

INVITATION FOR BIDS

for

**CONCESSION AND CATERING SERVICES AT THE EXPOSITION
CENTER AT THE NEW YORK STATE FAIRGROUNDS**

IFB #0183

IFB Issued: June 27, 2018
Proposals Due: July 20, 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 #0183: CONCESSION AND CATERING SERVICES AT THE EXPOSITION CENTER AT THE
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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 concession and catering services at the Exposition Center (“Licensed Premises”) at the New York State Fairgrounds (“Fairgrounds”) on a year-round basis. The recipient of the contract award from this IFB (“Contractor” or “Licensee”) shall be the sole operator of the concession stands and the catering for this facility.

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 Great New York State Fair, a multi-day event ending on Labor Day each year (“State Fair”).

The mission of the annual State Fair is to hold an exposition (currently 13 days) ending on Labor Day each 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 a free music venue that hosts two national touring acts a day and can hold over 30,000 people. 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 also operate year-round (“non-Fair”) offering several outstanding venues at the Fairgrounds. In 2017, the Fairgrounds hosted approximately 189 non-Fair events encompassing over 730 event-days. A wide variety of non-Fair events benefit from the Fairgrounds’ expansive buildings, open space, central location and convenient highway access. Current non-Fair events include major entertainment such as festivals, equestrian competitions, RV rallies, consumer shows, community events and corporate or organization meetings.

The Fairgrounds has undergone an extensive renovation which includes the construction of the new 136,000 square foot Exposition Center. This facility will be the largest Exposition 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 Exposition Center will be completed in August 2018. See Exhibit 1 for renderings of the Exposition Center.

1.2 IFB GOAL

The goal of this IFB is to retain one Contractor to provide concession and catering services at the Exposition Center (“Licensed Premises”) at the New York State Fairgrounds on a year-round basis.

1.3 TERM

The contract resulting from this IFB will be for a term of five (5) years. It is anticipated that the contract will be awarded on July 25, 2018. The contract term will commence in 2018 and end in 2023.

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1.4 IFB TIMELINE

Publication in Contract Reporter:	June 27, 2018
Deadline for Submission of Written Questions:	July 6, 2018 by 3:00 p.m. (EST)
Last update of answers or issuance of IFB Addendum:	July 10, 2018
Submission Deadline:	July 20, 2018 by 3:00 p.m. (EST)
Bid Opening:	July 23, 2018
Tentative Award Date:	July 25, 2018
Tentative Contract Start Date:	August 1, 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 LICENSED PREMISES

The Exposition Center is a 136,000-square foot flexspace building with 110,000 square foot of clearspan expo space. 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.

There are six (6) concession rooms to be provided as part of the “Licensed Premises” to the awarded “Contractor” or “Licensee.” Of the six (6) concession rooms, four (4) are designed for the Licensee to sell prepared foods, drinks and/or similar items (from the First-Floor level). There is one (1) room (on the First Floor) designated as the ‘Kitchen’ (Room 111 Concession). One (1) room on the Mezzanine Floor is designated as ‘Catering’ (Room 201 Catering) and is intended to service the VIP areas or other pre-function spaces. One (1) of the four (4) rooms for selling prepared items (Room 144 Concession) is designed and constructed to service the exterior of the Exposition Center. All other rooms for selling prepared food (Rooms 113, 114, and 127) are designed and will be constructed to service the interior of the Expo Hall.

All concessions have transaction counters and motorized counter shutter with anodized aluminum (coiling shutter). Electronic video menu boards are located at each concession (with the exception of Room 201 Catering), centered at counter opening. Concessions will have sealed concrete floors with rubber base. Walls are either 5/8 inch gypsum wallboard or concrete masonry units (CMU). All walls will be painted.

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Concessions (with the exception of Room 201) will have acoustical panel ceiling (APC) at twelve (12) feet above finished floor. The ceiling to Room 201 Catering is ten (10) feet above the finished floor. Video menu boards will be supplied including necessary power and data.

