

REQUEST FOR PROPOSALS

for

Restroom Valet and Cleaning Services for the New York State Fairgrounds

RFP#SF00280

RFP Issued: April 25, 2014
Proposals Due: June 6, 2014

By:

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

REQUEST FOR PROPOSALS

#SF00280: RESTROOM VALET AND CLEANING SERVICES FOR THE NEW YORK
STATE FAIRGROUNDS

Table of Contents

I. INTRODUCTION	1
a. OVERVIEW	1
b. TERM	1
c. TIMELINE AND CALENDAR OF EVENTS	1
d. SUMMARY OF SUBMISSION REQUIREMENTS	1
e. QUESTIONS	2
II. DESCRIPTION OF WORK TO BE PERFORMED	2
a. DESCRIPTION OF PROGRAM OBJECTIVES AND BACKGROUND	2
b. SCOPE OF SERVICES	2
c. DETAILED REQUIREMENTS	3
i. General	3
ii. State Fair Staffing	3
iii. Syracuse Nationals Car Show Staffing	5
iv. Department Provided	5
v. Contractor Provided	5
d. PERFORMANCE STANDARDS	6
e. PAYMENT	6
III. CONTENTS AND METHOD OF SUBMISSION	8
a. OVERVIEW OF THE SOLICITATION PROCESS	8
b. TIMELINE AND CALENDAR OF EVENTS	9
c. MINIMUM QUALIFICATIONS	9
d. MANDATORY CONTRACT REQUIREMENTS	10
e. TECHNICAL PROPOSAL	10
g. SUBCONTRACTING	13

h.	MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOALS	13
IV.	EVALUATION	15
a.	METHOD OF AWARD	15
b.	EVALUATION CRITERIA	15
c.	SELECTION OF WINNING BIDDER	16
V.	CONSIDERATIONS RELATED TO THIS REQUEST	16
a.	DEPARTMENT’S RESERVATION OF RIGHTS	16
b.	PREVAILING WAGE LAWS/PAYROLL CERTIFICATIONS	17
c.	M/WBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS CONTRACTOR REQUIREMENT AND OBLIGATION UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)	17
d.	NOTIFICATION OF AWARD	21
e.	DEBRIEFING PROCEDURES	21
f.	BID PROTEST PROCEDURES	21
g.	NEW YORK LAW	22
h.	REQUIRED APPROVALS	22
i.	RECOMMENDED SUBMISSIONS	22
j.	VENDOR RESPONSIBILITY AND NYS VENDOR ID	25
k.	PROCUREMENT LOBBYING LAW	25
l.	COST LIABILITY	26
m.	FREEDOM OF INFORMATION	26
VI.	REQUIRED ASSURANCES	26
a.	APPENDIX A	26
b.	M/WBE DOCUMENTS	27
c.	BIDDER AFFIRMATIONS AND MANDATORY CONTRACT REQUIREMENTS CERTIFICATION FORM	27
d.	CONTRACT TERMS	27
i.	ORDER OF PRECEDENCE	27
ii.	RECORDS MAINTENANCE, EXAMINATION AND RETENTION	28
iii.	PAYMENT TERMS	28

iv. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS.....	28
v. SUBCONTRACTS.....	28
vi. INDEMNIFICATION	28
vii. CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT	29
viii. DEVIATION FROM WORK	29
ix. RESPONSIBILITY REQUIREMENTS.....	29
x. TERMINATION	30
xi. TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K.....	30
xii. MODIFICATION	30
xiii. NECESSARY SIGNATURES	30
xiv. IRAN DIVESTMENT ACT	30
xv. LIABILITY INSURANCE.....	31
xvi. SALES TAX	32
xvii. FORCE MAJEURE.....	33
xviii. NEW YORK LAW	33
xix. NOTICE.....	33
xx. DIESEL EMISSION REDUCTION ACT	33
xxi. CERTIFICATIONS.....	33

EXHIBITS

EXHIBIT 1 -- STAFFING EXPECTATIONS FOR NEW YORK STATE FAIR

EXHIBIT 2 -- STAFFING EXPECTATIONS FOR SYRACUSE NATIONALS CAR SHOW

EXHIBIT 3 -- SUPPLIES ORDERED BEFORE AND DURING 2013 STATE FAIR

EXHIBIT 4 -- SUPPLIES ORDERED FOR 2013 SYRACUSE NATIONALS CAR SHOW

EXHIBIT 5 -- SCHEDULE OF PREVAILING WAGES FOR PRC 2014900316

I. INTRODUCTION

a. OVERVIEW

The New York State Department of Agriculture and Markets (the Department) seeks proposals from qualified parties to provide restroom valet and cleaning services at the New York State Fair and Syracuse Nationals Car Show for the years 2014, 2015 and 2016. Proposals should conform with the format and content specified in this Request for Proposals (RFP), which is posted in the “Funding Opportunities” section of the Department’s website (www.agriculture.ny.gov).

b. TERM

The contract term will begin July 1, 2014 and will continue until September 30, 2016.

c. TIMELINE AND CALENDAR OF EVENTS

RFP Posted	April 25, 2014
Questions regarding this RFP must be submitted by 3:00 PM on:	May 8, 2014
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	May 16, 2014
Bidder Response Due by 3:00 PM on:	June 6, 2014
The Department intends to make an award by:	June 20, 2014

d. SUMMARY OF SUBMISSION REQUIREMENTS

Proposals must conform to the format and content specified in this RFP. Applicants must submit an original and two (2) hard copies and one electronic version of each proposal plus a completed and signed Checklist for Proposal Eligibility and Completeness.

Envelopes must be clearly marked: “RFP #SF00280 – Restroom Valet and Cleaning Services for the NY State Fairgrounds”.

Proposals must be submitted to:

Lucy Roberson, Director
Division of Fiscal Management
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Proposals MUST BE RECEIVED by the Department’s Division of Fiscal Management by 3:00 PM on June 6, 2014.

Applicants, not delivery services or other intermediaries, are responsible for the timely submission of proposals. Faxed and e-mailed proposals will not be accepted. Proposals delivered after the scheduled date and time will be returned to applicants and not considered.

e. QUESTIONS

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

Judy Giovannetti
Fiscal Management
NYS Dept. of Agriculture and Markets
E-mail: Procurement.info@agriculture.ny.gov

Please reference RFP#SF00280 in the subject line.

