

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS REQUEST FOR PROPOSALS

SERVICES FOR MANAGEMENT, PROMOTION AND DEVELOPMENT OF THE NEW YORK CITY WHOLESALE FARMERS' MARKET

INTRODUCTION

The New York State Department of Agriculture and Markets seeks proposals from qualified parties to manage, promote and develop the Wholesale Farmers' Market currently operating at the New Fulton Fish Market in the Bronx, New York City. Proposals should conform with the format and content specified in this Request for Proposals (RFP), which is posted in the "Funding Opportunities" section of the Department's website (www.agmkt.state.ny.us).

Proposals *MUST BE RECEIVED* by the Department's Division of Fiscal Management by 4:00 p.m. EDT on July 29, 2009.

Proposal Submission Requirements

The cost and technical components must be submitted in separate sealed envelopes. The entire proposal shall be submitted in an envelope that is clearly marked as follows: "Proposal for Services for Management, Promotion and Development of the NYC Wholesale Farmers' Market" Inside the envelope shall be two (2) separate envelopes which must be identified as follows: 1) Proposer's name, "Services for Management, Promotion and Development of the NYC Wholesale Farmers' Market – Technical Component"; 2) Proposer's name, "Services for Management, Promotion and Development of the NYC Wholesale Farmers' Market – Budget Proposal Form."

Submit an original and two (2) copies of your proposal, in a sealed package, to:

Lucy Roberson, Director
Division of Fiscal Management
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Failure to follow the submission instructions may result in the rejection of the proposal. Proposers are solely responsible for insuring the timely delivery of their RFP response. Electronically submitted proposals (e.g. facsimile, e-mail) and proposals received after the deadline will not be accepted.

QUESTIONS CONCERNING THE RFP

All questions about requirements contained in this RFP must be submitted in writing (facsimile or e-mail will be accepted) to:

Bill Kimball
Director of Agricultural Protection & Development Services
NYS Dept. of Agriculture and Markets
10B Airline Drive
Albany, NY 12235
E-mail: bill.kimball@agmkt.state.ny.us
Fax: (518) 457-2716

All questions must be submitted to Mr. Kimball by 4:00 p.m. EDT, Wednesday, July 15, 2009. Proposers should note that all clarifications are to be resolved prior to the submission of a proposal. A list of questions about the RFP and answers to those questions, as well as any addendums to the RFP, will be posted in the "Funding Opportunities" section of the Department's website, www.agmkt.state.ny.us by Friday, July 17, 2009. If you are unable to access the website, please contact Bill Kimball to arrange for alternate delivery. All questions and answers will become a formal addendum to this RFP.

BACKGROUND AND PURPOSE

Background of Wholesale Farmers' Markets in New York City

Until the mid-1970s, two wholesale farmers' markets operated in New York City, providing a means for hundreds of small and medium size farmers in the Hudson Valley, Long Island, and adjoining areas to market fresh fruits and vegetables and other agricultural products directly to thousands of City retail food stores, restaurants, institutions, and other wholesale buyers. During the mid-1970s, for budgetary-reduction purposes, the City privatized operations of the wholesale and retail food market facilities originally built as public market infrastructure. At the same time, the wholesale farmers' market sections at both the Bronx Terminal Market and the Brooklyn Terminal Market, including the open sheds, were demolished to make way for additional warehouse and office facilities for wholesalers at the markets. The consequence was an abrupt, significant reduction of the direct wholesale marketing activity between farmers and New York City food buyers that had occurred continuously at the markets (and earlier facilities) originally established by the City to provide a reliable, efficient mechanism for ensuring a supply of farm fresh food for City residents, including what have become underserved populations found throughout the region.

For the many New York farmers who had depended on one or both wholesale farmers' markets as a major marketing channel, closing of the markets in the 1970s led to a significant, and in some cases catastrophic, loss in sales and net income by forcing them to market through produce wholesalers or commission agents for a substantially lower economic return. For the many City retail stores, restaurants, and other buyers who had been the farmers' regular customers for years, closing of the wholesale farmers' markets resulted in significantly reduced access to New York State fresh produce, thereby reducing its availability to New York City consumers in both volume and variety.

Following demolition of the farmers' market sheds at the Bronx Terminal Market, a small group of farmers who had continued to sell on the streets surrounding the former market site obtained permission from the private lessee/manager of the market to use a small, open-air, paved street area behind the market as an alternative site for direct wholesale operations. Despite its inadequacies, the site was used by 20-25 farmers year-round until the early 1990s when truck access to the area was constrained due to the partial collapse of an overhead viaduct/street attached to an adjoining market warehouse. These farmers relocated again with the permission of market management to a rarely used parking lot at the commercially abandoned north end of the market directly across the Metro North railroad tracks from Yankee Stadium.

