

INVITATION FOR BIDS

for

**New York State Department of Agriculture and Markets
Electric Scooter, Wheelchair, Stroller, and Wagon Rental Services,
New York State Fairgrounds**

IFB #0154

IFB Issued: February 24, 2017
Proposals Due: March 23, 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

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EXHIBIT 1 MAP OF THE FAIRGROUNDS

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INVITATION FOR BIDS
New York State Department of Agriculture and Markets

IFB#0154: Electric Scooter, Wheelchair, Stroller, and Wagon Rental Services at the New York State Fairgrounds

1. INTRODUCTION

1.1 OVERVIEW

This Invitation for Bids (“IFB”) is issued by the New York State Department of Agriculture and Markets (“AGM” or “the Department”) to invite qualified bidders to submit proposals to provide exclusive rental of electric scooters, wheelchairs, strollers, and wagons at the New York State Fairgrounds (“Fairgrounds”) during the Great New York State Fair (“the Fair”). The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is owned and operated by the AGM.

The Fair has historically been an annual 12-day event that ends on the Monday designated as Labor Day (the 2017 Fair will be 13 days). The Fair attracts more than 900,000 patrons and is committed to providing equal access and a pleasant experience for all its guests. The selected Contractor will be responsible for providing the rental of electric scooters, wheelchairs, strollers, and wagons during the 2017 through 2021 Fairs as further described below.

1.2 IFB GOALS

The objective of this IFB is to retain one Contractor to provide exclusive rental of electric scooters, wheelchairs, strollers, and wagons during the 2017 through 2021 Fairs as described in more detail below. Advance phone and online reservations of electric scooters shall be accepted by the selected Contractor prior to the start of each Fair beginning on or before June 1st each year during the Term of this Agreement. Rentals of all items including electric scooters must be made available for walk-up onsite rentals and reservations on the Fairgrounds each day of the Fair during Fair hours as specified in Section 2.2 B. of this IFB.

1.3 ELIGIBLE BIDDERS

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

1.4 TERM

The contract resulting from this IFB will be for a five (5) year term. The contract will begin on May 1, 2017 and end on September 30, 2021.

1.5 IFB TIMELINE

| | |
|---|-------------------|
| IFB Posted | February 24, 2017 |
| Questions regarding this IFB must be submitted by 3:00 PM (EST) on: | March 7, 2017 |
| A Question and Answer document will be posted to http://www.agriculture.ny.gov/RFPS.html no later than: | March 10, 2017 |
| Bidder Response Due by 3:00 PM (EST) on: | March 23, 2017 |
| Tentative Award Date | March 29, 2017 |

The Department intends to make one contract award from this IFB. This contract will require approval from the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York before it becomes effective.

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 Great New York State Fair. The main mission and function of the Fair is to hold a multi-day exposition ending on Labor Day each year, promoting and showcasing the agricultural practices, history and traditions of the State while providing equal access and a pleasant experience for all its guests.

2.2 SCOPE OF WORK:

A. RENTAL OF ELECTRIC SCOOTERS, WHEELCHAIRS, STROLLERS AND WAGONS

The selected Contractor shall provide rental services of mobility equipment to Fair patrons during each day of each Fair held during the Term of this Agreement. The 2017 Fair will be 13 days and will commence on Wednesday, August 23, 2017 and end on Monday, September 4, 2017. Rentals shall include electric scooters, wheelchairs, strollers, and wagons. Full day and half day rentals shall be available for rental of electric scooters.

The approximate total number of rentals during the 12 days of the 2016, 2015, and 2014 Fairs were as follows (Note: the 2017 Fair will be 13 days):

- Electric Scooters – 1674 in 2016; 1932 in 2015; 940 in 2014 (**The quantities include full day and half day rentals. The hours for half day rentals are 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m.**)
- Wheelchairs – 516 in 2016; 411 in 2015; 610 in 2014
- Strollers – 752 in 2016; 599 in 2015; 715 in 2014

- Wagons – 427 in 2016; 491 in 2015; 235 in 2014

Based on the foregoing, Contractor shall be responsible for ensuring that sufficient equipment inventory is available during each day of each Fair held during the Term of this Agreement to accommodate Fair patrons as follows:

- Electric Scooters – Minimum of 200 daily
- Wheelchairs – Minimum of 55 daily
- Strollers – Minimum of 75 daily
- Wagons – Minimum of 50 daily

The Department reserves the right to increase the minimum daily inventory requirements referenced above by up to 10% each year during the Term of the Agreement. All equipment must be clean, presentable and in safe, good working condition prior to rental to Fair patrons. The selected Contractor must clean/sanitize mobility equipment between uses by Fair patrons. The mobility equipment provided shall be available in various sizes and weight capacities to accommodate the needs of Fair patrons.