All questions must be submitted to Judy Giovannetti by 3:00 P.M. on May 8, 2014. A list of questions about the RFP and answers to those questions, as well as any addendums to the RFP, will be posted in the “Funding Opportunities” section of the Department’s website (www.agriculture.ny.gov) by May 16, 2014. If you are unable to access the website, please contact Judy Giovannetti to arrange for alternate delivery. All questions and answers will become a formal addendum to this RFP.

II. DESCRIPTION OF WORK TO BE PERFORMED

a. DESCRIPTION OF PROGRAM OBJECTIVES AND BACKGROUND

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 for a twelve-day period ending on Labor Day each year. 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 Fairgrounds also hosts the Syracuse Nationals Car Show, which is held over three days in July each year. The Syracuse Nationals Car Show will be held July 18-20, 2014; July 17-19, 2015; and July 15-17, 2016. The Department is seeking bids to manage cleaning and valet services for certain restrooms and showers on the Fairgrounds during the Syracuse Nationals Car Show and State Fair. The contract term will include the Syracuse National Car Show and State Fair for the years 2014, 2015 and 2016.

b. SCOPE OF SERVICES

The selected contractor will manage restroom valet and cleaning services at the Syracuse Nationals Car Show and State Fair at the Fairgrounds. The contract will cover 24 restrooms (12 male and 12 female) and 6 showers during the Syracuse Nationals Car Show and 94 restrooms (46 male, 47 female and 1 male/female) and 13 showers during the State Fair. A detailed breakdown of the number and type of covered restrooms is provided in Point III.c, Detailed Requirements, below and lists of covered restrooms and showers, including location, are attached as Exhibits 1 and 2 to this RFP. The number of covered restrooms could increase or decrease slightly based on operational considerations. Any changes to the number of restrooms will be made prior to the start of work.

The selected contractor will be responsible for ensuring that the covered restrooms and showers are kept clean and stocked with appropriate supplies. The selected contractor will be responsible for hiring, training and supervising all necessary staff. Contractor responsibilities will include ensuring that the restrooms and showers are clean and stocked prior to the commencement of each event, continuously cleaning and stocking the restrooms and showers during the events, and returning unused supplies to the Division of the State Fair upon completion of the events. The term of this contract will run from July 1, 2014 to September 30, 2016.

c. DETAILED REQUIREMENTS

i. General

The selected contractor will be responsible for the hiring, training and supervising of the staff needed to perform this work. The selected contractor will be responsible for conducting criminal and sex offender registry background checks on all employees and potential employees. The selected contractor must ensure that it does not knowingly employ registered sex offenders, persons with violent felony convictions, or others who might present a risk to State Fair attendees or staff. All staff will be employees of the selected contractor, or of a subcontractor hired by the selected contractor.

The solicitation or acceptance of tips by any restroom staff from Fair patrons will be prohibited. It is the responsibility of the selected contractor to communicate this rule to all staff and to assure that tips are not being either solicited or accepted by any of the staff. If any staff is found to be either soliciting or accepting tips from patrons, the selected vendor must immediately notify the employee that tipping is prohibited and take steps to prevent future solicitation or acceptance of tips.

All paper and cleaning products will be provided by the New York State Fair. All quantities will be determined by New York State Fair staff. Cleaning equipment needed to maintain all restrooms and showers will be provided by the New York State Fair, except that the selected contractor will be required to provide power washing equipment. Prior to the start of each event, the selected contractor will be responsible for obtaining supplies from the State Fair's warehouse and fully stocking the covered restrooms. Generally, supplies may be stored in locked cupboards or closets in the restrooms. As supplies are depleted during the event, the selected contractor will be responsible for obtaining additional supplies from the warehouse. At the conclusion of each event, the selected contractor will be responsible for returning all unused supplies to the warehouse. Lists of supplies ordered for the 2013 State Fair and 2013 Syracuse Nationals Car Show are attached as Exhibits 4 and 5.

ii. State Fair Staffing

There are 94 restrooms and 13 showers located at the Fairgrounds that will be covered by the selected contractor during the State Fair. This number could increase or decrease slightly based on operational considerations. Any changes to the number of restrooms will be made prior to the start of work. The breakdown of the 94 restrooms and 13 showers currently included in the scope of this work is as follows:

- 49 restrooms (24 male and 25 female) located inside various buildings throughout the Fairgrounds. 5 of these locations have shower facilities.

NYS Department of Agriculture and Markets
RFP #SF00280 – Restroom Valet and Cleaning Services for the NY State Fairgrounds

- 31 restrooms (15 male, 15 female, and 1 male/female) located outside in various locations throughout the Fairgrounds. 8 of these locations have shower facilities.
- 8 outside portable restrooms (4 male and 4 female) whose locations will be determined by State Fair management.
- 6 restrooms located within the Grandstand venue.

The selected contractor will not be responsible for the cleaning of any porta-potties. A list of restrooms and showers covered by this RFP, including their locations, is attached as Exhibit 1 to this RFP.

The majority of these 94 restrooms require continual cleaning and stocking daily during the event. The restrooms in the buildings are open daily from 10am until 10pm and staff should be on site from 9am until 10pm each day. The 13 shower facilities must be cleaned and stocked daily between the hours of 12am to 6am. The outside and portable restrooms are open 24 hours and should be staffed from 7am until midnight. The restrooms in the Grandstand are open only during events held at that venue and staff must be onsite from 2 pm to 12am (midnight) during these events. The exact dates and times of these events are still to be determined. As of April 9, 2014, there are seven (7) confirmed bookings and three (3) tentative bookings for grandstand shows at the 2014 State Fair. A list of publically-announced concerts is available on the State Fair's website: <http://www.nysfair.org/concerts/grandstand/>.

All restrooms are to be cleaned and fully stocked prior to the staff leaving for the day during the Fair. There may be several restrooms that do not need to be staffed at all times and can be serviced on a rotational basis. These locations (if any) and the frequency of servicing will be determined by mutual consent of the selected vendor and Fair management. The selected contractor should have a sufficient number of male and female employees to permit continuous cleaning and valet services without closing the bathrooms. The staffing expectations for the covered restrooms are included in Exhibit 1 to this RFP.

