

INVITATION FOR BIDS

for

**New York State Department of Agriculture and Markets
Restaurant Operation in the Center of Progress Building, New York
State Fairgrounds**

IFB #0139

IFB Issued: March 17, 2016
Proposals Due: April 12, 2016

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

Table of Contents

1. INTRODUCTION.....	4
1.1 OVERVIEW.....	4
1.2 IFB GOALS.....	4
1.3 ELIGIBLE BIDDERS.....	4
1.4 TERM.....	5
1.5 FACTORS SIGNIFICANT TO THIS IFB AND OPTIONAL BIDDER’S CONFERENCE.....	5
1.6 IFB TIMELINE.....	6
1.7 DEFINITIONS.....	6
2. DESCRIPTION OF WORK TO BE PERFORMED.....	7
2.1 LICENSED PREMISES.....	7
2.2 SCOPE OF WORK.....	7
3. BID SUBMISSION.....	8
3.1 SUBMISSION TIMELINE.....	8
3.2 SUBMISSION METHOD.....	9
3.3 MINIMUM QUALIFICATIONS.....	9
3.4 MANDATORY CONTRACT REQUIREMENTS.....	10
3.5 BID FORM.....	11
4. EVALUATION.....	11
4.1 CONSIDERATION.....	11
4.2 DETERMINATION OF BID AWARD.....	11
5. CONSIDERATIONS RELATED TO THIS PROCUREMENT.....	12
5.1 DEPARTMENT’S RESERVATION OF RIGHTS.....	12
5.2 TRANSFER OF INTEREST PROHIBITED.....	12
5.3 NOTIFICATION OF AWARD.....	13
5.4 DEBRIEFING PROCEDURES.....	13
5.5 BID PROTEST PROCEDURES.....	13
5.6 NEW YORK LAW.....	14
5.7 REQUIRED APPROVALS.....	14
5.8 VENDOR RESPONSIBILITY.....	14
5.9 COST LIABILITY.....	15

5.10	FREEDOM OF INFORMATION.....	15
5.11	PROCUREMENT LOBBYING LAW.....	15
6.	REQUIRED ASSURANCES.....	16
6.1	SUBMISSION DOCUMENTS.....	16
6.2	CONTRACT DOCUMENTS AND REQUIREMENTS.....	16
7.	RECOMMENDED SUBMISSIONS.....	17

EXHIBIT 1 LICENSE AGREEMENT

EXHIBIT 2 LIST OF EVENTS AT THE COP RESTAURANT AND SUMMARY OF REVENUES PAID TO THE FAIR 2011-2015

INVITATION FOR BIDS
New York State Department of Agriculture and Markets

IFB#0139: Restaurant Operation in the Center of Progress Building, New York State Fairgrounds

1. INTRODUCTION

1.1 OVERVIEW

This Invitation for Bids (“IFB”) is issued by the New York State Department of Agriculture and Markets (“AGM” or “the Department”) to invite qualified bidders to submit proposals to operate the restaurant located in the Center of Progress (“COP”) building at the New York State Fairgrounds (“Fairgrounds”). The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is owned and operated by the AGM.

AGM is responsible for producing the Great New York State Fair (“the Fair”). The Fair is an annual 12-day event that always ends on the Monday designated as Labor Day. In addition to the annual 12-day Fair, the Fairgrounds are operated year round with more than 150 trade and other shows taking place throughout the year. The selected Licensee will be completely responsible for the operation of the COP restaurant both during the annual Fair as well as for any shows taking place in the COP building during the non-Fair. At the Department’s sole discretion, the selected Licensee may also use the COP restaurant for private parties and other events when it is not in use, upon prior written approval from the Department. The operation of the COP restaurant shall be in accordance with the terms and conditions set forth in this IFB and the License Agreement (“License”) subsequently issued by the Department, a copy of which is attached as Exhibit 1.

