

INVITATION FOR BID

TEST TRUCK

FOR

**TESTING LARGE
CAPACITY**

VEHICLE SCALES

IFB Issued: August 26, 2011
Bids Due: October 11, 2011

By

State of New York
Department of Agriculture and Markets
Bureau of Weights and Measures
10B Airline Drive
Albany, NY 12235
(518) 457-3146



**STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS**

**INVITATION FOR BID
TEST TRUCK FOR TESTING LARGE CAPACITY VEHICLE SCALES**

INTRODUCTION

The Department of Agriculture and Markets (Department) owns a test truck for testing large capacity vehicle scales consisting of a 22 foot box with telescoping boom, (10) 2,500 lb. flat weights and (1) 3,000 lb. weight cart on a 1994 Ford L9000 chassis. The Department is inviting bids for a new chassis and a box with holding cages for the weights, hold downs for the weight cart, and a boom completely assembled and ready for loading and unloading the weights and weight cart. The Department will keep the existing weights and weight cart.

KEY EVENTS/DATES

IFB Issued	August 26, 2011
Voluntary Truck Inspection	September 26, 2011 or September 27, 2011
Deadline for Questions or Comments	September 30, 2011
Last update of answers or issuance of IFB Addendum	October 3, 2011
Submission Deadline	October 11, 2011

BID SUBMISSION REQUIREMENTS

Each bidder must submit a bid package consisting of the bid sheet, experience, references, and other required documents listed on page 10. Packages **MUST BE RECEIVED** in the Department's Albany office not later than 4:00 P.M. local time on October 11, 2011. Bids received after the scheduled date and time will not be accepted.

Bidders shall clearly mark each package of materials submitted with the following: "Test Truck IFB." This marking may appear either on the shipping container or on a secured package inside the shipping container. Bid packages shipped or mailed shall be addressed to:

Test Truck IFB
Lucy Roberson, Director
Division of Fiscal Management
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

Packages may be hand delivered to the receptionist in the Department's office at 10B Airline Drive, Albany New York. Bids will not be accepted via fax or e-mail.

QUESTIONS OR COMMENTS CONCERNING THE IFB

Prospective bidders with questions or comments concerning this Invitation for Bid (IFB) should present those questions in writing to:

Mike Sikula
Bureau of Weights and Measures
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235
Fax: (518) 457-5693
Mike.Sikula@agmkt.state.ny.us

All questions or comments shall be submitted in writing (fax or email will be accepted) to Mike Sikula by 4:30 P.M. local time September 30, 2011. Bidders should note that all clarifications are to be resolved prior to the submission of a bid. A list of questions and comments about the IFB, answers to those questions and comments, as well as any addenda to the IFB, will be posted in the "Funding Opportunities" section of the Department's website, www.agmkt.state.ny.us, along with the electronic version of this IFB. Questions, comments, and responses will be posted on the website no later than October 3, 2011. Bidders are urged to check the Department's website frequently for notices of any changes, additions or deletions to the IFB. If you are unable to access the website, please contact Mr. Sikula to arrange for alternate delivery. All answers shall be incorporated into this IFB as a formal addendum.

VOLUNTARY INSPECTION

The Department will make the test truck available for inspection at 10B Airline Drive, Albany, New York, or other New York locations at the Department's discretion, on September 26, 2011 and September 27, 2011. Prospective bidders who wish to inspect the existing test truck must make an appointment at least two weeks in advance by contacting:

Mike Sikula
Bureau of Weights and Measures
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235
Fax: (518) 457-5693
Mike.Sikula@agmkt.state.ny.us

Pictures and dimensions for the test weights and weight cart are included as Attachment #1. The Department takes no responsibility for bidders who misinterpret and/or make incorrect assumptions based on pictures. All bidders are encouraged to make a physical inspection.

QUALIFICATIONS

The company that installs the box and boom assembly must have a minimum of three years experience:

- 1) providing test trucks used for testing large capacity vehicle scales; and
- 2) installing and repairing boom systems used for loading and unloading weights and weight carts used for the testing of large capacity vehicle scales.

Bidders must document this minimum experience. Bidders must include names and contacts for at least three clients who purchased test trucks that were similar to that required by this IFB to serve as references.