Cleaning of select showers and bathrooms will begin four days prior to the start of the State Fair, and cleaning of all showers and bathrooms will begin two days prior to the start of the event. For the two days prior to the event, staffing must be sufficient (1) to stock all restrooms with the necessary supplies and equipment from the warehouse needed to maintain the restroom and (2) to thoroughly clean each restroom prior to the start of the event. Cleaning and restocking will continue through the duration of the State Fair, and will end one day after the event. All restrooms and showers must be thoroughly cleaned after the end of the State Fair, and all unused supplies must be returned to the State Fair's warehouse, before the selected contractor will be relieved of its obligations for that year.

Prior to the start of the contract term, the Department will be accepting applications from individuals interested in working as rest room valets or cleaners at the 2014 State Fair. The Department will provide these applications to the selected contractor. The selected contractor will be responsible for conducting additional recruitment, if necessary. In 2013, there were approximately 150 employees hired for the New York State Fair to perform restroom and shower cleaning services.

iii. Syracuse Nationals Car Show Staffing

There are 24 restrooms (12 male and 12 female) and 6 showers located at the Fairgrounds that will be covered by the selected contractor during the Syracuse Nationals Car Show. This number could increase or decrease slightly based on operational considerations. Any changes to the number of restrooms will be made prior to the start of work. All of the restrooms and showers are located outside. A list of the covered restrooms and showers is attached as exhibit 2 to this RFP.

Most of the restrooms do not need to be staffed at all times and can be serviced on a rotational basis. The frequency of servicing will be determined by mutual consent of the selected vendor and Fair management. The selected contractor should have a sufficient number of male and female employees to permit continuous cleaning and valet services without closing the bathrooms. The six (6) showers must be cleaned and stocked daily between the hours of 10pm and 6am.

Cleaning of showers and bathrooms will begin one day prior to the event. The staffing must be sufficient (1) to stock all restrooms with the necessary supplies and equipment from the warehouse needed to maintain the restroom and (2) to thoroughly clean each restroom prior to the start of the event. Cleaning and restocking will continue through the duration of the Car Show, and will end one day after the event. All restrooms and showers must be thoroughly cleaned after the event, and all unused supplies must be returned to the warehouse, before the selected contractor will be relieved of its obligations for the event. In 2013, there were approximately 12 employees hired for the Syracuse Nationals Car Show to perform these services. The hours and staffing expectations for the restrooms is attached as exhibit 2 to this RFP.

iv. Department Provided

The Department will provide:

- All paper products for the restroom facilities, including toilet paper and paper towels.
- Sanitary napkins and napkin disposal bags.
- All cleaning products for the restroom facilities, including gloves, all-purpose cleaner and floor cleaner.
- All cleaning equipment (buckets, mops, toilet brushes, brooms, etc.), except power washing equipment, needed to clean the permanent restroom facilities.
- Pad locks that will be used to secure cabinets in each restroom that house the cleaning equipment and supplies.
- Equipment needed to clean the portable restrooms, except for power washing equipment. The portable restrooms do not contain a “slop sink” so all grey water must be taken from the facilities and disposed of properly.
- All admission and parking credentials for all Restroom Valet Services staff to access the Fairgrounds during the Fair and the Syracuse Nationals Car Show for working purposes only.

v. Contractor Provided

The selected contractor will be responsible for:

- The hiring and supervision of all restroom cleaning and valet staff.

- Daily staffing, scheduling and supervision of the Restroom Valet Services staff, including ongoing verification that adequate supplies are on hand in each location and that continual cleaning of the toilets, sinks, floors, etc. is being performed. The overall staffing plan must be submitted to the Fair program manager at least one week prior to the start of each event.
- Adherence to all New York State Labor Laws, rules and regulations, including complying with prevailing wage requirements of Labor Law article 9. The schedule of prevailing wages applicable to this contract is attached as Exhibit 5.
- An approved Quality Assurance program designed to assure that the restrooms are being maintained to acceptable standards agreed to by both the selected vendor and the Department. A copy of the overall staffing plan must be submitted to the Fair program manager at least one week prior to the start of each event.
- Power washing equipment.
- An office and supply trailer, if needed. The Fair will provide a permit and mutually agreed upon location.
- Motorized and non-motorized equipment needed to transport staff and supplies to restrooms throughout the grounds. All motorized traffic (including golf carts) is prohibited on the interior roads of the Fairgrounds between 9:30 am and 10 pm during the twelve days of the Fair.
- Providing uniform shirts marked with the selected vendor's name and/or logo as well as employee identification that must be worn by the employee at all times. All employees must be neat in appearance.
- A written plan for the post-event return of all supplies and equipment to the State Fair warehouse that reduces or eliminates theft of these supplies and equipment.

d. PERFORMANCE STANDARDS

The selected contractor will be responsible for preparing a Quality Assurance program designed to assure that the restrooms are being maintained to acceptable standards agreed to by both the selected contractor and the Department. The Quality Assurance program will include a process for receiving and promptly responding to reports of unstaffed or unclean bathrooms, or bathrooms that need to be restocked with supplies. The Department retains the right to inspect any and all bathrooms to ensure the selected contractor's compliance with the Quality Assurance program.

The selected contractor is also responsible for submitting a written plan for the return of all supplies and equipment to the State Fairgrounds warehouse after each event that reduces or eliminates theft of these supplies and equipment. The selected contractor will be responsible for the cost of any supplies or equipment that are stolen. The selected contractor will be responsible for any damages done to the Department's facilities by the contractor's employees. Any disputes about the cause or nature of damaged facilities or missing supplies or equipments will be subject to arbitration in the State of New York.

e. PAYMENT

Payments to the selected contractor will be calculated as follows:

2014 Syracuse Nationals Car Show

The selected contractor will be paid the amount it bid for wages and fringe benefits and other costs for the 2014 Syracuse Nationals Car Show. If the number of covered restrooms changes, this payment may be adjusted up or down on a pro rata basis based on the percent change in the number of covered restrooms.

2014 State Fair

The selected contractor will be paid the amount it bid for wages and fringe benefits and other costs for the 2014 State Fair. If the number of covered restrooms changes, this payment may be adjusted up or down on a pro rata basis based on the percent change in the number of covered restrooms.

2015 Syracuse Nationals Car Show

The selected contractor will be paid the amount it bid for wages and fringe benefits at the 2014 Syracuse Nationals Car Show, adjusted up or down based on the percent change in the prevailing wage rate. The selected contractor will also be paid the amount it bid for other costs at the 2015 Syracuse Nationals Car Show. If the number of covered restrooms changes, the combined cost may be adjusted up or down on a pro rata basis based on the percent change in the number of covered restrooms.

