

# **REQUEST FOR PROPOSALS**

**New York State Department of Agriculture and Markets**

**RESTAURANT OPERATIONS AT THE NEW YORK STATE FAIRGROUNDS**

## Table of Contents

<b>Introduction</b>	
Overview.....	4
RFP Goal.....	4
Eligible Bidders.....	4
Term.....	4
Factors Significant to the RFP.....	5
RFP Timeline.....	6
Definitions.....	7
<b>Description of Work to Be Performed</b>	
Premises.....	7
Scope of Work.....	8
Food Service Locations.....	8
<b>Proposal Format, Contents and Submission</b>	
Submission Timeline.....	11
Submission Method.....	11
Minimum Qualifications.....	12
Mandatory Contract Requirements.....	12
Technical Proposal.....	13
Bid Form/Financial Proposal.....	14
Submission Documents.....	14
<b>Evaluation Criteria and Method of Award</b>	
Consideration.....	14
Criteria for Evaluating Bids.....	14
Calculation of Highest Revenue.....	15
Method of Award.....	16
<b>Considerations Related to this Solicitation</b>	
Department’s Reservation of Rights.....	16
Notification of Award.....	17
Debriefing Procedures.....	17
Bid Protest Procedures.....	17
New York Law.....	18
Required Approvals.....	18
Vendor Responsibility and NYS Vendor ID.....	18
Procurement Lobbying Law.....	18
<b>Required Assurances</b>	
Appendix A.....	19
Mandatory Contract Requirements Certification Form.....	20
Contract Terms.....	20
Order of Precedence.....	20
Records Maintenance, Examination and Retention.....	20
Revenue Accountability.....	20
Payment Terms.....	20
Compliance with Local, State and Federal Laws.....	21
Subcontracts.....	21
Indemnification.....	21

**Required Assurances**

Contract Terms (continued)

Contractor Not Department Employee or Agent.....	21
Deviation from Work.....	21
Responsibility Requirements.....	21
Termination.....	22
Termination Pursuant to New York State Finance	
Law Section 139-K.....	22
Modification.....	23
Necessary Signatures.....	23
Workers’ Compensation and NYS Disability Insurances.....	23
Labor Peace Agreement.....	24
Liability Insurance.....	25
Sales Tax.....	27
Force Majeure.....	27
New York Law.....	27
Notice.....	27
Diesel Emission Reduction Act.....	27
Certifications.....	27
<b>Exhibit 1 Empire Room Equipment List 2013.....</b>	<b>29</b>
<b>Exhibit 2 State Fair Year-Round Restaurants – Fair versus Non-Fair.....</b>	<b>31</b>
<b>Exhibit 3 Percentage Revenue Procedure and Sample Sales Summary.....</b>	<b>32</b>
<b>Exhibit 4 Diagrams of Food Service Locations.....</b>	<b>37</b>

**REQUEST FOR PROPOSALS**  
New York State Department of Agriculture and Markets

**#SF00276: RESTAURANT OPERATIONS AT THE NEW YORK STATE FAIRGROUNDS**

**1. INTRODUCTION:**

**1.1 OVERVIEW:**

The New York State Department of Agriculture and Markets is seeking proposals from qualified bidders to operate the four (4) year-round restaurants.

The New York State Fairgrounds are open year round. In addition to the annual Great New York State Fair, the Fairgrounds are also home to four (4) restaurants, which are operable year round. The selected licensee will be completely responsible for the operation of the four restaurants in accordance with the terms and conditions set forth in this Request for Proposals (“RFP”) and the License subsequently issued by the New York State Department of Agriculture and Markets (“AGM” or “the Department”). The property is owned and operated by the Department. AGM is responsible for producing the State Fair on an annual basis. The Great New York State Fair is a twelve day event. The Fair has a flexible start date and has a permanent end date on the Monday designated as Labor Day for that year.

**1.2 RFP GOAL:**

The objective of this RFP is to retain a private sector business to operate quality food, beverage and catering facilities at the four year-round restaurants. The locations and specifics of each facility are described below. Interested bidders must enter one bid which includes all of the facilities. Licensee shall be responsible for all insurance, maintenance and upkeep of the Licensed Premises in accordance with the Contract Terms contained in this RFP.

The Department believes that the property is currently underutilized and desires to contract with an entity that can optimize the available resources at the Fairgrounds. The selected licensee would be responsible for the year-round operations of the restaurants, including during the Fair. The fair restaurants must offer a positive overall guest experience and provide a good value for the customer.

**1.3 ELIGIBLE BIDDERS:**

Any private sector business capable of providing the services described in the scope of work on its own or in combination with subcontractors is encouraged to submit a proposal.

**1.4 TERM:**

The initial term of the License shall begin on July 1, 2014 and end on June 30, 2019 for a term of five (5) years. The License may be renewed for an additional five (5) year term upon agreement of the parties and subject to the approval of the Office of the State Comptroller.

