

# **INVITATION FOR BIDS**

**for**

**LAWN CARE SERVICES**

**AT THE NEW YORK STATE FAIRGROUNDS**

**IFB #0199**

IFB Issued: December 18, 2018  
Proposals Due: January 25, 2019

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 #0199: LAWN CARE SERVICES  
AT THE NEW YORK STATE FAIRGROUNDS

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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 to invite qualified bidders to submit bids to provide seasonal lawn care maintenance and grounds keeping services at the New York State Fairgrounds. The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is owned and operated by the New York State Department of Agriculture and Markets (AGM).

**1.2 IFB GOAL:**

The objective of this IFB is to retain one contractor to provide lawn care and grounds keeping services, including but not limited to: lawn mowing, pruning, spring cleanup, weed trimming, aeration of the lawn and general lawn care services. The contractor will be required to maintain the Fairgrounds in a park-like appearance.

**1.3 TERM:**

The contract resulting from this IFB will be for a five (5) year term. The contract will begin on April 1, 2019 and end on March 31, 2024. Services will be provided weather-permitting pursuant to the “Approximate Mowing and Maintenance Schedule” set forth in Section 2.2(H) of this IFB.

**1.4 OPTIONAL SITE VISIT(S)**

Two non-mandatory tours of the State Fairgrounds will be made available to prospective bidders on January 8, 2019 at 11:00 a.m. and January 10, 2019 at 11:00 a.m. Prospective bidders are encouraged to attend at least one tour; prospective bidders are invited to attend more than one tour. To schedule a tour, please email [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov) no later than 3:00 p.m. the day prior to the tour. No substantive questions may be asked during the tour. All questions must be submitted in writing as set forth in Section 3.1 of this IFB.

**1.5 IFB TIMELINE:**

Publication in Contract Reporter:	December 18, 2018
Non-Mandatory Site Visits:	January 8, 2019 at 11:00 a.m. (EST) and January 10, 2019 at 11:00 a.m. (EST)
Deadline for Submission of Written Questions:	January 14, 2019 by 3:00 p.m. (EST)
Last Update of answers or issuance of IFB Addendum <a href="http://www.agriculture.ny.gov/RFPS.html">http://www.agriculture.ny.gov/RFPS.html</a> no later than:	January 17, 2019
Submission Deadline:	January 25, 2019 by 3:00 p.m. (EST)
Bid Opening:	January 28, 2019

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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 is home to the annual New York State Fair as well as many non-Fair events during the year.

**2.2 SCOPE OF WORK:**

The selected contractor shall furnish all labor, tools, vehicles, supplies, and equipment required to perform the services described hereunder at the State Fairgrounds. A map showing the areas to be maintained is included as Exhibit 1. The contractor shall maintain the lawns, trees and shrubs in a neat and clean condition. The contractor shall collect and haul away all clippings, trimmings and cuttings within the same day of service to areas designated by the State Fair Maintenance Supervisor.

The selected contractor must provide competent, trained lawn care personnel for all services provided under this contract. A representative of the contractor, in addition to the crew foreman, shall be available locally during regular working hours. The contractor shall be capable of being contacted on a 24 hours per day-7 days a week basis in order to provide services as needed to accommodate unexpected schedule changes and/or added events. (For example, when a large event begins on a Monday, the contractor may be required to provide services on Sunday rather than Monday).

There shall be no additional cost for services provided outside of the contractor's usual business hours or on Saturday, Sunday and legal holidays.

**(A) Lawn Mowing:** Lawn mowing will be scheduled by the State Fair Property Manager. The frequency of mowing will generally be in accordance with the schedule set forth in Section 2.2(H) of this IFB (colors refer to locations on map, Exhibit 1). The schedule may vary at AGM's discretion (i.e., during a drought the area that is to be mowed weekly may be mowed bi-weekly or extra mowing may be required in a wet year). Exhibit 2 is a summary of the number of times the lawn was mowed each year for the years 2014 through 2017. The last lawn mowing prior to the Great New York State Fair (State Fair) shall start no earlier than five (5) days prior to the first day of each State Fair held during the Term of the Agreement and shall be completed no later than four (4) days prior to the first day of each State Fair held during the Term of the Agreement. The State Fair is a multi-day event that ends on Labor Day each year. The 2019 State Fair will be thirteen (13) days and will be held August 21, 2019 through September 2, 2019. Grass clippings thrown or blown onto roadways or walkways must be removed. Grass around trees, rocks, building foundations, curbs, ramps, fences, walkways and other obstacles must be mowed or trimmed. Vegetation in banks and ditches within areas being mowed must also be trimmed each time the area is mowed. In areas that contain cattails, the cattails must be cut each time the area is mowed.

