

INVITATION FOR BIDS

for

BAG CHECK AND GATE SECURITY SERVICES AT THE NEW YORK STATE FAIRGROUNDS

IFB #0141

IFB Issued: April 11, 2016
Proposals Due: April 25, 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

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0141: BAG CHECK AND GATE SECURITY SERVICES AT THE NYS FAIRGROUNDS

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1. INTRODUCTION

1.1 OVERVIEW

The New York State Department of Agriculture and Markets (the Department or AGM) owns and manages the New York State Fairgrounds in the Town of Geddes, Onondaga County, New York (the Fairgrounds). The Fairgrounds hosts the New York State Fair, which is held each year for twelve (12) days ending on Labor Day (the State Fair).

The Department is seeking bids for bag check and gate security services at the Fairgrounds as further described below.

1.2 IFB GOAL

The objective of this IFB is to retain a contractor to provide bag check and gate security services at the Fairgrounds.

1.3 TERM

The contract resulting from this IFB will begin on June 1, 2016 and end on May 31, 2017. The Department reserves the right to extend the contract for four (4) additional one (1) year periods under the same terms and conditions.

1.4 IFB TIMELINE

IFB Issued	April 11, 2016
Deadline for Submission of Written Questions	April 18, 2016 by 12:00PM NOON
Last update of answers or issuance of IFB Addendum	April 20, 2016
Submission Deadline	April 25, 2016 by 3:00 p.m.
Bid Opening	April 26, 2016

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. The annual New York State Fair is a twelve (12) day event ending on Labor Day each year.

2.2 SCOPE OF WORK

The selected contractor shall provide bag check and gate security services for the pedestrian and vehicle admission gates during the twelve (12) days of each State Fair held during the Term of the Agreement. The dates for the 2016 State Fair are Thursday, August 25th through Monday, September 5th, 2016. The dates for the 2017 State Fair are Thursday, August 24th through Monday, September 4th, 2017. Bag check and gate security services shall be provided at 7 pedestrian gates and 3 vehicle gates during the estimated hours referenced in Exhibit 1 pursuant to the tentative staffing plan included therein. Exhibit 2 to this IFB is a map of the Fairgrounds depicting its various gates.

2.2.1 BAG CHECK SERVICES

Bag Check services shall include monitoring and screening patrons at admission gates conducting a visual safety screening of patrons coming onto the Fairgrounds. The selected contractor shall be responsible for inspecting the interior of all bags, backpacks, packages, coolers etc. belonging to all patrons entering the Fairgrounds. The inspection shall be conducted in a manner that is safe and sanitary. The selected contractor shall ensure that all items brought onto the Fairgrounds adhere to the New York State Fair's Bag and Weapons Policy attached to this IFB as Exhibit 3.

2.2.2 GATE SECURITY SERVICES

Gate Security services shall include monitoring the admission and re-entry of patrons making sure all patrons are properly accounted for and pass through ticket taker locations only. The selected contractor shall also ensure all patrons entering or re-entering the Fairgrounds do so in an orderly manner and address all security related issues that may occur. The selected contractor's personnel stationed at vehicle gates shall monitor vehicles entering the Fairgrounds only allowing entrance to patrons with valid credentials (the Department will provide the selected contractor with NYS Fair Staff Parking and Admission Credentials). All personnel assigned to this engagement must be cross-trained to perform both gate security and bag check functions and shall be able to assist each other as needed.

2.2.3 CONTRACTOR RESPONSIBILITIES

The selected contractor shall be responsible for providing:

- Shirts identifying staff as security personnel with the company name or logo. Shirts must be uniform in color, type and worn at all times.
- Communication equipment for Bag Check and Gate Security personnel.
- Golf carts or other similar transportation to transport staff between gates. All such vehicles must be approved by the Fair prior to use on the Fairgrounds.

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- A trailer or similar mobile unit to be used as an office (size of trailer or mobile office must fit in 10' x 20' space).
- A 24 hour emergency contact phone number during the 12 days of the State Fair for all supervisors assigned to this engagement.

2.2.4 DEPARTMENT RESPONSIBILITIES

The Department shall be responsible for providing:

- Fair Security communication equipment (i.e. radios) for the selected contractor's supervisors only.
- Tables to be used for bag check.
- Tents for any gate that does not have weather protection.
- 10' x 20' space for the selected contractor's placement of contractor's trailer or similar mobile unit used for an office.
- Up to three (3) golf cart permits with a completed and approved NYS Fair Golf Cart Application. Any additional permits requested by the contractor must be purchased at the selected contractor's expense.
- NYS Fair Staff Parking and Admission Credentials.
- A staffing plan: A staffing plan will be finalized with the selected contractor and the NYS Fair's Security Supervisor by July 1st of each year during the Term of the Agreement. Any changes to the staffing plan will be made by the NYS Fair's Security Supervisor in consultation with the selected contractor. The selected contractor shall report to the NYS Fair's Security Supervisor.