## 1.5 FACTORS SIGNIFICANT TO THIS RFP:

A) The restaurants on the Fairgrounds offer widely varying levels of food service. In addition, each restaurant has varied equipment that is State-owned and available for use by the selected Licensee. An equipment listing for the Empire Room is provided as Exhibit 1 to this RFP. The other restaurants are minimally equipped with permanent fixtures. Therefore, prospective Bidders are **STRONGLY encouraged** to attend the Optional Bidder's Conference and Tour of the Fairgrounds on either April 4<sup>th</sup> OR April 8<sup>th</sup> at 11:00 AM to personally view each restaurant and its available equipment before responding to this RFP. A form to RSVP to one of these dates is included in the **Submission Documents** and also posted to the Department's website under Funding Opportunities.

B) During the five-year term of the contract resulting from this RFP, a transformation project of the Fairgrounds may occur which could include renovations and improvements to the licensed premises at no cost to the selected contractor.

C) With the exception of all walk-in coolers and freezers, the maintenance and replacement of equipment related to this solicitation will be the responsibility of the selected Licensee, as will any other equipment, furnishings and supplies that will be needed to operate the restaurants in accordance with the RFP. The State will retain responsibility for maintenance and replacement of permanent walk-in coolers and freezers.

D) Equipment maintenance shall apply to energy efficiency as well as the basic operation of the equipment. The selected Licensee shall consider NYS PSC Energy Efficiency Portfolio Standard (<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/2197DAD6F78ECCB085257BA9005E71A6?OpenDocument>) when purchasing and/or installing equipment and when utilizing systems such as Lighting, Heating, Air Conditioning, and Exhaust Systems. The Department and the selected Licensee shall agree on reasonable temperatures based on system capacities such that the building does not require overheating or overcooling.

E) Municipal water, sewer, natural gas and electric services are made available to the restaurants by the Department.

F) The Department shall maintain and repair, or provide for the maintenance and repair, of the physical plant of each facility, including structure, plumbing, heating and air conditioning, where applicable, and electrical systems.

G) Licensee will be responsible for the cost of utilities. There are electric meters for electric services in the year round restaurants. Meter readings are taken monthly by State Fair maintenance staff and an invoice is generated from the Fair to the Licensee for the reimbursement of the usage at monthly electric rate. Natural gas service hook-ups are available. Licensee is responsible for obtaining service from the natural gas provider. Licensee shall pay the Department a garbage removal and recycling fee of one thousand four hundred fifty dollars (\$1,450.00) monthly. The Department will provide refuse removal, which includes the removal of bulk grease and cooking oil, including used fryer oil. Payment for garbage and recycling shall be made quarterly to the Department.

H) The Licensed Premises is offered in "as is/where is" condition. Licensee will be required to provide any and all tools, fixtures, furnishings and other appurtenances necessary to successfully operate the business in accordance with the business plan described in the proposal. Upon

expiration of the term or termination of this Agreement, the selected Licensee will be expected to cooperate with the Department to facilitate any transition to a new vendor or winding down operations. Such cooperation shall include, but not be limited to basic cleaning and restoring the Licensed Premises to the same condition or better condition than at the commencement of the License Term.

I) Concerning the provision of catering services at the Empire Room, the selected Licensee will be required to enter into a Labor Peace Agreement. The complete Labor Peace Agreement terms are listed in **section 6.3.15**.

J) The Licensee shall be the sole operator of the licensed premises during the term of the License Agreement. For events held in buildings which house restaurants subject to this RFP, the Licensee will be required to operate the restaurant(s) for those events. In addition, the Licensee shall operate during other events as may be agreed upon by the Department and the Licensee. The Licensee shall have the right to operate from a temporary location in or adjacent to Chevy Court during the annual New York State Fair and at other times at the discretion of the Department. The Department reserves the right to conduct special events and programs at the licensed premises without interference by Licensee. Licensee’s rights to operate are subordinate to the Department’s jurisdiction and operation of the New York State Fair and Fairgrounds. In addition, certain festivals or special events during the non-fair season may be excluded from the Licensee’s temporary location operations due to terms and conditions required by the event promoter(s).

K) Licensee is responsible for obtaining a full liquor license for service at the Empire Room and Somerset Room, and appropriate liquor licenses for service from the remaining three restaurants.

L) The selected Contractor must, within three months of a successful bid, employ at least one ServSafe certified manager/supervisor who actively supervises food preparation activities. ServSafe is a food and beverage safety training certificate program administered by the National Restaurant Association. The program is accredited by American National Standards Institute and the Conference for Food Protection. More information regarding manager training can be found here: <https://www.servsafe.com/manager/food-safety-training-and-certification>

**1.6 RFP TIMELINE:**

RFP Posted	Monday, March 31, 2014
Optional Bidder’s Conference and Optional Tour of the Fairgrounds	Friday, April 4, 2014 OR Tuesday, April 8, 2014 BOTH DATES AT 11:00 AM
Questions regarding this RFP must be submitted by 3:00 PM on:	Friday, April 11, 2014
A Question and Answer document will be posted to <a href="http://www.agriculture.ny.gov/RFPS.html">http://www.agriculture.ny.gov/RFPS.html</a> no later than:	Friday, April 18, 2014
Bidder Response Due by 3:00 PM on:	Friday, April 25, 2014
Tentative Award Date	Friday, May 9, 2014

The Department intends to make one contract award from this RFP.