1.2 IFB GOALS

The objective of this IFB is to retain a private sector business currently engaged in the operation of a full service restaurant or multiple full service restaurants to operate a quality food and beverage facility in the COP restaurant as described in more detail below. Licensee will be responsible for obtaining and maintaining all insurance, maintenance and upkeep of the licensed premises in accordance with the terms set forth in the License.

The Department believes that the property is currently underutilized and desires to contract with an entity that can assist in optimizing the available resources at the Fairgrounds. The selected Licensee will be responsible for the year-round operation of the COP restaurant, including during the Fair. This restaurant must offer a positive overall guest experience and provide a good value for the customer.

1.3 ELIGIBLE BIDDERS

Any bidder that meets the minimum qualifications set forth in Section 3.3 of this IFB is eligible to submit a bid.

1.4 TERM

The contract resulting from this IFB will be for a five (5) year term. The contract will begin on June 1, 2016 and end on May 31, 2021.

1.5 FACTORS SIGNIFICANT TO THIS IFB AND OPTIONAL BIDDER'S CONFERENCE

A) During the five-year term of the License resulting from this IFB, a transformation project of the Fairgrounds will be occurring which could include renovations and improvements to the licensed premises at no cost to the selected Contractor. Therefore, prospective Bidders are **STRONGLY encouraged** to attend the **Optional Bidder's Conference and Tour of the COP Restaurant** on March 25, 2016 at 10:00 a.m. to 12:00 p.m. to personally view the COP restaurant and its available equipment before responding to this IFB.

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

C) The selected Licensee shall consider the NYS PSC Energy Efficiency Portfolio Standard (<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/2197DAD6F78ECCB085257BA9005E71A6?OpenDocument>) when purchasing and/or installing equipment and when utilizing systems such as lighting, heating, air conditioning, and exhaust systems. The Department and the selected Licensee shall agree on reasonable temperatures based on system capacities such that the building does not require overheating or overcooling.

D) Municipal water, sewer, natural gas and electric services are made available to the COP restaurant by the Department.

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

F) Licensee will be responsible for the cost of utilities. There are electric meters for electric services in the COP restaurant. Meter readings are taken monthly by State Fair maintenance staff and an invoice is generated from the Fair to the selected Licensee for the reimbursement of the usage at the monthly electric rate. Natural gas service hook-ups are available. Licensee is responsible for obtaining service from the natural gas provider. Licensee shall pay the Department a garbage removal and recycling fee of five hundred dollars (\$500) monthly. The Department will provide refuse removal, which includes the removal of bulk grease and cooking oil, including used fryer oil. Payment for garbage and recycling shall be made quarterly to the Department.

H) The licensed premises is offered in "as is/where is" condition. Licensee will be required to provide any and all tools, fixtures, furnishings (including but not limited to tables and chairs), and other appurtenances necessary to successfully operate the business. Upon expiration of the term or termination of this License, the selected Licensee will be expected to cooperate with the Department to facilitate any transition to a new vendor or winding down operations. Such cooperation shall include, but not be limited to cleaning and restoring the licensed premises to the same condition (wear and tear excepted) or better condition than at the commencement of the License term.

J) The selected Licensee shall be the sole operator of the licensed premises during the term of the License. The selected Licensee will be completely responsible for the operation of the COP restaurant both during the annual Fair as well as for any shows taking place in the COP building during the non-Fair. At the Department's discretion, the selected Licensee shall also have the right to operate from a temporary location in or adjacent to Chevy Court during the annual Fair. In addition, at the Department's sole discretion, the selected Licensee may use the COP restaurant to host their own events upon prior written approval from the Department. Licensee's rights to operate are subordinate to the Department's jurisdiction and operation of the New York State Fair and Fairgrounds.

K) Licensee is responsible for obtaining an appropriate liquor license that allows for, at a minimum, the sale of beer and wine. The Licensee must demonstrate that they will sell, to the extent possible New York produced food and alcohol products.

