

# **INVITATION FOR BIDS**

**for**

**AUDIO, LIGHTING, STAGING AND  
BACKLINE DURING THE ANNUAL NEW YORK STATE FAIR  
AT THE NEW YORK STATE FAIRGROUNDS**

**IFB #0182**

IFB Issued: May 9, 2018  
Proposals Due: June 4, 2018

By:

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

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0182: AUDIO, LIGHTING, STAGING AND BACKLINE  
DURING THE ANNUAL NEW YORK STATE FAIR

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**1. INTRODUCTION**

**1.1 OVERVIEW**

This Invitation for Bids (IFB) is issued by the New York State Department of Agriculture and Markets (“AGM” or “the Department”) to invite qualified bidders (“Respondents”) to submit proposals to provide audio, lighting, staging and backline for entertainment and concerts during the annual Great New York State Fair (“State Fair”) at the New York State Fairgrounds (“Fairgrounds”). The recipient of the contract award from this IFB (“Contractor”) shall be the sole provider of these services during the State Fair.

The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is a 375-acre site owned and operated by AGM which is home to the State Fair, an annual multi-day event ending on Labor Day each year.

The mission of the annual State Fair is to hold an exposition (currently 13 days) ending on Labor Day year, identifying, promoting and showcasing the agricultural practices, history and traditions of the State. In addition to agricultural competitions, the State Fair also hosts a 15-acre Midway and free music venues that host multiple national and regional acts a day with the largest being able to hold over 30,000 people. Additionally, there are approximately 600 vendors, including 175 food vendors. The entrance to the State Fair is currently available through eight (8) gates. Paid parking is also available in six (6) lots for approximately 20,000 vehicles as well as parking for approximately 1,000 overnight camping vehicles. The State Fair attracted over 1.16 million people in 2017.

The Fairgrounds has undergone an extensive renovation which includes the construction of the new 136,000 square foot Exposition Center (“Expo Center”). This facility will be the largest Expo Center north of New York City between Boston and Cleveland, a new facility uniquely situated to attract events not previously accommodated by existing regional facilities, such as large car shows, major equestrian competitions, motocross races and other large-scale traveling events not currently visiting the region. The Expo Center is expected to be completed in August 2018.

**1.2 IFB GOALS**

The goal of this IFB is to retain one Contractor to provide audio, lighting, staging and backline for entertainment and concerts held during the annual State Fair.

**1.3 ELIGIBLE BIDDERS**

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

**1.4 TERM**

The contract resulting from this IFB will commence on July 1, 2018 and end on October 1, 2022.

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**1.5 IFB TIMELINE**

Publication in Contract Reporter	May 9, 2018
Deadline for Submission of Written Questions	May 18, 2018 by 3:00 p.m. (EST)
Last update of answers or issuance of IFB Addendum	May 22, 2018
Submission Deadline	June 4, 2018 by 3:00 p.m. (EST)
Bid Opening	June 5, 2018

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

**2. DESCRIPTION OF WORK TO BE PERFORMED**

**2.1 PREMISES**

The New York State Fairgrounds is a 375-acre site that, during the State Fair, has an average daily attendance of almost 90,000 people, with total attendance for the 2017 State Fair being over 1.16 million over thirteen (13) days.

The Fairgrounds includes four major stages and several miscellaneous smaller stages that are used every day of the State Fair for multiple acts and competitions. See Exhibit 1 for a map of the Fairgrounds depicting the locations of the stages; Exhibit 2 for a list of acts that performed on the two largest stages at the 2017 State Fair (Chevy Court and the Experience Stage); and Exhibit 3 for photographs of the four major stages (Chevy Court, Experience, Talent Showcase, and Pan African Village stages) during the State Fair.

**A. Chevy Court**

Chevy Court is located inside Gate 1 and has traditionally hosted two national touring acts each day of the State Fair. Concerts and similar entertainment are held each day of the State Fair at 2:00 p.m. and 8:00 p.m. During the week, a live television program takes place from 10:00 a.m. – 11:00 a.m. Chevy Court is a permanent stage that is 58' x 30' with a front extension that is 40' x 8'. The front of house roof height is 30'.