2015 State Fair

The selected contractor will be paid the amount it bid for wages and fringe benefits at the 2014 State Fair, adjusted up or down based on the percent change in the prevailing wage rate. The selected contractor will also be paid the amount it bid for other costs at the 2015 State Fair. If the number of covered restrooms changes, the combined cost may be adjusted up or down on a pro rata basis based on the percent change in the number of covered restrooms.

2016 Syracuse Nationals Car Show

The selected contractor will be paid the amount it was paid for the 2015 Syracuse Nationals Car Show for wages and fringe benefits, adjusted up or down based on the percent change in the prevailing wage rate. The selected contractor will also be paid the amount it bid for other costs at the 2016 Syracuse Nationals Car Show. If the number of covered restrooms changes, the combined cost may be adjusted up or down on a pro rata basis based on the percent change in the number of covered restrooms.

2016 State Fair

The selected contractor will be paid the amount it was paid for the 2015 State Fair for wages and fringe benefits, adjusted up or down based on the percent change in the prevailing wage rate. The selected contractor will also be paid the amount it bid for other costs at the 2016 State Fair. If the number of covered restrooms changes, the combined cost may be adjusted up or down on a pro rata basis based on the percent change in the number of covered restrooms.

The percentage change in the prevailing wage rate will be determined based on the standard per hour wage rate, plus the fringe benefits required for an individual employee. The contractor is responsible for anticipating staffing needs, and will not receive additional compensation if additional staffing, not contemplated in its initial bid, is required to meet the scope of services requirements. For the purposes of calculating the percent change in restrooms, the selected contractor's bid for the Syracuse Nationals Car Show covers 24 restrooms and the selected contractor's bid for the State Fair covers 94 restrooms. Payment will be made by lump sum at the end of each event. After returning all unused supplies to the warehouse, the selected contractor will be required to submit an invoice for services and a payroll certification to the State Fair's Senior Accountant. State Fair staff will ensure that the supplies have been returned and that the restrooms have been fully cleaned prior to authorizing payment. All payments will comply with ordinary state procedures and practices. For more information on payment terms, please see section VI.d.iii, Payment Terms, below.

III. CONTENTS AND METHOD OF SUBMISSION

a. OVERVIEW OF THE SOLICITATION PROCESS

All required materials must be received by the Department no later than 3:00 PM on June 6, 2014 in order to be considered.

Faxed 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.

The cost and technical components must be submitted in separate sealed envelopes. The entire proposal shall be submitted in an envelope that is clearly marked "RFP #SF00280 – Restroom Valet and Cleaning Services for the NY State Fair." Inside the envelope shall be two (2) separate envelopes which must be identified as follows: 1) Proposer's name, "Restroom Valet and Cleaning Services for the NY State Fair – Technical Component"; 2) Proposer's name, "Restroom Valet and Cleaning Services for the NY State Fair – Cost Proposal".

For all required documents, the bidder must submit an original and two (2) hard copies, as well as 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, in a sealed package, to:

New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Judy Giovannetti, RFP #SF00280

Additionally, the M/WBE Documents, including originals, two (2) hard copies, must be mailed in a separate envelope labeled "RFP #SF00280-M/WBE Documents-Do Not Open", and sent to:

New York State Department of Agriculture and Markets
Fiscal Management

10B Airline Drive
Albany, New York 12235
ATTN: Bridgette Shellard, RFP #SF00280

For more information about required M/WBE documents, see section VI.b, M/WBE Documents.

b. TIMELINE AND CALENDAR OF EVENTS

RFP Posted:	April 25, 2014
Questions regarding this RFP must be submitted by 3:00 PM on:	May 8, 2014
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	May 16, 2014
Bidder Response Due by 3:00 PM on:	June 6, 2014

The Department intends to make an award by June 20, 2014.

The contract term will begin July 1, 2014 and will continue until September 30, 2016.

c. MINIMUM QUALIFICATIONS

To be considered, each bidder shall:

- 1) Certify that the bidder is currently operating as a business that provides cleaning services, and has operated continuously as such a business for the preceding three (3) years.
- 2) Certify that the bidder will be capable of providing at least 15,000 person hours in connection with providing cleaning and valet services at the State Fair each year. This total will include person hours expended in initial cleaning and stocking prior to the start of the Fair, as well as final cleaning and return of supplies after the conclusion of the Fair.
- 3) Demonstrate that the bidder has provided services at a similar size and scope to the New York State Fair, by providing either:
 - a. References from at least three (3) prior contracts in which the bidder provided at least 7,000 person hours of cleaning services per week. For all three contracts, the bidder should indicate the length of the contract, the number of person hours per week provided, the number of restrooms and showers serviced, and the names and contact information of the clients. The bidder must authorize the Department to contact all references; or
 - b. A reference from one prior contract in which the bidder provided at least 7,000 person hours of cleaning services per week for a total of at least 12 weeks. The bidder should indicate the length of the contract, the number of person hours per week provided, the number of restrooms and showers serviced, and the names and contact information of the client. In this case, the bidder must provide two (2) additional references. The bidder must authorize the Department to contact all references.

d. 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 restroom valet and cleaning services at the Syracuse Nationals Car Show or the New York State Fair.
- 2) The selected contractor will inform its employees, its subcontractors, and its subcontractors' employees that they are prohibited from soliciting or accepting tips, and take prompt action to respond to reports that tips or gratuities are being solicited or accepted.
- 3) The selected contractor shall have full control of the covered restrooms and assumes total responsibility for all liability for accident, injury and/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.
- 4) 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.
- 5) The selected contractor will ensure that its employees, and the employees of any subcontractors, are paid a wage of not less than the prevailing wage and supplements (fringe benefits) pursuant to the wage schedule provided by the Department of Labor under Prevailing Rate Case 2014900316, which is attached to this RFP as Exhibit 5. To ensure compliance with this requirement, the selected contractor will furnish a payroll certification to the Division of the New York State Fair at the end of each event.

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

e. TECHNICAL PROPOSAL

See section III.a (Overview of Solicitation Process) for information on packaging the proposal. The proposal shall address all of the elements below:

- i. Staffing (20%)– The bidder should state the anticipated number of person hours that the bidder will have available in the course of carrying out its annual contractual obligations at the Syracuse Nationals Car Show and at the New York State Fair. For the State Fair, the minimum acceptable bid is 15,000 person hours for each year's fair, which includes pre-fair cleaning and stocking and post-fair cleaning and return of supplies. The bidder should indicate the anticipated percentage of men and women that it will employ.

