

INVITATION FOR BIDS

for

DECORATIONS AND DECORATING SERVICES FOR THE NEW YORK STATE FAIR

IFB #0152

IFB Issued: March 27, 2017
Proposals Due: April 26, 2017

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 #0152: DECORATIONS AND DECORATING SERVICES – NEW YORK STATE FAIR

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1. INTRODUCTION

1.1 OVERVIEW

The New York State Department of Agriculture and Markets (“AGM” or “the Department”) owns and manages the New York State Fairgrounds in the Town of Geddes, Onondaga County, New York (“the Fairgrounds”). The Fairgrounds hosts the New York State Fair (“State Fair”) and other year-round events. The State Fair has historically been an annual 12-day event that ends on the Monday designated as Labor Day (the 2017 State Fair will be 13 days). The State Fair is an agricultural fair, showcasing New York’s agricultural industry through a variety of exhibits, demonstrations, amusements and competitions.

The Department is seeking bids for decorations and decorating services at the Fairgrounds during the annual State Fair and for other year-round events hosted by the Department.

1.2 IFB GOAL

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

1.3 TERM

The contract resulting from this IFB will be for a five (5) year term. The contract will begin on July 1, 2017 and end on June 30, 2022.

1.4 IFB TIMELINE

Publication in Contract Reporter	March 27, 2017
Deadline for Submission of Written Questions	April 11, 2017 by 3:00 p.m. (local time)
Last update of answers or issuance of IFB Addendum	April 14, 2017
Submission Deadline	April 26, 2017 by 3:00 p.m. (local time)
Bid Opening	April 27, 2017

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

2. DESCRIPTION OF WORK TO BE PERFORMED

2.1 PREMISES

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

2.2 SCOPE OF WORK

2.2.1 Fairtime Department Needs:

The selected contractor shall furnish all equipment, labor and supplies required to perform the services described hereunder during the annual State Fair held at the Fairgrounds. The 2017 State Fair will be 13 days and will commence on Wednesday, August 23, 2017 and end on Monday, September 4, 2017. On or before July 1st each year, the Department will provide the selected contractor with the Department's decorating order for that year's State Fair. The order will include an installation/set up and removal schedule. Exhibit 1 includes a list of decorations and decorating services ordered by the Department for the 2014, 2015, and 2016 State Fairs.

A. (Group 1A) – Decorations

For the duration of each State Fair held during the term of this Agreement, the contractor shall at a minimum, provide, install, maintain, clean and remove the following:

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

B. (Group 1B) – Pipe and Drape

The contractor shall install, maintain and remove “pipe and drape” for approximately 520 exhibit/concession spaces. Each space is approximately 10' x 10' with an 8' back and 3' sides in the buildings and/or spaces known as the Center of Progress, Horticulture, Art & Home, International, Science & Industry and Flea Market. Some locations may require weighted pipe and drape due to proximity to entrances. In addition, the contractor will be responsible for marking the layout of large exhibit/concession spaces that do not require pipe and drape. Contractor must use marking tape that is suitable for interior and exterior use.

All decorations, material and equipment furnished by the selected contractor must be of good quality, without visible damage or repair, clean and new (or equivalent condition), and shall be maintained in that condition (reasonable wear and tear excepted), from installation until removal. The selected contractor must provide sufficient staff on-site to monitor its decorated locations and remove unneeded items during

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each day of each State Fair held during the term of the Agreement. At a minimum, the selected contractor shall provide staff on-site the following days and hours to respond to requests for decorations, decorating service, repairs, replacements and cleaning within one (1) hour from receipt of the request:

Three days prior to the start of the State Fair – 8:00 a.m. – 8:00 p.m.

First full day of the State Fair until the last Sunday of the State Fair – 7:00 a.m. – 5:00 p.m.

Labor Day (final day of the State Fair) – 7:00 a.m. – midnight (at a minimum)

The selected contractor must be capable of beginning pipe and drape in all buildings and spaces, and other decorations and decorating needs for the Department, no later than August 1 of each calendar year during the term of the Agreement.

The selected contractor must complete all remaining decorating on or before five (5) days prior to the first day of each State Fair held during the term of the Agreement. Contractor shall consult with and cooperate with the Department's Concessions and Exhibits Manager.

Break down of decorated locations must be completed immediately following the close of the State Fair on the final day (Labor Day). Contractor shall be responsible for collecting all decorative items it has installed. Contractor shall provide sufficient staffing to accomplish break down and clean-up of the decorated exhibits once all locations have closed on Labor Day. Removal of all items shall be complete within four (4) days after the last day of each State Fair held during the term of the Agreement.

