

INVITATION FOR BIDS

New York State Department of Agriculture and Markets

#SF00268: DECORATIONS AND DECORATING SERVICES FOR THE NEW YORK STATE FAIR

1. INTRODUCTION:

1.1 OVERVIEW:

The New York State Department of Agriculture and Markets (AGM) presents the annual New York State Fair at the State Fairgrounds in Syracuse, New York for a twelve day period ending on Labor Day. The State Fair is an agricultural fair, showcasing New York's agricultural industry through a variety of exhibits, demonstrations, amusements and competitions. This Invitation for Bids (IFB) is issued by the Department to invite qualified bidders to submit bids to provide decorations and decorating services during the annual New York State Fair for the term of the contract. The Fairgrounds are located at 581 State Fair Boulevard, Syracuse, (Town of Geddes, Onondaga County) New York. The property is owned and operated by AGR.

1.2 IFB GOAL:

The objective of this IFB is to retain one contractor capable of providing professional quality decorating services, decorations and decorative equipment and supplies. All decorations must be consistent with the State Fair's family oriented theme and provide a bright, cheerful and festive atmosphere for all patrons.

1.3 TERM:

The contract resulting from this IFB will be for a three (3) year term. The contract will begin on July 1, 2014 and end on June 30, 2017.

1.4 IFB TIMELINE:

IFB Posted	November 27, 2013
Questions regarding this IFB must be submitted by 3:00 PM on:	December 11, 2013
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	December 17, 2013
Bidder Response Due by 3:00 PM on:	December 30, 2013

The Department intends to make an award within thirty days of the Bid Response due date.

2. DESCRIPTION OF WORK TO BE PERFORMED:

2.1 PREMISES:

The New York State Fairgrounds, also known as the Empire Expo Center, is a 375 acre site that is home to the annual New York State Fair.

2.2 SCOPE OF WORK:

The selected contractor shall furnish all equipment, labor and supplies required to perform the services described hereunder at the State Fairgrounds.

For the duration of the twelve-day Fair, the contractor shall at a minimum, provide, install, maintain, clean and remove the following:

1. Bunting
2. Carpeting
3. Tables
4. Chairs
5. Coat Racks
6. Drape
7. Table Linens
8. Risers
9. Skirting
10. Crowd Control Stanchions
11. Stools

The contractor shall also install, maintain and remove “pipe and drape” for approximately seven hundred (700) exhibit/concession spaces. Each space is approximately 10’ x 10’ with an 8’ back and 3’ sides in the buildings and/or spaces known as the Center of Progress, Horticulture, Art & Home, International, Science & Industry and Flea Market. Some locations may require weighted pipe and drape due to proximity to entrances. In addition, the contractor will be responsible for marking the layout of large exhibit/concession spaces that do not require pipe and drape. Contractor must use marking tape that is suitable for interior and exterior use.

Contractor must monitor its decorated locations during the twelve-day term of the Fair. Monitoring shall include collecting any items no longer needed by an exhibitor. Break down of decorated locations must be completed immediately following the close of the Fair on the final day (Labor Day). Contractor shall be responsible for collecting all decorative items it has installed. Contractor shall be staffed accordingly to accomplish break down and clean up of the decorated exhibits once all locations have closed on Labor Day.

2.3 MANDATORY BIDDING REQUIREMENTS:

All decorations, material and equipment furnished by the selected contractor must be of good quality, without visible damage or repair, clean and new, or equivalent condition, and shall be maintained in that condition, (reasonable wear and tear excepted), from installation until removal. The selected contractor shall be physically present and “on-call” during the New York State Fair and shall respond to requests for decorations, decorating service, repairs, replacements and cleaning within one (1) hour from receipt of the request.

The selected contractor must be capable of beginning pipe and drape in all buildings and spaces, and other decorations and decorating, no later than August 1 of each calendar year during the Term of the contract. The selected contractor must be able to complete all remaining decorating on or before the Sunday prior to the opening of the State Fair for each calendar year during the Term of

the contract. Contractor shall consult with and cooperate with the Concessions and Exhibits Manager.

