

# **INVITATION FOR BIDS**

**for**

## **BEDDING AND MANURE REMOVAL AND DISPOSAL NYS FAIRGROUNDS**

IFB #0120

IFB Issued: March 25, 2015  
Proposals Due: April 23, 2015

By:

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

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0120: BEDDING AND MANURE REMOVAL AND DISPOSAL NYS FAIRGROUNDS

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MANURE COLLECTION LOCATIONS

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**1. INTRODUCTION**

**1.1 OVERVIEW/IFB GOAL**

The New York State Department of Agriculture and Markets (Department) operates the New York State Fairgrounds and presents the annual New York State Fair at the State Fairgrounds in Syracuse, New York for a twelve day period ending on Labor Day each calendar year.

The purpose of this invitation is to retain a contractor to remove and dispose of all bedding and manure from collection locations on the New York State Fairgrounds throughout each calendar year, including the State Fair, during the Term of the contract. Approximately ninety percent (90%) of the material removed is bedding, including sawdust, wood shavings, bark, hay and straw, and ten percent (10%) is manure.

**1.2 TERM**

The contract resulting from this IFB will be for a five (5) year term. The contract will begin on June 1, 2015 and end on May 31, 2020.

**1.3 IFB TIMELINE**

Publication in Contract Reporter	March 25, 2015
Deadline for Submission of Written Questions	April 8, 2015 by 3:00 p.m.
Last update of answers or issuance of IFB Addendum	April 14, 2015
Submission Deadline	April 23, 2015 by 3:00 p.m.
Bid Opening	April 24, 2015

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

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

**2.1 PREMISES**

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



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**2.2 SCOPE OF WORK**

**2.2.1 YEAR-ROUND**

- A. Remove and dispose of bedding and manure from established collection locations adjacent to the following buildings, depicted in the map of the Fairgrounds attached as Exhibit 1 pursuant to the Bedding and Manure Removal Schedule attached as Exhibit 2:

Dairy Cattle Building  
Horse Exhibit Buildings  
Swine/Goat/Llama Building  
Beef Pole Barn  
Sheep Pole Barn  
4-H Horse Show Pole Barn Area  
Race Horse Stable Area

- B. Remove and dispose of bedding and manure from temporary collection locations to be determined by the Department.
- C. Bedding and manure shall be removed from the Race Horse Stable Area a minimum of once a week throughout the Term of the contract. Race horse stable facilities are generally occupied by approximately 50 horses.
- D. During the period from mid-April through mid-August and September through November, bedding and manure must be removed weekly from collection sites outside the Horse Exhibit Buildings. The Department will remove bedding and manure from the buildings on Monday and Tuesday and place it in collection sites. The contractor must remove and dispose of bedding and manure from the collection sites on Tuesday and Wednesday. The contractor must adhere to this schedule and will not be reminded or called on a weekly basis.
- E. The contract requires quick and efficient removal of bedding and manure from the Fairgrounds. Therefore, all bedding and manure shall be removed from the Fairgrounds and no handling/processing of the bedding and manure will be permitted on the Fairgrounds. All loads must be covered with a tarp prior to leaving the Fairgrounds.

*Please Note: Please see Exhibit 2 Bedding and Manure Removal Schedule, for the approximate number of cubic yards of bedding and manure removed from the above locations in 2014.*

**2.2.2 FAIRTIME**

- A. Exhibitor Animal Locations:

During the State Fair, the contractor shall remove bedding and manure from the Fairgrounds every night, between the hours of 10 p.m. and 6 a.m. pursuant to the Bedding and Manure Removal Schedule attached hereto as Exhibit 2. Removal will begin the night before the Fair opens and will continue for thirteen (13) nights. On nights one through 5 and 7 through 13, approximately 300 to 600 cubic yards of manure and bedding must be removed from locations outside the Dairy Cattle Building, Horse Exhibit Buildings, Beef Pole Barn, Sheep Pole Barn, Swine/Goat/Llama Building, and 4-H Horse Show Pole Barn Area.

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On the sixth night of the Fair, approximately 1,900 cubic yards of bedding and manure must be removed from outside the Dairy Cattle Barn between the hours of 10 p.m. and midnight. Also on the sixth night, approximately 600 cubic yards of manure and bedding must be removed from locations outside the Horse Exhibit Buildings, Beef Pole Barn, Sheep Pole Barn, and Swine/Goat/Llama Building. Removal from these locations must be complete by 6:00 am the following day.

Upon conclusion of the annual Fair, approximately 3,000 cubic yards of bedding and manure must be removed from the Fairgrounds within seventy-two (72) hours.