In 2007, with the closing of the access ramps from the overhead Major Deegan Expressway to the street level imminent, and construction of the new Yankee Stadium, the wholesale market farmers were required to once again find a new location. With assistance from the Department of Agriculture and Markets, the farmers reached an agreement with the New Fulton Fish Market to occupy a relatively large and unused fenced-in paved parking area at the Fish Market facility. Although in the long term this is viewed as an interim location pending development of a new permanent indoor wholesale farmers' market facility, the arrangement works to the advantage of the farmers as well as the fish market and its vendors. The farmers are now located in a well lit, secure area in close proximity to other wholesale food markets including the Hunt's Point Produce Market and the New York City Wholesale Meat Market as well as the Fish Market. From the perspective of the Fish Market, the arrangement provides additional income in the form of rent from the wholesale farmers; and fish market vendors benefit from additional buyer traffic generated by those farmers.

Purpose of this RFP

Article 23 of the Agriculture and Markets Law directs the Department to provide assistance to producers to improve wholesale farmers' markets. Article 23 further authorizes the Department to encourage the development of direct marketing programs within areas of the state which are identified as having poor consumer access to reasonably priced and high quality farm products. Frequent relocation, lack of any market infrastructure and other uncertainties have resulted in fewer farmer vendors, less product diversity and, inevitably, a declining number of buyers visiting the wholesale farmers' market in New York City. At the same time, the increasing demand for healthy, fresh, locally produced produce and other food products throughout the City offers wholesale farmer marketers a significant opportunity to generate substantially increased sales to traditional as well as non-traditional buyers. In particular this market, utilizing innovative delivery systems, can provide nutritious, locally produced fresh produce to underserved populations. In addition, there appear to be numerous opportunities to market significant volumes of fresh produce and other food products through public and private food programs, institutions and other non-traditional outlets.

Currently, producers participating in the wholesale farmers' market located at the New Fulton Fish Market self-manage the market organization. In order to assist these producers and encourage the development of direct marketing activities in the region, the Department intends to contract with a qualified not-for-profit organization to provide professional management services in all phases of farmers' market management, promotion and development. With a more stable arrangement for a market location in place, the wholesale farmers at the New Fulton Fish Market would benefit from the services of a professional management team to provide day-to-day operational management, do market promotion and development and help the farmers reclaim the customer base that has eroded over the years.

SCOPE OF SERVICES

The Contractor will be required to provide the following services:

- Develop, implement and maintain an effective, functional management structure for the Wholesale Farmers' Market, including office-based and on-site supervision elements, that facilitates profitable interaction between participating farmer vendors and wholesale food buyers from throughout the metropolitan New York City region;
- Develop and implement an effective plan to increase the number of New York State farmers and producers participating in the market and expand the diversity of New York fresh produce and other products offered for sale at the market;
- Develop and implement an effective plan to promote expanded use of the market by a diversity of wholesale buyers, including the use of promotional campaigns and events;
- Explore the feasibility of operating, and if determined feasible, operate the wholesale farmers' market on a year-round basis;
- Establish and maintain a mutually beneficial working relationship between the market and its current and future lessors;
- Explore the feasibility of establishing, and if determined feasible, establish a retail farmers' market as a component of the wholesale farmers' market;
- Participate with the Department in periodically evaluating the current market location and future growth of the market;
- Establish a farmer advisory committee to provide input with regard to market rules, management and promotion;
- Collaborate with and assist State and City agencies and private organizations to facilitate procurement of locally grown fresh produce from the market in connection with federal, State, and local government food and nutrition programs (such as the WIC Program, Food Stamps/SNAP, the School Lunch Program, and Emergency Food Programs) and private programs or initiatives that support and promote the expanded availability of fresh produce and other nutritious farm products through retail food stores, food service operations, public and private institutions, emergency food outlets, and other means in the region served by the market;
- Develop delivery mechanisms for projects and programs that provide enhanced access to locally grown fresh produce and other nutritious local food products to underserved populations throughout the region;
- Periodically report on the market's operation, including participation by farmers and buyers, sales, product diversity, prices, and capacity for self-support.