3. BID SUBMISSION:

3.1 SUBMISSION TIMELINE:

All required materials must be received by the Department no later than 3:00 PM on December 30, 2013 in order to be considered.

Any questions concerning this IFB must be received by 3:00 PM on December 11, 2013. Questions must be submitted in writing. Email is preferred and should be directed to Judy Giovannetti at judy.giovannetti@agriculture.ny.gov. Please list IFB #SF00268 in the subject line. In the alternative, questions may be mailed to: NYS Department of Agriculture and Markets, Fiscal Management, 10B Airline Drive, Albany, NY 12235 Attn: Judy Giovannetti (IFB #SF00268).

A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under "Funding Opportunities" no later than December 17, 2013. No individual written responses will be provided.

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

3.2 SUBMISSION METHOD:

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

Address or Hand-Deliver a Bid Response Containing:

1. **one (1) original paper version of the Bid Form plus two (2) copies, all submission documents** with original signatures where required, labeled **BID RESPONSE – IFB #SF00268 DO NOT OPEN**
2. M/WBE Documents labeled **M/WBE DOCUMENTS—IFB #SF00268 DO NOT OPEN**
3. **one (1) CD-ROM or thumb drive** containing electronic versions of all documents comprising the Bid Response and M/WBE Documents; all submitted in the format of Microsoft Word documents.

To the following address:

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

ATTN: Judy Giovannetti, IFB#SF00268

3.3 MINIMUM QUALIFICATIONS:

Each bidder shall:

1. Demonstrate that it is currently operating as a decorator and providing decorations and decorating services similar to those sought by this invitation and has done so continuously during the three (3) calendar years immediately preceding the submission of its bid;
2. Demonstrate that it has billed and received payment for work the same as, or similar to, that sought by this invitation in the aggregate amount of \$75,000.00 in each year of the three (3) calendar years immediately preceding submission of its bid; and
3. Provide the name, address, contact person, telephone number for the three (3) most recent customers for which the bidder has provided decorations and decorating service, the dates and location where the bidder provided the decorations and decorating service and the amount of the billing to each customer. The Department reserves the right to contact any or all of those customers to verify the information the bidder provides and ask for positive and negative references.

3.4 BID FORM:

All bids must be submitted on the "Bid Form" included in the Submission Documents section. Bidders must provide a per-unit cost for each item. For Group 1: Fair Decorations submit the cost for each item. *Each bidder must submit a cost for every item.* Do not leave the cost of an item blank.

Note: If an item listed on the Bid Form is included in the price of another item listed, enter \$0 for the included item. (e.g., a 4' table that includes linen: enter \$0 for "linen for 4' table" and enter the full price for "4' table").

For Group 2, Fair-time Pipe and Drape, submit the unit cost for one (1) complete booth, 10'x10' with an 8' high rear panel and two (2) 3' high side panels.

3.5 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 AGM's Minority and Women-Owned Business Enterprises (M/WBE) participation goals for this IFB 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 IFB.

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

For purposes of this procurement, NYS Department of Agriculture and Markets 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 MWBEs as subcontractors or suppliers in the performance of this Contract. Minority and Women-Owned Business Enterprise (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 AGM’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. AGM 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 (<http://www.esd.ny.gov/MWBE/directorySearch.html>); 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.

AGM 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.

4.0 EVALUATION:

4.1 CONSIDERATION:

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

4.2 CALCULATION OF LOWEST PRICE:

The total Bid Price will be calculated in two steps. The bidder's Group 1 unit prices will be multiplied by the actual number of units used in 2013 (Group 1 Cost). If an item was not used in 2013, the bidder's price will be multiplied by 1. For Group 2, the total price offered for one unit will be multiplied by 500 (Group 2 Cost). Group 1 Cost will be added to Group 2 Cost to arrive at the aggregate cost of the bid. The Department intends to make a single contract award to the eligible and qualified Bidder with the lowest aggregate priced bid.