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

1.6 IFB TIMELINE

IFB Posted	March 17, 2016
Optional Bidder's Conference and Tour of the COP Restaurant	March 25, 2016 10:00 a.m. to 12:00 p.m.
Questions regarding this IFB must be submitted by 3:00 PM on:	March 30, 2016
A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than:	April 5, 2016
Bidder Response Due by 3:00 PM on:	April 12, 2016
Tentative Award Date	May 2, 2016

The Department intends to make one contract award from this IFB. This contract will require approval from 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 before it becomes effective.

1.7 DEFINITIONS:

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

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

Full service restaurant - provides complete and varied lunch, and dinner menus, along with a wide selection of foods and beverages, and table service.

2. DESCRIPTION OF WORK TO BE PERFORMED:

2.1 LICENSED PREMISES

The COP restaurant is located in the COP building on the Fairgrounds in Syracuse New York. The restaurant occupies the majority of the southwest wing of the COP building. It has approximately 6,100 square feet on two floors. The main floor is approximately 3,850 square feet, with 3,150 square feet available for seating and 700 square feet of kitchen and prep area. The second floor, which is accessible by way of two staircases in the restaurant, is approximately 2,500 square feet and consists of dining space (approximately 2,250 square feet). Current seating capacity is over 300 persons when utilizing both floors. In addition, there is an attached storage/cooler area of approximately 400 square feet. The restaurant has an 8' x 24' ANSUL R102 Fire Suppression System and all equipment installed by the selected Licensee must be within the fire suppression system's coverage. The restaurant is heated and restroom facilities are available. The restaurant also includes a 70' x 25' patio that can be used for food and alcohol service. The selected Licensee shall be responsible for the cost of all services.

2.2 SCOPE OF WORK

The Department desires to contract with one private entity that can operate and manage the Center of Progress restaurant. The facility subject to this IFB is under the jurisdiction of AGM. The Department reserves the right to conduct special events and programs at the Fairgrounds without interference by the selected Licensee. Licensee's rights to operate are subordinate to the Department's jurisdiction and operation of the Fairgrounds.

The selected Licensee will be completely responsible for the operation of the COP restaurant both during the annual Fair as well as for any shows taking place in the COP building during the non-Fair. The COP restaurant shall operate every day during the annual New York State Fair opening not later than 10:00 a.m. and closing not earlier than 10:00 p.m. providing, at least, lunch and dinner. The selected Licensee shall coordinate food service and hours of operation for non-Fair events with the promoter of each event. At the Department's discretion, the selected Licensee shall also have the right to operate from a temporary location in or adjacent to Chevy Court during the annual New York State Fair. In addition, at the Department's sole discretion, the selected Licensee may use the COP restaurant to host their own events upon the prior written approval of the Department. Exhibit 2 to this IFB is a list of events held at the COP restaurant and a summary of revenues paid to the Fair in the last five (5) years based on a percentage of gross sales.

The restaurant has traditionally provided concession style food service although AGM is interested in an operator that could provide all levels of food service from cafeteria-style food service to table service, if needed. The selected Licensee shall operate in compliance with the New York State Sanitary Code, as administered and enforced by the Onondaga County Health Department and shall remain in full compliance at all times. The selected Licensee shall provide the Department with a copy of its annual health inspection certificate. If the Licensee fails its annual health inspection, the Department reserves the right to retain, at the expense of the Licensee, the services of an independent sanitation consultant to ensure safe and sanitary operation of the licensed premises. Failure of Licensee to comply

with recommendations of the independent sanitation consultant in a timely and responsive manner may result in termination of the License for cause.

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

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

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

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 12, 2016 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 March 30, 2016. Questions must be submitted in writing. Email is preferred and should be directed to Judy Giovannetti, the designated contact for this procurement, at procurement.info@agriculture.ny.gov. Please list "RESTAURANT OPERATION IN THE CENTER OF PROGRESS BUILDING IFB#0139" 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#0139 "RESTAURANT OPERATION IN THE CENTER OF PROGRESS BUILDING").