**1.7 DEFINITIONS:**

**Contractor-** may be used interchangeably with **Licensee** throughout this solicitation. The Department is licensing the selected bidder to operate the four restaurants. No transfer of property will occur.

**Licensee-** may be used interchangeably with **Contractor** throughout this solicitation. The Department is licensing the selected bidder to operate the four restaurants. No transfer of property will occur.

**Gross revenue** - shall mean **all revenue** generated by the sales of food, beverages, alcohol and merchandise, after the deduction of **sales tax**, but before any other deductions.

**Gross receipts** -shall be the total amount of money, excluding any taxes imposed by any taxing authority and any gratuities, received, realized by, or accruing to the **Licensee** from the sales operations.

**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 as well as many non-fair events during the year. The main mission and function of the Fair is to hold a twelve day exposition identifying, promoting and showcasing the agricultural practices, history and tradition of the State. In addition to the agricultural competitions, the Fair also hosts a large midway, four music venues including a 17,000 seat paid ticket grandstand and a free music venue that can hold approximately 20,000 people. There are approximately 600 vendors including 175 food vendors. In addition to the annual Great New York State Fair, the Fairgrounds host a wide range of indoor and outdoor events during the approximately eleven (11) months per year known as the “non-fair.” The Department schedules approximately 140 events annually during the non-fair. The restaurants on-site are operable year round including during the Fair.

The table below represents an overview of gross sales and percentage payments made to the Fair. A comprehensive listing by facility and vendor percentage for the years 2010-14 is attached as Exhibit 2.

<b>Fiscal Years 2012-2014 (through 1/19/2014)</b>						
<b>Combined Fair and Non-Fair Food and Beverage Figures</b>						
<b>Year</b>	<b>Fair Food and Beverage Gross Sales</b>	<b>Payment to NYSF percentage of Fair Food and Beverage Gross Sales</b>	<b>Non-Fair Food and Beverage Gross Sales</b>	<b>Payment to NYSF percentage of Non-Fair Food and Beverage Gross Sales</b>	<b>Total Food and Beverage Gross Sales</b>	<b>Total Revenue Paid to NYSF</b>
2012-2013	\$318,228.38	\$75,402.22	\$752,985.51	\$163,048.65	\$1,071,213.89	<b>\$238,450.87</b>
2013-2014	\$328,582.44	\$64,610.63	\$367,386.77	\$78,959.46	\$695,969.21	<b>\$143,570.09</b>
<b>TOTALS:</b>	<b>\$646,810.82</b>	<b>\$140,012.85</b>	<b>\$1,120,372.28</b>	<b>\$242,008.11</b>	<b>\$1,767,183.10</b>	<b>\$382,020.96</b>

## 2.2 SCOPE OF WORK:

The Department desires to contract with one private entity that can operate and manage the four (4) year-round restaurants. The facilities subject to this RFP are under the jurisdiction of AGM. The Department reserves the right to conduct special events and programs at the Fairgrounds without interference by Licensee. Licensee's rights to operate are subordinate to the Department's jurisdiction and operation of the Fairgrounds.

The restaurants provide varying levels of food service ranging from a full scale banquet facility to mobile food concessions. For each of the locations listed below, the selected licensee shall operate each location in compliance with the New York State Sanitary Code, as administered and enforced by the Onondaga County Health Department and shall remain in full compliance at all times. (see: [https://www.health.ny.gov/regulations/nycrr/title\\_10/part\\_14/subpart\\_14-1.htm](https://www.health.ny.gov/regulations/nycrr/title_10/part_14/subpart_14-1.htm)). The Licensee shall provide the Department with a copy of its annual health inspection certificate. If the Licensee fails its annual health inspection, the Department reserves the right to retain, at the expense of the Licensee, the services of an independent sanitation consultant to ensure safe and sanitary operation of the premises. Failure of Licensee to comply with recommendations of the independent sanitation consultant in a timely and responsive manner may result in termination of the Licensee for cause.

The selected licensee shall operate each location using its employees. Each licensee's employees shall wear uniforms, which include the name of the restaurant, at all times. The uniforms may not include "T-shirts". Licensee's employees must be pleasant, neat, clean and well trained. The selected licensee shall be responsible for the cost of employee admissions and parking during the annual New York State Fair.

Licensee will be expected to develop and operate a quality food and beverage business consistent with existing and future Fairground operations that competes effectively in prevailing market conditions. The operation is expected to be attractive in content, presentation and price point. The food and beverage menus periodically, including pricing, must be provided to the Department.

The Department's intent is to grant Licensee discretion in achieving this goal, subject to compliance with License requirements. Nevertheless, in furtherance of the Department's core mission, the selected Licensee should, to the extent possible, utilize food and beverage items produced in New York State. The naming or changing of the existing names of any of these restaurants shall only be with the express approval of the Department.

### **FOOD SERVICE LOCATIONS**

For diagrams of the food service locations see Exhibit 4.

