

INVITATION FOR BIDS

for

AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE AT NEW YORK STATE FAIRGROUNDS

IFB #SF00281

IFB Issued: May 20, 2014
Proposals Due: June 13, 2014

By:

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

Table of Contents

1. INTRODUCTION 1

 1.1 OVERVIEW..... 1

 1.2 IFB GOAL..... 1

 1.3 TERM..... 1

 1.4 IFB TIMELINE..... 1

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

 2.1 PREMISES..... 2

 2.2 SCOPE OF WORK 2

 2.2.1 LOCATIONS..... 2

 2.2.2 ATM SPECIFICATIONS..... 3

 2.2.3 ATM INSPECTION, MAINTENANCE AND REPAIR..... 4

 2.2.4 REPORTS TO THE DEPARTMENT..... 4

 2.2.5 PHONE SERVICE 4

 2.2.6 DEPARTMENT PROVIDED 4

3. BID SUBMISSION 4

 3.1 SUBMISSION TIMELINE..... 4

 3.2 SUBMISSION METHOD..... 5

 3.3 MINIMUM QUALIFICATIONS 5

 3.4 MANDATORY CONTRACT REQUIREMENTS 5

 3.5 BID FORM..... 6

4. EVALUATION..... 6

 4.1 CONSIDERATION 6

 4.2 DETERMINATION OF BID AWARD..... 6

 4.2.1 ITEM 1 ASSESSMENT (50%)..... 6

 4.2.2 ITEM 2 ASSESSMENT (50%)..... 7

 4.2.3 DETERMINATION OF BEST VALUE..... 7

 4.2.4 BIDDING EXAMPLE 7

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT 8

 5.1 INSPECTION AND INVENTORY 8

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

5.2	DEPARTMENT’S RESERVATION OF RIGHTS	8
5.3	NOTIFICATION OF AWARD	9
5.4	DEBRIEFING PROCEDURES	9
5.5	BID PROTEST PROCEDURES.....	10
5.6	NEW YORK LAW	10
5.7	REQUIRED APPROVALS	10
5.8	VENDOR RESPONSIBILITY AND NYS VENDOR ID.....	11
5.9	COST LIABILITY.....	12
5.10	FREEDOM OF INFORMATION	12
5.11	PROCUREMENT LOBBYING LAW	12
5.12	RECOMMENDED SUBMISSIONS	12
6	REQUIRED ASSURANCES	15
6.1	APPENDIX A	15
6.2	MANDATORY REQUIREMENTS CERTIFICATION FORM	15
6.3	CONTRACT TERMS	15
6.3.1	ORDER OF PRECEDENCE.....	15
6.3.2	PAYMENT TERMS.....	16
6.3.3	COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS	16
6.3.4	SUBCONTRACTS.....	16
6.3.5	INDEMNIFICATION	16
6.3.6	CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT.....	16
6.3.7	DEVIATION FROM WORK.....	16
6.3.8	RESPONSIBILITY REQUIREMENTS	17
6.3.9	TERMINATION	17
6.3.10	TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K	18
6.3.11	MODIFICATION.....	18
6.3.12	NECESSARY SIGNATURES	18
6.3.13	RECORDS MAINTENANCE, EXAMINATION AND RETENTION	18
6.3.14	IRAN DIVESTMENT ACT.....	18

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

6.3.15 LIABILITY INSURANCE..... 19

6.3.16 SALES TAX 20

6.3.17 FORCE MAJEURE 20

6.3.18 NEW YORK LAW 21

6.3.19 NOTICE..... 21

6.3.20 DIESEL EMISSION REDUCTION ACT..... 21

6.3.21 CERTIFICATIONS 21

EXHIBIT 1 – LIST OF 2013 NON-FAIR EVENTS AND ESTIMATED ATTENDANCE

EXHIBIT 2 – MAP OF NEW YORK STATE FAIRGROUNDS

1. INTRODUCTION

1.1 OVERVIEW

The New York State Department of Agriculture and Markets (the Department) owns and manages the New York State Fairgrounds in the Town of Geddes, Onondaga County, New York (the Fairgrounds). The Fairgrounds hosts the New York State Fair, which is held each year for twelve days ending on Labor Day, as well as other year-round events. Other events include the Syracuse Nationals car show and the K-Rockathon music festival.