For the State Fair, the bidder should describe how the person hours will be divided among the various restrooms and showers and in the five situations described below. The bidder should

indicate how many restrooms will be staffed at all times while the Fair is in session, and how many restrooms will be staffed on a part-time basis. For restrooms staffed on a part-time basis, the bidder should indicate the frequency of cleaning and restocking checks. If possible, the bidder should refer to exhibit 1, attached to this RFP, and indicate the staffing levels and hours it will provide for each covered restroom and shower. The bidder should also describe anticipated staffing levels for the following situations:

- (1) pre-fair cleaning and stocking of restrooms and showers for the four days preceding the fair;
- (2) continuous cleaning and stocking while the fair is in session and open;
- (3) cleaning and stocking that will occur while the fair is in session, but while the grounds are closed (for example, overnight or early in the morning);
- (4) cleaning and stocking of grandstand bathrooms during performances while the fair is in session;
- (5) post-fair cleaning and supply return on the day after the conclusion of the fair.

For the Syracuse Nationals Car Show, the bidder should describe how the person hours will be divided among the covered restrooms and showers. If possible, the bidder should refer to Exhibit 2 and indicate the hours and levels of staffing coverage for each covered restroom and shower.

- ii. Experience (15%) – The bidder should describe its relevant experience in providing restroom valet or other cleaning services. The bidder should indicate both the length of time it has been active in this industry, and should provide specific descriptions of contracts it has been party to that are similar to the State Fair in size and scope. The references provided by the bidder under section III.c will also be contacted in connection with this element.
- iii. Quality Assurance (10%) – The bidder should describe a Quality Assurance program designed to assure that the restrooms and showers are being maintained to acceptable standards agreed to by both the selected vendor and the Department. The Quality Assurance Program should describe the bidder’s process for receiving and promptly responding to reports of unstaffed or unclean bathrooms, or bathrooms that need to be restocked with supplies.
- iv. Return of Unused Supplies (5%) – The bidder must include plans for returning all unused supplies to the Department’s warehouse in a manner that will minimize theft or loss of supplies.

f. COST PROPOSAL

Cost will constitute 50% of the total score for each bidder. Each bidder must complete the bid form sheet included in Attachment 1 to this RFP. The cost proposal must include the following:

- (1) the cost of wages and fringe benefits that will be paid to employees at the 2014 Syracuse Nationals Car Show;
- (2) the other costs to provide the required services at the 2014 Syracuse Nationals Car Shows;
- (3) the other costs to provide the required services at the 2015 Syracuse Nationals Car Shows;
- (4) the other costs to provide the required services at the 2016 Syracuse Nationals Car Shows;
- (5) the cost of wages and fringe benefits that will be paid to employees at the 2014 State Fair;

- (6) the other costs to provide the required services at the 2014 State Fair;
- (7) the other costs to provide the required services at the 2015 State Fair;
- (8) the other costs to provide the required services at the 2016 State Fair.

The “wages and fringe benefits” bids should include only the cost of wages and fringe benefits that the bidder anticipates paying to employees. All other costs, such as administrative costs, equipment, and profits, should be part of the “other costs” bid.

To determine the bidder with the lowest cost proposal, the three “other costs” bids for each event will be totaled and divided by three and rounded to the nearest whole dollar to arrive at an “mean other costs bid.” A total cost bid will then be calculated by adding together (1) the “mean other costs bid” for the State Fair, (2) the “mean other costs bid” for the Syracuse Nationals Car Show, (3) the wages and fringe benefits bid for the 2014 Syracuse Nationals Car Show, and (4) the wages and benefits bid for the 2014 State Fair.

Example Cost Calculation

Cost Proposals

	Bidder A	Bidder B	Bidder C
Bid for Wages and Fringe Benefits at 2014 Syracuse Nationals	\$4,600	\$5,000	\$4,750
Bid for Other Costs at 2014 Syracuse Nationals	\$2,000	\$1,800	\$2,050
Bid for Other Costs at 2015 Syracuse Nationals	\$2,100	\$2,000	\$2,050
Bid for Other Costs at 2016 Syracuse Nationals	\$2,200	\$2,100	\$2,050
Bid for Wages and Fringe Benefits at 2014 State Fair	\$190,000	\$225,000	\$199,000
Bid for Other Costs at 2014 State Fair	\$7,600	\$6,900	\$7,775
Bid for Other Costs at 2015 State Fair	\$7,800	\$7,500	\$7,775
Bid for Other Costs at 2016 State Fair	\$8,000	\$8,000	\$7,775

Calculation of Mean Other Costs Bids for Syracuse Nationals

	Calculation	Mean Other Costs Bid
Bidder A:	$(2,000+2,100+2,200)/3$	\$2,100
Bidder B:	$(1,800+2,000+2,100)/3$	\$1,967
Bidder C:	$(2,050+2,050+2,050)/3$	\$2,050

Calculation of Mean Other Costs Bids for State Fair

	Calculation	Mean Other Costs Bid
Bidder A:	$(7,600+7,800+8,000)/3$	\$7,800
Bidder B:	$(6,900+7,500+8,000)/3$	\$7,467
Bidder C:	$(7,775+7,775+7,775)/3$	\$7,775

Calculation of Total Bid

	Calculation	Total Cost Bid
Bidder A:	2,100+7,800+4,600+190,000	\$204,500
Bidder B:	1,967+7,467+5,000+225,000	\$239,434
Bidder C:	2,050+7,775+4,750+199,000	\$213,575

Bidder A has the lowest total cost bid and is awarded the most points for its cost proposal. See section IV.b, Evaluation Criteria, for more information on how points will be allocated between cost proposals.

g. SUBCONTRACTING

Subcontracting will be limited to thirty (30) percent of the annual contract budget. Subcontracting is defined as non-employee direct personal services and related incidental expenses, including travel. Bidders are required to comply with the Department’s Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this RFP through one of three methods. Compliance methods are discussed in detail in the Minority/Women-Owned Business Enterprise (M/WBE) Participation Goals section of the RFP.

h. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION GOALS

For purposes of this procurement, the Department hereby establishes an overall goal of 20% for M/WBE participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation based on the current availability of qualified MBEs and WBEs. All bidders must document good faith efforts to provide meaningful participation by M/WBEs as subcontractors or suppliers in the performance of this Contract. M/WBE participation includes any and all services, materials or supplies purchased from New York State certified minority and women-owned firms. Utilization of certified Minority and Women-Owned firms will be applied toward the goals. Bidders can achieve compliance with the Minority and Women-Owned Business Enterprise goals as described below.