Please provide a list of governmental clients that purchased comparable trucks, if applicable.

The Department will only accept bids from companies that meet these qualifications.

SUBCONTRACTING

If the bidder is a chassis retailer/distributor, the Department expects that it will subcontract the installation of the box and boom assembly to a qualified test truck manufacturer. If the bidder intends to subcontract any of the work to an outside source this shall be clearly noted in the bid, and shall be subject to approval by the Department. Subcontractors must possess the applicable qualifications as noted above and provide at least three references. The bidder is responsible for supplying the required information with the bid.

MINIMUM SPECIFICATIONS FOR DELIVERABLES
(Include the following in the specifications submitted with your bid)

CHASSIS

1. New 2011/2012 Chassis (specify available colors)
2. 3 axle with 10 wheels or other approved configuration (Bidders must request approval from the Department prior to submitting a bid.)
 - The unit's front axle shall be a non-driving steerable type having a minimum capacity of 20,000 pounds.
 - The rear axle shall be heavy-duty tandem 40,000 pounds, minimum capacity with a gear ratio to provide a road speed of at least 70 MPH. It shall be a tandem assembly with a manually lockable torque proportioning power divider. The rear axles shall be equipped with oil bath type wheel bearings and seals and a magnetic drain plug.
 - If the unit requires a tag or pusher axle, the axle shall have a minimum capacity of 12,000 pounds and be complete with spacer kit, air controls, single tires and wheels. Tires shall be no less than 11R22.5 and load range "H" steel belted tubeless radials. Wheels shall be 22.5" diameter ten (10) holes, hub piloted steel disc with a minimum rim section 8.25". The tag shall be a double convalescent air lift type, self steering, with air up and air down capability.
 - The unit shall be designed to carry (10) 2,500 lb. pan weights and a 3,000 lb. weight cart.
3. Automatic Transmission
 - Allison RDS 4000 series or most recent that meets the needed performance criteria shall be provided. It shall be equipped with neutral lockup, without retarder, with largest oil pan capacity available.
4. Road Speed and Grade Ability
 - When operating at maximum GVWR and within the recommended governed engine RPM range, transmission, wheel/tire, and axle gearing shall be such that the truck will be capable of maintaining a sustained level road speed of 65 mph.
5. Engine
 - The engine shall be liquid cooled, diesel powered.
 - The engine shall be EPA certified &/or California, EPA-CARB certified.
 - The engine shall comply with federal and New York laws and regulations governing emissions in effect on the date of manufacture.
 - The truck's engine shall not be less than 350 gross horsepower and have a minimum gross torque of 1,350 lb./ft.
 - All fuel, oil, hydraulic, and air filters shall be readily serviceable without interference from other body, chassis, and air & hydraulic system (i.e., hoses, piping, etc.) components.
 - Monitoring system with visual and audible alarm to warn of low oil pressure, low coolant level and overheating. The alarm shall not activate unless the engine is running.
6. Engine Block Heater
 - The engine shall have a 115 VAC, engine block heater or heaters with three wire grounding type receptacle permanently mounted in a convenient readily accessible location on the lower left side of the cowl or below cab door. Location shall be approved by the Department.

- The receptacle shall have a weatherproof hinged cover and male 3-prong device. Grounding shall be directly to the engine.
- The engine block heater(s) capacity (i.e., wattage) shall be the engine manufacturer's maximum recommendation for engine provided under this contract. If (a) block heater(s) of sufficient capacity (1500 watts) is/are not available, the Department may consider an optional cold start enhancement.

7. Exhaust System

- The exhaust system shall be mounted as close to the chassis frame rail as practical, and shall be shielded as required to provide personnel protection from the top of door height to below its bend inward under the cab. The stack shall terminate in a side outlet diffuser, which shall ensure adequate clearances. It shall direct exhaust fumes away from personnel stations. Heavy sheet metal (or other approved material) guards shall be provided between the exhaust system and hydraulic oil lines in areas of potential overheating of the oil or possible line failure due to excessive heat exposure.

8. Cooling System

- The cooling system shall include a full flow radiator, spin-on filter, pre-charged cooling system, filter-conditioner with factory installed shut-off valves. The radiator coolant shall provide protection to at least -34° F.