The Department is seeking bids from federally or state regulated financial institutions to provide, install, operate, maintain and service automatic teller machines (ATMs) at various locations on the Fairgrounds. Over the last four years, average attendance at the State Fair has been 903,515 visitors per year. In each of the last two years, there were roughly 30,000 ATM transactions during the 12-day State Fair. Other events on the Fairgrounds during the last two years have accounted for a total of 14,000 additional ATM transactions. The Department provides these figures for informational purposes only. They are estimates, and the Department makes no representation as to their accuracy or predictive relevance.

1.2 IFB GOAL

The objective of this IFB is to retain a federally or state regulated financial institution to provide, install, operate, maintain and service ATMs at various location on the Fairgrounds.

1.3 TERM

The contract resulting from this IFB will be for a three (3) year term. The contract will begin on August 1, 2014 and end on July 31, 2017.

1.4 IFB TIMELINE

IFB Posted	May 20, 2014
Questions regarding this IFB must be submitted by 3:00 PM on:	May 30, 2014
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	June 6, 2014
Bidder Response Due by 3:00 PM on:	June 13, 2014

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

2. DESCRIPTION OF WORK TO BE PERFORMED

2.1 PREMISES

The New York State Fairgrounds is a 375-acre site that is home to the annual New York State Fair and other year-round events.

2.2 SCOPE OF WORK

The selected contractor shall have the right and obligation to provide, install, operate, maintain and service ATMs at the Fairgrounds for the contract period. The selected contractor will have the exclusive right and obligation to provide ATMs and related services at the Fairgrounds, except that it shall not have the exclusive right to place and service ATMs in the area referred to as the Midway. The Midway is depicted in the map attached to this IFB as Exhibit 2. At the termination of the contract period, the selected contractor shall remove all ATMs from the Fairgrounds. The fees bid by the selected contractor under section 3.5 shall be firm throughout the contract period, and shall apply to all ATMs provided by the selected contractor, regardless of the event or total number of ATMs provided.

2.2.1 LOCATIONS

A. Year Round Location

One (1) permanent ATM shall be located adjacent to the Box Office at Gate 1.

B. April – October Location

One (1) permanent ATM shall be located in the vicinity of the restaurant that will be operated between April to October. The location of this restaurant is still to be determined. The selected contractor will be notified once the location of the restaurant is determined. The precise location of the ATM will be determined by mutual agreement between the Department and the selected contractor.

C. Annual State Fair Locations

At least twenty (20) additional ATMs shall be placed at locations around the Fairgrounds during the annual State Fair, which runs each year for a twelve (12) day period ending on Labor Day. The Fair will be held August 21 to September 1, 2014; August 27 to September 7, 2015; and August 25 to September 5, 2016. The ATM locations will be determined by the Department, provided that the selected contractor may object to locations considered unsafe or technologically infeasible, in which case the selected contractor will be responsible for finding an alternative location as close as possible to the Department's initial choice. Refusal to provide the required number of ATMs will be considered a breach of contract, and will result in the loss of the selected contractor's right to provide ATMs and related services. The Department reserves the right to request up to five (5) additional temporary ATMs at the New York State Fair.

The selected contractor will not place temporary ATMs in the area of the Fairgrounds referred to as the "Midway," unless the Department specifically authorizes such placement. The Midway is depicted in the map attached to this IFB as Exhibit 2.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

The selected contractor shall install the temporary ATMs at least three (3) days before the opening day of the Fair during each calendar year and remove the temporary ATMs no later than one (1) day after the close of the State Fair each year.

