Due – November 30, 2009
Selection Within 30 days
Improvements completed by April 1, 2010

Mandatory Meeting and Tour of Facilities

All prospective proposers must attend a meeting at the Empire Expo Center on October 22, 2009 at 11:00 am. A tour of the premises is mandatory for all proposers and will be given at the conclusion of the mandatory meeting. Proposals will not be accepted from proposers who do not attend the meeting and tour the current facilities and equipment. Please call Geneanne Keegan-Smith, Concessions and Exhibits Manager at (315) 487-7711, Ext. 1212 to advise if you will attend the mandatory meeting and tour of the location.

Objective

The objective of this RFP is to retain a Licensee to renovate, improve and operate a themed restaurant located in the Center of Progress Building.

Scope of License

During the Term of the License, the Licensee shall be the sole operator of the Restaurant during all events held at the Empire Expo Center. The Licensee shall operate the Restaurant during the annual New York State Fair, and during every event held in the Center of Progress Building. Restaurant and food and beverage service operation shall include the sale of food, beverages and alcoholic beverages in the Restaurant, and in the Center of Progress from mobile food carts provided by the Licensee and, within the sole discretion of the Department, during the annual State Fair from a temporary location located in or adjacent to Chevy Court. The food and beverage menus and prices must be pre-approved by the State Fair and, to the extent possible, shall utilize New

York food and beverage products. The sale of novelties and souvenirs will be subject to "Novelties and Souvenirs", below.

Operation

The Restaurant shall be fully operable no later than the deadline for the completion of improvements. The Restaurant shall operate every day during the annual New York State Fair opening not later than 10:00 am and providing breakfast, lunch and dinner. At other times, the Restaurant shall open for every event held at the Center of Progress Building. The hours of operation shall be coordinated with the event promoters.

Attached is a list of events using the Center of Progress and the amounts paid by the licensee to the Department in 2008-2009, 2007-2008 and 2006-2007. Also attached is a schedule showing the licensee's payment to the Department for sales made during the annual New York State Fair in each of those years.

Term

The Term of the License will be five (5) years beginning January 1, 2010. The License may be renewed at the Department's sole option for not more than five (5) years, upon terms no less favorable to the Department than those in the License agreement arising from this request for proposals.

Premises

The Restaurant is located in the Center of Progress Building and is owned by the Department. The Restaurant area takes up most of the southwest wing of the Center of Progress Building. It has approximately 6,100 square feet on two floors. The main floor is approximately 3,850 square feet, with 3,150 square feet available for seating and 700 square feet of kitchen and prep area. The second floor, which is accessible by way of two staircases in the restaurant, is approximately 2,500 square feet and consists of dining space (approximately 2,250 square feet) and a storage/office area. Current seating capacity is over 300 persons when utilizing both floors. In addition, there is an attached storage/cooler area of approximately 400 square feet. The Restaurant is heated and restroom facilities are available. In addition, mobile food cart operations may be operated by the successful proposer at location(s) near, or in proximity to, the Restaurant, as determined by the Department. The brick patio area adjacent to the front doors of the Restaurant and the concrete patio will not be part of this license agreement.

The food preparation equipment is owned by the current operator.

Municipal water, sewer, natural gas and electric services are made available to the Restaurant by the Department. The Licensee shall be responsible for and shall pay for the cost of natural gas and electricity.

Capital Improvements

The Licensee shall improve and renovate the existing Restaurant and re-equip all kitchen facilities. All cooking equipment in the Restaurant shall be natural gas fueled, except where natural gas fueled equipment is not available. The current kitchen and

food service equipment is owned by the current Restaurant licensee. All permanent fixtures including the hood/ventilation system and the storage/cooler area, as well as counters, tables and chairs/benches are the property of the Fair. The successful proposer may, but is not required to use these items.

Your proposal must include capital improvements to the Restaurant structure, including exterior signage, furnishings and equipment along with a preliminary schedule for completion of all improvements. All improvements must follow the architectural design of the existing building. Preliminary drawings, layouts and cost estimates must be part of your proposal. If you are the successful proposer, your final approved proposed renovations must be prepared by an architect licensed by the State of New York. All structural improvements will become the property of the Department. All equipment will remain the property of the successful proposer.