9. Engine Brake

- An integral engine brake (not an exhaust restrictor) shall be provided with driver operated in-cab control(s) including an in-dash mounted On-Off switch in combination with accelerator switch and a switch to regulate the amount of braking.

10. Brakes (air)

- The brakes shall be air-actuated, S-cam type drum brakes with fabricated shoes. These drum brakes on all wheels shall be equipped with open anchor (quick change) type brake shoes. All components needed to conform to current federal regulations shall be furnished.

11. Tires

- The unit's tires shall be (SBR) steel belted radial ply tubeless type. All tires shall be rated for first line quality. All tires will be from the same manufacturing source. The tires shall have a load range designation of "H" [a sixteen (16PR) ply rating], or better.
- All tires & wheels on both front & rear axle/s shall be balanced. All tire valves shall be readily serviceable from the outside face of the wheel.
- Complete tire configuration must meet all federal and New York State standards.

12. Electrical System

- Alternator shall be rated at 12 volts, minimum 130 amps, providing a minimum 30 amp charge rate at engine idle and full output at approximately 1200 engine RPM. The alternator shall be either gear driven, two-belt driven, or multiple groove flat belt driven.
- Storage batteries shall be heavy duty commercial, maintenance-free type. They shall provide a 12 volt energy source equal to three (3) each, group 31, minimum: 920 C.C.A rated, 165 minute reserve capacity, batteries.

13. Cruise Control

14. Steering shall be hydraulic power assist

15. Cab Equipment

- The cab shall be the widest available in the manufacturer's standard line.
- The cab door locks and ignition lock shall be keyed alike.
- Manufacturers' standard adjustable steering column, electric operated windshield wipers with winter (rubber sleeved) blades, a powered windshield washer, headliner, cab dome light, dual sun visors & arm rests, AM/FM radio, minimum of two 12V DC power outlets, and fresh air heater and defrosters.

16. Seats

- Individual driver and passenger seats, which are fully adjustable, with an air-operated suspension system and a motion dampening feature shall be provided. The seat shall have lumbar support, headrest/back-rest and mid-back configuration.

17. Air Conditioning

18. In cab instruments and controls

- Dash mounted instruments and controls shall include at least the following: voltmeter or ammeter; fuel level gauge; engine temperature gauge; engine oil pressure gauge; air pressure gauge and low pressure indicator; speedometer; odometer; hour meter; tachometer.

19. Minimum 100 gallon fuel tank

20. Front tow hooks mounted to frame. The tow hooks must be adequate to tow the fully loaded vehicle.

21. Tow package set-up for electric braking system.

- Receiver hitch with a 2 inch ball.
- Required to tow a small pick-up with a maximum weight of 5,000 lb.

22. Back-up warning signal

23. Appropriate side view and spot mirrors

24. Mud flaps, stone guards and all lights and reflectors required to meet federal and N.Y. state standards

25. Power windows

26. Air horn

27. Two (2) side storage boxes approximately 3 feet x 18 inches x 18 inches, one on each side

BOX AND BOOM

1. New Box and Boom.

2. Box body shall be heavy duty aluminum or other approved material painted white or other approved color. Bidders must request approval from the Department prior to submitting a bid. Box should have a watertight seal.

3. Box length should be approximately 22 feet with the overall length (chassis plus box) from front bumper to rear bumper not to exceed 35 feet.

4. Interior sidewalls must be fully lined with minimum 3/8 inch exterior grade plywood or equivalent.

5. Rear of box should have step slots for easier access.
6. Holding cages for the existing (10) 2,500 lb. flat weights. Holding cages should be sturdy and secure and allow for safe, easy loading and unloading and should prevent the weights from moving during normal driving conditions.
7. Hold-downs for the existing 3,000 lb. weight cart. Hold-downs should be easy to use and provide safe, easy loading and unloading and should prevent the cart from moving during normal driving conditions.
8. Interior/exterior lights. Exterior lights should light the rear of the box for night operation.
9. Boom with a minimum load of 3,000 lb. and capable of easily loading and unloading the existing weights and weight cart. Boom should have remote control.
10. Parts for the boom should be “off the shelf” allowing for easy repairs without the necessity of returning the truck to the manufacturer.
11. Boom technology and design should be such that maintenance is minimal and repairs infrequent.
12. Method of heating hydraulic reservoir for boom during winter unless successful bidder can guarantee performance without it.
13. (1) Dual 110 volt receptacle.
14. Exterior door(s) equipped with latch for padlock.
15. Reflective red/white strips along bottom of sides and back of box.