B. RESERVATIONS AND ONSITE RENTALS

Advance phone and online reservations of electric scooters shall be accepted by the selected Contractor prior to the start of each Fair beginning on or before June 1st each year during the Term of this Agreement. The website and reservation system used by the selected Contractor to accept online reservations for this engagement must be pre-approved by the AGM prior to release to the public.

Rentals of all items including electric scooters must be made available for walk-up onsite rentals and reservations from the following three locations on the Fairgrounds each day of each Fair held during the Term of this Agreement (exact locations of displays to be determined by the AGM):

| Rental Locations | Approximate Dimensions of Rental Space Provided | Gate Description |
|------------------|---|---|
| Gate 1 | 30'w x 50'd | Inside the Main Gate entrance |
| Gate 3 | 30'w x 30'd | Pedestrian Entrance across the street from access to two parking lots |
| Gate 10 | 30'w x 50'd | Pedestrian Entrance used for general, permit and accessible parking |

A map depicting the gates/rental locations is attached to this IFB as Exhibit 1. The above-referenced onsite rental locations must be adequately staffed by the selected Contractor each day of the Fair at a minimum during Fair hours. The dates and hours of the 2017 Fair are:

- Wednesday, August 23, 2017 through Sunday, September 3, 2017: 8:00 a.m. to 10:00 p.m.
- Monday, September 4, 2017: 8:00 a.m. to 9:00 p.m.

Please note: The Midway is open until midnight each day of the Fair (except Labor Day – the Midway closes at 9:00 p.m.).

Each location must have a clean and neat display. Signage must be clear and identify the company name. Rental prices and the cancellation policy shall be visibly displayed to patrons. The selected Contractor must comply with the Fair’s sign regulations. The Department shall have final approval of the rental display. Any tent(s) used must be clean and have no holes or marks. Locations must be covered at night and all equipment secured and stacked in an orderly fashion by the selected Contractor. The selected Contractor will only be permitted to use the square footage provided; no additional space will be provided. Electrical needs must be provided to the AGM by May 1st of each year. Setup of all equipment may begin on the Thursday prior to the first day of each Fair held during the Term of this Agreement. All equipment and displays must be removed by the selected Contractor by the Friday after the conclusion of each Fair.

C. CONTRACTOR RESPONSIBILITIES

The selected contractor will be required to:

- Obtain credentials (parking and admission) for its employees to access the Fairgrounds during the NYS Fair.
- Obtain credentials for parking any trailers on the grounds during the annual NYS Fair. The location of the trailer(s) must be approved by the AGM.
- Provide their own setup (tent, rental display etc.) at each of the locations and any power cords for electricity/power needs.
- Provide a mechanism for Fair patrons to reserve rental items in advance (both phone and website) prior to the Fair as set forth in Section 2.2 B of this IFB. **The reservation and cancellation policy must indicate that a full refund will be accepted upon 24 hours advance notification. A copy of the reservation and cancellation policy must be provided to the AGM on or before May 1st each year during the Term of the Agreement.**
- Accept both cash and debit/credit card methods of payments for rental fees from Fair patrons.
- Provide the Fair administration with the name and contact information of the Manager on site during the Fair.
- On or before October 1st each year, submit a final accounting/report to the AGM of all rentals provided pursuant to this Agreement. The report should specify the date, type, and quantity of each piece of equipment rented. The report should also specify the number of half day and full day rentals of electric scooters.
- Provide uniforms for staff which is presentable and identifies the company.
- Provide staff at each of the three locations to accept walk up onsite reservations and rentals.
- Provide a contact number available for Management use only during the Fair.

- Adhere to the NYS Fair Concessions & Exhibits Agreement attached to this IFB as Exhibit 2.

D. DEPARTMENT RESPONSIBILITIES

The Department will provide:

- Electricity at each location
- Trash removal
- Water
- A link on the Fair's website directing Fair patrons to the selected Contractor's website to reserve/rent mobility equipment

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 (EST) on March 23, 2017 in order to be considered. AGM 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 AGM 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 (EST) on March 7, 2017. Questions must be submitted in writing. Email is preferred and should be directed to Judy Giovannetti or Kimberly Carr, the designated contacts for this procurement, at procurement.info@agriculture.ny.gov. Please list "ELECTRIC SCOOTER, WAGON, WHEELCHAIR AND STROLLER RENTAL SERVICES IFB#0154" 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 or Kimberly Carr (IFB#0154 "ELECTRIC SCOOTER, WAGON, WHEELCHAIR AND STROLLER RENTAL 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 March 10, 2017. No individual written responses will be provided.