5.0 CONSIDERATIONS RELATED TO THIS PROCUREMENT:

5.1 DAMAGE TO CONTRACTOR'S PROPERTY:

The replacement cost of any item provided to the Department by the selected contractor that is (1) damaged by the Department beyond the reasonable cost of repair (the cost of the repair is seventy-five (75%) or less than the replacement cost of the item), or (2) any item not returned to the selected contractor, may be reimbursed by the Department to the selected contractor *provided that* (i) the item has been specifically identified upon delivery on an inventory sheet provided by the successful bidder to the Department; (ii) the inventory sheet has been verified as accurate by a representative of the Department and bears the representative's dated signature (initials are not acceptable); (iii) the installed location of the damaged or missing item is noted in the inventory sheet, and (iv) the item is specifically identified by a Department representative as damaged or missing and the Department representative's dated signature is placed next to each item identified as damaged or missing. Any payment made shall not exceed the actual cost of the replacement item which shall be of the same kind and quality as the damaged or missing item. The item rental cost shall be credited.

5.2 STORAGE SPACE FOR CONTRACTOR:

The Department will provide an outdoor location of an agreed upon size, conveniently located on the State Fairgrounds during each State Fair held during the Term of the contract. The selected contractor shall inform the Department within five (5) business days after notification of award of the space requested. The selected contractor shall be solely responsible for providing all storage facilities and for the cost of all utility connections, if any. The space provided shall be available to the selected contractor no later than August 1 and shall be vacated by the selected contractor no later than one week after the conclusion of the annual State Fair during the Term of the contract.

5.3 INSPECTION AND INVENTORY:

All decorations provided by the successful bidder shall be jointly inspected and inventoried by the bidder's representative and a representative of the Department upon entry to the Fairgrounds. The Department shall retain all signed and dated individual inventory sheets and no payment will be made for the provision of any item in excess of the total quantity of that item listed upon the inventory sheet.

5.4 ADDITIONAL ITEMS AVAILABLE:

Contractor shall provide the Department with a price list of all decorative items and services available that were not part of the requirements of this IFB, nor included on the Bid Form. This list will not be scored.

5.5 DEPARTMENT'S RESERVATION OF RIGHTS:

The Department reserves the right to:

- Reject any or all bids received with respect to this invitation;
- Withdraw the IFB at any time, at the Department's sole discretion or otherwise decline to award a contract from this invitation;
- Make an award in whole or in part;
- Require clarification from any bidder to assure a full understanding of the responsiveness to the requirements of the invitation;
- Disqualify any bidder whose conduct and/or bid response fails to conform to the requirements of the IFB;
- Use bid response information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the Department's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Waive or modify minor irregularities in bids received;

- Request additional information from bidders as deemed necessary to more fully evaluate bids or to obtain omitted required forms. Bidders will have three (3) business days to respond to the request;
- Prior to the bid opening, amend this invitation after its release, with appropriate written notice posted on the Department's website to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit bid response modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any minimum or mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected bidder; and
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 120 days from the bid opening.
- Use proposal 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 agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Utilize any and all ideas submitted in the proposals received;
- 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;
- To request best and final offers.

5.6 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 New York State Department of Agriculture and Markets (AGM) has enacted its policies 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") incorporated by reference, requiring Contracting Agencies to implement procedures to ensure that the "Contractor" (as defined under Article 15-A, §310.3 shall 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 AGM, 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, AGM 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 Article 15-A §312.5, 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 AGM M/WBE Program Unit by the deadline for submission of proposals for eligibility determination. AGM 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.