All concessions have required sinks for hand washing (with instant hot water heater) and floor drains. Water and electric are at each concession. Each Concession will have a hose bibb. Gas is provided only at the Kitchen (Room 111 Concession). Concessions are designed to provide 30 foot candles of illumination with LED lamps (controlled by occupancy sensors and switches). General purpose electrical receptacles are provided at the Concessions (GFCI as required). Concessions are mechanically conditioned spaces (heating and cooling). The Kitchen (Room 111) has a dedicated exhaust fan for removing grease fumes from the Exposition Center. The Exposition Center will have an oil-water separator and a grease manhole. Rooms 111, 113, 114, and 201 each have (in addition to a sink for handwashing) a three-bay sink. Areas where three-bay sinks are provided also are outfitted with a solids separator and grease trap.

Room 111 Concession (Kitchen), includes a walk-in cooler-freezer combination (Room 111B). Additionally, Room 111 includes an exhaust hood at the South wall. The hood will be fitted with an ansul fire suppression system and designed to accommodate: a fryer, a convection oven, and a flat top grill. All necessary equipment (excluding walk-in cooler-freezer and ansul-hood) necessary to operate the Concessions shall be provided by Licensee. Room 111 Concession (Kitchen) is designed and will be constructed to provide the following connections:

- Fryer – two (2) 20 Amp, 208V/3 Phase receptacles, and gas connection of equal capacity;
- Convection Oven – one (1) 45 Amp, 208V/3 Phase receptacles, and gas connection of equal capacity;
- Flat Top Grill – one (1) 90 Amp, 208V/2 Phase receptacles, and gas connection of equal capacity;
- and
- Twelve (12) general purpose 20 Amp 208V/3 Phase receptacles.

Rooms 113, 114, 127, and 144 will have receptacles to power food warming equipment and provide no less than a minimum of eight (8) general purpose 20 Amp 208V/3 Phase receptacles.

Room 201 (Catering) includes power at walls to energize hot/cold carts to support 200 plates (for catered functions).

See Exhibits 2, 3 and 4 for design drawings of the Exposition Center and concession spaces.

2.2 SCOPE OF WORK

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

A. Concession and Catering Services at the Exposition Center

The Contractor will be the sole provider of the concession and catering services at the Licensed Premises during the term of the Agreement.

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The Contractor will be expected to develop and operate a quality food, beverage and concession and catering business consistent with existing and future Fairground operations that competes effectively in prevailing market conditions. The operation is expected to be attractive in content, presentation and price point. The food and beverage menus, including pricing, must be provided to AGM by the first day of every month. The naming of concession stands in the Exposition Building requires the express written approval of AGM.

The Contractor shall ensure the following:

- All of the coffee sold is roasted in New York State;
- All of the milk, cream and cheese products is processed or manufactured in New York State;
- All of the hotdogs, sausage, bratwurst and similar products is manufactured in New York State;
- All of the bottled water offered for sale must be produced and/or manufactured in New York State;
- All of the wine, cider, and spirits offered for sale must be produced and/or manufactured in New York State; and
- At least 80% of all of the beer offered for sale must be produced and/or manufactured in New York State.

Further, all other food and beverages should, to the extent practicable, be produced and/or manufactured in New York State. AGM will help the Contractor procure New York State fresh and processed food products.

AGM's intent is to grant the selected Contractor discretion in achieving this goal, subject to compliance with License requirements.

The Contractor may submit to AGM a request for an exemption from requirements for a specific product listed above if the product needed is not manufactured in New York State.

At least one of the concession stands operated by the selected Contractor must be branded as a Taste NY location and include hot and cold products. At least fifty-one percent of products sold must be grown and/or manufactured in New York State.

The Contractor shall provide to AGM by the first day of every month a report or reports, as prescribed by AGM, demonstrating where the products, including alcoholic and non-alcoholic beverages and food products being served are grown or manufactured.

Other than the equipment specifically listed in the description of the facility, the Contractor shall be responsible for providing all required kitchen, storage and counter equipment as well as all food storage, preparation and serving equipment and utensils.