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**B. Experience Stage**

The Experience Stage is located in the NY Experience, a 6-acre grass festival grounds that includes a pond. It is located on the west end of the Fairgrounds. The stage is temporary for the State Fair. In 2017, the stage was 32' x 32' with a stage roof and weather protection.

**C. Talent Showcase Stage**

The Talent Showcase Stage is located on the west end of the Fairgrounds and has traditionally served as the main stage for 4-H and Youth Competitions that include dancing, singing and other talents. The Talent Showcase Stage is a permanent stage that is 56' x 34'.

**D. Pan African Village Stage**

The Pan African Village Stage is located in Pan African Village on the east end of the Fairgrounds and generally hosts local and regional acts. The Pan African Village Stage is a semi-permanent stage that is 32' x 16' with a permanent stage floor and tents used for the stage roof and weather protection.

**E. Miscellaneous Stages**

The State Fair hosts several other stages and entertainment areas on the Fairgrounds. The locations of these areas are noted on Exhibit 1.

**2.2 SCOPE OF WORK**

During the term of the contract, the selected Contractor will be responsible for providing the following services:

**A. Lot 1 - Audio**

The Contractor shall provide the audio equipment listed in "Attachment 1 - Bid Form" in the quantities ordered by AGM each year. The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all requested audio equipment for all stages except Chevy Court, Experience Stage, and during Gospel Weekend at the Talent Showcase Stage. For Chevy Court, the Experience Stage and during Gospel Weekend at the Talent Showcase Stage, the Contractor will be responsible for the delivery and pick-up only (AGM will provide stagehands to set-up and tear down the audio equipment).

The Contractor must provide all materials and equipment necessary to safely stack, support, suspend, rig, fly, and place all Contractor supplied audio equipment to the satisfaction of AGM. All cable and wires for audio systems must be safely secured and not be exposed or come in contact with the public or performers. All cable and wires laid through walkways must be properly secured and covered with carpet or other flooring material to produce a smooth transition for walking.

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AGM will provide the Contractor with the list and quantities of audio equipment needed by July 15 of each year of the contract.

The delivery, set-up, testing and tuning of the audio equipment shall be completed by noon one (1) day prior to the first day of the State Fair each year. The tear down and pick-up of the equipment may begin no earlier than 7:00 a.m. on the day after the last day of the State Fair each year, and completed no later than seven (7) days after the last day of the State Fair.

**B. Lot 2 - Lighting**

The Contractor shall provide the lighting equipment listed in “Attachment 1 - Bid Form” in the quantities ordered by AGM each year. The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all requested lighting equipment for all stages except Chevy Court, Experience Stage, and during Gospel Weekend at the Talent Showcase Stage. For Chevy Court, the Experience Stage and during Gospel Weekend at the Talent Showcase Stage, the Contractor will be responsible for the delivery and pick-up only (AGM will provide stagehands to set-up and tear down the lighting equipment).

The Contractor must provide all materials and equipment necessary to safely stack, support, suspend, rig, fly, and place all contractor supplied lighting equipment to the satisfaction of the New York State Fair. All cable and wires for the lighting systems must be safely secured and not be exposed or come in contact with the public or performers. All cable and wires laid through walkways must be properly secured and covered with carpet or other flooring material to produce a smooth transition for walking.

AGM will provide the Contractor with the list and quantities of the lighting equipment needed by July 15 of each year of the contract.

The delivery of the lighting equipment must be completed no later than noon one (1) day prior to the first day of the State Fair. The removal of the equipment may begin no earlier than 7:00 a.m. on the day after the last day of the State Fair each year, and must be completed no later than seven (7) days after the last day of the State Fair.

**C. Lot 3 - Staging**

The Contractor shall provide the staging listed in “Attachment 1 - Bid Form” in the quantities ordered by AGM each year. The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all requested staging and equipment.

The Contractor shall provide schematic drawings with the lay-out of equipment, specifications on staging structures and engineered drawings when needed for building and/or fire code compliance. Any staging that is erected shall also meet minimum OSHA standards.

AGM will provide the Contractor with the list and quantities of the staging needed by July 15 of each year of the contract.

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The delivery and set-up of the staging must be completed no later than noon two (2) days prior to the first day of the State Fair. The tear down and pick-up of the equipment may begin no earlier than 7:00 a.m. on the day after the last day of the State Fair each year, and must be completed no later than seven (7) days after the last day of the State Fair.