ACHIEVE FULL COMPLIANCE WITH PARTICIPATION GOALS (PREFERRED)

Bidders should submit subcontracting/supplier forms that meet or exceed the Department’s participation goals for this procurement. All subcontracting/supplier forms must be submitted with the bid response. In addition, bidders must complete and submit **M/WBE 100: Utilization Plan**, **M/WBE 102: Notice of Intent to Participate** and **EEO 100: Staffing Plan**. Instructions and copies of these forms are located in the Submission Documents. All firms utilized must be certified with the NYS Division of Minority and Women Business Development before beginning any work on this contract. For additional information and a listing of currently certified M/WBEs, see:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>.

The contact person on M/WBE matters is available throughout the application and procurement process to assist bidders in meeting the M/WBE goals. The Department reserves the right to approve the addition or

deletion of subcontractors or suppliers to enable bidders to comply with the M/WBE goals, provided such addition or deletion does not impact the bid response and/or increase the total cost of the bid proposal.

DOCUMENTATION OF GOOD FAITH EFFORTS

Bidders must undertake a good faith effort to solicit NYS Certified M/WBE firms as subcontractors and/or suppliers in fulfillment of this procurement. Means of solicitation may include but are not limited to: advertisements in minority centered publications; solicitation of vendors found in the NYS Directory of Certified Minority and Women-Owned Business Enterprises (<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>); and the solicitation of minority and women-oriented trade and labor organizations. Bidders will be required to certify and attest to their good faith efforts by completing the Certification of Good Faith Efforts Form (**M/WBE 105**). See the M/WBE Submission Documents for detailed examples of and required forms to document good faith efforts.

The Department reserves the right to reject any bid for failure to document “good faith efforts” to comply with the stated M/WBE goals.

IN THE EVENT BIDDERS CANNOT COMPLY WITH THE DEPARTMENT’S DESIGNATED PARTICIPATION GOALS, SAID BIDDERS MUST DOCUMENT THEIR “GOOD FAITH EFFORTS” TO COMPLY AND SUBMIT ONE OF THE FOLLOWING REQUESTS:

REQUEST A PARTIAL WAIVER OF PARTICIPATION GOALS

In order to request a partial waiver of the participation goals for this procurement, Bidders must provide documentation of their good faith efforts to obtain the use of certified M/WBE enterprises along with their bid response forms. The subcontracting forms must include the participation percentage(s) for which they seek approval. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a partial waiver (Form **M/WBE 101**) and document their Good Faith Efforts (Form **M/WBE 105**) at the same time as the bid is submitted. Bidders must also complete and submit **M/WBE 100: Utilization Plan**, **M/WBE 102: Notice of Intent to Participate** and **EEO 100: Staffing Plan**. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

REQUEST A COMPLETE WAIVER OF PARTICIPATION GOALS

In order to request a complete waiver of the participation goals for this procurement, Bidders must provide documentation of their Good Faith Efforts to obtain the use of certified M/WBE enterprises along with their bid proposal forms. Bidders will be required to certify and attest to their good faith efforts. Bidders should submit a request for a complete waiver on Form **M/WBE 101** and document their Good Faith Efforts (Form **M/WBE 105**) at the same time as they submit their bid. The M/WBE Coordinator is available throughout the procurement process to assist in all areas of M/WBE compliance.

All payments to Minority and Women-Owned Business Enterprise subcontractor(s) must be reported to the Department’s M/WBE Program Unit using **M/WBE 103 Quarterly M/WBE Compliance Report**. This report must be submitted on a quarterly basis.

i. SUBMISSION DOCUMENTS

The packet of submission documents is annexed to this solicitation and is available on the Department's website. The submission must include paper documents plus an electronic version.

IV. EVALUATION

a. METHOD OF AWARD

The winning bid will be selected based on the bid offering the best value to the State of New York. The Department anticipates making a single award pursuant to this RFP.

b. EVALUATION CRITERIA

Best value will be determined by calculating a combined score for each bidder, using the following criteria:

Cost – 50 points – up to 50 points will be awarded based on the cost to the State of New York of the bid. The bidder who submits the lowest cost bid will receive the full 50 points. Lowest cost will be calculated as described in section III.f, Cost Proposal. All other bidders will receive points based off of the lowest total bid as follows: the lowest bid will be divided by the bid being evaluated, and the resulting decimal, rounded to two decimal places, will be multiplied by 50. For example, if Bid A is the lowest bid at \$240,000 and Bid B is \$260,000, the points awarded for cost will be determined by dividing 240,000 by 260,000, which rounded to two decimal places equals .92, and multiplied by 50 equals 46. Accordingly, Bid A receives 50 points and Bid B receives 46 points.

Staffing – 20 points – up to 20 points will be awarded based on the anticipated staffing levels offered by the bidder. Generally, bidders offering higher staffing levels will receive more points. However, this factor will also consider the number of bathrooms that will be staffed on a full-time basis, the staffing levels anticipated for the situations described in Point III.e, Technical Proposal, above, and whether the bidder anticipates hiring an approximately equal number of male and female employees.

Experience – 15 points – up to 15 points will be awarded based on the experience of the bidder in providing services similar to those sought in this RFP. This factor will consider both the length of experience and the similarity of the prior experience in size and scope to the services sought pursuant to this RFP. The responses from the references provided by the bidder under section III.c will also be considered in connection with this element.

Quality Assurance – 10 points – up to 10 points will be awarded based on the Quality Assurance plan prepared by the bidder. This factor will consider the comprehensiveness of the bidder's plan, whether the bidder's plan contains appropriate methods for responding to consumer complaints, and whether the plan permits dialogue on quality assurance issues between the Department and the selected contractor.

Return of Unused Supplies – 5 points – up to 5 points will be awarded based on the bidder’s plan for returning unused supplies to the Department’s warehouse at the conclusion of each event. This factor will consider whether the bidder’s plan will effectively minimize theft or loss of supplies.

c. SELECTION OF WINNING BIDDER

The bidder with the highest combined score offers the best value to the State, and will be considered the winning bidder. In the event that two or more bidders are tied with the highest combined score, the winning bid will be the bidder subject to the tie with the highest cost score (i.e., the lowest cost bid). In the event that two or more bidders are tied with the highest combined score as well as the highest cost score, the winner will be determined by a coin flip.