DELIVERABLES

The deliverables for this contract will be as follows:

- The development and successful implementation of well conceived plans to manage the day-to-day operation, promotion and development of the New York City Wholesale Farmers' Market including:
- Maintenance of a business environment conducive to profitable interaction between farmer vendors and wholesale buyers;
- Increased number of New York State farmers and wholesale buyers participating in the market and expansion of the diversity of New York fresh produce and other products offered for sale at the market;
- Operation of the market on a year-round basis if determined feasible;
- Establishment of a retail component of the wholesale market if determined feasible;
- Establishment of a farmer advisory committee;
- Increased purchase by public and private agencies of New York State grown fresh produce;
- Provision of a delivery service to enhance access to fresh produce by underserved individuals and families in the region;
- Quarterly reports describing progress towards provision of contract deliverables.

MANDATORY QUALIFICATIONS

Eligible applicants **must meet** the following minimum qualifications:

- 1) Be a not for profit agency or organization;
- 2) Have at least one year of experience in New York City developing wholesale marketing relationships for New York State farmers; and
- 3) Have at least one year of experience in operating product delivery services that support participating farmers and community-based projects and/or retail outlets to increase consumer access to fresh, locally grown produce.

PROPOSAL CONTENT

Proposals **must include** the following information:

Technical Component

- (1) A complete and clear narrative description of:
 - How the proposer meets the mandatory minimum qualifications for eligibility described in this RFP; and
 - The proposer's demonstrated ability, years of past experience and success in undertaking each of the elements described in the RFP's Scope of Services and reflected in the Selection Criteria and Deliverables sections of the RFP.
- (2) A list of the names, titles and qualifications of all key personnel.

Cost Component

Submit one Budget Proposal Form (Attachment 3) with the proposal.

Eligible costs

Funds provided under this contract may be used for any of the following purposes and must be directly related to the provision of services described in the proposal:

- Salaries, wages and fringe benefits
- Contractual services
- Marketing materials
- Advertising and promotion
- Office supplies
- Postage
- Printing
- Travel expense (at State government rates)
- Communication
- Liability insurance necessary to perform work contained in the proposal
- Leased or rented equipment or other items (necessary to undertake proposed activities for the length of the contract only)
- Indirect and overhead expense (limited to 15% of salaries and wages)

Ineligible Costs

Purchase of machinery, equipment, buildings and other depreciable items.
Any costs incurred prior to the award of the contract.

Other Required Documents

Proposers shall provide originals only of each of the following:

- a signed and notarized non-collusive bid certification form, as required by Section 139-d of the State Finance Law (Attachment 4);

- Offeror's Affirmation of Understanding and Agreement Pursuant to State Finance Law § 139-j(3) and § 139-j(6) (Attachment 6 - Form 2)
- Offeror's Certification of Compliance Pursuant to State Finance Law § 139-k(5) (Attachment 6 - Form 3);
- a completed Vendor Responsibility Questionnaire (see page 10 of this RFP).

SELECTION CRITERIA

The Department will award the contract based on evaluation of all aspects of the project according to the needs of the Department and the best interest of the State. The award will go to the proposer whose proposal provides the best value as determined by the highest score received based upon the selection criteria specified below.

- **Technical Component (70 points):** The Department will evaluate the technical component of the proposal based on the following criteria:
 - Experience in successfully establishing and promoting farmers' markets in New York City, including attracting buyers and expanding farmer participation (10 points);
 - Experience in successfully managing a farmers' market or farmers' markets in New York City, including collecting and maintaining records of farmer and buyer participation and of produce varieties and volumes sold, and conducting on-farm inspections (10 points);
 - Experience in developing year-round farmers' markets (8 points);
 - Experience in incorporating a farmer advisory committee in farmers' market program operations (8 points);
 - Experience in conducting food-related promotional events at farmers' markets (8 points);
 - Experience working with New York State farmers and becoming familiar with the State's agriculture, in particular fruit and vegetable crops, their seasonality of production and availability, and their health and nutrition related attributes (10 points);
 - Experience interacting with City, State and federal agencies and private organizations in support of public or private food, nutrition and marketing programs responsibilities or interests – such as the Food Stamp Program/SNAP, the WIC Program, the School Lunch Program, and Emergency Food Programs (8 points);
 - Experience in negotiating agreements with New York City government agencies regarding the use of public space for farmers' markets (8 points).
- **Cost Component (30 points):**

The basis for the cost proposal evaluation rankings will be the total price offer received from each offeror using the "Budget Proposal Form" (Attachment 3). The total

price offers will be ranked with the low bid awarded the maximum total of 30 points. The remaining bids will be assigned scores based on the following formula:

$$\frac{\text{Low bid}}{\text{Bid being evaluated}} \times 30 \text{ points}$$

After completion of the technical and cost evaluation, a composite score will be assigned to each proposal with the technical score weighted at 70 points and cost score weighted at 30 points. The award will be made to the proposal with the highest composite score.