Any revisions to this IFB will be posted on the Department's website, under "Current Funding Opportunities" at <http://www.agriculture.ny.gov/RFPS.html>. All bidders are responsible for keeping informed of any revisions to this IFB. All questions and answers shall be incorporated into the IFB which will be part of the awarded contract. If you are unable to access the Department's website, please contact Judy Giovannetti or Kimberly Carr at procurement.info@agriculture.ny.gov to arrange for alternate delivery. You may also contact Judy Giovannetti or Kimberly Carr at the mailing address noted above.

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 #0154 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 quantity of electric scooters, wheelchairs, strollers and wagons that meet the requirements in Section 2.2 of this IFB. Bidder shall provide representative photos and specifications/descriptions of the electric scooters, wheelchairs, strollers and wagons 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 #0154 Bid Form - Do Not Open” and include the following outlined below:
 - Attachment 1 - Bid Form and Subcontracting Form (Original Signatures)**

To the following address:

New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Judy Giovannetti or Kimberly Carr (IFB#0154)

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 quantity of electric scooters, wheelchairs, strollers and wagons that meet the requirements in Section 2.2 of this IFB. Bidder shall provide representative photos and specifications/descriptions of the electric scooters, wheelchairs, strollers and wagons 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 electric scooters, wheelchairs, strollers and/or wagons 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 Proposer 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 the rental of electric scooters, wheelchairs, strollers and wagons to NYS Fair patrons during the Term of the Agreement.
- 2) The selected Contractor will have full control of all equipment and rental services provided pursuant to this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the equipment and services provided. The selected 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 \$2,000,000 each occurrence. Such insurance shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages, with no modification to the contractual liability coverage provided therein. Coverages shall include liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract). If such insurance contains an aggregate limit, it shall apply separately to each location.
 - Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile, including owned, leased, hired and non-owned automobiles.

- The above policies shall be accompanied by additional insured endorsement (Acord 101) naming the New York State Department of Agriculture and Markets as an additional insured.
 - Worker’s Compensation and Disability Insurance – Statutory limits.
- 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 NYS Fair Concessions and Exhibits Agreement attached to this IFB as Exhibit 2.

3.5 BID FORM

A five-year contract will be awarded. A fully completed and properly executed Bid Form (See Submission Documents Attachment 1) must be submitted for this IFB. The Bid Form must not be altered in any way. All blanks must be filled in.

ITEM 1 BID – CONCESSION AND EXHIBIT LICENSE FEE:

Based upon the New York State Fair’s 2017 published concession and exhibit license rates, the license value for the three (3) concession and exhibit locations set forth in Section 2.2 B. of this IFB is \$2,855.77 per day (\$37,125 total for 13 days). To be considered, the bidder must offer a minimum bid of \$2,855.77 per day for use of the concession and exhibit space set forth in Section 2.2 B of this IFB for each of the five years listed on the Bid Form. Payment shall be made by the selected Contractor to the AGM on or before June 1st each year during the Term of the Agreement.

ITEM 2 BID – RENTAL PRICES CHARGED TO NYS FAIR PATRONS:

Bidder shall provide per unit rental prices to be charged to Fair Patrons for the rental of electric scooters, wheelchairs, strollers and wagons. Full day and half day rentals shall be available for rental of electric scooters. The hours for half day rentals are 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m. NOTE: The per item rental prices bid shall remain firm for the Term of the Agreement subject to any price adjustment pursuant to Section 5.3 of the IFB.

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 bidder that receives the highest number of points (highest bid score) pursuant to Section 4.2.1 and 4.2.2 based on the following two weighted factors: (1) the amount that the selected contractor will pay to the Department (Item 1); and (2) the amount that the selected contractor will charge Fair patrons for the rental of electric scooters, wheelchairs, strollers, and wagons (Item 2).

4.2.1 ITEM 1 ASSESSMENT - CONCESSION AND EXHIBIT LICENSE FEE (80%)

Up to 80 points will be awarded for Item 1. The highest amount paid to the department under Item 1 will receive the full 80 points. All other bids under Item 1 will receive points based on the highest bid. The number of points will be determined by dividing the bid being evaluated by the highest bid, rounding the resulting decimal to two places, and multiplying that decimal by 80. Please see Section 4.2.4 for bidding example. Please note, per Section 3.5 of the IFB, the minimum bid is \$2,855.77 per day (\$37,125 total for 13 days).

