

# REQUEST FOR PROPOSALS

## EMPIRE EXPO CENTER

### CENTER OF PROGRESS BUILDING RESTAURANT

New York State Department of Agriculture and Markets

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 theme 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, 2010. 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, your technical proposal, will consist of your proposed theme, which shall include, either electronic or "hard copy", color sketches, drawings, pictures, layouts, facades, renderings and such other media as you choose to provide a visual depiction of the theme and a written rationale and business plan for your choice of your proposed theme, and your background, experience, references, menu and prices, and other information about you. Part II will be the License Fee you offer.

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](mailto:emma.graham@agmkt.state.ny.us) and received no later than November 19, 2010. No telephone inquiries will be accepted. All questions and answers will be posted on the Department's website, [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us) in the "Funding Opportunities" section. Answers will be posted as quickly as possible, but no later than November 23, 2010. 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](http://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 900,000 – 1,000,000 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 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](http://www.agmkt.state.ny.us) under "Funding Opportunities". Proposers are responsible for keeping informed of any changes in the schedule.

### Event Dates

RFP Issued - November 2, 2010  
Mandatory Meeting and Tour – November 15, 2010  
Last Date for Inquiries – November 19, 2010  
Responses to Inquiries Posted – November 23, 2010  
Proposals Due – November 30, 2010 at 3:00 p.m.  
Selection Within 30 days  
Renovations completed by March 1, 2011

## **Mandatory Meeting and Tour of Facilities**

All prospective proposers must attend a meeting at the Empire Expo Center on November 15, 2010 at 11:00 am. A tour of the premises is mandatory for all proposers and will be given at the conclusion of the meeting. Proposals will not be accepted from proposers who do not attend the meeting and tour the current facilities. Please call Diane Bruhns at (518) 457-2080 or email her at [diane.bruhns@agmkt.state.ny.us](mailto:diane.bruhns@agmkt.state.ny.us) to advise if you plan to 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 theme restaurant (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, during the events held in the Center of Progress Building set forth in the list attached to this RFP and during other events as may be agreed upon by the Department and the Licensee. 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 Building from mobile food and beverage stations provided by the Licensee and, within the sole discretion of the Department, during the annual New York State Fair and at other times from a temporary location in or adjacent to Chevy Court. The food and beverage menus and prices must be pre-approved by the Department 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 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 the events held at the Center of Progress Building set forth in the list attached to this RFP and during other events as may be agreed upon by the Department and the Licensee. The hours of operation shall be coordinated with the Department and event promoters.

Attached is a list of events using the Center of Progress Building and the amounts paid by the current Licensee to the Department in 2009-2010, 2008-2009 and 2007-2008. Also attached is a schedule showing payment to the Department for sales made at the Restaurant 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, 2011.

## **Premises**

The Restaurant is located in the Center of Progress Building and is owned by the Department. The Restaurant occupies 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.

The selected proposer may, in the Department's sole discretion, be permitted to operate a second location under the License at or near Chevy Court, selling only beverages, non-alcoholic and alcoholic, for specific hours during the annual State Fair and during other events held at or utilizing Chevy Court.

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.

## **Renovations**

The Licensee shall renovate the existing Restaurant and re-equip the kitchen facilities. All cooking equipment shall be electric or natural gas fueled. Propane is not permitted. The existing kitchen and food service equipment is owned by the former Restaurant licensee. All permanent fixtures including the hood/ventilation system and the storage/cooler area are the property of the Department.

Your proposal must include your plans for renovation of the Restaurant, including signage which will be subject to approval **in its entirety** by the Department, interior furnishings and equipment, and a preliminary schedule for completion of all renovations. All renovations, exterior and interior, must compliment the architectural design of the existing building and the exterior property adjacent to it. If you are the successful proposer and your proposed renovations include any structural alteration of the existing building, your renovation plan must be approved by an architect licensed by the State of New York. All structural improvements will become the property of the Department immediately upon completion of the improvement. 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**

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.

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 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 Licensee 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.

## **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, excluding any taxes imposed by any taxing authority, 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 beverages subject to the Alcoholic Beverage Control Law of the State of New York.

## **Transfer of Interest Prohibited**

The Department will select the Licensee, in part, upon the 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.

### **Insurance – Casualty**

During renovation, the Licensee shall obtain and maintain casualty insurance, insuring against loss or damage to the Center of Progress Building from fire or other casualty with an extended coverage endorsement in an amount equal to 100% of the full insurable value of 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 fourteen (14) 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 capital improvements, if any, included in the Licensee's renovations as of the date of such termination. Depreciation will be calculated at a straight line rate of 20% per year prorated to the month of termination and all capital improvements shall be fully depreciated during the Term of the 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.