A Question and Answer document will be posted to the Department website at: <http://www.agriculture.ny.gov/RFPS.html> under "Current Funding Opportunities" no later than April 5, 2016. No individual written responses will be provided.

Any revisions to this IFB will be posted on the Department's website, under "Current Funding Opportunities" at <http://www.agriculture.ny.gov/RFPS.html>. All bidders are responsible for keeping informed of any revisions to this IFB. 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, please contact Judy Giovannetti at procurement.info@agriculture.ny.gov to arrange for alternate delivery. You may also contact Judy Giovannetti at the mailing address noted above.

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.

Mail or hand deliver a bid response in one (1) package containing the following two (2) separately labeled envelopes:

1. **Minimum Qualifications and Required Forms and Assurances:** Original plus two (2) paper copies of the Minimum Qualifications and Required Forms and Assurances should be mailed in a separate envelope labeled “IFB #0139 Restaurant Operations in the Center of Progress Building - Minimum Qualifications and Required Forms and Assurances - Do Not Open” and must include:

- All required documentation to demonstrate that the Bidder meets the Minimum Qualifications set forth in Section 3.3 of this IFB; and
- All Forms and Assurances located in the Submission Documents packet (which follows the Exhibits), including original signatures, where necessary.
 - Submission Documents Checklist
 - Mandatory Contract Requirements Certification Form (Original Signatures)
 - Non-Collusive Bidding Certification (Original Signatures)
 - MacBride Nondiscrimination Certification Form (Original Signatures)
 - Procurement Lobbying Law Forms (Original Signatures)
 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)

2. **Bid Form:** Original plus two (2) paper copies of the completed Bid Form cost proposal located in the Submission Documents packet (which follows the Exhibits), should be mailed in a separate envelope labeled “IFB #0139 Restaurant Operations in the Center of Progress Building – Bid Form Cost Proposal - Do Not Open” and must include the following outlined below:

- Bid Form (Original Signatures)

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#0139

3.3 MINIMUM QUALIFICATIONS

To be considered, each bidder shall:

- 1) Be authorized to do business in the State of New York;
- 2) Currently own and operate at least one (1) year-round, full service restaurant that has been in business for at least three (3) years with an annual gross revenue at or above \$225,000. Bidder should submit either: copies of bidder’s actual 2014 income reported to either the U.S. Internal Revenue Service (Form 1040 Sch.C. Business Income, or Form 1120 Corporate Income Tax Return), or the annualized gross revenue and sales tax paid to the New York State Department of Taxation and Finance. If more than one business entity or location is included in the reports,

financial statements supporting the revenues from at least one business entity meeting this minimum qualification should be included. The restaurant must be located within fifty (50) miles of the Fairgrounds. Bidder should provide the name of the restaurant, address, and number of years in business;

- 3) Demonstrate that during the three (3) consecutive calendar years immediately preceding submission of this bid, bidder has held a license or permit to sell alcoholic beverages, including beer, wine, and liquor issued by the New York State Liquor Authority (SLA) for the restaurant(s) referenced in “2” above, and has had no disciplinary violations with the SLA within the last three (3) years;
- 4) Demonstrate that the bidder has spent at least \$5,000 on marketing and promotion of the restaurant(s) referenced in “2” above during the most recently ended fiscal year. This can include coupon and other similar promotions, direct mail, media advertising and social media;
- 5) Demonstrate that the bidder has an active social media presence which shall include at least 1,000 likes on Facebook for the restaurant(s) referenced in “2” above; and
- 6) Provide the names of two (2) verifiable references, other than the Department, with the submission of this bid, one of which must be from your primary food supplier and one from your primary financial institution.