OTHER CONSIDERATIONS

Only proposers that have submitted complete information will be considered. The Department reserves the right to:

- reject any or all proposals received with respect to this RFP;
- waive or modify minor irregularities in proposals received;
- request from a proposer additional information as deemed necessary to more fully evaluate its proposal;
- amend the specifications contained in this RFP after its release, with appropriate written notice posted on the Department's website;
- negotiate the terms of the budget; and
- make all final decisions with respect to the amount of State funding and the timing of payments to be provided to a successful contractor.

All proposals submitted in response to this RFP will become the property of the New York State Department of Agriculture and Markets.

TERMS OF AGREEMENT

The Department will award a contract to the successful proposer for a two-year term, with the option to renew for an additional two-year term. The contract will incorporate this RFP and the successful proposer's proposal among its provisions. A copy of the standard clauses that set forth the general terms and conditions required in all contracts awarded by the Department as well as any special conditions that will be required for this contract is attached to this RFP (Attachment 2).

At the end of any contract term otherwise provided for herein, if a replacement contract has not yet been approved in accordance with State law, any contract awarded hereunder may be extended unilaterally by the State, upon notice to the Contractor, at the same terms and conditions, including all contract prices, for a period of one month. Additionally, this extension may be for a period of up to three months with the concurrence of the Contractor. However, any extension will terminate immediately upon approval of the replacement contract except where a period for transition of contractors has been previously provided for.

Payment

Payment will be made on a reimbursement basis. Invoices for payment shall be submitted to the Department at the end of each month on a New York State Standard Voucher for services satisfactorily completed during that month.

Price Escalation

On the anniversary date of the contract, the Contractor may be granted an increase or decrease in their bid dependent upon fluctuations in the latest published copy of the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. The price adjustment shall be calculated as follows. The base index shall be the index for 3 months prior to the month of the start date of the contract. An adjusted index shall be calculated by averaging the 12 seasonally adjusted months, ending 3 months prior to the anniversary date of the contract. The average adjusted index is then compared with the base index, and the resulting percentage of increase or decrease shall be applied to the next contract year, effective on the anniversary date of the contract. The adjusted index shall become the base index for the next subsequent contract adjustment period. In no instance should a CPI price adjustment exceed five percent (5%) of the current contract's hourly rate.

Travel Reimbursement

Costs for travel and associated meals and lodging for those assignments that requires such shall not exceed the prevailing maximum rates established by the Office of the State Comptroller, which correspond to the rates provided by the Federal Government to its employees. To access information related to travel, including the current reimbursement amounts, refer to the following website:

<http://nysosc3.osc.state.ny.us/agencies/travel/travel.htm>.

Appendix A (Standard Clauses for All State Contracts)

Appendix A, which is attached to this RFP (see Attachment 1) contains standard clauses that are required in all State contracts. Appendix A will be a part of any contract awarded under this RFP, and the successful contractor will be responsible for complying with the terms and conditions contained therein.

Minority and Women Owned Businesses Equal Employment Opportunities And Goals

See Clause 12, Equal Employment Opportunities for Minorities and Women, in Appendix A.

For the contract awarded under this RFP, the Department has established the following goals:

Minority business enterprises	1%
Women owned business enterprises	1%

Consultant Services Contractor's Employment Reports (See Attachment 5)

The successful Proposer will be required to submit the attached Form A: "State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term" to the Department upon signing the contract. In addition, the successful Proposer will be required to submit the attached Form B: "State Consultant Services

Contractor's Annual Employment Report" to the Department, the Office of the State Comptroller and the Department of Civil Service on or before May 15 of each year of this Agreement. Such report shall include employment data for the most recently concluded State fiscal year (April 1-March 31).

NYS Standard Vendor Responsibility Questionnaire

The Proposer agrees to fully and accurately complete the Vendor Responsibility Questionnaire, which is posted in the "Funding Opportunities" section of the Department's website (www.agmkt.state.ny.us) with this RFP. The Proposer acknowledges that the Department's execution of the Contract will be contingent upon the Department's determination that the Proposer is responsible, and that the Department will be relying upon the Proposer's responses to the Vendor Responsibility Questionnaire in making that determination. The Proposer agrees that if it is found by the Department that the Proposer's responses to the Vendor Responsibility 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.

NOTE: Proposers are invited 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 <http://www.osc.state.ny.us/vendrep/login.htm>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email athelpdesk@osc.state.ny.us.