WARRANTY

The successful bidder shall provide standard manufacturer warranties on the chassis, box, and all equipment provided pursuant to its bid.

The successful bidder shall be responsible for the coordination during the warranty or extended warranty period(s) for warranty repair or replacement.

The successful bidder will convey full ownership, clear title free of all liens, to the chassis, box and all equipment and be solely liable for any costs associated with the acquisition thereof.

If a bidder, product manufacturer or service provider generally offers additional or more advantageous warranties than those provided by the manufacturer, the bidder must include details with the bid.

CHASSIS, BOX AND BOOM OPERATING INSTRUCTIONS

Standard operator's manual for the chassis and an operator's manual for the boom.

DELIVERY

The Department will take delivery of the test truck from any site identified by the successful bidder within New York State. Bidders must include the cost of transporting the test truck to the specified site as part of the bid.

Delivery must be made within one hundred twenty (120) days of issuance of a purchase order. Any exceptions to this requirement must be completely detailed on a separate sheet and included with the Bid.

BID FORMAT

The bidder is solely responsible for the content and completeness of the bid. The Department may request clarification from the bidder regarding items in the bid. However, the Department is under no obligation to solicit missing information.

Each copy of the bid shall be organized in the following format:

SECTION I: Qualifications

Experience/References/History

- Provide a description of the experience of the company installing the box and boom assembly (minimum of three years):
 - Providing test trucks used for testing of large capacity vehicle scales.
 - Installing and repairing boom systems used for loading and unloading weights and weight carts used for the testing of large capacity vehicle scales.
- Include the names and contacts for at least three clients who purchased test trucks that were similar to that required by this IFB to serve as references.

- Provide a list of governmental clients that have purchased comparable trucks, if applicable.
- The Department reserves the right to contact any or all of the clients and references to verify information provided.

SECTION II: Bid

1. The bid form (Attachment #2)
2. Proposed Chassis and Box and Boom Specifications

SECTION III – Other required documents

1. Signed and notarized Non-Collusive Bidding Certification (Attachment #3).
2. MacBride Stipulation (Attachment #4).
3. A completed Vendor Responsibility Questionnaire (Attachment #5).
4. A signed copy of any addendums to the IFB and questions and answers that have been posted on the Department’s website.
5. Offeror’s Affirmation of Understanding and Agreement Pursuant to State Finance Law § 139-j(3) and § 139-j(6) (Attachment #6).
6. Offeror’s Certification of Compliance Pursuant to State Finance Law §139-k(54) (Attachment #7).
7. Department of Taxation and Finance Forms ST-220-CA – Contractor Certification to Covered Agency and ST-220-TD – Contractor Certification (Attachment #8). (To be completed by successful bidder at time of contract).

METHOD OF AWARD

In the sole discretion of the Department, the award will be made to the lowest responsive, responsible and qualified bidder offering the test truck as outlined in these specifications. The successful bidder must possess the qualifications outlined in this IFB.

The Department reserves the right to award this bid to the next lowest responsive, responsible and qualified bidder if the original successful bidder is found to be non-responsive and/or non-responsible. The Department reserves the right to reject all bids and to seek new bids, if it is determined that it is in the best interest of the Department and the State.

The evaluation of the bids shall be done in stages as follows:

Stage 1. Evaluation of the Qualifications - (Qualitative Screen)

The Department will screen the bids received using the Qualitative Checklist below.

<input type="checkbox"/> Yes <input type="checkbox"/> No	<ul style="list-style-type: none"> • Does the installer of the box and boom assembly have 3 years experience providing test trucks used for testing large capacity vehicle scales?
<input type="checkbox"/> Yes <input type="checkbox"/> No	<ul style="list-style-type: none"> • Does the installer of the box and boom assembly have 3 years experience installing and repairing boom systems used for loading and unloading weights and weight carts used for the testing of large capacity vehicle scales?