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 25, 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 12:00 PM NOON on April 18, 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 "BAG CHECK AND GATE SECURITY SERVICES IFB#0141" 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#0141 "BAG CHECK AND GATE SECURITY SERVICES").

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 20, 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

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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 package containing the following three (3) 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 submitted in a separate envelope labeled “IFB #0141 Bag Check and Gate Security Services - 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 submitted in a separate envelope labeled “IFB#0141 Bag Check and Gate Security Services – Bid Form Cost Proposal - Do Not Open” and must include the following outlined below:

- Bid Form and Subcontracting Form with additional pages, if required (Original Signatures)

3) **MWBE/EEO Documents:** Original plus one (1) paper copy of the completed MWBE/EEO Documents located in the Submission Documents packet (which follows the Exhibits), should be submitted in a separate envelope labeled “IFB#0141 Bag Check and Gate Security Services - MWBE/EEO Documents – 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#0141

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3.3 MINIMUM QUALIFICATIONS

To be considered, each bidder shall:

- 1) Be licensed to do business in New York State as either an established: a) security guard company, b) private investigator, or c) watch guard & patrol agency. Bidder must submit a copy of their current license to conduct business in New York State along with their bid submission.
- 2) Provide the name, address, contact person and telephone number for two (2) verifiable references. References must be customers that the bidder has provided bag check and/or security services for within the last three (3) calendar years preceding submission of this bid, for a fair, festival, run/race, concert series or similar event that lasted a minimum of two (2) consecutive days with a minimum of 10,000 daily attendees or more.

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 contractor's ability to provide bag check and security services at the New York State Fairgrounds during the contract period.
- 2) The selected contractor's staff members assigned to this engagement will complete the 8 hour pre-assignment training course for security guards certified by the New York State Department of Criminal Justice Services. A copy of all training certifications must be provided to the AGM at least fourteen (14) days prior to the first day of each State Fair held during the Term of this Agreement.
- 3) The selected contractor will have full control of all personnel and equipment provided and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The contractor 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 contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 4) The selected contractor will obtain and maintain 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 \$1,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately on a per location or per project basis.
 - 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.
 - Worker's Compensation and Disability Insurance – Statutory limits.

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- 5) The selected contractor agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is included in the sample New York State AGM contract attached to this IFB as Exhibit 4.

3.5 BID FORM

All bids must be submitted on the “Bid Form” included in the Submission Documents packet (which follows the Exhibits). The Bid Form must not be altered in any way.

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 pursuant to the Rating Form attached as Exhibit 5. Prices submitted on the Bid Form shall remain firm for the duration of the contract subject to any price adjustment pursuant to Section 5.3 of this IFB.

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;

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- 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 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. All subcontractors must comply with the mandatory contract requirements set forth in Section 3.4 of this IFB.

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 the second week of July 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.

5.3 PRICE ADJUSTMENT

The prices agreed upon in the contract on the Bid Form may be increased up to the same percentage as the change in the U.S. city average, Consumer Price Index (All Items) for All Urban Consumers (CPI-U), not to exceed 3 %, during the 12 calendar months ending May 31st of the previous contract year, as reported by the U.S. Department of Labor Bureau of Labor Statistics in the CPI Detailed Report. It shall be the responsibility of the Contractor to annually request a payment change based upon the CPI, not to exceed 3%, which may be granted at the sole discretion of the Department. Requests for changes must be submitted in writing 90 days prior to May 31st each year. Only one price adjustment per year will be granted at the sole discretion of the Department. The Department reserves the right to request a price decrease should the relevant index referenced herein decrease.

5.4 PREVAILING WAGE RATE - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Prevailing Wage Rate as part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, requires public work contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law Article 9 Sections 230-239. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid. The selected contractor shall comply with the prevailing wage rates set forth in PRC# 2016900048 attached to this IFB as Exhibit 6. All invoices submitted must include supporting documentation that the selected contractor has complied with the prevailing wage rates for this Agreement.

5.5 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.

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 -

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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 subcontractors 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 (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,

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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

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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/EEO5**. 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/EEO5**, 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.

(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.

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(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 10th 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 NYCS website (<https://ny.newnycontracts.com>).

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>.**

5.6 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.

5.7 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

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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.

5.8 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/>.

5.9 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.

5.10 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.

5.11 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).

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5.12 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.

5.13 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.

5.14 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. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department's Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

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.

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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 and Subcontracting 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**)
- **MWBE/EEO Documents** (Signature Required - the forms are included in the **Submission Documents as Attachment 7**)
- **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 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 attached to this IFB as Exhibit 4. 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.”

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.

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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

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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.wcb.ny.gov/content/main/Employers/busPermits.jsp>. Alternatively, questions relating to either workers’ compensation or disability benefits coverage should be directed to the NYS Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307.

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

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency within 48 hours of notification of selection for award) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance’s website, available through this link: www.tax.ny.gov/pdf/publications/sales/pub223.pdf. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

Please note that although these forms are not required as part of the bid submissions, 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.