2.2.2 Fairtime Concessionaire/Exhibitor Needs (Group 1C):

The selected contractor will also be the exclusive vendor for providing all decorations and decorating services for NYS Fair concessionaires and exhibitors during each State Fair held during the term of this Agreement. The selected contractor shall pay the Department fifteen percent (15%) of the total gross rental sales for these rented items and services. Exhibit 2 is a list of decorations rented by NYS Fair Concessionaires and Exhibitors for the 2015 and 2016 State Fairs.

Bidders shall provide rental prices for each item to be offered to NYS Fair concessionaires and exhibitors on the Bid Form. The Department will distribute the price list to NYS Fair concessionaires and exhibitors.

NYS Fair concessionaires and exhibitors shall submit all order forms for decorations and decorating services to the Department. The Department will forward the order forms to the selected contractor for fulfillment. The selected contractor shall coordinate installation with the concessionaires and exhibitors and the Department's Concessions and Exhibits Office. Within thirty (30) days after the conclusion of each State Fair held during the term of the Agreement, the selected contractor shall provide the Department the percentage payment referenced herein along with a sales report that includes a description of all items and services furnished and prices charged to NYS Fair concessionaires and exhibitors. The selected contractor will be responsible for collecting and processing all payments directly with the individual concessionaires/exhibitors.

2.2.3 Non-Fair Year-Round Department Needs (Group 1D):

The selected contractor shall furnish all equipment, labor and supplies required to perform the services described hereunder for Non-Fair year-round events hosted by the Department at the State Fairgrounds.

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Exhibit 1 includes a list of decorations and decorating services ordered by the Department for Non-Fair events hosted by the Department in 2015 and 2016. The 2016 quantities covered six (6) one-day events, some of which required prior day set-up.

The selected contractor shall at a minimum, provide, install, maintain, clean and remove the requested items within the timeframe provided by the Department for these Non-Fair events.

All decorations, material and equipment furnished by the selected contractor must be of good quality, without visible damage or repair, clean and new, or equivalent condition, and shall be maintained in that condition (reasonable wear and tear excepted), from installation until removal.

The selected contractor shall respond to requests for decorations, decorating service, repairs, replacements, cleaning and removal within one (1) hour from receipt of the request.

All items provided must be verified by designated authorized Department staff at the time of delivery. The selected contractor must provide an emergency contact number when the delivery of items are made.

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 (local time) on April 26, 2017 in order to be considered. The Department reserves the right to request any missing information from those items marked with an asterisk (*) on the Submission Documents Checklist. Bidder will have three (3) business days to provide any missing information requested by the Department for those items marked with an asterisk (*) on the Submission Documents Checklist. 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 (local time) on April 11, 2017. Questions must be submitted in writing via email to Judy Giovannetti at procurement.info@agriculture.ny.gov. Please list “DECORATIONS AND DECORATING SERVICES IFB#0152” in the subject line.

A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under “Funding Opportunities” no later than April 14, 2017. No individual written responses will be provided.

Any revisions to this invitation will be posted on the Department’s website, www.agriculture.ny.gov under “Funding Opportunities”. All bidders are responsible for keeping informed of any revisions to this invitation. 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, or at the following mailing address: New York State Department of Agriculture and Markets, Fiscal Department, Attn: Judy Giovannetti, 10B Airline Drive, Albany, New York, 12235.

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3.2 SUBMISSION METHOD

Facsimiles or e-mailed copies are not acceptable. Materials received after the due date/time shall be returned unopened to the sender. See Section 6.1, Submission Documents, for information on completing a bid response.

Mail or hand deliver a bid response in **one package containing the following three (3) separately labeled envelopes:**

Envelope 1 - Minimum Qualifications and Forms and Assurances:

- Mail original plus two (2) paper copies of the Minimum Qualifications in a separate envelope labeled “IFB #0152 Minimum Qualifications and Forms and Assurances - Do Not Open” and include all required documentation to demonstrate that the Proposer meets the Minimum Qualifications set forth in Section 3.3 of this IFB including:
 - Proof of current filing status with New York State Department of State;**
 - Certify that the bidder owns or has access to the decorations that meet the requirements in Section 2.2 of this IFB. Bidder shall provide representative photos and specifications/descriptions of the decorations to be provided with its bid.**
 - Attachment 9-References Form**
- All Forms and Assurances located in the Submission Documents packet (which follows the Exhibits), original plus one (1) copy, including original signatures, where necessary.
 - Cover Sheet and Submission Documents Checklist**
 - Attachment 2 - Mandatory Contract Requirements Certification Form (Original Signatures)**
 - Attachment 3 - Non-Collusive Bidding Certification (Original Signatures)**
 - Attachment 4 - MacBride Nondiscrimination Certification Form (Original Signatures)**
 - Attachment 5 - Procurement Lobbying Law Forms (Original Signatures)**
 - Attachment 6 - Vendor Responsibility (Original Signatures)**
 - Attachment 7 – Vendor Assurance No Conflict of Interest (Original Signatures)**
 - Attachment 8 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)**

Envelope 2 – Bid Form:

- Mail original plus two (2) paper copies of the completed Bid Form in a separate envelope labeled “IFB #0152 Bid Form - Do Not Open” and include the following outlined below:
 - Attachment 1 - Bid Form and Subcontracting Form (Original Signatures)**

Envelope 3 – MWBE/EEO Documents:

- Mail original plus one (1) paper copy of the completed MWBE/EEO Documents in a separate envelope labeled “IFB #0152 MWBE/EEO Documents - Do Not Open” and include the following outlined below:
 - Attachment 10 – MWBE/EEO Documents (Original Signatures)**

To the following address:
New York State Department of Agriculture and Markets
Fiscal Management

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10B Airline Drive
Albany, New York 12235
ATTN: Judy Giovannetti, IFB#0152

3.3 MINIMUM QUALIFICATIONS

To be considered, each bidder shall:

- 1) Be authorized to do business in New York State. Bidders are strongly encouraged to submit a copy of their current filing status with the New York State Department of State (DOS). The Department reserves the right to confirm bidder's filing status with DOS in the event Bidder fails to provide proof of their filing status; and
- 2) Certify that the bidder owns or has access to the decorations that meet the requirements in Section 2.2 of this IFB. Bidder shall provide representative photos and specifications/descriptions of the decorations to be provided with its bid.
- 3) Provide the name, title, contact person, address, and telephone number for three (3) verifiable references. References must be customers that the bidder has provided service for within the last three (3) calendar years similar in scope to the services sought by this invitation for bids for a festival or event that lasted a minimum of three (3) consecutive days. Bidder must provide a list of the type and quantity of decorations provided to the customer, the location of the festival or event, and the number of days of the event (See Submission Documents Attachment 9, References Form). Note that the Department will contact the references provided and the bidder is solely responsible for the availability of the submitted references.

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 decorations and decorating services at the New York State Fairgrounds during the contract period.
- 2) The selected contractor will have full control of the personnel and decorations/equipment provided and associated services and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the decorations and 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.
- 3) 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

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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.
- 4) The selected contractor agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is included in the sample New York State AGM contract attached to this IFB as Exhibit 3.

3.5 BID FORM

All bids must be submitted on the “Bid Form” included in the Submission Documents section. ***Each bidder must submit a per unit cost for every item. Do not leave the cost of an item blank. Note: If an item listed on the Bid Form is included in the price of another item listed, enter \$0 for the included item (e.g., a 4’ table that includes linen: enter \$0 for “linen for 4’ table” and enter the full price for “4’ table”).***

Group 1A Fairtime Department Needs - Fair Decorations (weighted at 40%) - Submit the cost for each item.

Group 1B Fairtime Department Needs - Pipe and Drapery (weighted at 25%) - Submit the unit cost for one (1) complete booth, 10’x10’ with an 8’ high rear panel and two (2) 3’ high side panels.

Group 1C Fairtime Concessionaire/Exhibitor Needs (weighted at 10%): Submit the cost for each item to be charged to NYS Fair concessionaires and exhibitors. Per Section 2.2.2 of this IFB, by submitting a bid, bidder agrees to pay the Department fifteen percent (15%) of gross rental sales of all decorations and decorating services provided to NYS Fair concessionaires and exhibitors during each State Fair held during the term of this Agreement.

Group 1D Non-Fair Year-Round Events Hosted by the Department (weighted at 25%) - Submit the cost for each item.

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 lowest responsible bidder with the lowest Total Weighted Bid Score pursuant to the Rating Form attached as Exhibit 4.