5.7 NOTIFICATION OF AWARD:

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

5.8 DEBRIEFING PROCEDURES:

Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful bidder has the right to a debriefing. An unsuccessful bidder must request a debriefing within five (5) business days of receiving a notice of non-award from the Department. Bidders may request a debriefing letter on the selection process regarding this procurement by submitting a written request to 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 proposal's strengths and weaknesses, as well as recommendations for improvement. Within ten (10) business days of receipt of the request, the program staff will issue a written debriefing letter to the bidder.

5.9 BID PROTEST PROCEDURES:

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by AGM.
2. The protest must be filed within ten (10) business days of receipt of a debriefing letter, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with:
3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within seven (7) business days of receipt of the protest. The original

protest and decision will be filed with OSC when the contract procurement record is submitted for approval and, and Fiscal Management will advise OSC that a protest was filed.

4. Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts.

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

5.10 NEW YORK LAW:

The provisions of New York law shall apply to the contract and to all claims, actions and other proceedings arising out of the contract.

5.11 REQUIRED APPROVALS:

Any contract award resulting from this solicitation is subject to the availability of funding and the authorization of the New York State Division of the Budget. Contract awards in excess of Fifty Thousand Dollars (\$50,000) are also subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

5.12 VENDOR RESPONSIBILITY AND NYS VENDOR ID:

Prime Contractors:

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

All bidders must fully and accurately complete the Vendor Responsibility Questionnaire, (hereinafter the "Questionnaire"). All bidders acknowledge that the Department's execution of the Contract will be contingent upon the Department's determination that the bidder is responsible, and that the Department will be relying upon the 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.

Subcontractors:

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

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

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

5.13 COST LIABILITY:

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

5.14 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 bid response are proprietary business information to be withheld from disclosure. A bidder may not designate its entire bid response as confidential, proprietary or copyrighted.

5.15 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 notice of intent to solicit bids/bids through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance

Law Section 139-j(3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department’s Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

PROGRAM	FISCAL	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 Management Telephone: (518) 457-4619 Fax: (518) 485-7750 E-mail: bridgette.shellard@agriculture.ny.gov

5.16 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.

Consultant Disclosure Legislation

Effective June 19, 2006, new reporting requirements became effective for State contractors, as the result of an amendment to State Finance Law §§ 8 and 163. As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term ([Form A](#) - see link below). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information ***prospectively from the start date of the contract through the end of the contract term.***

Form A: <http://www.osc.state.ny.us/agencies/gbull/g226forma.doc>

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to **report annually** on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to the Department of Civil Service. State Consultant Services Contractor's Annual Employment Report ([Form B](#) - see link below) is to be used to report the information for all procurement contracts above \$15,000. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, ***Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).***

Form B: <http://www.osc.state.ny.us/agencies/gbull/g226formb.doc>

For more information, please visit the OSC web site for G-Bulletin 226 at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

AGM Substitute Form W-9

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

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

Workers' Compensation Coverage and Debarment

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

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

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers'

Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

PROOF OF COVERAGE REQUIREMENTS

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

Proof of Workers' Compensation Coverage

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

- **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.

6.0 REQUIRED ASSURANCES:

6.1 APPENDIX A:

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

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

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

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

MacBride Certification (Signature Required - the form is included in the **Submission Documents as Attachment 7**)

Offerer Disclosure of Prior Non-Responsibility Determinations (Signature Required - the form is included in the **Submission Documents as Attachment 10**)

6.1.1 M/WBE Documents

The original plus two (2) copies of the completed M/WBE Documents must be mailed in a separate envelope labeled **IFB #SF00268-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

6.2 MANDATORY REQUIREMENTS CERTIFICATION FORM:

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

6.3 CONTRACT TERMS:

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

6.3.1 ORDER OF PRECEDENCE

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

- Appendix A
- Contract Cover Page
- Appendix D
- Appendix C
- Appendix B

6.3.2 PAYMENT TERMS

The Department will provide a list of Department employees authorized to order decorations and request decorating services to the selected contractor. The selected contractor must submit a signed copy of each order placed by an authorized Department employee with each invoice requesting payment for work performed under the contract. Payment shall be made by the Department only after receipt and approval of itemized invoice(s) submitted by the selected contractor.