**D. Lot 4 - Backline**

The Contractor shall provide backline equipment for various concerts (based upon band requests) to be held during the State Fair. The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all requested backline equipment as well as any materials or equipment that may be needed for the operation, performance and protection of the backline.

The Contractor must have equipment in inventory or readily available to provide the needed equipment in a timely manner. The Contractor must provide one (1) qualified technician familiar with all aspects of the supplied backline equipment. The technician must be on-site at hours to be determined by AGM. The technician shall look presentable and wear a shirt that displays the name of the Contractor.

The Contractor must provide all materials and equipment necessary to safely stack, support, suspend, rig, fly and place all Contractor supplied backline equipment to the satisfaction of AGM.

It will be the Contractor's responsibility to advance each show with AGM and to obtain riders and backline equipment requirements. Any additions, changes or deletions to the equipment list based upon the most current riders must be approved in advance by AGM.

The equipment must be the item that is specified or an approved equivalent or equal, in like-new condition, and, unless otherwise approved by AGM, must be delivered by 9:00 a.m. on the day of the show and picked-up after 10:30 p.m. on the night of the show.

**2.3 AGM RESPONSIBILITIES**

AGM will provide the following:

- A Production Manager to work directly with the selected Contractor on all aspects of the Agreement.
- Admission and parking credentials for any employees or subcontractors.
- Parking area for storage or delivery trucks as needed.

**3. PROPOSAL FORMAT, CONTENTS AND SUBMISSION**

**3.1 SUBMISSION TIMELINE**

All bid submission documents required to be responsive for bid evaluation must be received by the Department no later than 3:00 PM (EST) on June 4, 2018 in order to be considered. The Department reserves the right to request any missing information from those items marked with an asterisk (\*) on the

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Submission Documents Checklist. Bidder will have three (3) business days to provide any missing information requested by the Department for those items marked with an asterisk (\*) on the Submission Documents Checklist. All remaining forms and documents required to be completed after notification of selection is made shall be submitted to the Department by the selected contractor prior to execution of the contract.

Any questions concerning this IFB must be received by 3:00 PM (EST) on May 18, 2018. Questions must be submitted in writing via email to Kimberly Carr at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list "AUDIO, LIGHTING, STAGING AND BACKLINE DURING THE ANNUAL NEW YORK STATE FAIR IFB#0182" in the subject line.

A Question and Answer document will be posted to the Department website: [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under "Funding Opportunities" no later than May 22, 2018. No individual written responses will be provided.

Any revisions to this invitation will be posted on the Department's website, [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under "Funding Opportunities". All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the IFB which will be part of the awarded contract. If you are unable to access the Department's website, please contact Kimberly Carr at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov) to arrange for alternate delivery, or at the following mailing address: New York State Department of Agriculture and Markets, Fiscal Department, Attn: Kimberly Carr, 10B Airline Drive, Albany, New York, 12235.

### 3.2 SUBMISSION METHOD

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

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

**Envelope 1, titled "IFB #0182 Minimum Qualifications and Forms and Assurances."**

*Original plus one (1) paper copy* of (See Submission Documents):

- Cover Sheet and Submission Documents Checklist
- Attachment 3 - Mandatory Contract Requirements Certification Form (Original Signatures)
- Attachment 4 - Non-Collusive Bidding Certification (Original Signatures)
- Attachment 5 - MacBride Nondiscrimination Certification Form (Original Signatures)
- Attachment 6 - Procurement Lobbying Law Forms (Original Signatures)
- Attachment 7 - Vendor Responsibility (Original Signatures)
- Attachment 8 – Vendor Assurance No Conflict of Interest (Original Signatures)
- Attachment 9 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)

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- Attachment 10 - References Form demonstrating proof of having met the Minimum Qualification set forth in Section 3.3 of this IFB.