4.2.2 ITEM 2 ASSESSMENT - RENTAL PRICES CHARGED TO NYS FAIR PATRONS (20%)

Up to 20 points will be awarded for Item 2. The lowest total rental fees charged to the consumer (prices provided in bid multiplied by 2016 quantities) under Item 2 will receive the full 20 points. All other bids under Item 2 will receive points based on the lowest bid. The number of points will be determined by dividing the lowest bid by the bid being evaluated, rounding the resulting decimal to two places, and multiplying that decimal by 20. Please see Section 4.2.4 for bidding example.

4.2.3 DETERMINATION OF HIGHEST BID SCORE

The bid score will be determined by adding the points awarded under the Item 1 assessment to the points awarded under the Item 2 assessment. The bidder with the highest aggregate bid score will be considered the winning bidder. In the event of a tie for highest aggregate score, the bidder who is part of the tie with the highest Item 1 score will be considered the winning bidder.

4.2.4 BIDDING EXAMPLE

The following example is provided for illustrative purposes only. To the extent that the bidding example is inconsistent with the description of the Evaluation Method provided above, the description above controls.

Bidding Example

Bids Received:

| Bidder | Item 1 | Item 2 |
|---------------|---------------|---------------|
| A | 45,000 | 116,760 |
| B | 39,000 | 120,520 |
| C | 46,000 | 121,520 |
| D | 38,000 | 118,500 |

Item 1 Assessment:

| Bidder | Item 1 | Point Multiplier | Times 80 | Points Awarded |
|--------|--------|-----------------------|------------------------|----------------|
| A | 45,000 | $45,000/46,000=.98$ | $.98 \times 80 = 78.4$ | 78.4 |
| B | 39,000 | $39,000/46,000 = .85$ | $.85 \times 80 = 68$ | 68 |
| C | 46,000 | Highest | | 80 |
| D | 38,000 | $38,000/46,000 = .83$ | $.83 \times 80 = 66.4$ | 66.4 |

Item 2 Assessment:

| Bidder | Item 2 | Point Multiplier | Times 20 | Points Awarded |
|--------|---------|-------------------------|------------------------|----------------|
| A | 116,750 | Lowest | | 20 |
| B | 120,520 | $116,750/120,520 = .97$ | $.97 \times 20 = 19.4$ | 19.4 |
| C | 121,520 | $116,750/121,520 = .96$ | $.96 \times 20 = 19.2$ | 19.2 |
| D | 118,500 | $116,750/118,500 = .99$ | $.99 \times 20 = 19.8$ | 19.8 |

Determination of Winning Bidder:

| Bidder | Item 1 Assessment | Item 2 Assessment | Total Aggregate Points |
|--------|-------------------|-------------------|---------------------------|
| A | 78.4 | 20 | 98.4 |
| B | 68 | 19.4 | 87.4 |
| C | 80 | 19.2 | 99.2 (Winning Bid) |
| D | 66.4 | 19.8 | 86.2 |

Accordingly, **Bidder C** has the highest Total Aggregate Points and is the winning bidder.

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DEPARTMENT'S RESERVATION OF RIGHTS

The Department reserves the right to:

- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Prior to the *bid opening*, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening;
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; and
- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department's interpretation is final.

5.2 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.

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.

5.3 PRICE ADJUSTMENT

The rental prices to be charged to NYS Fair patrons 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 April 30th 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 April 30th 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 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.

5.5 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.

5.6 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 or Kimberly Carr 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/>.

5.7 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.

5.8 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.

5.9 VENDOR RESPONSIBILITY AND NYS VENDOR ID

Prime Contractors:

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

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

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

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

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

Subcontractors:

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

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

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

5.10 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.

5.11 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.

5.12 PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (See Attachment 5 -- "Summary of the Department's Policy on State Finance Law Section 139-j and Section 139-k"). An offerer/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the IFB through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j(3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department's Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

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

6. REQUIRED ASSURANCES

6.1 SUBMISSION DOCUMENTS

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

- **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**)
- **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**)

6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

The successful bidder will be required to execute a NYS Fair Concessions and Exhibits Agreement (“Agreement”) with the Department, a copy of which is attached to this IFB as Exhibit 2. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department’s Agreement including Appendix A “Standard Clauses for New York State Contracts” (January 2014), Appendix D “General Conditions for Revenue Agreements,” and Appendix E “Special Conditions.”

7. RECOMMENDED SUBMISSIONS

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

AGM Substitute Form W-9

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

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

Workers' Compensation Coverage and Debarment

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

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

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

PROOF OF COVERAGE REQUIREMENTS

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

Proof of Workers' Compensation Coverage

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

- **Form C-105.2** – Certificate of Workers’ Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12**– Certificate of Workers’ Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers’ Compensation Group Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

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

- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- **Form DB-155**- Certificate of Disability Benefits Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

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

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

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

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

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

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

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