Any improvements made to the Licensed Premises which would be commonly considered an appurtenance or fixture shall not be made without the prior consent of the Department and shall become the property of the State of New York.

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During the Term of the License, the selected Contractor shall provide concession and catering services at the Exposition Center. Service shall include: (i) the provision of concession and catering services during the annual New York State Fair, (ii) the provision of concession services during events held in the Exposition Center, this shall include working with the show or event promoter to determine menus and hours of operation. The menu should include a variety of both hot and cold items as well as a diversity of products representing different cuisines including, but not limited to, Kosher and vegan options if requested; and (iii) the provision of catering services, as needed and requested, by the show or event promoter in the Exposition Center.

If AGM uses an exclusive provider of bottled water or other goods, the selected Contractor will be expected to purchase those items from AGM's vendor.

The selected Contractor shall operate the Licensed Premises in compliance with the New York State Sanitary Code, as administered and enforced by the Onondaga County Health Department and shall remain in full compliance at all times. The selected Contractor shall provide the Department with a copy of its annual health inspection certificate. If the Contractor fails its annual health inspection, the Department reserves the right to retain, at the expense of the Contractor, the services of an independent sanitation consultant to ensure safe and sanitary operation of the Licensed Premises. Failure of Contractor to comply with recommendations of the independent sanitation consultant in a timely and responsive manner may result in termination of the License for cause.

The selected Contractor shall provide the concession and catering services using its employees. The Contractor's employees shall wear uniforms, which include the name of the business, at all times. The uniforms may not include "T-shirts." Contractor's employees must be pleasant, neat, clean and well trained. The selected Contractor shall be responsible for the cost of employee admissions and parking during the annual New York State Fair.

B. Hours of Operation

1. Fair

Service shall be provided at the Exposition Center every day during the annual New York State Fair beginning no later than 10:00 a.m. and not closing prior to 10:00 p.m. Each of the concession stands in the Exposition Center shall be open during these times. At a minimum, service shall include the provision of hot and cold concession-style foods as well as both alcoholic and non-alcoholic drinks. The menu should include a variety of both hot and cold items as well as a diversity of products representing different cuisines including, but not limited to, Kosher and vegan options. The selected vendor shall also provide catering services in the building as requested.

2. Non-Fair

During the non-Fair, service shall be provided for the events held at the Exposition Center as may be agreed upon by the event promoter, AGM and the Contractor. The hours of operation and the

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number of concession stands to be opened shall be coordinated with AGM and event promoters. The Contractor shall provide for all cleaning and maintenance at the concession stands and catering facilities and shall provide for the repair of any damage that results from the operation of these concession stands and catering facilities.

2.3 FACTORS SIGNIFICANT TO THIS IFB

- A. With the exception of all walk-in coolers, walk-in freezers and hood systems, the maintenance and replacement of equipment related to this solicitation will be the sole responsibility of the selected Contractor, as will any other equipment, furnishings and supplies that will be needed to operate the Licensed Premises in accordance with the IFB.
- B. The selected Contractor shall consider the NYS PSC Energy Efficiency Portfolio Standard when purchasing and/or installing equipment and when utilizing systems such as lighting, heating, air conditioning, and exhaust systems.
(<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/2197DAD6F78ECCB085257BA9005E71A6?OpenDocument>) The Department and the selected Contractor shall agree on reasonable temperatures based on system capacities such that the building does not require overheating or overcooling.
- C. The selected Contractor shall be responsible for the cost of utilities. The selected Contractor shall pay AGM a garbage removal and recycling fee of two hundred fifty dollars (\$250) monthly. The Department will provide refuse removal, which includes the removal of bulk grease and cooking oil, including used fryer oil. Payment for garbage and recycling shall be made quarterly to the Department.
- D. The premises is offered in “as is/where is” condition. The selected Contractor will be required to provide any and all tools, fixtures, furnishings (including but not limited to tables and chairs), and other appurtenances necessary to successfully operate the business, excluding those included as part of the Licensed Premises as set forth in Section 2.1 of this IFB. Upon expiration of the term or termination of this License, the selected Contractor will be expected to cooperate with the Department to facilitate any transition to a new vendor or winding down operations. Such cooperation shall include, but not be limited to cleaning and restoring the Licensed Premises to the same condition (wear and tear excepted) or better condition than at the commencement of the License term.
- E. The selected Contractor is responsible for obtaining an appropriate liquor license that allows for the sale of beer, wine and spirits.
- F. The selected Contractor must, within three months of a successful bid, employ at least one ServSafe certified manager/supervisor who actively supervises food preparation activities. ServSafe is a food and beverage safety training certificate program administered by the National Restaurant Association. The program is accredited by American National Standards Institute and the Conference for Food Protection. More information regarding manager training can be found at <https://www.servsafe.com/manager/food-safety-training-and-certification>.
- G. The selected Contractor will be responsible for any parking and admission credentials for their employees during the annual New York State Fair.