<input type="checkbox"/> Yes <input type="checkbox"/> No	<ul style="list-style-type: none"> Did the installer of the box and boom assembly provide 3 references? (The Department reserves the right to contact the references to verify that the bidder did perform services for the clients similar in scope and complexity to those required by the IFB.)
<input type="checkbox"/> Yes <input type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No	<ul style="list-style-type: none"> Subcontracting – The bidder proposed to subcontract some components of the work? If yes, does the subcontractor have the experience & references necessary to complete the specific work that it will perform?

Bidders will be given three (3) business days from the date of request to submit documentation if it is not included with the bid package or submit substitute documentation if the original submission is determined to be unacceptable. If the documentation is not submitted on time, the bid will be rejected.

Stage 2. Evaluation of Chassis and Box and Boom Specifications.

<input type="checkbox"/> Yes <input type="checkbox"/> No	<ul style="list-style-type: none"> Did the bidder provide a specification list for the chassis, boom and box?
<input type="checkbox"/> Yes <input type="checkbox"/> No	<ul style="list-style-type: none"> Are the descriptions consistent with the specifications set forth in the IFB?

Stage 3. Evaluation of Bid.

The Department will determine the lowest bid based on the total bid price.

NOTIFICATION OF AWARD

The Department will notify the successful bidder verbally, followed by a written confirmation. Each bidder whose bid is not selected will be notified in writing by the Department. Pursuant to section 163(9) (c) of the State Finance Law, an unsuccessful bidder has the right to a debriefing regarding the reasons its bid was not selected for an award. An unsuccessful bidder must request a debriefing within thirty (30) days from the date of the notification stating that their bid has not been selected. To request a debriefing an unsuccessful bidder should contact Emma Graham, Division of Fiscal Management, in writing or via e-mail at emma.graham@agmkt.state.ny.us.

The Department and the Office of the State Comptroller reserve the right to audit the selected successful bidder’s books and records relating to the provision of the equipment and up to three years after the delivery.

DRAWINGS

Prior to beginning work on assembling the box and boom, the successful bidder shall provide schematic drawings of the box and boom set-up for the Department’s approval.

TERMS

CONTRACT

Upon receipt of all required approvals a contract shall be deemed executed and created with the successful Bidder upon the Department's mailing of a purchase order to the address on the bid.

APPENDIX A

Appendix A, which is posted on the Department's website in the "Funding Opportunities" section contains standard clauses required in all State contracts. Appendix A will be a part of any contract awarded under this IFB, and the successful bidder will be responsible for complying with the terms and conditions contained therein.

PAYMENT

Payment shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The successful bidder shall comply with the Comptroller of the State of New York's procedures to authorize electronic payments. The successful bidder acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

CERTIFICATION PURSUANT TO NEW YORK STATE TAX LAW - SECTION 5-A

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect State sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms can be found at <http://www.tax.ny.gov/forms>. Form No. ST 220-TD must be filed with and returned directly to DTF. Unless information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA (Attachment #8) should be filed with the Department upon receipt of the purchase order certifying that the contractor filed the ST-220-TD with DTF. The contractor should complete and return the certification forms within two business days of request (if the forms are not completed and returned upon receipt of the purchase order). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. Vendors may call DTF at 1-800-698-2931 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF.

WORKER'S COMPENSATION AND DISABILITY INSURANCE REQUIREMENTS

The Worker's Compensation Law requires that before a New York State Agency may enter into any contract, the contractor must submit proof that he or she has obtained the required worker's compensation and disability benefits coverage, or that he or she is not required to provide coverage. If you are selected as the successful bidder, before we can contract with you, you must provide us with the necessary proof of coverage completed by your insurance carrier and/or the Worker's Compensation Board on a form approved by the Worker's Compensation Board.

NON COLLUSIVE BID CERTIFICATION

Section 139-d of the State Finance Law requires that bidders submit a non-collusive bid certification with their bid. The Statement is included as Attachment #3.