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In the event of a tie for the lowest Total Weighted Bid Score, the bidder who is part of the tie with the lowest cost for “Group 1A Fairtime Department Needs - Fair Decorations” will be considered the winning bidder. In the event that multiple bidders have identical Total Weighted Bid Scores and identical “Group 1A Fairtime Department Needs - Fair Decorations” costs, the bidder who is part of the tie with the lowest cost for “Group 1B Fairtime Department Needs – Pipe and Drape” will be considered the winning bidder. If multiple bidders have identical Total Weighted Bid Scores and identical Group 1A and Group 1B costs, the winner will be determined by a coin toss.

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DAMAGE TO CONTRACTOR’S PROPERTY

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

5.2 STORAGE SPACE FOR CONTRACTOR

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

5.3 INSPECTION AND INVENTORY

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

5.4 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;

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- 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; and,
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer’s proposal and/or to determine an offerer’s compliance with the requirements of the solicitation.
- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department’s interpretation is final.

5.5 SUBCONTRACTING

The Department reserves the right to prohibit subcontracting in the Solicitation or Contract. The Department also reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior Department Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor’s list of companies with which New York State cannot do business; the Department’s determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the Department. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

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The Contractor may arrange for a portion(s) of its responsibilities under the Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of the Department. If the Contractor determines to subcontract a portion of the services, the subcontractor(s) must be clearly identified and the nature and extent of the involvement in and/or proposed performance under the Contract must be fully explained by the Contractor to the Department. As part of this explanation, the Subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form (see Submission Documents Attachment 7), as required by the Contractor prior to execution of this Contract.

The Contractor retains ultimate responsibility for all services performed under the Contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Contract including, but not limited to, the body of the Contract, Appendix A – Standard Clauses for New York State Contracts and Appendix B – Budget. Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Department.

The Department reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all the provisions of this Section and any subcontract provisions contained in this Contract.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the Contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Contract.

If at any time during performance under this Contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

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

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations the Department is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBES") and the employment of minority group members and women in the performance of the Department contracts.

Business Participation Opportunities for MWBES

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For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this Invitation for Bids (IFB), the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this IFB, such finding constitutes a breach of contract and the Department may withhold payment 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.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Department’s MWBE Liaison at 518-457-4619 or mwbe@agriculture.ny.gov. All MWBE Forms and Instructions are included in the Submission Documents.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. The Department will review the submitted MWBE Utilization Plan and advise the respondent of the Department acceptance or issue a notice of deficiency within 30 days of receipt.
- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department, a

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written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Department may disqualify a respondent as being non-responsive under the following circumstances:

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

The successful respondent will be required to 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 the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to the Department, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The respondent is required to ensure that it and any subcontractors awarded a subcontract 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 respondent, 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 the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, (See Submission Documents, Form MWBE EE01), to the Department with its bid or proposal.

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If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Department on a quarterly basis during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, 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.

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.

5.7 NOTIFICATION OF AWARD

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

5.8 DEBRIEFING PROCEDURES

Pursuant to section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within fifteen (15) calendar days of notification by the AGM that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

5.9 BID PROTEST PROCEDURES

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

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the Department
2. The protest must be filed within ten (10) business days of a debriefing, 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

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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/>.

5.10 NEW YORK LAW

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

5.11 REQUIRED APPROVALS

Any contract award resulting from this solicitation 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.

5.12 VENDOR RESPONSIBILITY AND NYS VENDOR ID

Prime Contractors:

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

http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm

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

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

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

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

Subcontractors:

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

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

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

5.13 COST LIABILITY

The State of New York, 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.

5.14 FREEDOM OF INFORMATION

The selected contractor’s bid response and any contract resulting from this solicitation are subject to the provisions of Article 6 of New York State Public Officers Law, 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.

5.15 PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (*See Submission Documents Attachment 5 -- “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

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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

Carrie Lindemann
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

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

6. REQUIRED ASSURANCES

6.1 SUBMISSION DOCUMENTS

The documents listed below are included in the **Submission Documents** section, which follows. All documents requiring signature must be signed by an authorized representative of the Bidding entity. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the New York State Department of Agriculture and Markets. Please refer to Section 3.2, “Submission Method” for more information on how to package your proposal:

- **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**)

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- **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**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is 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**)
- **References Form** (the form is included in the **Submission Documents as Attachment 9**)
- **MWBE/EEO Documents** (the forms are included in the **Submission Documents as Attachment 10**)

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 3. 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.

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.

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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:

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<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.