D. Event Locations

The selected contractor shall provide, install, operate and maintain such temporary ATMs as may be requested by the Department during other yearly events. The Syracuse Nationals Car Show, held in July each year, will require no more than ten (10) temporary ATMs. All other regularly scheduled events will require no more than four (4) ATMs. If a special event requiring more than four (4) ATMs is scheduled during the contract term, the Department will provide the selected contractor with at least 30 days notice of the number of ATMs required. In no event will the Department require the selected contractor to provide more than ten (10) temporary ATMs at a non-State Fair event.

The locations of ATMs will be determined by the Department, provided that the selected contractor may object to a location considered unsafe or technologically infeasible, in which case the selected contractor will be responsible for finding an alternative location as close as possible to the Department's initial choice. Refusal to install any ATMs at an event will be considered a breach of contract, and will result in the loss of the selected contractor's right to provide ATMs and related services.

A list of yearly non-fair events, including estimated attendance figures, is attached as Exhibit 1 to this IFB. Events may be added or discontinued at the Department's sole discretion. The Department reserves the right to modify the number of ATMs requested at each event, within the estimated ranges described in this section.

2.2.2 ATM SPECIFICATIONS

The selected contractor will be responsible for ensuring that each ATM it provides, including replacement ATMs, if necessary, shall meet the following specifications and conditions:

- All required ATMs shall be installed at least three days prior to the event. The selected contractor may install additional ATMs at its sole discretion.
- Each ATM shall bear a seal of approval from the Underwriters Laboratory.
- Each ATM shall comply with the Federal Americans with Disabilities Act, the Human Rights Law of the State of New York, and all other federal, state and local laws and regulations.
- Each ATM shall display, on its face, (1) operating instructions and (2) a toll-free telephone number to report malfunctions.
- Each ATM shall have the capability to provide each customer with a printed receipt of the customer's transaction. Each ATM will provide each customer with a printed receipt of the customer's transaction, unless the customer elects not to receive a printed receipt.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

- Each permanent ATM shall have a video camera that shall record all activity occurring within a minimum of three feet in front of the ATM. The selected contractor will ensure that the video is retained for a period of at least forty-five (45) days.

2.2.3 ATM INSPECTION, MAINTENANCE AND REPAIR

The selected contractor shall be responsible for inspecting, maintaining and repairing all of its ATMs. At a minimum, the contractor will physically inspect all ATMs once per week, except that the contractor will physically inspect all ATMs on each day of the State Fair. The physical inspection will ensure that each ATM is (1) in good working order, (2) is clean, (3) is stocked with cash, and (4) is free of unauthorized devices such as skimmers, card traps or unauthorized cameras.

The selected contractor will maintain a 24-hour, toll-free number where customers may report malfunctioning or otherwise inoperable ATMs. The selected contractor will respond to such reports and return inoperable ATMs to service, or provide a replacement ATM, within one hour. This obligation includes responding to reports that an ATM has been depleted of cash.

2.2.4 REPORTS TO THE DEPARTMENT

The selected contractor will be responsible for providing a monthly report to the Department which must include (1) the number of transactions per day for each ATM; (2) the type of transaction; (3) the fee charged for each transaction; (4) the date and time any ATM became unavailable for service due to a malfunction; (5) the date and time the malfunctioning ATM was returned to service or replaced; (6) the date and time any ATM became fully depleted of cash; and (7) the date and time that an ATM depleted of cash was restored to service.

2.2.5 PHONE SERVICE

The selected contractor shall be solely responsible for ensuring that all ATMs are connected to necessary telephone or internet services, and for paying all connected service charges and fees.

2.2.6 DEPARTMENT PROVIDED

The Department will provide electrical service to each ATM location and will pay all associated service charges and fees. The Department will provide all admission and parking credentials for employees of the selected contractor to access the Fairgrounds for working purposes only.

3. BID SUBMISSION

3.1 SUBMISSION TIMELINE

All required materials must be received by the Department no later than 3:00 PM on June 20, 2014 in order to be considered.