*Please Note: The number of cubic yards referenced herein are approximate figures based upon 2014 bedding and manure removal data. The number of cubic yards to be removed pursuant to this contract may fluctuate, and contractor shall account for any such fluctuations when submitting a fixed price bid.*

B. Entertainment Animal Act Locations:

The contractor shall remove bedding and manure from various Entertainment Animal Act locations as directed by the Department.

**2.2.3 EQUIPMENT**

The contractor shall furnish all labor and equipment necessary for the provision of services under this contract. Trained, licensed personnel shall operate equipment at all times. All equipment must be currently registered and licensed as required by New York State Law/Regulation and insured pursuant to the insurance requirements set forth in the Department's Special Conditions, a copy of which is included in the Submission Documents as Appendix E.

A. Required Equipment During Fairtime, Except the Sixth Night of the Fair:

- Minimum of three (3) dump trucks/trailers (or equivalent) each capable of hauling away 100 cubic yards of bedding and manure, or bidder shall demonstrate that bidder owns equipment necessary to remove the number of yards of bedding and manure specified in Section 2.2.2 of this IFB during the time periods set forth therein.
- Minimum of one (1) 3 cubic yard front-end loader or larger
- Shovels, manure forks, brooms and other tools necessary to complete the required work under the contract.

B. Required Equipment for the Sixth Night of the Fair:

- Minimum of nine (9) dump trucks/trailers (or equivalent) each capable of hauling away 100 cubic yards of bedding and manure, or bidder shall demonstrate that bidder owns equipment necessary to remove the number of yards of bedding and manure specified in Section 2.2.2 of this IFB during the time periods set forth therein.
- Minimum of two (2) 3 cubic yard front-end loaders or larger
- Shovels, manure forks, brooms and other tools necessary to complete the required work under the contract.



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C. Required Equipment During Non-Fair Time:

- Minimum of one (1) dump truck/trailer (or equivalent) capable of hauling away 100 cubic yards of bedding and manure, or bidder shall demonstrate that bidder owns equipment necessary to remove the number of yards of bedding and manure specified in Section 2.2.1 of this IFB during the time periods set forth therein.
- Minimum of one (1) 3 cubic yard front-end loader or larger
- Shovels, manure forks, brooms and other tools necessary to complete the required work under the contract.

### 2.3 PERMITS

The bidder shall, at the bidder's own expense, obtain the necessary licenses, permits or authorizations from any federal, state, county and local agency or jurisdiction regulating the collection, transport and disposal of manure and bedding. If the selected bidder does not have all necessary permits at the time of submission of the bid, any award will be contingent upon the bidder obtaining the permit(s) within sixty (60) days from award.

### 2.4 DISPOSAL SITE

Each bidder shall demonstrate that the bidder owns and operates, or has arranged for disposal of bedding and manure at a disposal site permitted or exempted by the New York State Department of Environmental Conservation or an equivalent regulatory entity if disposal occurs outside New York State. All bids must include: (a) the location and a description of the proposed disposal site; (b) proof that the site(s) may accept manure and bedding; and (c) a disposal plan detailing what bidder intends to do with the bedding and manure removed from the fairgrounds (ie. composting, land application etc.). If the disposal plan is land application, bidder shall submit a Nutrient Management Plan (or equivalent business plan) that accounts for the manure removed from the fairgrounds and its disposal. The plan should spell out in an environmentally safe manner the type, amount, and location of all applications based on crop uptake, runoff potential etc. The plan shall be updated on an annual basis and submitted to the Department on or before January 1<sup>st</sup> of each year. The bidder is responsible for and shall pay any and all costs for use of a disposal site. The contract requires quick and efficient removal of bedding and manure from the Fairgrounds. Therefore, all bedding and manure shall be removed from the Fairgrounds and no handling/processing of the bedding and manure will be permitted on the Fairgrounds.

### 2.5 REMOVAL OF BEDDING AND MANURE FROM THE RACING STABLES

The services to be provided under the contract include the removal of bedding and manure from the racing stables, which house approximately 50 horses year-round. **Vendors shall provide a separate price for this item on the Bid Form. If use of the racing stables is discontinued during the term of the contract, such cost may be credited to any invoice in whole or in part (on a pro-rated basis) depending on the Department's need usage.**

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**3. BID SUBMISSION**

**3.1 SUBMISSION TIMELINE**

All bid submission documents required to be responsive for bid evaluation must be received by the Department no later than 3:00 PM on April 23, 2015 in order to be considered. All remaining forms and documents required to be completed after notification of selection is made shall be submitted to the Department by the selected contractor prior to execution of the contract.