The Department will provide such "as-built" drawings, surveys and utility locator maps as may be available.

The Licensee shall be responsible for determining the adequacy of the existing utilities, including natural gas, electricity and telephone service.

All construction, labor and materials shall comply with the laws of the State of New York.

Operation and Maintenance

During renovation and construction, the Licensee shall provide food and beverage service during all events at the Center of Progress using mobile carts or such other means as will satisfactorily provide such service.

The Licensee shall operate the Restaurant in compliance with the New York State Sanitary Code, as administered and enforced by the Onondaga County Health Department and shall remain in full compliance at all times.

The Licensee shall operate the Restaurant through its employees. The Licensee's employees shall wear uniforms, which include the name of the Restaurant, at all times. The uniforms may not include "T-shirts". The Licensee shall be responsible for the cost of employee admissions and parking during the annual New York State Fair.

The Department shall make available potable water and sanitary sewer for the Licensee's use at the location.

The Licensee shall be solely responsible for the cost of all utility connections, service charges and usage charges. The Department shall provide trash removal. The selected Licensee shall retain the services of a company authorized and licensed to dispose of cooking oils and grease.

Permits and Licenses

The selected proposer shall, at its sole cost and expense, identify and obtain all necessary federal, state and local approvals, including but not limited to, hazardous materials assessments, environmental assessments, surveys, health department

approvals and other approvals necessary to complete the Licensee's proposed improvements and renovation of the Restaurant, and all licenses, permits and permissions necessary to operate the Restaurant, including permits authorizing the sale of alcoholic beverages which sale shall include beer, wine and liquor.

Department Use of Restaurant

The Department reserves the right to use the Restaurant for governmental purposes. The Department shall be responsible for all costs and expenses associated with such use and shall be responsible for damage or loss to the Licensee's equipment and property during such use.

Novelties and Souvenirs

Novelties and souvenirs may not be sold by the Licensee except as may be permitted in the sole discretion of the Department. Such sales, if permitted, shall be made only upon such terms and conditions as determined by the Department.

License Fee

The license fee offered shall consist of two parts: (i) a fee based on a percentage of gross receipts from the sale of food and non-alcoholic beverages, and (ii) a fee based upon a percentage of gross receipts from the sale of alcoholic beverages. Gross receipts shall be the total amount of money received, or realized by, or accruing to, the Licensee from the sales, for cash or credit, of food, beverages and alcoholic beverages made pursuant to the rights granted under the License. Alcoholic beverages shall include all non-alcoholic beverages subject to the Alcoholic Beverage Control Law of the State of New York.

Books and Records

The Licensee shall maintain separate books and records covering its operation of the Restaurant under the License; retain its books and records related to the Licensee's operations for a period of six (6) years and shall provide access to those books and records by the Department and the State Comptroller, upon reasonable notice.

Transfer of Interest Prohibited

The Department will select the Licensee, in part, upon that Licensee's particular and personal experience and ability to provide the services sought under this Request for Proposals.

The License awarded from this Request presumes that the Licensee's ownership will not change during the Term of the License. In the event of change of ownership, or principals, of the Licensee, the License arising from this Request may be terminated by the Department without liability. No change in ownership or principals of any Licensee shall be made or become effective unless the Department is notified, in writing, of the change not less than ninety (90) days before the proposed change and approves such proposed change in writing.

Sublicensing is not permitted.

Performance Bond

The Licensee shall provide a performance bond and a labor and material bond for the benefit of the Department and the proposal shall include a written binder, providing that such bonds shall be issued upon award of the License to the Licensee, from an insurance or surety company authorized to do business in New York State. The bonds shall insure that the Licensee promptly and timely completes the improvements and renovations set forth in the Licensee's proposal, pays all materialmen and subcontractors in connection with such improvements and renovations.

Insurance – Improvement and Renovation - Casualty

During improvement and renovation, the Licensee shall obtain and maintain casualty insurance, insuring against loss or damage to the facility from fire or other casualty with an extended coverage endorsement in an amount equal to 100% of the full insurable value of the facility. The facility is the Center of Progress Building.