Any questions concerning this IFB must be received by 3:00 PM on May 30, 2014. Questions must be submitted in writing via email to Judy Giovannetti at procurement.info@agriculture.ny.gov. Please list "IFB #SF00281" in the subject line.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under “Funding Opportunities” no later than June 6, 2014. No individual written responses will be provided.

Any revisions to this invitation will be posted on the Department’s website, www.agriculture.ny.gov under “Funding Opportunities”. All bidders are responsible for keeping informed of any revisions to this invitation.

3.2 SUBMISSION METHOD

Facsimiles or emailed copies are not acceptable. Materials received after the due date/time shall be returned unopened to the sender. No supplemental submissions or amendments to the bid response will be accepted thereafter.

Address or Hand-Deliver a Bid Response Containing:

1. **one (1) original paper version of the Bid Form plus two (2) copies, all submission documents** with original signatures where required, labeled **BID RESPONSE – IFB#SF00281: DO NOT OPEN**
2. **one (1) CD-ROM or thumb drive** containing electronic versions of all documents comprising the Bid Response; all submitted in the format of Microsoft Word documents.

To the following address:

New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Judy Giovannetti, IFB#SF00281

3.3 MINIMUM QUALIFICATIONS

To be considered, each bidder shall:

- 1) Certify that the bidder is a financial institution that is subject to regulation by the United States Treasury’s Office of the Comptroller of Currency, the Federal Reserve System’s Bureau of Consumer Financial Protection, or the New York State Department of Financial Services.
- 2) Certify that the bidder has been in the business of providing ATMs and related services continuously for the previous three (3) years.
- 3) Provide contact information for three (3) references, which are prior clients to whom the bidder provided ATMs and associated services. The bidder must authorize the Department to contact these references.

3.4 MANDATORY CONTRACT REQUIREMENTS

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

- 1) No other obligation or engagement, contractual or otherwise, will conflict with or in any way impact the selected contractor’s ability to provide ATMs and associated services at the New York State Fairgrounds during the contract period.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

- 2) The selected contractor shall have full control of the ATMs and associated services and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The contractor shall indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the selected contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) The selected contractor will obtain and maintain a Commercial General Liability Insurance Policy from an insurance policy authorized to do business in the State of New York with a limit of not less than \$1,000,000 for each occurrence. Such insurance shall cover liability arising out of the deliberate, reckless, or negligent acts of the selected contractor, its employees, subcontractors, or subcontractors' employees.

Please see section 6 (Required Assurances) for specific contract terms and conditions that will be included in any contract resulting from this IFB.

3.5 BID FORM

All bids must be submitted on the "Bid Form" included in the Submission Documents section. Bidders will be evaluated on two items:

Item 1 is the fee that the bidder will charge customers for each transaction at each ATM.

Item 2 is the amount that the bidder will pay the Department for each transaction at each ATM.

4. EVALUATION

4.1 CONSIDERATION

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

4.2 DETERMINATION OF BID AWARD

The contract will be awarded based on best value to the State of New York. Best value will be determined based on two, equally weighted, factors: (1) the amount that the selected contractor will charge visitors to the State Fairgrounds for each ATM transaction (Item 1); and (2) the amount that the selected contractor will pay the State of New York for each ATM transaction (Item 2).

4.2.1 ITEM 1 ASSESSMENT (50%)

Up to 50 points will be awarded for Item 1. The lowest per transaction fee under Item 1 will receive the full 50 points. All other bids under Item 1 will receive points based on the lowest bid. The number of points will be determined by dividing the lowest bid by the bid being evaluating, rounding the resulting decimal to two places, and multiplying that decimal by 50.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

4.2.2 ITEM 2 ASSESSMENT (50%)

Up to 50 points will be awarded for Item 2. The highest per transaction fee under Item 2 will receive the full 50 points. All other bids under Item 2 will receive points based on the highest bid. The number of points will be determined by divided the bid being evaluated by the highest bid, rounding the resulting decimal to two places, and multiplying that decimal by 50.