3. BID SUBMISSION

3.1 SUBMISSION TIMELINE

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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 July 20, 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 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 July 6, 2018. Questions must be submitted in writing via email to Joyce Willi at procurement.info@agriculture.ny.gov. Please list "CONCESSION AND CATERING SERVICES AT THE EXPOSITION CENTER IFB#0183" in the subject line.

A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under "Funding Opportunities" no later than July 10, 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 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 Joyce Willi at procurement.info@agriculture.ny.gov to arrange for alternate delivery, or at the following mailing address: New York State Department of Agriculture and Markets, Fiscal Department, Attn: Joyce Willi, 10B Airline Drive, Albany, New York, 12235.

3.2 SUBMISSION METHOD

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

Mail or hand deliver a bid response in **one package containing the following two (2) separately labeled and sealed envelopes:**

Envelope 1, titled "IFB #0183 Minimum Qualifications and Forms and Assurances."

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

- Cover Sheet and Submission Documents Checklist
- Attachment 2 - Mandatory Contract Requirements Certification Form (Original Signatures)
- Attachment 3 - Non-Collusive Bidding Certification (Original Signatures)
- Attachment 4 - MacBride Nondiscrimination Certification Form (Original Signatures)
- Attachment 5 - Procurement Lobbying Law Forms (Original Signatures)
- Attachment 6 - Vendor Responsibility (Original Signatures)
- Attachment 7 – Vendor Assurance No Conflict of Interest (Original Signatures)
- Attachment 8 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)

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- Attachment 9 – Experience Form - Demonstrating proof of having met the Minimum Qualification as set forth in Section 3.3 of this IFB.

Envelope 2, titled “IFB#0183 Bid Form/Cost Proposal – Do Not Open.”

- Original plus four (4) paper copies of Attachment 1 - Bid Form (Original Signatures)

Place the two (2) 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: Joyce Willi (IFB#0183)

3.3 MINIMUM QUALIFICATIONS

Respondents are advised that AGM’s intent is to ensure that only qualified, responsive and responsible Contractors enter into a contract to provide concession and catering services as defined in this IFB. AGM considers the following qualification a pre-requisite in order to be considered a qualified Respondent for the purposes of this solicitation:

Own and/or operate at least two (2) year-round or seasonal restaurants (full service or limited service) or food concession operations for at least three (3) consecutive years in the past five (5) years preceding submission of this bid. Bidder should provide the name and address of the restaurant or food concession operation and the dates the bidder owned and/or operated the restaurant or food concession operation (See Submission Documents, Attachment 9 “Experience Form”).

For purposes of this solicitation:

- Multiple concession stands at one location will be considered individual operations
- Food truck operations do not qualify as food concession operations
- “Seasonal” is defined as 3 (three) or more months in a calendar year
- A “full service restaurant” is defined as a sit down eatery where food is served directly to the customers’ table
- A “limited service restaurant” is any establishment whose patrons generally order or select items and pay before eating

3.4 MANDATORY CONTRACT REQUIREMENTS

Each bidder must certify that, if selected, the bidder will meet the following requirements:

- 1) No other obligation or engagement, contractual or otherwise, will impact the selected contractor’s ability to provide concession and catering services at the Exposition Center at the New York State Fairgrounds during the contract period.
- 2) The selected contractor will have full control of the personnel and supplies/equipment provided and associated services and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the supplies/equipment and services provided. The selected contractor will

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indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the selected contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.