#### **THE EMPIRE ROOM AND SOMERSET ROOM**

The Empire Room and Somerset Room are located in the Art and Home Center, which is a multi-use facility that includes several conference rooms, a theater and a demonstration kitchen. The Center is located on the southeast corner of the Fairgrounds. The Empire Room is located at ground level, has a large kitchen and opens onto an outdoor patio area. It is approximately 6,000 square feet and can seat approximately 300 guests in a banquet/dining configuration. The patio area is suitable for "cook out" style food service and can seat approximately 130 guests. The Empire Room has a large kitchen, a built-in 8' x 12' cooler, sink units, back bar cabinets and draft beer coolers. The facility is also equipped with a State-owned ANSUL fire suppression system. The Department also owns the bar, the bar equipment, indoor tables and seating for approximately 200 and the patio furniture.



The Empire Room offers banquet services and food and alcohol sales during the Fair and non-fair. Any improvements made to State property which would be commonly considered an appurtenance or fixture shall not be made without the prior consent of the Department and shall become the property of the State of New York.

The Somerset Room, located on the lower level of the Center, is 2,900 square feet and can seat approximately 75 guests in a banquet/dining configuration. It has a small kitchen that must be equipped by the operator. The Somerset Room also includes a snack bar (not contiguous to the room) that is 22' x 10'. The snack bar offers food, alcoholic and non-alcoholic beverages for sale during shows and other events held in the theater at the Art and Home Center. The snack bar is equipped with a three bay sink.

The Licensee shall be responsible for providing all food storage, preparation and serving equipment, utensils, tables, chairs, flatware, and decorating necessary to operate the license. A list of the equipment and furnishings in the Empire Room which will be available for use by the Licensee as of 2013 is attached as Exhibit 1.

During the Term of the License, the selected licensee shall provide service in and at the Empire Room and Somerset Room. Service shall include: (i) booking and catering events, (ii) the provision of food and beverage service during the annual New York State Fair, and (iii) the provision of food and beverage service at the reasonable request of an event sponsor during events held at the New York State Fairgrounds, which use all or part of the Center. The Service shall be provided in the Center's Empire Room and Somerset Room using the Center's kitchens, food preparation and food storage areas and facilities, loading area, reasonable ingress and egress, and the outside "patio." Service shall include hosting and catering events, as well as the sale of food and alcoholic and non-alcoholic beverages. Full service restaurant operation is not required, but may be provided at the selected proposer's discretion. The facility may be used to prepare food and beverage items for off-premises catering.

Service shall be provided at the Empire Room and every day during the annual New York State Fair beginning not later than 11:00 AM and shall include lunch and dinner. The Empire Room must be open until at least 10:00 PM. Beginning with the first Wednesday in August of each year and ending on the first Wednesday of September, the Somerset Room is used by AGM to host Fair related exhibits and competitions. At other times, service shall be provided for the events held at the Center as may be agreed upon by the event promoter, AGM and the Licensee. The hours of operation shall be coordinated with AGM and event promoters. When not in use as described above, Licensee may book events and operate the licensed premises in accordance with its proposal. The Licensee shall provide for all cleaning and maintenance arising from events held at the Empire Room and Somerset Room, which shall include cleaning of the kitchen, restrooms and other facilities used in connection with Licensee's operations, the patio and any area used by patrons of the Licensee and the repair of any damage, as directed by the Department.

#### CENTER OF PROGRESS RESTAURANT

The Restaurant is located in the Center of Progress Building (COP). The Restaurant occupies the majority 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). 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 has an 8'x24' ANSUL R102 Fire Suppression System and all equipment installed by the Licensee must be within the fire suppression system's coverage. The Restaurant is heated and restroom facilities are available.

The Licensee shall be responsible for the cost of all services. The Center of Progress Restaurant shall operate every day during the New York State Fair opening not later than 10:00 am and closing not earlier than 10:00 pm providing breakfast, lunch and dinner.

#### HORTICULTURE RESTAURANT

The restaurant is located in the Horticulture Building (Hort). It has approximately 4,800 square feet. The main floor is 3,700 square feet, with 1,300 square feet available for seating. Current seating capacity is approximately 150 persons. The second floor is approximately 700 square feet used for office and storage space. The restaurant is heated and air conditioned and restroom facilities are available in the Horticulture Building.

The Horticulture Restaurant shall operate every day during the New York State Fair opening not later than 10:00 am and closing not earlier than 10:00 pm providing breakfast, lunch and dinner. At other times, the Horticulture Restaurant shall be open for every event held at the Horticulture Building. The hours of operation shall be coordinated with the event promoters.

#### MOBILE FOOD SERVICE

For shows in buildings which do not have a permanent restaurant or in areas of the Fairgrounds not served by a food concession, the selected proposer will be required to provide mobile food service. The level of food service and the hours of operation of the mobile food service will be coordinated with the show's promoter. The mobile food service areas are not separately metered. All mobile equipment must be electric and may not use grease. Currently, beer is the only alcoholic beverage for sale from mobile sites.

The two major areas served by mobile food service are:

1) Exhibit Center: The mobile food and beverage service is located in the corner of the Exhibit Center. The approximate dimensions of the location is 25'Wx47'L. This area will allow for food service and seating, provided by the Licensee. Water and electric services only are provided at the Exhibit Center. The fuel source for cooking must be electric. This mobile food station provides food and beverage for shows that are located in the Exhibit Center.