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

Chapter 807 of the Laws of 1992 prohibits a State department from contracting for the supply of goods and services or construction with any contractor who does not agree to stipulate that it either has no business operations in Northern Ireland, or if it does have such business operations, it shall take lawful steps in good faith to conduct such operations in accordance with the MacBride Fair Employment Principles, if there is another contractor who will execute such stipulation and provide the goods and services or construction of comparable quality at a comparable price. The stipulation is included as Attachment #4.

CONTRACT LIAISONS

The successful bidder will designate an employee to act as the primary contact person in all matters regarding this contract. Upon notification of award, successful bidder must provide the name, title, telephone and fax numbers of their contact person to the Department.

OTHER CONSIDERATIONS

The Department reserves the right to:

- reject any or all bids received with respect to this IFB;

- waive or modify minor irregularities in any bid received after prior notification and concurrence of the bidder;
- request from a bidder additional information as deemed necessary to fully evaluate its bid;
- amend the IFB's specifications after its release, with appropriate written notice to all potential bidders;
- negotiate the terms of any agreement with the successful bidder; and
- make all final decisions with respect to the amount of State funding and the timing of payments to be provided to successful bidder.

FREEDOM OF INFORMATION

All bids submitted and all related contracts and reports may be subject to disclosure under the Freedom of Information Law.

NEW YORK STATE STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE

The contractor agrees to fully and accurately complete the Vendor Responsibility Questionnaire, which is attached as Attachment #5 (hereinafter the "Questionnaire"). The contractor acknowledges that the Department's execution of the Contract will be contingent upon the Department's determination that the contractor is responsible, and that the Department will be relying upon the contractor's responses to the Questionnaire in making that determination. The contractor agrees that if it is found by the Department that the contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, 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.

Contractors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. 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> For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email ciohelpdesk@osc.state.ny.us. Contractors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the State Agency or the Office of the State Comptroller for a copy of the paper form.

SUMMARY OF DEPARTMENT'S POLICY REGARDING STATE FINANCE LAW SECTIONS 139-J AND 139-K

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 #9 “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 notice of intent to solicit bids/proposals 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, is 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 IFB:

Emma Graham
Division of Fiscal Management
New York State Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235
Fax: (518) 457-0864
Emma.Graham@agmkt.state.ny.us

**State of New York
Department of Agriculture and Markets
Test Truck for Testing Large Capacity Vehicle Scales
BIDS DUE: 4:00PM October 11, 2011**

Bids must be on this form

THE DEPARTMENT RESERVES THE RIGHT TO REJECT ANY/ALL BIDS.

	Price
Truck chassis	\$
Truck box	\$
Boom	\$
Delivery	\$
Total cost	\$

Estimated days to complete: _____ (Maximum 120 days after issuance of purchase order)

Delivery Site within New York State: _____

Bidder's Firm Name: _____

Address: _____

Bidder's Signature: _____

Printed Name: _____

Official Title: _____

Email Address: _____

Telephone: _____

Fax: _____

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

BY SUBMISSION OF THIS BID, ANY BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER(S) SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE.

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 2011

Notary Public

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 2011

Notary Public

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES
STIPULATION**

Chapter 807 of the Laws of 1992 prohibits a State department from contracting for the supply of goods and services or construction with any **Contractor** who does not agree to stipulate that it either has no business operations in Northern Ireland, or if it does have such business operations, it shall take lawful steps in good faith to conduct such operations in accordance with the MacBride Fair Employment Principles.


**PLEASE READ AND INITIAL EITHER STATEMENT #1 OR STATEMENT #2.
DO NOT INITIAL BOTH STATEMENTS.**

_____ 1. The Contractor, and any individual or legal entity in which the Contractor holds a 10% or greater ownership interest and any individual or legal entity that holds a 10% or greater ownership interest in the Contractor has no business operations in Northern Ireland.

_____ 2. The Contractor, and any individual or legal entity in which the Contractor holds a 10% or greater ownership interest and any individual or legal entity that holds a 10% or greater ownership interest in the Contractor shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles and shall permit the independent monitoring of their compliance with such principles.