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 impact the selected Licensee’s ability to operate and manage the restaurant located in the Center of Progress building at the New York State Fairgrounds during the Term of the License Agreement.
- 2) The selected Licensee will have full control of services provided pursuant to this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The selected Licensee will 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 Licensee, 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 Licensee will work with AGM on joint advertising and promotion for both Fair and non-Fair promotion of the Center of Progress restaurant.
- 4) The selected Licensee will provide a point of sale system that accepts multiple forms of payments which shall include cash, credit cards and debit cards. The point of sale system provided must be capable of accepting a minimum of three (3) different credit cards.
- 5) The selected Licensee will obtain and maintain the following policies from an insurance company authorized to do business in the State of New York:
 - Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract). If such insurance contains an aggregate limit, it shall apply separately to each location.

- Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile, including owned, leased, hired and non-owned automobiles.
 - If the Licensee sells, distributes, serves or furnishes alcoholic beverages, then it shall maintain in full force and effect through the Term of the License Agreement, Liquor Liability Insurance with limits of not less than \$1,000,000.00. Such coverage shall be written on ISO occurrence form CG00 03, or a substitute form providing equivalent coverage.
 - The above policies shall be accompanied by additional insured endorsement (Acord 101) naming the New York State Department of Agriculture and Markets as an additional insured.
 - Worker’s Compensation and Disability Insurance – Statutory limits.
- 6) The selected Licensee agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is included in the License Agreement attached to this IFB as Exhibit 1.

3.5 BID FORM

A five-year contract will be awarded. A fully completed and properly executed Bid Form (See Submission Documents Attachment 1) must be submitted for this IFB. The Bid Form must not be altered in any way. All blanks must be filled in and a License Fee must be offered for each of the five years listed on the Bid Form. The bidder must offer a minimum bid of \$65,000 each year to be considered.

Exhibit 2 to this IFB is a list of events held at the COP restaurant and a summary of revenues paid to the Fair in the last five (5) years based on a percentage of gross sales. **Please note: This data is provided for informational purposes only. Bidder shall be responsible for paying the License Fees set forth on the Bid Form throughout the Term of the License irrespective of the number of events held in the COP restaurant.**

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 contract will be awarded to the qualified, responsible bidder offering the highest aggregate total License Fees on the Bid Form for the five year Term of the License.

In the event of a tie, the License will be awarded to the bidder with the highest gross revenue for the restaurant(s) referenced in Section 3.3 Minimum Qualification “2”.

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DEPARTMENT'S RESERVATION OF RIGHTS

The Department reserves the right to:

- 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 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;
- 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; and
- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department's interpretation is final.

5.2 TRANSFER OF INTEREST PROHIBITED

The License awarded from this IFB presumes that the Licensee's ownership will not change during the Term of the License. In the event of change of ownership or principals of the Licensee, the License arising from this IFB may be terminated by the Department without liability. No change in ownership or principals of any Licensee shall be made or become effective unless the Department is notified, in

writing, of the change not less than ninety (90) days before the proposed change and approves such proposed change in writing. Sublicensing is not permitted.

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

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

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

4. Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts. An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, New York 12236. 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

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

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

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

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

Subcontractors:

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

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

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

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 5 -- "Summary of the Department's Policy on State Finance Law Section 139-j and Section 139-k"). An offerer/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 offerer/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 offerer/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:

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

6. REQUIRED ASSURANCES

6.1 SUBMISSION DOCUMENTS

The documents listed below are included in the **Submission Documents** packet, 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. Please refer to Section 3.2 of this IFB, "Submission Method" for more information on how to package your proposal. The following forms must be completed and returned with the Bid Response:

- **Bid Form** (Signature Required - the form is included in the **Submission Documents as Attachment 1**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **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**)
- **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 7**)

6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

The successful bidder will be required to execute a License Agreement with the Department, a copy of which is attached to this IFB as Exhibit 1. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department's License Agreement including Appendix A "Standard Clauses for New York State Contracts" (January 2014).

7. 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.

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.

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

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

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

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in with 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, the Department encourages bidders to include them with their bid submissions to expedite execution of the License Agreement if the bidder is awarded the License. The above forms are required to be completed and submitted after notification of selection is made and prior to signing the License Agreement.