4.2.3 DETERMINATION OF BEST VALUE

Best value will be determined by adding the points awarded under the Item 1 assessment to the points awarded under the Item 2 assessment. The bidder with the highest aggregate bid score offers the best value to the state, and will be considered the winning bidder. In the event of a tie for highest aggregate score, the bidder who is part of the tie with the highest Item 2 will be considered the winning bidder. In the event that multiple bidders have the lowest aggregate bid score and identical bids, the winning bidder will be determined by coin flip.

4.2.4 BIDDING EXAMPLE

The following example is provided for illustrative purposes only. To the extent that the bidding example is inconsistent with the description of the Evaluation Method provided above, the description above controls.

Bidding Example

Bids Received:

Bidder	Item 1	Item 2
A	\$3.50	\$1
B	\$3.50	\$1.50
C	\$2.50	\$1
D	\$2	\$.50

Item 1 Assessment:

Bidder	Item 1	Point Multiplier	Times 50	Points Awarded
A	3.50	$2/3.50=.57$	$.57*50=28.5$	28.5
B	3.50	$2/3.50=.57$	$.57*50=28.5$	28.5
C	2.50	$2/2.50=.8$	$.8*50=40$	40

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

D	2	--(lowest bid)	--	50
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Item 2 Assessment:

Bidder	Item 2	Point Multiplier	Times 50	Points Awarded
A	\$1	$1/1.50=.67$	$.67*50=33.5$	33.5
B	\$1.50	-- (highest bid)	--	50
C	\$1	$1/1.50=.67$	$.67*50=33.5$	33.5
D	\$.50	$.50/1.50=.33$	$.33*50=16.5$	16.5

Determination of Winning Bidder:

Bidder	Item 1 Assessment	Item 2 Assessment	Total Aggregate Points
A	28.5	33.5	62
B	28.5	50	78.5
C	40	33.5	73.5
D	50	16.5	66.5

Accordingly, Bidder B has the most Total Aggregate Points and is the winning bidder.

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 INSPECTION AND INVENTORY

All ATMs provided by the successful bidder shall be jointly inspected and inventoried by the bidder's representative and a representative of the Department upon installation.

5.2 DEPARTMENT'S RESERVATION OF RIGHTS

The Department reserves the right to:

- Reject any or all bids received with respect to this invitation;
- Withdraw the IFB at any time, at the Department's sole discretion or otherwise decline to award a contract from this invitation;
- Make an award under this IFB in whole or in part;

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

- 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 IFB;
- Use bid response 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 IFB;
- 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 IFB 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 IFB amendments;
- Change any of the scheduled dates;
- Eliminate any minimum or mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the state;
- Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 days from the bid opening; and
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.

5.3 NOTIFICATION OF AWARD

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

5.4 DEBRIEFING PROCEDURES

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

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

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

5.5 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 Judy Giovanetti at:

NYS Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, NY 12235
Or via email: judy.giovanetti@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.

5.6 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.

5.7 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.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

5.8 VENDOR RESPONSIBILITY AND NYS VENDOR ID

Prime Contractors:

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

http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm

All bidders must fully and accurately complete the Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"). All bidders acknowledge that the Department's execution of the Contract will be contingent upon the Department's determination that the bidder is responsible, and that the Department will be relying upon the bidder's responses to the Questionnaire in making that determination. If it is found by the Department that a bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, the Department may terminate the contract by providing ten (10) days written notification to the contractor. In no case shall such termination of the contract by the Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

NOTE: Bidders are encouraged to file the Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>.