Any questions concerning this IFB must be received by 3:00 PM on April 8, 2015. Questions must be submitted in writing via email to Judy Giovannetti or Tina Lyons at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list "BEDDING AND MANURE REMOVAL AND DISPOSAL IFB#0120" in the subject line.

A Question and Answer document will be posted to the Department website: [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under "Funding Opportunities" no later than April 14, 2015. No individual written responses will be provided.

Any revisions to this invitation will be posted on the Department's website, [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under "Funding Opportunities". All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the IFB which will be part of the awarded contract. If you are unable to access the Department's website, you may contact Judy Giovannetti or Tina Lyons at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov) or at the following mailing address: New York State Department of Agriculture and Markets, ATTN: Judy Giovannetti or Tina Lyons, 10B Airline Drive, Albany, New York, 12235, and arrange for alternate delivery.

**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. Vendors should not alter the IFB requirements or offer any additional information as a condition of their bid submission or they could be rejected as not responsive.

Mail or Hand-Deliver a Bid Response in a sealed envelope Containing:

- 1. One (1) original paper version of the Bid Form plus two (2) copies, all submission documents required to be submitted at the time of bid submission with original signatures where required, labeled BID RESPONSE – BEDDING AND MANURE REMOVAL AND DISPOSAL IFB#0120: DO NOT OPEN.**
- 2. MWBE/EEO Documents labeled MWBE/EEO DOCUMENTS – BEDDING AND MANURE REMOVAL AND DISPOSAL NYS FAIRGROUNDS IFB#0120: DO NOT OPEN.**

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#0120



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### 3.3 MINIMUM QUALIFICATIONS

To be considered, each bidder shall:

- 1) Demonstrate that the bidder owns or has access to the motorized equipment and vehicles required under the contract pursuant to the Equipment requirements set forth in Section 2.2.3 of this IFB. Bidder shall submit a list of all equipment to be used for this engagement including proof of ownership/lease, valid registration, and insurance.
- 2) Demonstrate that the bidder holds, or has applied for, a solid waste transporter permit issued by the New York State Department of Environmental Conservation.
- 3) Demonstrate that the bidder owns and operates, or has arranged for disposal of bedding and manure at a disposal site permitted or exempted by the New York State Department of Environmental Conservation or an equivalent regulatory entity if disposal occurs outside New York State. All bids must include: (a) the location and a description of the proposed disposal site; (b) proof that the site(s) may accept manure and bedding; and (c) a disposal plan detailing what bidder intends to do with the bedding and manure removed from the fairgrounds (ie. composting, land application etc.). If the disposal plan is land application, bidder shall submit a Nutrient Management Plan (or equivalent business plan) that accounts for the manure removed from the fairgrounds and its disposal. The plan should spell out in an environmentally safe manner the type, amount, and location of all applications based on crop uptake, run-off potential etc. The contract requires quick and efficient removal of bedding and manure from the Fairgrounds. Therefore, the bidder shall demonstrate that all bedding and manure will be removed from the Fairgrounds and no handling/processing of the bedding and manure will take place on the Fairgrounds.
- 4) Provide the name, address, contact person and telephone number for one (1) verifiable reference, other than the Department, with submission of its bid. The reference must be a recent customer that the bidder has provided similar service for within the last five (5) years.

### 3.4 MANDATORY CONTRACT REQUIREMENTS

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

- 1) No other obligation or engagement, contractual or otherwise, will conflict with or in any way impact the selected contractor's ability to provide Bedding and Manure Removal and Disposal services at the New York State Fairgrounds during the contract period.
- 2) The selected contractor shall have full control of the equipment and associated services provided for this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The contractor shall indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the selected contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) The selected contractor will obtain and maintain a Commercial General Liability Insurance Policy from an insurance provider 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.



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- 4) The selected contractor agrees to comply with "Appendix A, Standard Clauses for New York State Contracts," a copy of which is included in the Submission Documents.

### **3.5 BID FORM**

All bids must be submitted on the "Bid Form" included in the Submission Documents section and set forth the cost to remove and dispose of all bedding and manure for each year of the five (5) year Term of the contract. The cost of removal of bedding and manure from the racing stables pursuant to Section 2.5 of this IFB shall be provided separately on the Bid Form.