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 6 -- "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, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four year period, the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department's Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

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

Emma Graham

Division of Fiscal Management
Telephone: (518) 457-0864
Fax: (518) 485-7750
E-mail: emma.graham@agmkt.state.ny.us

Judy Giovannetti
Division of Fiscal Management
Telephone: (518) 457-6172
Fax: (518) 485-7750
E-mail: judy.giovannetti@agmkt.state.ny.us

Workers' Compensation and Disability Insurance Requirements

New York State Workers' Compensation Law, sections 57 and 220, requires that the Department shall not enter into a contract unless proof of Workers' Compensation and Disability Insurance in a form satisfactory to the New York State Workers' Compensation Board has been secured.

The successful proposer will be required to produce proof of Workers' Compensation and Disability Insurance in a form satisfactory to the New York State Workers' Compensation Board prior to the execution of the contract.

Please refer to the Workers' Compensation and Disability Insurance Requirements posted on the Department's website, www.agmkt.state.ny.us under the heading of this RFP or visit the New York State Workers' Compensation Board website, www.wcb.state.nys.us for more information.

Certification Pursuant To New York State Tax Law Section 5-A

Pursuant to Tax law Section 5-a, certain contractors with New York State are required to certify to the Tax Department 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 specified period. In addition, contractors must certify to the Tax Department 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 agency that they filed the certification with the Tax Department and it is correct and complete. The successful proposer will be required to complete and sign, under penalty of perjury, the Contractor Certification Form ST-220-TD and the Contractor Certification to Covered Agency Form ST-220 – CA. The Contractor Certification Forms are available from the Department of Tax and Finance web site at http://www.tax.state.ny.us/forms/sales_cur_forms.htm#Other%20Sales%20Tax%20Forms.

The successful proposer will be required to complete and submit the Contractor Certification Forms within three (3) business days of request. Failure to respond timely 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 the Tax Department at 1-800-698-2931 for any and all questions relating to Tax Law § 5-a and relating to a company's registration status with the Tax Department. For additional information, please refer to the Department of Tax and Finance web site: http://www.tax.state.ny.us/pdf/publications/sales/pub223_507.pdf.

The Department reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with § 5-a of the Tax Law is not timely filed during the term of the contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing ten (10) days written notification to the Contractor.

NOTIFICATION OF AWARD

The Department will notify the successful proposer verbally, followed by a written confirmation. Each proposer whose proposal is not selected will be notified in writing by the Department. Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful proposer has the right to a debriefing regarding the reasons their proposal was not selected for an award. An unsuccessful proposer must request a debriefing within thirty (30) days from the date of the notification stating that their proposal has not been selected. To request a debriefing, an unsuccessful proposer should contact Ms. Emma Graham, Division of Fiscal Management, by phone at: (518) 457-0864 or via e-mail at emma.graham@agmkt.state.ny.us.

A contract defining all project terms and conditions and responsibilities of the successful proposer will be developed by the Department. Upon agreement by the contractor and the Department to the provisions of the contract, it will be submitted for approval to the Attorney General of the State of New York and the Comptroller of the State of New York. Contract funds cannot be paid out until the contract is fully executed. Typically, this takes from two to three months from the date of notification of selection. The contractor will be paid on a reimbursement basis after the contract is fully executed. A minimum of 10 percent of the contract funds will be withheld pending satisfactory completion of the project.

The Department and the Office of the State Comptroller reserve the right to audit the selected contractor's books and records relating to the performance of the plan of work during and up to three years after the completion of the plan of work.

LIABILITY

The Department shall not be held liable for any costs incurred by any individual or firm for work performed to prepare its proposal or for any travel or other expenses incurred in the preparation or submission of this proposal. Further, the Department is not liable for any costs incurred prior to formal approval of the contract.

FREEDOM OF INFORMATION

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

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT

June, 2006

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

FOR FUTURE REFERENCE.

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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, licenser, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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.

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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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 State Finance Law §165. (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. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

GENERAL CONDITIONS FOR AGREEMENTS

NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

These general conditions apply to the administrative aspects of the agreement and reflect New York State's contract record keeping and payment procedures. These general conditions cannot be changed.

PAYMENT

Payment shall be made to the **Contractor** under this Agreement upon the submission of a payment request (standard voucher), the required progress report and a budget report in the format prescribed by the **Department**.

The **Contractor** shall submit all requests for payment and reports to the following address: NYS Department of Agriculture and Markets, Division of Fiscal Management, 10B Airline Drive, Albany, NY 12235. Invoices, Standard Vouchers and any reports will not be considered received by the **Department** and any interest which may be due the **Contractor** will not begin to accrue until they have been received by the Division of Fiscal Management.