Insurance - Liability and Workers Compensation

The Licensee shall obtain and maintain at its sole cost and expense during the Term of the License, comprehensive general liability insurance including coverage for premises - operations liability; liability for acts of independent contractors and others; products - completed operations liability; blanket contractual liability; liability for the operation of owned, non-owned and hired motor vehicles; coverage against liability arising from explosion, collapse and underground casualty; and liquor liability insurance. Such comprehensive general liability insurance shall have a combined single limit of not less than two million dollars (\$2,000,000.00) per occurrence. The Department shall be named as an additional insured on all policies of insurance provided and maintained by the Licensee.

The Licensee shall obtain and maintain Workers Compensation and disability insurance coverage covering all persons working for the Licensee, or on its behalf, as required by law.

Use of New York State Fair Name and Logo

The Licensee may, with the prior permission of the Department, use the term "*New York State Fair*," the New York State Fair logo and the term "*Empire Expo Center*" in connection with Licensee's operation of the License. Such permission will not be unreasonably withheld and, when given, shall not be deemed blanket permission for the use of the names and logo. The Licensee shall make a prior written request to the Department for such permission not later than seven (7) days prior to such intended use, or within such time as is necessary for the Licensee to arrange for production and distribution of commercial and advertising materials.

Termination of License

The License agreement arising from this Request for Proposals will include a provision allowing the Department to terminate the License for cause, or convenience, prior to expiration of the Term. If the License is terminated for convenience, the License will be reimbursed only for the undepreciated value of the capital improvements, renovations and equipment as of the date of such termination. Depreciation will be calculated at a straight line rate of 20% per year and capital improvements will be fully depreciated during the Term of this agreement.

New York Law

The laws of the State of New York shall apply to the License and to all claims, actions and other proceedings arising out of the operation of the License.

Approvals

The License agreement shall be effective only upon the approval of the Attorney General of the State of New York and the Comptroller of the State of New York.

Minimum Qualifications

Your proposal will not be evaluated if you do not offer a license fee equal to or exceeding twenty-eight percent (28%) of gross sales realized from the sale of food and non-alcoholic beverages and a license fee equal to or exceeding twenty-five percent (25%) of gross sales realized from the sale of alcoholic beverages.

Proposal Contents

Submit your proposal in one envelope or package, marked with your name and the words "Center of Progress Restaurant Proposal". Inside, place your proposal which must be submitted in two (2) separate parts. Each part must have the name of the proposer on the outside of the envelope or package.

1. On the first inner envelope put your name and write the words "License Fee" on the outside and place the "License Fee" portion of your proposal inside.

For each of the five (5) twelve (12) month periods during the Term of the proposed License, state the annual license fee to be paid to the Department expressed as a percentage of gross receipts received from (i) the sales of food and non-alcoholic beverages, including water, and (ii) the sales of alcoholic beverages. The license fee shall be based upon gross receipts, after the deduction of sales tax only.

2. On the second inner envelope, put your name and write the word "Technical Proposal" on the outside and place the "Technical Proposal" portion of your proposal inside. Your technical proposal must include:

- a. A narrative description and pictorial display (photos, drawings etc.) of the theme you propose for the Restaurant including your rationale for your choice.
- b. Renovation/construction
 - 1. Preliminary drawings showing proposed structural improvements and renovation; a written description of the work proposed, including new signage and a detailed cost estimate; and
 - 2. A proposed depreciation schedule for the restaurant improvements, separately identifying and depreciating each capital improvement and capital renovation. All depreciation must be taken within the initial Term of the License; and
 - 3. Proof of casualty insurance and a performance bond and labor and material bond covering your proposed improvements and renovations.
- c. A list of equipment, including make, model and manufacturer, which you propose to install, for example, cook tops, refrigerators, freezers; whether the equipment is presently owned and, if so, the age and condition, or whether the equipment will be obtained if you are awarded the License. Previously used equipment and refurbished equipment is acceptable provided that such equipment is owned by you.
- d. A proposed list of food, beverages and alcoholic beverages to be sold, including serving size and sale price.
- e. A description of the method or methods of revenue accountability which you will use in the operation of this License.
- f. The name, address and telephone number and a written description of each location, including identification of the building owner and/or manager, and photographs of the exterior and interior of food service operations similar to that which you propose in which you have interest. If you currently provide food service for the benefit of a governmental entity, you must provide a copy of the current agreement between you and the governmental entity.
- g. Copies of your state and federal income tax returns and your financial statements for the last three (3) business years. This information will be received and maintained by the Department as confidential to the maximum extent permitted by law; the information will not be disclosed to anyone other than Department personnel on the selection committee, and upon request, the Office of the State Comptroller during review of the award of the License. The tax and finance information will not be copied and will be returned to you.
- h. A minimum of three (3) verifiable references, one of which must be your principal banking organization and one of which must be your principal

food supplier, together with the name, address and telephone number of a contact person at each reference and your written authorization allowing your references to provide information about you to the Department.