Contractor shall provide complete and accurate billing invoices to the New York State Fair, a division of the NYS Department of Agriculture and Markets in order to receive payments. Billing invoices submitted must contain all information and supporting documentation. Payment for invoices submitted by the **Contractor** shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in 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 Comptroller of the State of New York's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website: www.osc.state.ny.us/epay/index.htm by email at epunit@osc.state.ny.us or by telephone at (518) 474-4032. **Contractor** acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

6.3.3 FINANCIAL LIMIT

The financial limit of State appropriated funds under this Agreement shall not exceed the amount indicated on the latest executed version of the signature page of this Agreement and the **Department** shall not be obligated to make any payment to the **Contractor** in excess of that amount.

6.3.4 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The **Contractor** is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

6.3.5 CONTRACT EXPENDITURES

Expenditures under this Agreement shall conform to the budget annexed as Appendix B, provided however, that the **Contractor** may vary budget amounts by not more than ten percent (10%) within each specific budget category. Any budget variance in excess of ten percent (10%) shall be made only upon the prior written approval of the **Department** and if the financial limit under the contract exceeds fifty thousand dollars (\$50,000), the Comptroller of the State of New York. This paragraph does not apply to budget amounts of one thousand dollars (\$1,000.00) or less.

6.3.6 NON-DUPLICATION OF PAYMENTS

The payments received by the **Contractor** under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, the **Contractor** shall remit to the **Department** the amount which duplicates payment received from other sources.

6.3.7 SUBCONTRACTS

Any subcontract under this Agreement shall be in writing and shall clearly describe the goods or services to be provided and the total cost of such goods or services. Subcontracts for services only shall separately state the rate of compensation on a per-hour or per-day basis.

6.3.8 INDEMNIFICATION

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

6.3.9 CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, its agents, employees, suppliers nor its subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

6.3.10 DEVIATION FROM WORK

The **Contractor** shall perform the work under this Agreement as outlined in the scope of work annexed as Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of the **Department**.

6.3.11 RESPONSIBILITY REQUIREMENTS

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

suspension. Upon issuance of such notice, the **Contractor** must comply with the terms of the suspension order. **Agreement** activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the **Agreement**.

- D. Upon written notice to the **Contractor**, and a reasonable opportunity to be heard with appropriate Commissioner officials or staff, the **Agreement** may be terminated by Commissioner or his or her designee at the **Contractor's** expense where the **Contractor** is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

6.3.12 TERMINATION

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

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

6.3.13 TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K

The **Department** reserves the right to terminate this Agreement in the event it is found that the certification filed by the **Contractor** in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the **Department** may exercise its termination right by providing written notification to the **Contractor**.

6.3.14 MODIFICATION

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

6.3.15 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.

6.3.16 WORKERS' COMPENSATION AND NYS DISABILITY INSURANCES

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document they have appropriate workers' compensation and disability benefits insurance coverage. These requirements

apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption may result in the termination of the Agreement.

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

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

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

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable IFB/RFP and Group #s on the form.)
2. Certificate of Workers' Compensation Insurance:
 - a. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Department of Agriculture and Markets, or
 - b. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Department of Agriculture and Markets.
 - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
 - d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

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

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

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

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

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

6.3.17 RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The **Contractor** shall maintain records and accounts in specific detail to identify all contract funds received and expended under this Agreement. The **Contractor** shall maintain a daily written record which contains the name(s) of the officer(s) and employee(s) providing services under this Agreement and the amount of time expended upon such services.

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

6.3.18 NON-SECTARIAN PURPOSE

The **Contractor** shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no contract funds shall be expended directly or indirectly for any private or sectarian purpose.

6.3.19 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.