## 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 "**Technical Proposal**" on the outside and place the "Proposed Theme" portion of your proposal inside. Your proposed theme should include, but not be limited to, sketches, drawings, pictures, layouts, facades, and renderings of the outside and the inside of the Restaurant, including signage and furnishings, showing the theme you propose and **must** include a written rationale and business plan for your choice of the theme you propose.

Also place in the envelope:

- a. A proposed menu and prices.
- b. A description of the method or methods of revenue accountability which you will use in the operation of this License.
- c. 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.

- d. Copies of your audited financial statements or tax returns for the last three (3) business years.
  - e. 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.
  - f. A 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.
2. On the second 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.

Use the “License Fee” form attached to this RFP. Do not make any changes to it.

## **Selection Process**

The successful proposer will be selected based upon an evaluation of each proposer’s proposed theme and 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 proposed theme, technical evaluation and license fee evaluation will be combined to determine the ranking of proposals. Proposals will be rated as follows:

### **Technical Proposal**

Your proposed theme will be evaluated based upon its attractiveness and appeal (10 points), its quality and substance (10 points), and its rationale and business plan (20 points) for a total of forty (40) points.

Your company history, background, structure, ownership and management, your principal owners/managers background, qualification and experience, your company policies addressing personnel, customer relations and customers with special needs, your prior experience in operations similar to that which you propose, and your references will also be evaluated. Each of these five (5) components is worth eight (8) points for a total of forty (40) points.

### **License Fee**

You must use the attached "License Fee" form. Do not make any changes to it.

The two-part license fee (See, *Proposal Contents*, above) is worth 10 points for each part. The proposer offering the highest license fee in each part will receive 10 points. The remaining proposers will be awarded points as follows: fee being evaluated/highest fee = % x 10 points = points awarded.

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 when the award is made.

A 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](mailto: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 Contracts, 110 State Street, 11<sup>th</sup> 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](mailto:emma.graham@agmkt.state.ny.us).

## **Cost Liability**

The State of New York and the Department 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, this RFP and any addenda, if issued, will become part of the 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.

## **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 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%

November 2, 2010

New York State  
Department of Agriculture and Markets

CENTER OF PROGRESS BUILDING RESTAURANT

EMPIRE EXPO CENTER  
2011-2015

New York State Department of Agriculture and Markets

LICENSE FEE

LICENSE FEE PER YEAR  
PERCENTAGE OF GROSS RECEIPTS

	Food, Non-Alcoholic Beverages and Water	Alcoholic Beverages
2011		
2012		
2013		
2014		
2015		

\_\_\_\_\_  
Proposer Name

\_\_\_\_\_  
Signature of Proposer Authorized Representative and Title

\_\_\_\_\_  
Print Name and Title of Representative Signing Above

\_\_\_\_\_  
Date

**Offeror's Affirmation of Understanding and Agreement  
Pursuant to State Finance Law §139-j(3) and §139-j(6)**

**Instructions:**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the procurement's "Restricted Period" (from the issuance of the solicitation document until the date of the contract's final approval by the State Comptroller) to other than designated staff, unless the contact falls within certain statutory exceptions ("permissible contacts"). Agriculture and Markets' employees are required to obtain certain information from Offerors and others whenever there is a contact about the procurement during the Restricted Period, and are required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection of contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. Further information about these requirements can be found

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

As a prerequisite for participating in this procurement, an Offeror must provide the following Affirmation of Understanding and Agreement to comply with these procurement lobbying restrictions in accordance with State Finance Law §§139-j and 139-k.

**Offeror Affirmation and Agreement**

The Offeror affirms that it understands the procurement lobbying requirements set forth in State Finance Law §§139-j and 139-k, and agrees to comply with the Agriculture and Markets' procedures regarding permissible Contacts as required thereby.

Name of Offeror: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_



Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Offeror's Certification of Compliance  
Pursuant to State Finance Law §139-k(5)**

**Instructions:**

New York State Finance Law (SFL) §139-k(5) require that every contract award subject to the provisions of SFL §§139-k or 139-j shall contain a certification by the Offeror that all information provided to Agriculture and Markets with respect to SFL §139-k is complete, true and accurate.

At the time an Offer or Bid is submitted to Agriculture and Markets, the Offeror/Bidder must provide the following certification that the information it has and will provide to Agriculture and Markets pursuant to SFL §139-k is complete, true and accurate including, but not limited to, disclosures of findings of non-responsibility made within the previous four years by any State governmental entity where such finding of non-responsibility was due to a violation of SFL §139-j or due to the intentional provision of false or incomplete information to a State governmental entity.