2) Coliseum: The mobile food station for the Coliseum provides service mainly for the horse and livestock shows that are located there. It generally operates from April through November. For purposes of providing this concession, the selected proposer can either use an existing facility located in the Coliseum or propose another means of providing such service that could include, but not be limited to, the use of concession vehicles or subcontracting to a current concessionaire that is located in proximity to the Coliseum.

The current level of service is the provision of take-away food and beverages for all shows held at the Coliseum, as well as several events held at the Goat and Sheep Barns, located on the NYS Fairgrounds. The approximate dimensions of the available space are 51'x71'. The existing space has

a walk-in cooler and freezer as well as dry storage space. The selected Licensee will be required to supply all required kitchen, storage and counter equipment needed to operate the concession and remove all equipment at the end of the term of the agreement. Cooking may include both electrical and gas units. If gas service will be used, the selected vendor will be responsible for both the hook-up and bills for this service. Hours of operation shall be coordinated with the Department and event promoters. All food service must be available at a minimum of one half-hour before and after each event.

### **3. PROPOSAL FORMAT, CONTENTS AND SUBMISSION:**

#### **3.1 SUBMISSION TIMELINE:**

All required materials must be received by the Department no later than 3:00 PM on April 25, 2014 in order to be considered. Any revisions to this RFP will be posted on the Department's website, [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under "Funding Opportunities". All bidders are responsible for keeping informed of any revisions to this RFP.

Any questions concerning this RFP must be received by 3:00 PM on April 11, 2014. Questions must be submitted in writing. Email is preferred and should be sent to the Fiscal Management designated contact for this solicitation at [procurementinfo@agriculture.ny.gov](mailto:procurementinfo@agriculture.ny.gov) Please list RFP #SF00276 in the subject line. In the alternative, questions may be mailed to: NYS Department of Agriculture and Markets, Fiscal Management, 10B Airline Drive, Albany, NY 12235 Attn: Contracts (RFP #SF00276).

A Question and Answer document will be posted to the Department website: <http://www.agriculture.ny.gov/RFPS.html> no later than April 18, 2014. No individual written responses will be provided.

#### **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. See **section 3.7 Submission Documents** for information on completing a bid response.

Address or Hand-Deliver a Bid Response Containing:

- 1. Technical Proposal:** original plus two (2) paper copies with original signatures.
- 2. Submission Documents:** original plus one (1) copy, including original signatures where necessary:
  - A. Cover Sheet and Checklist for Bid Response and Minimum Qualifications (Original Signatures)
  - B. Sample Pro Forma
  - C. Mandatory Contract Requirements Certification Form (Original Signatures)
  - D. Non-Collusive Bidding Certification (Original Signatures)
  - E. MacBride Nondiscrimination Certification Form (Original Signatures)
  - F. Procurement Lobbying Law Forms (Original Signatures)
  - G. Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)
- 3. Bid Form/Financial Proposal:** original plus two (2) paper copies with original signatures.

The **Technical Proposal, Submission Documents** (without the Bid Form and Subcontracting Form) and CD or flash drive may be packaged together in the same envelope. Mark the envelope **“Technical Proposal RFP #SF00276- DO NOT OPEN”**

To ensure that it is reviewed separately from the technical proposal, the **Bid Form** must be placed in a separate envelope labeled **“Financial Proposal RFP #SF00276-DO NOT OPEN”**

Please Note: electronic versions of all documents may be submitted on the same CD or flash drive. The electronic versions will be maintained in Fiscal Management and not distributed to evaluators.

To the following address:  
New York State Department of Agriculture and Markets  
Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
**ATTN: Contracts, RFP #SF00276**

Bidders must submit all submission documents by the bid response due date. The packet of submission documents is posted separately on the Department’s website. The submission must include paper documents where original signatures are required, plus electronic versions of the technical proposal, bid form cost proposal and required assurances and documentation.

Proposals should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond what is required to provide a complete presentation. If supplemental materials are a necessary part of the proposal, the bidder should reference these materials in the technical proposal, identifying the document(s) and citing the appropriate section(s) and page(s) to be reviewed. Any proprietary material considered confidential by the bidder must be specifically so identified, and the basis for such confidentiality must be specifically set forth in the proposal. Be advised that the Department is subject to the Freedom of Information Act as codified in the New York State Public Officers Law.

**3.3 MINIMUM QUALIFICATIONS:**

Each bidder shall:

1. Demonstrate that the bidder has simultaneously operated at least two (2) year-round, full service restaurants during the last three (3) years, whose annual gross revenue each exceeded \$150,000.00.

**3.4 MANDATORY CONTRACT REQUIREMENTS**

1. The selected contractor must certify that it will obtain and maintain the following policies from an insurance company authorized to do business in the State of New York: Commercial General Liability Insurance with a limit of not less than \$2,000,000.00 per each occurrence from CG 00 01, or a substitute form providing equivalent coverage with no modification to the contractual liability coverage provided therein. Further it shall cover liability arising from premises operations, independent contractors, products-completed operations, fire damage legal liability with a limit of not less than \$500,000.00 each occurrence, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

If such insurance contains an aggregate limit, it shall apply separately to each location.

Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000.00 per each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

If the **Licensee** sells, distributes, serves or furnishes alcoholic beverages, then it shall maintain in full force and effect through the term, Liquor Liability Insurance with limits of not less than \$1,000,000.00. Such coverage shall be written on ISO occurrence form CG 00 03, or a substitute form providing equivalent coverage.

Be accompanied by additional insured endorsement (Acord 101) naming the New York State Department of Agriculture and Markets as an additional insured.

Please see section **6.3.16 LIABILITY INSURANCE** for specific contract terms and conditions that will be included in any contract resulting from this RFP.

### **3.5 TECHNICAL PROPOSAL**

See section **3.2 Submission Method** for information on packaging the proposal. All proposals must contain the following:

A complete written description of the substance of the proposal, including the following information:

#### **Background and Experience - 30 Points**

- A. Discuss the background and experience of key personnel and past performance on similar ventures and other projects. This experience must be relevant and must be comparable in scale and scope, to that of the New York State Fair. The proposal should also include the names of key personnel, partners or subcontractors. (10 points)
- B. Please describe the qualifications of the key personnel including, but not limited to managerial strength, organizational structure and training programs. Resumes and/or career summaries demonstrating the relevant background, education, and experience of your key personnel. Include three or more references for proposer. An organizational chart or description reflecting the corporate structure, chain of command, and/or composition of the proposing party and all participants should also be provided. (10 points)
- C. Provide a detailed business plan, including evidence of credit, financial strength, stability, and business administration. The business plan (with *pro-forma* revenue and expense projection for the initial term of the License, a sample *pro forma* is included in the **Submission Documents** packet for this RFP) should identify and account for anticipated revenue sources and business opportunities sought, and all costs and expenses projected to be incurred, by Licensee. Please omit the cost of the proposed License Fee from expenses for purposes of technical evaluation. (10 points)

#### **Response to the RFP - 30 Points**

- D. Please describe the proposer’s view of the facilities’ public image and brand. In keeping with the Department’s position that the facilities are underutilized, the proposer should describe its vision for developing and growing this business opportunity. (10 points)
- E. Bidders should describe the proposed operations of each location (4 restaurants and mobile service), including management, maintenance, development, and improvement plans, staffing or sub-licensing. The operation plan should also describe staff training and promotions of food and beverages produced in of New York. Sample menus including healthy food options, proposed inventory items with pricing, and hours of operation should be provided. (10 points)
- F. The proposal should capitalize on the year-round setting and distinguish the varying levels of service at the licensed premises. The Great New York State Fair is the most widely attended event of the year and Bidders should be mindful of the family atmosphere and ensure that the proposal is attractive and appropriate for the Fairground setting. (10 points)

**Additional Demonstrative Materials**

Prospective Bidders are encouraged to provide as much additional material and detail as possible to completely describe and demonstrate the proposal. AGM reserves the right to request additional information or clarification in order to fully evaluate any proposal.

**3.6 BID FORM/FINANCIAL PROPOSAL:**

A five-year contract will be awarded. A fully completed and properly executed **Bid Form/Financial Proposal** (See Attachment 1) must be submitted for this RFP. All blanks must be filled in and a License Fee must be offered. The bidder must offer a minimum bid of ten (10) percent of all gross revenue derived from operations. See section **3.2 Submission Method** for information on packaging the proposal.

**3.7 SUBMISSION DOCUMENTS**

Bidders must submit all submission documents by the bid response due date. The packet of submission documents is posted separately on the Department’s website. The submission must include paper documents plus electronic versions of the technical proposal, bid form and required assurances and documentation. See section **3.2 Submission Method**.

**4.0 EVALUATION CRITERIA AND METHOD OF AWARD:**

**4.1 CONSIDERATION:**

For a bidder to be eligible for consideration, it must meet the Minimum Qualifications. To be awarded a contract, the bidder must certify that it meets the Mandatory Contract Requirements.

**4.2 CRITERIA FOR EVALUATING BIDS**

All complete proposals received by the deadline will be reviewed using the following criteria and ratings. Bidders must ensure that all components of this request for proposals have been addressed, the required number of copies has been provided, all forms and assurances have been completed, and the original signatures, in blue, are included as required.

A proposal will first be reviewed by AGM staff to ensure that the proposal is complete, and that all of the minimum qualifications have been met.

An evaluation committee will complete a review of the Technical Proposals for all complete proposals submitted. The committee will review each Technical Proposal to determine compliance with the requirements described in the RFP. The committee retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject, in whole or in part, any and all proposals, waive minor irregularities, and conduct discussions with all responsible bidders.

All proposals received by eligible and qualified bidders will be evaluated. The evaluation committee will be permitted to review its scoring and to make corrections based upon clarifications, error discovered and/or a disparate score.

**Technical Criteria (60%)**

Technical Proposal 60 points

**Financial Criteria (40%)**

Bid Form/Financial Proposal 40 points

**Maximum Score - 100 points**

**4.3 CALCULATION OF HIGHEST REVENUE:**

The financial portion represents 40 points of the overall score and will be awarded pursuant to a formula. This calculation will be computed by Fiscal Management independently of the technical scoring by the evaluation committee.

The submitted annual License Fee will be awarded points, pursuant to a formula which awards 40 points to the bidder who offers the highest percentage of gross revenue (Return to the State or “RTS”).