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

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

Subcontractors:

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

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

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

5.9 COST LIABILITY

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

5.10 FREEDOM OF INFORMATION

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

5.11 PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (See Attachment 8 -- “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 written notice, advertisement or solicitation of the IFB through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department’s Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

PROGRAM	FISCAL
Denise Jordan Division of the State Fair Telephone: (315) 487-7711 ext. 1204 Fax: (315) 487-9260 E-mail: denise.jordan@agriculture.ny.gov	Judy Giovannetti Division of Fiscal Management Telephone: (518) 457-6172 Fax: (518) 485-7750 E-mail: judy.giovannetti@agriculture.ny.gov

5.12 RECOMMENDED SUBMISSIONS

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

AGM Substitute Form W-9

Any payee/vendor/organization receiving Federal and/or State payments from the Department must complete the Substitute Form W-9 if they are not yet registered in the Statewide Financial System centralized vendor file.

The Department is using the Substitute Form W-9 to obtain certification of a vendor's Tax Identification Number in order to facilitate a vendor's registration with the SFS centralized vendor file and to ensure accuracy of information contained therein. We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States.

Workers' Compensation Coverage and Debarment

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

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

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

PROOF OF COVERAGE REQUIREMENTS

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

Proof of Workers' Compensation Coverage

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

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

Proof of Disability Benefits Coverage

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

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

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: New York State Department of Agriculture and Markets, Division of the New York State Fair, 581 State Fair Boulevard, Syracuse, NY 13209 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

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

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

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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

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

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

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

6 REQUIRED ASSURANCES

6.1 APPENDIX A

Appendix A- Standard Clauses for all New York State Contracts WILL BE INCLUDED in the contract that results from this IFB. Bidders who are unable to complete or abide by these assurances should not respond to this request.

The documents listed below are included in the **Submission Documents** section, which follows. All documents requiring signature must be signed by an authorized representative of the Bidding entity. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the New York State Department of Agriculture and Markets.

Appendix A – Standard Clauses for New York State Contracts, contains the following three (3) certifications:

Non-Collusive Bidding Certification (Signature Required - the form is included in the **Submission Documents** as **Attachment 3**)

MacBride Certification (Signature Required - the form is included in the **Submission Documents** as **Attachment 4**)

Offerer Disclosure of Prior Non-Responsibility Determinations (Signature Required - the form is included in the **Submission Documents** as **Attachment 5**)

6.2 MANDATORY REQUIREMENTS CERTIFICATION FORM

This document is in the **Submission Documents** as **Attachment 2**. It must be completed and returned with the Bid Response.

6.3 CONTRACT TERMS

The contract resulting from this IFB will contain the following terms.

6.3.1 ORDER OF PRECEDENCE

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

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

Appendix A

Contract Cover Page

Appendix D (Department's General Conditions)

Appendix C (Scope of Work/IFB)

Appendix B (Budget/Cost Proposal)

6.3.2 PAYMENT TERMS

Payments will be made monthly. Upon receipt of the selected contractor's monthly ATM transaction report (see Section 2.2.4, *supra*), the Department will issue an invoice for its share of the ATM transaction fees to the selected contractor. Payments shall be due within fifteen (15) days from the issuance of the invoice. Payments may be made by standard business check, cashier's check, money order or credit card (or cash, in person). A copy of the State Fair invoice shall accompany the payment. Payment shall be remitted to the State Fair's Licensing Office. A penalty of 10% of the amount of the payment may be imposed on any late payments.

6.3.3 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.

6.3.4 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.

6.3.5 INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury (including death) and real and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** timely notifies the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

6.3.6 CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, its agents, employees, suppliers nor its 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.

6.3.7 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**.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

6.3.8 RESPONSIBILITY REQUIREMENTS

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

6.3.9 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 **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.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

6.3.10 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**.

6.3.11 MODIFICATION

This Agreement may not be modified unless such modification is made in writing and executed by the **Department** and the **Contractor**. If required by State Finance Law, modifications may also be subject to the review and approval of the Office of the Attorney General and the Office of the State Comptroller of the State of New York.

6.3.12 NECESSARY SIGNATURES

If the financial limit under this Agreement exceeds Ten Thousand Dollars (\$10,000) this Agreement shall not be binding and effective upon the **Department** unless and until approved by 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.

6.3.13 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.