Dated:

Attachment #6

	<p>State of New York Department of Agriculture and Markets 10B Airline Drive Albany, NY 12235</p>	<p>Offerer's Affirmation of Understanding and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6) Form 2</p>
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Instructions:

Pursuant to State Finance Law §§139-j and 139-k, this solicitation imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the procurement's "Restricted Period" (from the issuance of the solicitation document until the date of the contract's final approval by the State Comptroller) to other than designated staff, unless the contact falls within certain statutory exceptions ("permissible contacts"). Agriculture and Markets' employees are required to obtain certain information from Offerors and others whenever there is a contact about the procurement during the Restricted Period, and are required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection of contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. Further information about these requirements can be found at: <http://www.ogs.State.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html>.

As a prerequisite for participating in this procurement, an Offeror must provide the following Affirmation of Understanding and Agreement to comply with these procurement lobbying restrictions in accordance with State Finance Law §§139-j and 139-k.

Offeror Affirmation and Agreement	
<p>The Offeror affirms that it understands the procurement lobbying requirements set forth in State Finance Law §§139-j and 139-k, and agrees to comply with the Agriculture and Markets' guidelines regarding permissible Contacts as required thereby.</p>	
Name of Offeror:	
By:	
(Signature)	
Name:	
Title:	
Address:	
Date:	

Attachment #7



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

**Offeror's Certification of Compliance Pursuant to
State Finance Law §139-k(5)
Form 3**

Instructions:

New York State Finance Law (SFL) §139-k(5) require that every contract award subject to the provisions of SFL §§139-k or 139-j shall contain a certification by the Offeror that all information provided to Agriculture and Markets with respect to SFL §139-k is complete, true and accurate.

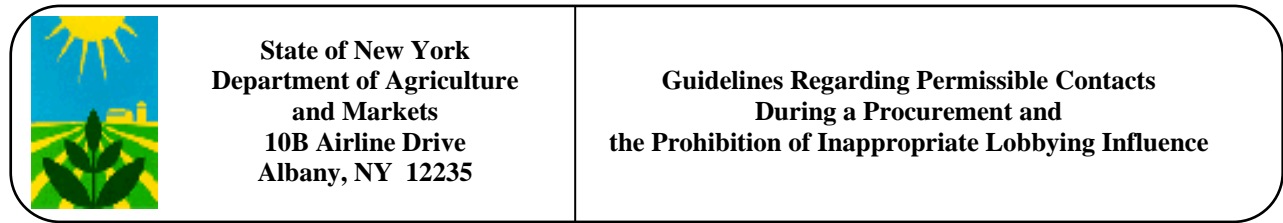
At the time an Offer or Bid is submitted to Agriculture and Markets, the Offeror/Bidder must provide the following certification that the information it has and will provide to Agriculture and Markets pursuant to SFL §139-k is complete, true and accurate including, but not limited to, disclosures of findings of non-responsibility made within the previous four years by any State governmental entity where such finding of non-responsibility was due to a violation of SFL §139-j or due to the intentional provision of false or incomplete information to a State governmental entity.

Offeror Certification

I certify that all information provided to the Department of Agriculture and Markets with respect to State Finance Law §139-k is complete, true and accurate.

Name of Offeror:	
By:	
(Signature)	
Name:	
Title:	
Address:	
Date:	

Attachment #9



Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (collectively referred to as the “Lobbying Law”), makes major changes to the Legislative Law and State Finance Law relative to lobbying on government procurements. More specifically, the Lobbying Law creates two new sections in the State Finance Law: Section 139-j addresses the disclosure of “contacts” during the procurement process; and Section 139-k addresses the disclosure of contacts and the responsibility of Offerors¹ during the procurement process. The Lobbying Law applies to all procurements initiated on or after January 1, 2006. In this regard, a procurement means a contract or agreement involving an annual expenditure in excess of \$15,000 for a commodity, service, technology, public work, or construction; purchase, sale or lease of real property; or revenue contract.