- 3) The selected contractor will obtain and maintain the insurance policies that meet the requirements set forth in Exhibit 5 of this IFB.
- 4) The selected contractor agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is included in the sample New York State Department of Agriculture and Market’s License Agreement attached to this IFB as Exhibit 6.

3.5 BID FORM

A fully completed and properly executed Bid Form (See Submission Documents Attachment 1) must be submitted for this IFB. The Bid Form must not be altered in any way. To be considered, the bidder must offer a license fee that consists of the following:

- (i) a fee based upon a percentage of the gross receipts, excluding taxes and gratuities, received by the Licensee for the sale of alcoholic beverages, food, non-alcoholic beverages (including water), and catered events.

Gross receipts shall be the total amount of money, excluding any taxes imposed by any taxing authority and gratuities, received, realized by, or accruing to the Licensee from the sales, for cash, including debit transactions, and credit, for food, and alcoholic and non-alcoholic beverages (including water) made pursuant to this License. Alcoholic beverages shall include all beverages subject to the Alcoholic Beverage Control Law of the State of New York.

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 highest bid on the Bid Form. The fee 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

The Department reserves the right to:

- Reject any or all proposals received in response to the IFB;

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- 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 TRANSFER OF INTEREST PROHIBITED

The License awarded from this IFB presumes that the Licensee's ownership will not change during the Term of the License. In the event of change of ownership or principals of the Licensee, the License arising from this IFB may be terminated by the Department without liability. No change in ownership or principals of any Licensee shall be made or become effective unless the Department is notified, in writing, of the change not less than ninety (90) days before the proposed change and approves such proposed change in writing. Sublicensing is not permitted.

5.3 NOTIFICATION OF AWARD

The Department will notify the selected bidder verbally, followed by a written confirmation. Unsuccessful bidders will be notified in writing by the Department within ten (10) business days after the award.

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5.4 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.

5.5 BID PROTEST PROCEDURES

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

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

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

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

5.6 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.

5.7 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.

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5.8 VENDOR RESPONSIBILITY AND NYS VENDOR ID

Prime Contractors:

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

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

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

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

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

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

Subcontractors:

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

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

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

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5.9 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.

5.10 FREEDOM OF INFORMATION

The selected contractor's bid response and any contract resulting from this solicitation are subject to the provisions of Article 6 of New York State Public Officers Law, the Freedom of Information Law (NY FOIL). It is the responsibility of the Bidder to designate which components of the bid response are proprietary business information to be withheld from disclosure. A bidder may not designate its entire bid response as confidential, proprietary or copyrighted.

5.11 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:

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

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

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Appendix E “Special Conditions for Agreements New York State Department of Agriculture and Markets.”

6. REQUIRED ASSURANCES

6.1 SUBMISSION DOCUMENTS

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

- **Bid Form** (Signature Required - the form is included in the **Submission Documents as Attachment 1**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 3**)
- **MacBride Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 4**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents as Attachment 5**)
- **Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents as Attachment 6**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the **Submission Documents as Attachment 7**)
- **Substitute W-9 Form to obtain SFS ID** (Signature Required - Return if SFS Vendor ID is requested – the form is included in the **Submission Documents as Attachment 8**)
- **Experience Form** demonstrating proof of having met the Minimum Qualification set forth in Section 3.3 of this IFB (the form is included in the **Submission Documents as Attachment 9**)

6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

The successful bidder will be required to execute a written License Agreement with the Department. A sample New York State Department of Agriculture and Market’s License Agreement is attached to this IFB as Exhibit 6. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department’s License Agreement including: Appendix A “Standard Clauses for New York State Contracts” (January 2014).

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

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

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

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

Proof of Coverage Requirements

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

Proof of Workers' Compensation Coverage

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

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

Proof of Disability Benefits Coverage

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of

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coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

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

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

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

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

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

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

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

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

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