Initial payment to the **Contractor** under this Agreement shall not be made unless the **Contractor** shall have submitted to the **Department** a written payment request together with such information as required by the Agreement. Initial payment shall not be due until the latter of either the last day of the calendar month of the term of this Agreement, or the thirtieth calendar day after receipt of the payment request, where contract funds have been appropriated and made available to the **Department**.

Payments shall not be made if the **Contractor** fails to file the progress reports and budget reports, if any, as required by this Agreement. The **Contractor's** payment requests shall include a statement of expenses and charges by major budget category for work actually performed or expenses incurred in accordance with the terms of this Agreement during the period covered by the request.

Upon examination of the **Contractor's** payment requests and supporting material, the **Department** may, in its sole discretion, modify or adjust the amount requested to reflect contract funds expended as of the date of the request. Subsequent to its review and approval of the payment request, the **Department** will transmit the request to the Comptroller for payment.

The total payment made under this Agreement will not exceed the **Contractor's** actual costs and expenses arising from the completion of the work under this Agreement.

Final payment, including payment of retained amounts if any, shall not be made until work under the Agreement is completed to the satisfaction of the **Department** and the **Contractor's** final performance report and a final budget report detailing receipt and expenditure of all funds received pursuant to this Agreement by major budget category are received and accepted by the **Department**. Satisfactory completion and acceptance shall be defined as conformance to established standards for such reports and conformance to the attached plan of work.

PROGRESS REPORTS

The **Contractor** shall file written progress reports with the **Department on a quarterly basis**. Progress reports shall provide a detailed narrative description of work completed under the Agreement and include an identification of specific objectives accomplished to date.

PAYMENT CONTINGENCY

Funds for payment under this Agreement are provided to the **Department** through appropriations from the New York State Legislature. These appropriations are made on a fiscal year basis. New York State's fiscal year begins on April 1 of each calendar year and ends on March 31 of the following calendar year. Funds for payments under this Agreement were or are expected to be appropriated to the **Department** during fiscal year . Payments made after fiscal year or payment for work pursuant to this Agreement which is completed or continued by the **Contractor** after fiscal year is subject to appropriation of funds by the Legislature in each subsequent fiscal year.

RETAINAGE

The **Department** shall retain ten (10) percent of the budget amount of this Agreement once payment to the **Contractor** equals ninety (90) percent of the budget amount to ensure completion of the work under this Agreement. The total amount retained shall be paid to the **Contractor** together with the final payment under this Agreement and shall be subject to the same conditions as the final payment.

FINANCIAL LIMIT

The financial limit of State appropriated funds under this Agreement shall not exceed the amount indicated on the latest executed version of the signature page of this Agreement and the **Department** shall not be obligated to make any payment to the **Contractor** in excess of that amount.

CONTRACT EXPENDITURES

Expenditures under this Agreement shall conform to the budget annexed as Appendix B, provided however, that the **Contractor** may vary budget amounts by not more than ten percent (10%) within each specific budget category. Any budget variance in excess of ten percent (10%) shall be made only upon the prior written approval of the **Department**. This paragraph does not apply to budget amounts of one thousand dollars (\$1,000.00) or less.

NON-DUPLICATION OF PAYMENTS

The payments received by the **Contractor** under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, the **Contractor** shall remit to the **Department** the amount which duplicates payment received from other sources.

SUBCONTRACTS

Any subcontract under this Agreement shall be in writing and shall clearly describe the goods or services to be provided and the total cost of such goods or services. Subcontracts for services only shall separately state the rate of compensation on a per-hour or per-day basis.

FINAL REPORT

Not later than thirty (30) days from completion of the work under this Agreement, the **Contractor** shall file with the **Department** a final written report summarizing the **Contractor's** performance of the work under this Agreement.

RECORDS MAINTENANCE, EXAMINATION AND RETENTION

The **Contractor** shall maintain records and accounts in specific detail to identify all contract funds received and expended under this Agreement. The **Contractor** shall maintain a daily written record which contains the name(s) of the officer(s) and employee(s) providing services under this Agreement and the amount of time expended upon such services.

The **Contractor** shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

INDEMNIFICATION

The **Contractor** agrees to indemnify and hold harmless the State of New York and the **Department** from all liability incurred by the **Department** for bodily injury and personal property damage resulting from the negligent acts, errors or omissions of the **Contractor**, its officers, agents or employees in the provision of services under this Agreement, provided that the **Department** promptly notify the **Contractor** of any such claim and afford the **Contractor** an opportunity to defend such claim and cooperate fully with the **Contractor** in the defense of any claims.

NON-SECTARIAN PURPOSE

The **Contractor** shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no contract funds shall be expended directly or indirectly for any private or sectarian purpose.