**Envelope 2, titled “IFB#0182 Bid Form/Cost Proposal – Do Not Open.”**

- Original plus one (1) paper copy of Attachment 1 - Bid Form (Original Signatures)
- One (1) electronic copy of Attachment 1 – Bid Form. Electronic media shall be submitted on a USB 2 or 3 compliant Flash Drive and clearly labeled. The electronic version of the Bid Form must be sealed within the same envelope as the corresponding hard copies. In the event that there are any inconsistencies between the electronic submissions and the hard copy submissions, or between multiple hard copy submissions, the original, wet ink, hard copy will be deemed controlling by AGM when reviewing each Cost Proposal.
- Original plus one (1) paper copy of Attachment 2 - Subcontracting Form (Original Signatures)

**Envelope 3, titled “IFB#0182 MWBE Forms – Do Not Open.”**

- Original plus one (1) paper copy of Attachment 11 - MWBE Forms (Original Signatures)

Place the three (3) envelopes described above into one package and mail or hand-deliver to:  
New York State Department of Agriculture and Markets  
Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
ATTN: Kimberly Carr (IFB#0182)

### **3.3 MINIMUM QUALIFICATIONS**

Bidders are advised that AGM’s intent is to ensure that only qualified, responsive and responsible Contractors enter into a contract to provide audio, lighting, staging and backline for entertainment and concerts during the State Fair. AGM considers the following qualification a pre-requisite in order to be considered a qualified Bidder for the purposes of this solicitation:

The Bidder must provide the name of at least four (4) events (including but limited to a concert or similar event) or venues that the Bidder or the Bidder’s proposed subcontractor has provided the rental, installation, and testing of no less than two of the following services: audio, lighting, staging, and backline within the past twenty-four (24) months preceding submission of this bid at a venue(s) with an audience capacity of at least 7,500. The Bidder must provide the name and address of the event or venue, the date service was provided, a description of the services provided at the event or venue (please specify if Bidder’s proposed subcontractor provided any of the services and provide the name of the subcontractor), the venue capacity, and the name and phone number of the event promoter or event operator or the venue owner or venue manager/operator. Note that the Department will contact the references to verify the information provided and the Bidder is solely responsible for the availability of the submitted references. Please provide the above information using the References Form, Attachment 10 of the Submission Documents. The New York State Fair cannot be used as a reference.

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**3.4 MANDATORY CONTRACT REQUIREMENTS**

Each bidder must certify that:

- 1) No other obligation or engagement, contractual or otherwise, will impact the selected Contractor's ability to provide rental of audio, lighting, staging and backline equipment and related services at the Fairgrounds during the contract period.
- 2) The selected Contractor will have full control of all services provided pursuant to this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The selected Contractor will indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the selected Contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) The selected Contractor will obtain and maintain insurance policies that meet the requirements set forth in Exhibit 4.
- 4) The selected Contractor agrees to comply with "Appendix A, Standard Clauses for New York State Contracts," a copy of which is attached to this IFB within Exhibit 5.

**3.5 BID FORM/COST PROPOSAL**

All bids must be submitted on "Attachment 1 - Bid Form" included in the Submission Documents. The Bid Form must not be altered in any way. Please refer to Section 3.2, Submission Method, for information on how to package your proposal. Please follow the instructions in Attachment 1 when completing your bid.

**4. EVALUATION**

**4.1 CONSIDERATION**

For a bidder to be eligible for consideration, it must meet the Minimum Qualifications. For the bid response to be evaluated, the bidder must certify that it will meet the Mandatory Contract Requirements.

**4.2 DETERMINATION OF BID AWARD**

The award will be made to a qualified, responsible bidder submitting the lowest total bid for all lots on "Attachment 1 - Bid Form." Prices submitted on the Bid Form shall remain firm for the duration of the contract.

**5. CONSIDERATIONS RELATED TO THIS PROCUREMENT**

**5.1 DEPARTMENT'S RESERVATION OF RIGHTS**

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The Department reserves the right to:

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

## 5.2 SUBCONTRACTING

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

All subcontracting is subject to the prior written approval of the Department. If the selected contractor determines to subcontract any supplies and equipment, the subcontractor(s) must be clearly identified and

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the nature and extent of the involvement in and/or proposed performance under the Contract must be fully explained by the selected contractor to the Department. As part of this explanation, the Subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form (see Submission Documents Attachment 8), as required by the selected contractor prior to execution of this Contract.

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

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

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

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

**NEW YORK STATE LAW**

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

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15 percent for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract.