V. CONSIDERATIONS RELATED TO THIS REQUEST

a. 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 request;
- Make an award under this RFP in whole or in part;
- Require clarification from any bidder to assure a full understanding of the responsiveness to the requirements of the request;
- 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 RFP 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;
- Negotiate with the successful bidder within the scope of the RFP 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;
- 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; and
- Request best and final offers.

b. PREVAILING WAGE LAWS/PAYROLL CERTIFICATIONS

Under Labor Law article 9, employers that contract with public agencies for the provision of building services must ensure that their employees, and the employees of any subcontractors, are paid the prevailing wage and supplements (fringe benefits) in the locality for the craft, trade or occupation of the service employee. Building service employee includes, but is not limited to (as relevant here), building cleaners, porters, and janitors. The prevailing wage schedule applicable to this RFP is attached as Exhibit 5, and has been assigned the Prevailing Rate Case number 2014900316. This prevailing wage schedule is in effect until June 30, 2014. The applicable prevailing wage schedule is also available online, at <http://wpp.labor.state.ny.us/wpp/doFindProject.do?method=doIt&prcNumber=2014900316>. The online prevailing wage schedule will be updated automatically to reflect changes in the prevailing wage rate. The selected contractor will be responsible for complying with this prevailing wage schedule, including complying with any changes to the prevailing wage schedule that may be made during the course of this contract. Bidders are strongly encouraged to review the schedule and ask any questions by May 9, 2014. To ensure compliance with prevailing wage laws, the selected contractor will be responsible for submitting payroll certification reports along with each invoice for payment. Failure to provide payroll certifications will result in non-payment of invoices.

c. M/WBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS CONTRACTOR REQUIREMENT AND OBLIGATION UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)

In an effort to eradicate barriers that have historically impeded access by minority group members and women in State contracting activities, Article 15-A, of the New York State Executive Law §§310-318, (Participation By Minority Group Members and Women With Respect To State Contracts) was enacted to promote equality of economic opportunities for minority group members and women.

The Department has enacted policies on Equal Opportunity, Non-Discrimination and Affirmative Action and on Minority and Women-Owned Business Enterprise Procurements, consistent with the requirements as set forth under the provisions of Article 15-A (the “Article”) requiring Contracting Agencies to implement procedures to ensure that the “Contractor” (defined under Article 15-A, § 310 [3] to mean an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to a state contract, or a bidder in conjunction with the award of a state contract or a proposed party to a state contract), complies with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, in addition to providing Opportunities for Minority and Women-Owned Business Enterprises on all covered state contracts.

In keeping with the intent of the Law, it is the expectation of the Commissioner and the responsibility of all contractors participating in and/or selected for procurement opportunities with the Department, to fulfill their obligations to comply with the requirements of the Article and its implementing regulations. In accordance with these requirements, the contractor hereby agrees to make every good faith effort to promote and assist the participation of certified Minority and Women-Owned Business Enterprises (“M/WBE”) as subcontractors and suppliers on this project for the provision of services and materials in an amount at least equal to the M/WBE goal (included in the procurement document) as a percentage of the total dollar value of this project. In addition, the contractor shall ensure the following:

1. All state contracts and all documents soliciting bids or proposals for state contracts contain or make reference to the following provisions:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

For purposes of the Article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rate of pay or other forms of compensation.

b. The contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the contractor’s obligation herein.

c. The contractor shall state in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment

opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, gender, religion, veteran status, sexual orientation, genetic disposition or carrier status.

2. The contractor will include the provisions of subdivision one of this section in every subcontract as defined under §310.14, except as provided under §312.6 of the Article, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the State contract.
3. Contractors or subcontractors shall comply with the requirements of any federal law concerning equal employment opportunity, which effectuates the purpose of this section.
4. Contractors and subcontractors shall undertake programs of affirmative action and equal employment opportunity as required by this section¹. In accordance with the provision of the Article, the bidder will submit, with their proposal, Staffing Plan (EEO 100).
5. Certified businesses (as defined under Article 15-A, §310.1 means a business verified as a minority or women-owned business enterprise pursuant to §314 of the Article) shall be given the opportunity for meaningful participation in the performance of this contract, to actively and affirmatively promote and assist their participation in the performance of this contract, so as to facilitate the award of a fair share of this contract to such businesses².
6. Contractor shall make a good faith effort to solicit active participation by enterprises identified in the Empire State Development (“ESD”) directory of certified businesses, which can be viewed at: <http://www.nylovesmwbe.ny.gov>. The contractor must document its good faith efforts as set forth in 5 NYCRR 142.8. This document, Contractors Good Faith Efforts, can be found in the M/WBE Submission Documents.
7. Contractor shall agree, as a condition of entering into said contract, to be bound by the provisions of Article 15-A, §316.
8. Contractor shall include the provisions set forth in paragraphs (6) and (7) above, in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with this contract.
9. Contractor shall comply with the requirements of any federal law concerning opportunities for M/WBEs which effectuates the purpose of this section.
10. Contractor shall submit all necessary M/WBE documents and/or forms as described above as part of the bid response to the Department’s procurement.

¹ Notice – Contractors are provided with notice herein, the Department may require a contractor to submit proof of an equal opportunity program after the proposal opening and prior to the award of any contract. In accordance with regulations set forth under Executive Law Article 15-A, contractors and/or subcontractors will be required to submit compliance reports relating to the contractor’s and/or subcontractor’s program in effect as of the date the contract is executed.

² Should the contractor identify a firm that is not currently certified as an M/WBE, it should request that the firm submit a certification application to the Department M/WBE Program Unit by the deadline for submission of proposals for eligibility determination. The Department will work with ESD to expedite the application, however, it is the responsibility of the contractor to ensure that a sufficient number of certified M/WBE firms have been identified in response to this procurement, in order to facilitate full M/WBE participation.

11. The percentage goals established for this RFP are based on the overall availability of M/WBEs certified in the particular areas of expertise identified under this RFP. These goals should not be construed as rigid and inflexible quotas which must be met, but as targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-Owned Business Program work.

12. Contractor shall ensure that enterprises have been identified (M/WBE 102) within the Utilization Plan, and the contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the plan, as to what measures and procedures contractor intends to take to comply with the provisions of the Article.