### **3.6 SUBCONTRACTING**

NYS Department of Agriculture and Markets (AGM) will contract only with the successful Bidder who is the Prime Contractor. AGM considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. If subcontractors are used it shall be understood that the bid price includes the cost of the subcontractor(s) and no additional markups will be allowed. No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this IFB. The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors. The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

Contractor shall not subcontract any work required under this procurement without first obtaining prior written approval from the Department. Any proposed subcontract under this Agreement shall be provided to the Department in writing on or before January 1<sup>st</sup> each year, and shall be approved in writing by the Department, 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. The Contractor shall promptly furnish information as requested by the Department concerning the proposed subcontractor's ability and qualifications.

## **4. EVALUATION**

### **4.1 CONSIDERATION**

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

### **4.2 DETERMINATION OF BID AWARD**

The award will be made to a qualified, responsible bidder submitting the lowest total bid. Prices submitted on the Bid Form shall remain firm for the duration of the five-year contract.

## **5. CONSIDERATIONS RELATED TO THIS PROCUREMENT**

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

The Department reserves the right to:

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- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals.
- 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;
- Prior to the *bid opening*, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency 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 180 days from the bid opening; and,
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.
- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department's interpretation is final.

**5.2 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

**POLICY STATEMENT**

The New York State Department of Agriculture and Markets (AGM), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority and women-owned business enterprises have opportunities for maximum feasible participation in the performance of AGM contracts.



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In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("the Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that AGM establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

By submission of a bid in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A, "Standard Clauses for New York State Contracts," including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this Contract; or (ii) employment outside New York State.

Bidder further agrees to submit with the bid an equal employment opportunity staffing plan on **Form MWBE/EEO2** identifying the anticipated work force to be utilized on the Contract and if awarded a contract, will, upon request, submit to AGM, a workforce employment utilization report on **Form MWBE/EEO3**, identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### **BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN- OWNED BUSINESS ENTERPRISES (MWBEs)**

#### **A. MWBE CONTRACT GOALS**

For purposes of this procurement, AGM hereby establishes a goal of **15%** for Minority-owned Business Enterprises (MBE) participation and **15%** for Women-owned Business Enterprises (WBE) participation



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(collectively referred to as MWBE) for a total Contract MWBE goal of **30%**. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/frontend/diversityusers.asp>. Questions regarding compliance with MWBE participation goals should be directed to the AGM Office for Minority and Women Owned Business Enterprises Designated Contacts identified in the MWBE/EEO Submission Documents.

A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract (see clause E below) and ensure that the MWBEs utilized under the Contract perform commercially useful functions (see clause B below). Contractor agrees that AGM may withhold payment pending receipt of the required MWBE documentation.

**B. COMMERCIALY USEFUL FUNCTION REQUIREMENT**

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity, and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. AGM will assess whether a MWBE is performing a commercially useful function by considering the following:

- (1) the amount of work subcontracted;
- (2) industry practices;
- (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
- (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and,
- (5) any other relevant factors.

**C. By submitting a bid, Bidder/Contractor agrees to the following:**

**(1) Breach of Contract and Liquidated Damages**

In accordance with 5 NYCRR §142.13, Bidder/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and AGM may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and, (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

**(2) Utilization Plan**

a. **Bidders are required to submit a completed MWBE Utilization Plan on Form MWBE/EEO4 with their bid.** The Utilization Plan shall list the MWBEs the Contractor intends to use to perform the State Contract, a description of the Commercially Useful Function the Contractor intends the MWBE to perform to meet the goals on the State Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of a State Contract that the Contractor intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that the utilization of MWBEs that do not perform commercially useful functions may not be counted as meeting the MWBE goals of the Contract; and, that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to AGM.

b. AGM will review the submitted MWBE Utilization Plan and advise the awarded Bidder of AGM acceptance or issue a notice of deficiency within twenty (20) days of receipt.

c. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to AGM a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by AGM to be inadequate, AGM shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by AGM, a request for a partial or total waiver of MWBE participation goals on **Form MWBE/EE05**. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

**(3) AGM may disqualify a Bidder's bid as being non-responsive under the following circumstances:**

- (a) If a Bidder fails to submit a MWBE Utilization Plan;
- (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- (c) If a Bidder fails to submit a request for waiver;  
or
- (d) If AGM determines that the Bidder has failed to document good faith efforts.

**D. Request for Waiver**

(1) A Bidder who is able to document good faith efforts to meet the goal requirements, as set forth in clause E below, may submit a request for a partial or total waiver on **Form MWBE/EE05**, accompanied by supporting documentation, at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by AGM at that time, the provisions of clauses C(2)(b& c) and C(3) above will apply.



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(2) Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to AGM, but must be made no later than prior to the submission of a request for final payment on the Contract.