<p><b>Offeror Certification</b></p> <p><i>I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.</i></p> <p>Name of Offeror: _____</p> <p>By: _____ (Signature)</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____ _____</p> <p><b>Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence</b></p>
--

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses the disclosure on “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of Offerors<sup>1</sup> during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during a procurement’s restricted period<sup>2</sup> the only Department employee(s) that the Offeror may “Contact” is/are the Department designated contact person(s) for that procurement. In this regard, “Contact” means any oral, written or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include:

- submission of a written proposal in response to an RFP, IFB or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all Offerors;
- participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an Offeror that the Department designated contact for a procurement fails to respond in a timely manner;
- negotiations with the Department following tentative award;
- contacts between designated Department staff and Offeror to request the review of a contract award; and
- communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

An Offeror shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of state agencies.

An Offeror who contacts the Department regarding a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and

---

<sup>1</sup> An Offeror is an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

<sup>2</sup> The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals “RFP”, Invitation for Bids “IFB”, solicitation of proposals or any other method for soliciting responses from Offerors intending to result in a procurement contract by the Department, and ending with the final contract award and approval by the Department, and OSC (if required).

whether the person/organization making the contact is the Offeror or is retained, employed or designated by or on behalf of the Offeror to appear before or contact the Department about the procurement. The Department's Report of Contact Form is attached as Form 1.

An Offeror that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must:

- Affirm that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. (The Department's Affirmation of Understanding and Agreement is attached as Form 2.);
- Certify that all information provided to the Department with respect to the Lobbying Law is complete, true, and accurate. (The Department's Certification of Compliance is attached as Form 3.);
- Disclose whether any governmental entity has, within the prior four years, found the Offeror non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. (Included in the Vendor Responsibility Questionnaire.)

Further, all Department procurement contracts will contain a provision authorizing the Department to terminate the contract in the event such Certification of Compliance is found to be intentionally false or incomplete.

Any alleged violations of the Department's guidelines or the Lobbying Law regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence will be reported to the Department's Ethics Officer for investigation. If there is sufficient evidence to indicate the allegation may be true, the Department shall give the Offeror reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation. At the Department's discretion, the opportunity to be heard may be provided either by giving the Offeror the opportunity to meet with the Department staff conducting the investigation or by convening a hearing before an impartial hearing officer at the Department's Albany office. In either case, a written report including findings, conclusions, and a recommended decision will be forwarded to the Commissioner or his or her designee for review and a final determination. A determination that an Offeror has knowingly and willfully committed such a violation may result in a finding that the Offeror and its subsidiaries are non-responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four years of the first such determination may render the Offeror and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> where Frequently Asked Questions "FAQ's" adopted by the Council have been posted.

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY  
SECTION 139-D OF THE STATE FINANCE LAW**

**BY SUBMISSION OF THIS BID, ANY BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER(S) SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE.**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Signature \_\_\_\_\_

Name (Typed) \_\_\_\_\_

Company Position \_\_\_\_\_

Company Name \_\_\_\_\_

Date Signed \_\_\_\_\_

**Sworn to before me this**

\_\_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
**Notary Public**

Signature \_\_\_\_\_

Name (Typed) \_\_\_\_\_

Company Position \_\_\_\_\_

Company Name \_\_\_\_\_

Date Signed \_\_\_\_\_

**Sworn to before me this**

\_\_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
**Notary Public**

## MACBRIDE FAIR EMPLOYMENT PRINCIPLES

### STIPULATION

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

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

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

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

Dated:

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

## TABLE OF CONTENTS

1. **Executory Clause**
2. **Non-Assignment Clause**
3. **Comptroller's Approval**
4. **Workers' Compensation Benefits**
5. **Non-Discrimination Requirements**
6. **Wage and Hours Provisions**
7. **Non-Collusive Bidding Certification**
8. **International Boycott Prohibition**
9. **Set-Off Rights**
10. **Records**
11. **Identifying Information and Privacy Notification**
12. **Equal Employment Opportunities For Minorities and Women**
13. **Conflicting Terms**
14. **Governing Law**
15. **Late Payment**
16. **No Arbitration**
17. **Service of Process**
18. **Prohibition on Purchase of Tropical Hardwoods**
19. **MacBride Fair Employment Principles**
20. **Omnibus Procurement Act of 1992**
21. **Reciprocity and Sanctions Provisions**
22. **Purchases of Apparel**

**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, licensor, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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).

**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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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.

**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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (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  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

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. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**THIS PAGE IS INTENTIONALLY LEFT BLANK**