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To that end, by submitting a response to this Invitation for Bids (IFB), the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

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

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. The Department will review the submitted MWBE Utilization Plan and advise the respondent of the Department acceptance or issue a notice of deficiency within 30 days of receipt.
- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

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

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**5.4 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. AGM recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of AGM contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, AGM conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/Bidder/Contractor> is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

**5.5 NOTIFICATION OF AWARD**

The Department will notify the selected bidder in writing. Unsuccessful bidders will be notified in writing by the Department within ten business days after the award.

**5.6 DEBRIEFING PROCEDURES**

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

**5.7 BID PROTEST PROCEDURES**

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

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1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the Department
2. The protest must be filed within ten (10) business days of a debriefing, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with Kimberly Carr at:

NYS Department of Agriculture and Markets  
Fiscal Management  
10B Airline Drive  
Albany, NY 12235  
Or via email: [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov)

3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within fourteen (14) business days of receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and, and Fiscal Management will advise OSC that a protest was filed.
4. Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts. An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> Floor, Albany, New York 12236. More information on the Office of the State Comptroller's (OSC) Contract Award Protest Procedures can be found in OSC's Guide to Financial Operations (GFO), Chapter XI.17, available on the internet at <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## **5.8 NEW YORK LAW**

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

## **5.9 REQUIRED APPROVALS**

Any contract award resulting from this solicitation will be subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

## **5.10 VENDOR RESPONSIBILITY AND NYS VENDOR ID**

### **Prime Contractors:**

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

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Vendor Responsibility Questionnaire. Public Authorities, BOCES, public colleges and universities are some of the exempt entities. For a complete list, see:

[http://www.osc.state.ny.us/vendrep/resources\\_docreq\\_agency.htm](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm)

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

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

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

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

**Subcontractors:**

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

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

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

**5.11 COST LIABILITY**

The State of New York, the Department and the Division of the New York State Fair assume no responsibility or liability for the costs incurred by the Bidders in preparing and submitting their bids in response to this solicitation.

**5.12 FREEDOM OF INFORMATION**

The selected contractor's bid response and any contract resulting from this solicitation are subject to the provisions of Article 6 of New York State Public Officers Law, the Freedom of Information Law (NY FOIL). It is the responsibility of the Bidder to designate which components of the bid response are

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proprietary business information to be withheld from disclosure. A bidder may not designate its entire bid response as confidential, proprietary or copyrighted.

**5.13 PROCUREMENT LOBBYING LAW**

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (See *Submission Documents* Attachment 5 -- “Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence”). An offeror/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the IFB through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory 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 member(s) to receive contacts pertaining to this Bid:

Kimberly Carr  
New York State Department of Agriculture & Markets  
Division of Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
E-mail: [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov)

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

**6. REQUIRED ASSURANCES**

**6.1 SUBMISSION DOCUMENTS**

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

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- **Bid Form/Cost Proposal** (Signature Required Hard Copy - the form is included in the **Submission Documents as Attachment 1**)
- **Subcontracting Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 3**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 4**)
- **MacBride Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 5**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents as Attachment 6**)
- **Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents as Attachment 7**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the **Submission Documents as Attachment 8**)
- **Substitute W-9 Form to obtain SFS ID** (Signature Required - Return if SFS Vendor ID is requested – the form is included in the **Submission Documents as Attachment 9**)
- **References Form** (the form is included in the **Submission Documents as Attachment 10**)
- **MWBE/EEO Documents** (the forms are included in the **Submission Documents as Attachment 11**)

## 6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

The successful bidder will be required to execute a written contract with the Department. A sample New York State Department of Agriculture and Market’s contract is attached to this IFB as Exhibit 5. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department’s contract including: Appendix A “Standard Clauses for New York State Contracts” (January 2014); Appendix D “General Conditions for Agreements New York State Department of Agriculture and Markets;” and Appendix E “Special Conditions for Agreements New York State Department of Agriculture and Markets.”

## 7. RECOMMENDED SUBMISSIONS

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

### **Workers’ Compensation Coverage and Debarment**

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

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

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

### **Proof of Coverage Requirements**

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

### **Proof of Workers' Compensation Coverage**

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

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

### **Proof of Disability Benefits Coverage**

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

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

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

For additional information regarding workers' compensation and disability benefits requirements, please refer to the New York State Workers' Compensation Board website at:

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

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

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

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

- ST-220 CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
- ST-220 TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

**Please note that although these forms are not required as part of the bid submissions, the Department encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.**