CONTRACTOR NOT DEPARTMENT EMPLOYEE OR AGENT

Neither the **Contractor**, nor its agents, employees, suppliers or subcontractors shall be in any way deemed to be employees or agents of the **Department** or of the State of New York in performing the work under this Agreement.

DEVIATION FROM WORK

The **Contractor** shall perform the work under this Agreement as outlined in the scope of work annexed as Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of the **Department**.

COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The **Contractor** is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

TERMINATION

The **Department** may terminate this Agreement for convenience upon giving thirty (30) days written notice to the **Contractor**. This Agreement may be terminated at any time upon mutual written consent of the **Department** and the **Contractor**. Upon termination, the **Contractor** shall immediately cease work and prepare a statement of costs, expenses and non-cancelable commitments incurred as of the date of such termination.

The **Department** may terminate this Agreement for cause upon giving one (1) days written notice.

The **Contractor's** failure to perform in accordance with the terms of this Agreement due to circumstances reasonably beyond the **Contractor's** control should not constitute cause for termination pursuant to this provision. In the event of such failure to perform, the **Department** may, at its option, either grant the **Contractor** a specified period in which to correct its performance, or terminate this Agreement in accordance with this paragraph.

MODIFICATION

This Agreement may not be modified unless such modification is made in writing, executed by the **Department** and the **Contractor** and approved by the Attorney General and Comptroller of the State of New York.

NECESSARY SIGNATURES

If the financial limit under this Agreement exceeds Fifty Thousand Dollars (\$50,000) this Agreement shall not be binding and effective upon the **Department** unless and until approved by the Attorney General and the Comptroller of the State of New York.

SPECIAL CONDITIONS FOR AGREEMENTS
NEW YORK STATE DEPARTMENT OF
AGRICULTURE AND MARKETS

These special conditions apply to the administrative aspects of this particular agreement. These special conditions cannot be changed.

ADVANCE PAYMENT

An advance payment of not more than twenty-five percent (25%) of the amount to be paid under this Agreement may be made to the **Contractor** after approval of this Agreement by the State Comptroller.

INSURANCE

The **Contractor** shall obtain and keep in force during the term of this Agreement insurance policies, naming the State of New York and the **Department** as additional insured as follows:

TYPE	AMOUNT
COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE	\$1,000,000
COMMERCIAL GENERAL LIABILITY INSURANCE	\$1,000,000

Certificates of insurance showing the above coverages shall be provided to the **Department** within ten (10) business days from the date the **Contractor** executes the Agreement. The certificates shall provide that the policies shall not be amended or cancelled upon less than ten (10) days written notice to the **Department** from the policy issuers.

TERMINATION PURSUANT TO NEW YORK STATE FINANCE LAW SECTION 139-K

The **Department** reserves the right to terminate this Agreement in the event it is found that the certification filed by the **Contractor** in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the **Department** may exercise its termination right by providing written notification to the **Contractor**.

TRAVEL

Travel expenses may be reimbursed at rates not to exceed rates applicable to State employees provided that such expenses: (1) conform, subject to the contract expenditures provision, to the Budget approved by the Department and annexed as Appendix B; and (2) are necessary for the performance of the work under this Agreement.

Services for Management, Promotion and Development of the New York City Wholesale Farmers' Market

ALL PROPOSERS MUST COMPLETE AND SUBMIT THIS FORM

BUDGET PROPOSAL FORM

<u>Expenditure Category</u>	<u>Amount</u>
Salaries, wages and fringe	\$
Contractual services	\$
Marketing materials	\$
Advertising and promotion	\$
Office supplies, postage and printing	\$
Travel expense (at State government rates)	\$
Communication	\$
Liability insurance	\$
Lease/rental expense	\$
Indirect and overhead expense (limited to 15% of salaries and wages)	\$
Other expenses (specify)	\$
TOTAL	\$

**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 _____, 2009

Notary Public

Signature _____

Name (Typed) _____

Company Position _____

Company Name _____

Date Signed _____

Sworn to before me this

_____ day of _____, 2009

Notary Public

CONSULTANT SERVICES CONTRACTOR'S EMPLOYMENT REPORTS

Instructions for Completing Forms A and B

- **Scope of Contract (Form B only):** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the United States Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)
- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.
- **Number of hours (to be) worked:** for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.
- **Amount payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Reports that are submitted to the Department must be transmitted as follows:

By mail: NYS Department of Agriculture & Markets
 Division Fiscal Management
 10B Airline Drive
 Albany, NY 12235

By fax: (518) 485-7750

Reports that are submitted to the Office of the State Comptroller must be transmitted as follows:

By mail: NYS Office of the State Comptroller
 Bureau of Contracts
 110 State Street, 11th Floor
 Albany, NY 12236
 Attn: Consulting Reporting

By fax: (518) 474-8030 or (518) 473-8808

Reports that are to be submitted to the Department of Civil Service must be transmitted as follows:

By mail: NYS Department of Civil Service
 Alfred E. Smith Office Building
 Albany, NY 12239

<p>OSC Use Only:</p> <p>Reporting Code:</p> <p>Category Code:</p>
--

<p>State Consultant Services</p> <p>Contractor's Annual Employment Report</p> <p>Report Period: April 1, to March 31,</p>

<p>Contracting State Agency Name: _____ Agency Code: _____</p> <p>Contract Number: _____</p> <p>Contract Term: / / to / /</p> <p>Contractor Name: _____</p> <p>Contractor Address: _____</p> <p>Description of Services Being Provided: _____</p>
--

<p>Scope of Contract (Choose one that best fits):</p> <p>Analysis <input type="checkbox"/> Evaluation <input type="checkbox"/> Research <input type="checkbox"/> Training <input type="checkbox"/></p> <p>Data Processing <input type="checkbox"/> Computer Programming <input type="checkbox"/> Other IT consulting <input type="checkbox"/></p> <p>Engineering <input type="checkbox"/> Architect Services <input type="checkbox"/> Surveying <input type="checkbox"/> Environmental Services <input type="checkbox"/></p> <p>Health Services <input type="checkbox"/> Mental Health Services <input type="checkbox"/></p> <p>Accounting <input type="checkbox"/> Auditing <input type="checkbox"/> Paralegal <input type="checkbox"/> Legal <input type="checkbox"/> Other Consulting <input type="checkbox"/></p>

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

<p>Name of person who prepared this report: _____</p> <p>Preparer's Signature: _____</p> <p>Title: _____ Phone #: _____</p> <p>Date Prepared: / /</p>

Use additional pages if necessary)

Please submit one copy of this form to the following:

<p>NYS Office of the State Comptroller Bureau of Contracts 110 State Street, 11th Floor Albany, NY 12236 Attn: Consulting Reporting Fax: (518) 474-8030 or (518) 473-8808</p>	<p>NYS Dept. of Civil Service Alfred E. Smith Office Building Albany, NY 12239</p>	<p>NYS Dept. of Agriculture & Markets Division of Fiscal Management 10B Airline Drive Albany, NY 12235 Fax: (518) 485-7750</p>
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State of New York
Department of Agriculture and
Markets
10B Airline Drive
Albany, NY 12235

Attachment 6

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

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 a 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.

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.);

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**

Attachment 6

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

- 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-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.



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Form 1

Report of Contact Regarding Procurement Pursuant to State
 Finance Law §139-k

Instructions:

State Finance Law §139-k(4) requires Agriculture and Markets' staff to make a written record of any "Contacts" made regarding a procurement during the procurement's "Restricted Period", which runs from the date bids are first solicited to the date of the contract's final approval. A "Contact" is any oral, written or electronic communication that a reasonable person would infer to be an attempt to influence the procurement. Additionally, staff must inquire and record whether the person that made the "Contact" was the Offeror or was retained, employed or designated on behalf of the Offeror to appear before or contact Agriculture and Markets. However, communications received from members of the State legislature, or legislative staffs, when acting in their official capacity, are not considered to be a "Contact" and shall not be recorded. A separate form must be completed for each permissible and impermissible "Contact" received, including each of multiple "Contacts" by a single person or Offeror.

To: Fiscal Management/Contracts _____ (title of procurement)

From: _____ Date: _____
 (name and title)

I was contacted by the below named individual regarding the above identified procurement.

Name: _____

Address: _____

Telephone Number: _____

Place of Principal Employment: _____

Occupation: _____

Date(s) of Contact: _____

Form of Contact:
 correspondence in person by telephone electronic mail other _____

Was the person making the Contact informed that the contact would be documented?
 yes no

Is the above-named person/organization the Offeror in this procurement?
 yes no

If no, was the above-named person/organization retained, employed or designated by the Offeror to:
 - appear before Agriculture and Markets about the governmental procurement?
 yes no
 - contact Agriculture and Markets about the governmental procurement?
 yes no

Additional notes (optional):

This form should be completed and forwarded to Fiscal Management. Fiscal Management will maintain a record of all such contacts and will make it part of the procurement/contract record.



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FORM 2

**Offeror's Affirmation of Understanding and Agreement
 Pursuant to State Finance Law §139-j(3) and §139-j(6)**

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

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.

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



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FORM 3

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

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:	