In conformity with the Lobbying Law, during procurement’s restricted period² the only Department employee(s) that the Offeror may “Contact” is/are the Department designated contact person(s) for that procurement. In this regard, “Contact” means any oral, written or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence a procurement. Exceptions to this rule include:

- submission of a written proposal in response to an RFP, IFB or any other solicitation method;
- submission of written questions as part of an RFP, IFB or other solicitation method where all written questions and written responses will be provided to all Offerors;
- participation in a pre-proposal or pre-bid conference scheduled as part of an RFP, IFB or other solicitation process;
- written complaints by an Offeror that the Department designated contact for a procurement fails to respond in a timely manner;
- negotiations with the Department following tentative award; contacts between designated Department staff and Offeror to request the review of a contract award; and
- communications with the Department regarding an appeal, protest or other review of a procurement, participation in an administrative or judicial proceeding regarding a procurement and complaints regarding a procurement made to the Attorney General, Inspector General, District Attorney, or State Comptroller.

¹ An Offeror is an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the Department about a procurement during the restricted period.

² The period of time commencing with the earliest written notice, advertisement or solicitation of a Request for Proposals “RFP”, Invitation for Bids “IFB”, solicitation of proposals or any other method for soliciting responses from Offerors intending to result in a procurement contract by the Department, and ending with the final contract award and approval by the Department, and OSC (if required).



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

**Guidelines Regarding Permissible Contacts
During a Procurement and
the Prohibition of Inappropriate Lobbying Influence**

An Offeror shall not, under any circumstances, attempt to influence a Department procurement in a way that violates or attempts to violate: Public Officers Law Section 73(5), relating to gifts intended to influence; or Public Officers Law Section 74, relating to the code of ethics for employees of State agencies.

An Offeror who contacts the Department regarding a procurement during the restricted period must be prepared to provide the following information: name, address, telephone number, place of principal employment and occupation of the person or organization making the contact, and whether the person/organization making the contact is the Offeror or is retained, employed or designated by or on behalf of the Offeror to appear before or contact the Department about the procurement. The Department's Report of Contact Form is attached as Form 1.

An Offeror that submits a proposal, bid or other response to a Department RFP, IFB or other solicitation method must:

- Affirm that it understands and agrees to comply with these guidelines regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence. (The Offeror's Affirmation of Understanding and Agreement is attached as Form 2.);
- Certify that all information provided to the Department with respect to the Lobbying Law is complete, true, and accurate. (The Offeror's Certification of Compliance is attached as Form 3.);
- Disclose whether any governmental entity has, within the prior four years, found the Offeror non-responsible due to a violation of the Lobbying Law or the intentional provision of false or incomplete information. (Included in the Contractor Responsibility Questionnaire.)

Further, all Department procurement contracts will contain a provision authorizing the Department to terminate the contract in the event such Certification of Compliance is found to be intentionally false or incomplete.

Any alleged violations of the Department's guidelines or the Lobbying Law regarding permissible contacts during a procurement and the prohibition of inappropriate lobbying influence will be reported to the Department's Ethics Officer for investigation. If there is sufficient evidence to indicate the allegation may be true, the Department shall give the Offeror reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation. At the Department's discretion, the opportunity to be heard may be provided either by giving the Offeror the opportunity to meet with the Department staff conducting the investigation or by convening a hearing before an impartial hearing officer at the Department's Albany office. In either case, a written report including findings, conclusions, and a recommended decision will be forwarded to the Commissioner or his or her designee for review and a final determination. A determination that an Offeror has knowingly and willfully committed such a violation may result in a finding that the Offeror and its subsidiaries are non-



**State of New York
Department of Agriculture
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10B Airline Drive
Albany, NY 12235**

**Guidelines Regarding Permissible Contacts
During a Procurement and
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responsible and therefore ineligible for award of the procurement contract. A second determination of non-responsibility for such a violation within four years of the first such determination may render the Offeror and its subsidiaries ineligible to submit a bid or proposal or be awarded a procurement contract for four (4) years from the date of the second determination. The Department will notify the New York State Office of General Services (“OGS”) of any determinations of non-responsibility or debarments due to violations of the Lobbying Law.

If you require further guidance on the new Lobbying Law, you are encouraged to visit the Advisory Council on Procurement Lobbying website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html> where Frequently Asked Questions “FAQ’s” adopted by the Council have been posted.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or

reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of

this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce

Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely

affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a

contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without

discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to

service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the

New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.