**(3) Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the AGM Office for Minority and Women Owned Business Enterprises Designated Contacts identified in the MWBE/EEO Submission Documents.**

**E. Required Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of required good faith efforts shall include the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.

(2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

(4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

(5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by AGM with certified MWBEs whom AGM determined were capable of fulfilling the MWBE goals set in the Contract.

(6) Other information deemed relevant to the request.

**F. Quarterly MWBE Contractor Compliance Report**

Contractors are required to submit a Quarterly MWBE Contractor Compliance Report on Form MWBE/EEO6 to AGM by the 10<sup>th</sup> day following each end of quarter over the term of the Agreement documenting the progress made towards achievement of the MWBE goals of the Agreement. Contractors will also be required to submit utilization plans, request subcontractors, and communicate with their project manager throughout the term of the Agreement using the New York State Contract System ("NYSCS"). The NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. More information on reporting responsibilities and use of the NYSCS is included in the Submission Documents and is available on the NYSCS website (<https://ny.newnycontracts.com>).

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*Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract. ALL FORMS ARE INCLUDED IN THE SUBMISSION DOCUMENTS AND ARE ALSO AVAILABLE AT: <http://www.agriculture.ny.gov/MWBE.html>.*

### 5.3 NOTIFICATION OF AWARD

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

### 5.4 DEBRIEFING PROCEDURES

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

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

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

### 5.5 BID PROTEST PROCEDURES

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the Department
2. The protest must be filed within ten (10) business days of receipt of a debriefing letter, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with Judy Giovannetti at:

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

3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within fourteen (14) business days of receipt of the protest. The original protest and



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decision will be filed with OSC when the contract procurement record is submitted to OSC for review and approval.

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

An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> Floor, Albany, New York 12236. More information on the Office of the State Comptroller's (OSC) Contract Award Protest Procedures can be found in OSC's Guide to Financial Operations (GFO), Chapter XI.17, available on the internet at <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## 5.6 NEW YORK LAW

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

## 5.7 REQUIRED APPROVALS

Any contract award resulting from this solicitation will be subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

## 5.8 VENDOR RESPONSIBILITY AND NYS VENDOR ID

### **Prime Contractors:**

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

[http://www.osc.state.ny.us/vendrep/resources\\_docreq\\_agency.htm](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm)

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

***NOTE: Bidders are encouraged to file the Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep***



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*System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>.*

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

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

**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).**

**5.9 COST LIABILITY**

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

**5.10 FREEDOM OF INFORMATION**

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

**5.11 PROCUREMENT LOBBYING LAW**

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (See Attachment 8 -- "Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence"). An offeror/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the IFB through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes.

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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 member(s) to receive contacts pertaining to this Bid:

Judy Giovannetti  
New York State Department of Agriculture and Markets  
Division of Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
E-mail: [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov)

Tina Lyons  
New York State Department of Agriculture and Markets  
Division of Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
E-mail: [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov)

## 5.12 RECOMMENDED SUBMISSIONS

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

### **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.



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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



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- **CE-200**– Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

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

For additional information regarding workers’ compensation and disability benefits requirements, please refer to the New York State Workers’ Compensation Board website at: <http://www.web.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](http://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](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](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

*Please note that although these forms are not required as part of the bid submissions, the Department encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract. The above forms are required to be completed and submitted after notification of selection is made and prior to contract signing.*

**6. REQUIRED ASSURANCES**

**6.1 SUBMISSION DOCUMENTS**

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.

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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**

**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 (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents** as **Attachment 5**)

**Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents** as **Attachment 6**)

**MWBE/EEO Documents** (Signature Required - the forms are included in the **Submission Documents** as **Attachment 7**) - The original plus two (2) copies of the completed M/WBE Documents must be mailed in a separate envelope labeled **MWBE/EEO DOCUMENTS – BEDDING AND MANURE REMOVAL AND DISPOSAL NYS FAIRGROUNDS IFB#0120: DO NOT OPEN**.

**Substitute W-9 Form to obtain SFS ID** (Signature Required - Return if SFS Vendor ID is requested – the form is included in the **Submission Documents** as **Attachment 8**)

**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 DOCUMENTS AND REQUIREMENTS**

The successful bidder will be required to execute a written contract with the Department. A sample New York State Department of Agriculture and Market’s contract is included in the **Submission Documents**. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department’s contract including: Appendix A “Standard Clauses for New York State Contracts” (January 2014); Appendix D “General Conditions for Agreements New York State Department of Agriculture and Markets, and; Appendix E “Special Conditions for Agreements New York State Department of Agriculture and Markets.”