- i. A specific and detailed written statement of your:
 1. corporate/company history, background, structure, ownership and management philosophy;
 2. background and experience of management and operating personnel;
 3. personnel policy, including alcohol/drugs and employee assistance; and dress, conduct and appearance policy/guidelines;
 4. customer complaint policy;
 5. policies concerning employee qualification and training;
 6. policy on people with special needs.

Selection Process

The successful proposer will be selected based upon an evaluation of each proposer's technical proposal by a selection committee composed of Department officers and employees, and the evaluation of each proposer's license fee by the Department's Division of Fiscal Management. The points awarded in the technical evaluation and license fee evaluation will be combined to determine the ranking of proposals. Proposals will be rated as follows:

1. Attractiveness, viability and rationale of the theme. (15 points)
2. Quality and responsiveness of proposal demonstrating an understanding of the Department's objectives and the proposer's explanation of how their proposal will achieve those objectives (10 points).
3. Qualifications and experience of the proposer (25 points). The points available will be awarded based upon the proposers prior experience in operating a restaurant (12.50 points) and the proposer's prior experience in similar food service operations (12.50 points).
4. License fee (50 points). The two-part license fee (See, *Proposal Contents*, above) is worth 25 points for each part. The proposer offering the highest license fee in each part will receive 25 points. The remaining proposers will be awarded points using this formula:

$$25 \times \frac{\text{Fee being evaluated}}{\text{Highest fee}}$$

The points awarded for each part of the fee will be combined resulting in the total license fee points awarded for each proposer.

The Department reserves the right to:

- reject any or all proposals received with respect to this RFP;
- decline to award a contract from this RFP;
- require clarification from any Proposer to assure a full understanding of the responsiveness to the requirements of the RFP;
- waive or modify minor irregularities in proposals received;
- request from a Proposer additional information deemed necessary to more fully evaluate its proposal. Proposer's will have three (3) business days to respond to the request or may be disqualified;
- amend this RFP after its release, with appropriate notice posted on the Department's website, and;
- negotiate with any or all Proposers within the proposal requirements, in the best interest of New York State.

Notification of Award – Debriefing - Protest

Each proposer will be advised by letter within three business days after the award is made.

An unsuccessful proposer may request a debriefing, provided for by Section 163, subd. 9(c) of the State Finance Law, by contacting Emma Graham at emma.graham@agmkt.state.ny.us within five business days from receipt of notification of award.

An unsuccessful proposer may protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Cotntracts, 110 State Street, 11th Floor, Albany, New York 12236.

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

Proposers shall make no unsolicited contact with any Department or Division personnel regarding this RFP, except that proposers may contact Emma Graham in writing or by email at emma.graham@agmkt.state.ny.us.

Cost Liability

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

Acceptance of Proposal Content

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

Assignment

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

Accounting Records

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

Freedom of Information

The selected proposer's proposal and any contract resulting from this RFP is subject to the provisions of New York's Freedom of Information Law, Public Officers Law, Article 6. The selected proposer's financial and proprietary business information will be received and accepted as confidential information and not subject to disclosure.

Standard Contract Provisions

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

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

Minority and Women Owned Businesses Equal Employment Opportunities and Goals

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

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

Notification of Award

The Department will notify the selected proposer verbally, followed by a written confirmation. Each proposer whose proposal is not selected will be notified in writing by the Department. Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful proposer has the right to a debriefing regarding the reasons their proposal was not selected for an award. An unsuccessful proposer must request a debriefing within thirty (30) days from the date of the notification stating that their proposal has not been selected. To request a debriefing an unsuccessful proposer should contact Emma Graham, Division of Fiscal Management, in writing or via e-mail at emma.graham@agmkt.state.ny.us.

October 13, 2009

New York State
Department of Agriculture and Markets