The remaining bids will be awarded points based on a calculation that computes the relative difference between each bid and the highest bid received for each criterion. The points to be awarded to the proposal with the next and succeeding RTS will be calculated by computing each proposal’s RTS percentage of the highest RTS and multiplying that percentage by 40 (the total points available in this category). No decimal values will be considered. For evaluative purposes, decimal points are rounded to whole numbers. The responsible Proposer with the highest total score will be awarded the license.

**Examples of Revenue Score Calculation:**

BIDDER	PERCENTAGE OF GROSS REVENUE	NUMBER OF COST POINTS (MAXIMUM 40 POINTS)	TOTAL COST SCORE (rounded to a whole number)
A	18%	$(18\%/23\%) \times 40 = 31.3$	31
B	12%	$(12\%/23\%) \times 40 = 20.8$	21
C	15%	$(15\%/23\%) \times 40 = 26.1$	26
D	23%	40 (highest bid)	40

The Department reserves the right to request best and final offers. In the event the Department exercises this right, all eligible and qualified bidders will be asked to provide a best and final offer.

#### **4.4 METHOD OF AWARD**

The Department intends to make a single contract award to the eligible and qualified Bidder whose proposal results in the highest combined technical and revenue score. The scores for all of the technical criteria listed will be calculated for each proposal received. The average technical score for each proposal will be added to its revenue score for a maximum combined score of 100 points. The contract issued pursuant to this proposal will be awarded to the proposal whose average technical score plus revenue score is the highest among all the proposals rated. In the case of a tie score, the bidder among the tied group with the highest cost score will be ranked higher.

#### **5.0 CONSIDERATIONS RELATED TO THIS SOLICITATION:**

##### **5.1 DEPARTMENT'S RESERVATION OF RIGHTS:**

The Department reserves the right to:

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



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

**5.2 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.

**5.3 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 RFP by submitting a written request to the Fiscal Management designated contact at:

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

**5.4 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 AGM.
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: NYS Department of Agriculture and Markets, Fiscal Management, Contracts Unit, 10B Airline Drive, Albany, NY 12235. Please include the title and number of the AGM solicitation in any correspondence.
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 seven (7) 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, 11<sup>th</sup> Floor, Albany, New York 12236.

#### **5.5 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.

#### **5.6 REQUIRED APPROVALS:**

Any contract award resulting from this solicitation is subject to the availability of funding and the authorization of the New York State Division of the Budget. Contract awards in excess of Ten Thousand Dollars (\$10,000) are also subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

#### **5.7 VENDOR RESPONSIBILITY AND NYS VENDOR ID:**

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 bidders' 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, on such finding, the Department may terminate the contract by providing ten (10) days written notification to the contractor. In no case shall such termination of the contract by the Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

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

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

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

#### **5.8 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 5 -- "Guidelines Regarding

Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence”).) An offeror/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/bids 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://ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

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

PROGRAM	FISCAL
<p style="text-align: center;">Denise Jordan            Division of the New York State Fair            Telephone: (315) 487-7711 ext. 1204            Fax: (315) 487-9260            E-mail: <a href="mailto:denise.jordan@agriculture.ny.gov">denise.jordan@agriculture.ny.gov</a></p>	<p style="text-align: center;">Tina Lyons            Division of Fiscal Management            Telephone: (518) 457-0864            Fax: (518) 485-7750            E-mail: <a href="mailto:tina.lyons@agriculture.ny.gov">tina.lyons@agriculture.ny.gov</a></p>

**6.0 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 solicitation. 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, pages 6-7**)

**6.2 MANDATORY CONTRACT 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 RFP will contain the following terms.

**6.3.1 ORDER OF PRECEDENCE**

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

- Appendix A
- Contract Cover Page
- Appendix E (Special Conditions, if applicable)
- Appendix D (General Conditions)
- Appendix C (Scope of Work/ RFP Proposal)
- Appendix B (Budget/Cost Proposal)

**6.3.2 RECORDS MAINTENANCE, EXAMINATION AND RETENTION**

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

**REVENUE ACCOUNTABILITY**

The **Licensee** shall establish and follow sound business practices regarding revenue accountability using generally accepted accounting principles and internal controls to ensure that the assets of both the Licensee and Department are protected. The Licensee shall conform to the Department's policies and procedures for reporting revenue sales. (Note: The current percentage revenue procedure and sample forms are included as Exhibit 3 to this RFP).

**6.3.3 PAYMENT TERMS**

Payments may be made by standard business check, cashier's check, money order or credit card (or cash, in person). A copy of all documentation and State Fair invoices relating to each event 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.

**Non-Fair Events:** Sales summary sheets shall be remitted to the New York State Fair's Senior Accountant within five business days of the conclusion of each event. Upon review and verification of sales summary sheets, the State Fair shall issue an invoice to the Licensee. The invoice shall list the payment amount and due date. Payments shall be net fifteen (15) days.

**Fair-Time:** Payment for services provided during the Great New York State Fair shall be made in installments during the twelve-day duration of the Fair. Sales summary sheets shall be remitted to the New York State Fair's Senior Accountant on a daily basis for the previous day. The report for the first day of the Fair will be due by 3:00 PM on the second day of the Fair. Failure to provide reports as required may result in a penalty being imposed.