13. Contractor shall upon written notification from the M/WBE Program Unit as to any deficiencies and required remedies thereof, the contractor, within the period of time specified, will submit compliance reports documenting remedial actions taken and other information relating to the operation and implementation of the Utilization Plan.

14. Where it appears that a contractor cannot, after a good faith effort, comply with the M/WBE participation requirements, contractor may file a written application with the M/WBE Program Unit requesting a partial or total waiver (M/WBE 101) of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements, together with an explanation of the efforts undertaken by the contractor to obtain the required M/WBE participation.

For purposes of determining a contractor's good faith efforts to comply with the requirements of this section or be entitled to a waiver, AGM shall consider at the least the following:

I. Whether the contractor has advertised in general circulation media, trade association publications and minority-focused and women-focused media and, in such event;

a. Whether or not the certified M/WBEs which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

b. Whether certified businesses solicited by the contractor responded in a timely fashion to the contractor's solicitations for timely competitive bid quotations prior to the contracting agency's deadline for submission of proposals.

II. Whether there has been written notification to appropriate certified M/WBEs that appear in the Empire State Development website, found at: <http://www.nylovesmwbe.ny.gov>

All required Affirmative Action, EEO, and M/WBE forms to be submitted along with bids and/or proposals for AGM procurements are attached hereto. Bidders must submit subcontracting forms which:

1) fully comply with the participation goals specified in the RFP; OR

2) partially comply with the participation goals specified in the RFP, and include a request for partial waiver, and document its good faith efforts to fully comply with the percentage goals specified in the RFP; OR

3) do not include certified M/WBE subcontractors or suppliers, and include a request for a complete waiver, and document its good faith efforts to fully comply with the participation goals specified in the RFP.

All M/WBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD.

Failure to comply with the requirements of Article 15-A as set forth under this procurement and in conjunction with the corresponding contract, will result in the withholding of associated funds and other enforcement proceedings set forth under Article 15-A.

d. 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 (10) business days after the award.

e. DEBRIEFING PROCEDURES

Pursuant to State Finance Law § 163 (9) (c), an unsuccessful bidder has the right to a debriefing. An unsuccessful bidder must request a debriefing within five (5) business days of receiving 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 Contact, Judy Giovannetti, at:

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

The Fiscal Contact person will make arrangements with program staff to provide a written summary of the proposals 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.

f. BID PROTEST PROCEDURES

Bidders who receive a notice of non-award may protest the award decision subject to the following:

- i. The protest must be in writing and must contain specific factual/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the Department.
- ii. 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 Department solicitation in any correspondence.

- iii. Fiscal Management will convene a review team that will include at least one staff member from the Department's Counsel's Office, Fiscal Management and Division of State Fair. 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 Fiscal Management will advise OSC that a protest was filed.
- iv. 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.

g. 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

h. 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 Budget. Contract awards in excess of Fifty Thousand Dollars (\$50,000) are also subject to the approval of Office of the State Comptroller of the State of New York and the Office of the Attorney General of the State of New York.

i. 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.

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:

- **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.

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.

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, OSC encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.

j. 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 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.

k. 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 RFP 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.ny.gov/acpl/>

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

PROGRAM	FISCAL	M/WBE
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	Bridgette Shellard Division of Fiscal Mgmt. Telephone: (518) 457-4619 Fax: (518) 485-7750 E-mail: Bridgette.Shellard@agriculture.ny.gov

I. 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.

m. 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 (NY FOIL). It is the responsibility of the Bidder to designate which components of the proposal are proprietary business information to be withheld from disclosure. A bidder may not designate its entire proposal as confidential, proprietary or copyrighted.

VI. REQUIRED ASSURANCES

a. 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 Department.

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)

b. M/WBE DOCUMENTS

The original plus two (2) copies of the completed M/WBE Documents must be mailed in a separate envelope labeled **RFP #SF00280-M/WBE Documents-Do Not Open**. Please return the documents listed for the compliance method bidder has achieved:

Full Participation-No Request for Waiver

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan

Signatures Required

Partial Participation-Request for Partial Waiver

1. M/WBE Cover Letter
2. **M/WBE 100** Utilization Plan
3. **M/WBE 102** Notice of Intent to Participate
4. **EEO 100** Staffing Plan
5. **M/WBE 101** Request for Waiver
6. **M/WBE 105** Contractor's Good Faith Efforts

Signatures Required

No Participation-Request for Complete Waiver

1. M/WBE Cover Letter
2. **M/WBE 101** Request for Waiver
3. **M/WBE 105** Contractor's Good Faith Efforts

Signatures Required

c. BIDDER AFFIRMATIONS AND MANDATORY CONTRACT REQUIREMENTS CERTIFICATION FORM

The Bidder Affirmations and Mandatory Contract Requirements Certification Form is Attachment 2 in the Submission Documents. It must be completed and returned with the Bid Response.

d. CONTRACT TERMS

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

i. ORDER OF PRECEDENCE

The Order of Precedence for this Agreement is as follows:

- Appendix A
- Contract Cover Page

Appendix D (General Conditions)

Appendix C (Scope of Work/ RFP Proposal)

Appendix B (Budget/Cost Proposal)

ii. RECORDS MAINTENANCE, EXAMINATION AND RETENTION

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

iii. PAYMENT TERMS

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

iv. 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.

v. 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 section V.i of this RFP. If the vendor proposes to change subcontractors during the contract period, the Department must be notified prior to the change. The Department 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 the Department.

vi. 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.

vii. 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.

viii. 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.

ix. 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.

x. 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.

xi. 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.

xii. 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.

xiii. NECESSARY SIGNATURES

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

xiv. 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 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.

xv. 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 July 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.

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.

xvi. 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.

xvii. 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.

xviii. NEW YORK LAW

The parties to the Agreement agree that the laws of the State of 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.

xix. 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.

xx. 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.

xxi. CERTIFICATIONS

1. Contractor 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. Contractor certifies that it has not knowingly and willfully violated the prohibitions against impermissible contacts found in State Finance Law §139-j.
3. Contractor certifies that no governmental entity has made a finding of non-responsibility regarding the Licensee in the previous four years.

NYS Department of Agriculture and Markets
RFP #SF00280 – Restroom Valet and Cleaning Services for the NY State Fairgrounds

4. Contractor 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. Contractor 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. Contractor certifies that it is in compliance with NYS Public Officers Law, including, but not limited to §73(4)(a).