6.3.14 IRAN DIVESTMENT ACT

By assuming the responsibility for performance of this **Agreement**, Bidder/Contractor (or any assignee) 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 web site at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, 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

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

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

6.3.15 LIABILITY INSURANCE

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies).

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with the Department Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements contained in this contract. Such Certificates shall be of a form and substance acceptable to the Department.

The insurance certificate must:

1. Identify the Contractor by legal business name, sole proprietor name and address and, if applicable, the legal status, i.e., corporation, limited liability company, partnership, limited partnership or unincorporated association.
2. Show Commercial General Liability Insurance with a limit of not less than \$1,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location or per project basis.
3. Be accompanied by additional insured endorsement (Acord 101) naming the New York State Department of Agriculture and Markets as an additional insured.
4. Policy coverage must be effective August 1, 2014 and remain in effect for the term of the Agreement.
5. Certificate Holder: New York State Fair, a Division of the New York State Department of Agriculture and Markets; 581 State Fair Blvd., Syracuse, NY 13209

The Contractor must immediately inform the Department of any insurance cancellation or material change in coverage. Certificates of Insurance (or exemptions) shall be provided to the Department within ten (10) days from the date on which the Contractor executes the Agreement.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

Certificate acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers authorized to do business in the State of New York and acceptable to the Department; shall be primary and non-contributing to any insurance or self insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to (New York State Fair, a Division of the New York State Department of Agriculture and Markets; 581 State Fair Blvd., Syracuse, NY 13209) and shall name The People of the State of New York, the Department of Agriculture and Markets, its officers, agents, and employees as additional insureds there under (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or its equivalent). The additional insured requirement does not apply to Workers Compensation or Disability.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by Agricultural and Markets. Such approval shall not be unreasonably withheld. The Contractor shall require that any subcontractors hired carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply to the Department updated replacement Certificates of Insurance, and amendatory endorsements.

Contractor acknowledges that failure to obtain any or all required insurance on behalf of the Department constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Department.

6.3.16 SALES TAX

Contractors making taxable sales of goods or services shall provide the Department with a valid Certificate of Authority to collect sales tax in New York State.

6.3.17 FORCE MAJEURE

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

Neither party shall be liable to the other for failure to perform any part of this Agreement when such failure is due to fire, flood, strikes or similar labor disturbances, industrial disturbances, war, riot, insurrection, or other causes beyond the control of either party.

6.3.18 NEW YORK LAW

The parties to the Agreement agree that the laws of the State New York shall apply to the contract and to all claims, actions and other proceedings arising out of the Agreement. Both parties agree that this agreement is performable in Onondaga County.

6.3.19 NOTICE

All notices given to the New York State Fair, a division of the Department, may be served only by mailing same by certified mail to Concessions Department, New York State Fair, 581 State Fair Blvd., Syracuse, New York 13209. Notice to Bidder shall be given to Bidder at the address stated on the face page of this agreement.

6.3.20 DIESEL EMISSION REDUCTION ACT

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

The Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2012. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.

6.3.21 CERTIFICATIONS

1. Bidder certifies that it has met the disclosure requirements of State Finance Law §139-k and that all information provided to the Department of Agriculture and Markets with respect to State Finance Law §139-k is complete, true and accurate.
2. Bidder certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
3. Bidder certifies that no governmental entity has made a finding of non-responsibility regarding the Licensee in the previous four years.

DEPARTMENT OF AGRICULTURE AND MARKETS

IFB #SF00281: AUTOMATIC TELLER MACHINE (ATM) PROVISION, OPERATION AND SERVICE

4. Bidder certifies that no governmental entity or other governmental agency has terminated or withheld a procurement contract with the Licensee due to the intentional provision of false or incomplete information.
5. Bidder affirms that it understands and agrees to comply with the procedures of the State relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6)(b).
6. Bidder certifies that it is in compliance with NYS Public Officers Law, including, but not limited to §73(4)(a).