The first installment shall be payable on Day Five of the Fair and shall represent the percentage payment owed for Days One through Three of the Fair. The second installment shall be payable on Day Nine of the Fair and shall represent the percentage payment owed for Days Four through Seven of the Fair. The third installment shall be payable on Day Twelve of the Fair and shall represent the

percentage payment owed for Days Eight through Ten of the Fair. The final installment shall be due within two days following the close of the Fair and shall represent the percentage payment owed for Days Eleven and Twelve of the Fair.

#### **6.3.4 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.

#### **6.3.5 SUBCONTRACTS**

Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. 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.

For additional information about Vendor Responsibility, see sections 5.7 and 6.3.9 of this RFP. If the vendor proposes to change subcontractors during the contract period, AGM must be notified prior to the change. AGM reserves the right to reject any replacement subcontractors proposed by the vendor and reserves the right to approve all changes in subcontractors. The Subcontracting Form located in the Submission Documents must be updated annually and submitted to AGM.

#### **6.3.6 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.

#### **6.3.7 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.

#### **6.3.8 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**.

#### **6.3.9 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.

#### **6.3.10 TERMINATION**

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the other party. Upon receipt of such notice from the **Department**, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for failure on the part of the **Contractor** to perform in a manner consistent with the terms of this Agreement. 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.

#### **6.3.11 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**.

### **6.3.12 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.

### **6.3.13 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.

### **6.3.14 WORKERS' COMPENSATION AND NYS DISABILITY INSURANCES**

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption may result in the termination of the Agreement.

A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the **Department**:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable IFB/RFP and Group #s on the form.)
2. Certificate of Workers' Compensation Insurance:
  - a. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Department of Agriculture and Markets, or
  - b. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Department of Agriculture and Markets.

- c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- a. Be legally exempt from obtaining disability benefits coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the **Department**:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable IFB/RFP and Group #s on the form.)
2. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Department of Agriculture and Markets; or
3. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

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).

### **6.3.15 LABOR PEACE AGREEMENT**

As a condition of receiving this contract for the provision of catering services at the Empire Room, and to protect the New York State Department of Agriculture and Markets' financial interest in revenue generated by the State Fair, the selected proposer, agrees to enter into a Labor Peace Agreement with a bona fide labor organization which represents a substantial number of hotel or convention center employees in the State, and is actively representing or seeking to represent the Empire Room employees, and shall require any subcontractor, lessor or sublessor that operates the Empire Room catering facility at the New York State Fair to enter into such agreement by incorporating a term requiring such agreement in its contracts with such entities. "Labor Peace Agreement" means an agreement enforceable under federal law with a labor organization that includes a promise by the labor organization on behalf of itself and its members not to engage in any strikes, boycotts, work stoppages, corporate campaigns, picketing or other economic action against the Empire Room or any part of the New York State Fair. The Labor Peace Agreement shall not include any provision requiring any employee to become a member of a labor organization, or apply to any employee that does not work at the Empire Room. The Labor Peace Agreement shall provide for termination in the event the labor organization signing the agreement is found by an



arbitrator or court of competent jurisdiction to have violated its terms. The Labor Peace Agreement shall be in effect for the term of this License Agreement.

#### **6.3.16 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 of Agricultural and Markets (AGM), 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 AGM.

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 insurance coverage in the minimum amounts of:
  - A) Commercial General Liability Insurance with a limit of not less than \$2,000,000.00 per each occurrence from CG 00 01, or a substitute form providing equivalent coverage with no modification to the contractual liability coverage provided therein. Further it shall cover liability arising from premises operations, independent contractors, products-completed operations, fire damage legal liability with a limit of not less than \$500,000 each occurrence, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).
  - B) If such insurance contains an aggregate limit, it shall apply separately to each location.
  - C) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000.00 per each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
  - D) If the **Licensee** sells, distributes, serves or furnishes alcoholic beverages, then tenant shall maintain in full force and effect through the term, Liquor Liability Insurance with limits of not less than \$1,000,000.00. Such coverage shall be written on ISO occurrence form CG 00 03, or a substitute form providing equivalent coverage.
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 July 1, 2014 and remain in effect for the term of the Agreement.

Certificate Holder: New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235

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.

Certificate acceptance and/or approval by AGM 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 AGM; shall be primary and non-contributing to any insurance or self insurance maintained by AGM; shall be endorsed to provide written notice be given to AGM, 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 Agricultural and Markets updated replacement Certificates of Insurance, and amendatory endorsements.

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

### **6.3.17 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.

### **6.3.18 FORCE MAJEURE**

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.

### **6.3.19 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.

### **6.3.20 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 Licensee shall be given to Licensee at the address stated on the face page of this agreement.

### **6.3.21 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.

### **6.3.22 CERTIFICATIONS**

1. Licensee 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. Licensee certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
3. Licensee certifies that no governmental entity has made a finding of non-responsibility regarding the Licensee in the previous four years.
4. Licensee 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. Licensee 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. Licensee certifies that it is in compliance with NYS Public Officers Law, including, but not limited to §73(4)(a).