**(B) Pruning and Shaping:** Two times per year, in April and August (prior to the State Fair), the contractor will prune and trim small trees, ornamental plantings, including all shrubs, and remove debris to a specified location on the Fairgrounds. The contractor will trim and shape all shrubbery, prune dead branches from small trees and ornamental plantings, and remove "sucker shoots" from all deciduous trees. The date for this work must be scheduled in advance with the State Fair Property Manager, who will inspect and approve job performance

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following the completion of the work.

**(C) Spring Cleanup:** Once per year in April, the selected contractor will rake and remove leaves, and remove dead branches and debris from the Fairgrounds. The Fairgrounds include all lawn areas, under all shrubs and trees, and all shrubbery beds. The date of the spring cleanup session must be scheduled in advance with the State Fair Property Manager, who will also inspect and approve job performance following the cleanup of each area.

**(D) Weed Trimming:** The selected contractor shall trim and/or weed all paver and patio areas and cracks on the grounds one week prior to the Syracuse Nationals (held in July each year) and one week prior to the State Fair each year during the Term of the Agreement. The date for this work must be scheduled in advance with the State Fair Property Manager, who will inspect and approve job performance following the completion of the work.

**(E) Lawn Aeration:** The selected contractor shall aerate the grass areas in Chevy Court and Indian Village once in May and once in October each year during the Term of the Agreement. The date for this work must be scheduled in advance with the State Fair Property Manager, who will inspect and approve job performance following the completion of the work.

**(F) Veterans Memorial Trimming:** The selected vendor shall trim and/or weed the brick and paver area at the Veterans Memorial biweekly beginning approximately in April until October. This area is approximately 7,500 square feet.

**(G) Reporting:** The selected vendor shall fill out and submit a “Lawn Maintenance Service Performance Sheet” (attached as Exhibit 3) each time work is performed on the State Fairgrounds. The contractor and the State Fair designee must sign the form before payment for services rendered may be authorized. The State Fair Property Manager will conduct inspections on a regular basis.

**(H) Schedule of Services:** All services must be scheduled and approved in advance with the State Fair Property Manager. The schedule may vary at AGM’s discretion (i.e., During a drought the area that is to be mowed weekly may need to be mowed biweekly or during a wet season extra mowing may be required to cut the grass at the required length set forth in this IFB. If extra mowing is required (i.e. twice in one week), the contractor will be compensated for each mow approved by the State Fair Property Manager). The areas referenced in the “Approximate Mowing and Maintenance Schedule” below are depicted on Exhibit 1. As noted above, all services must be scheduled and approved in advance with the State Fair Property Manager. The selected vendor will only be compensated for actual services rendered and approved in advance by the State Fair Property Manager.

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SERVICES	APPROXIMATE MOWING AND MAINTENANCE SCHEDULE
<b>LAWN MOWING - GREEN AREA (approximately 60 acres)</b>	Weekly mowing beginning in April until October weather permitting. Mowing may start on Monday, but must be completed by Tuesday of each week. <u>All clippings in this area must be bagged.</u> An area of the Fairgrounds will be designated for dumping the clippings. Lawns in this area must be maintained at 2 1/2" length. The last lawn mowing prior to the State Fair shall start no earlier than five (5) days prior to the first day of each State Fair held during the Term of the Agreement and shall be completed no later than four (4) days prior to the first day of each State Fair held during the Term of the Agreement.
<b>LAWN MOWING - YELLOW AREA (approximately 20 acres)</b>	Biweekly mowing beginning in April until October weather permitting. Lawns in this area must be mowed to a height of 3". The last lawn mowing prior to the State Fair shall start no earlier than five (5) days prior to the first day of each State Fair held during the Term of the Agreement and shall be completed no later than four (4) days prior to the first day of each State Fair held during the Term of the Agreement.
<b>PRUNING AND SHAPING (entire Fairgrounds)</b>	Once in April and once in August the selected contractor shall prune and trim small trees, ornamental plantings, including all shrubs, and remove debris to a specified location on the Fairgrounds. The contractor shall trim and shape all shrubbery, prune dead branches from small trees and ornamental plantings, and remove "sucker shoots" from all deciduous trees.
<b>SPRING CLEANUP (entire Fairgrounds)</b>	Once per year in April, the selected contractor shall rake and remove leaves, and shall remove dead branches and debris from the Fairgrounds. The Fairgrounds include all lawn areas, under all shrubs and trees, and all shrubbery beds.
<b>WEED TRIMMING (all paver and patio areas and cracks on the Fairgrounds)</b>	Once one week prior to the first day of the Syracuse Nationals (held in July each year) and once one week prior to the first day of the State Fair the selected contractor shall trim and/or weed all paver and patio areas and cracks on the Fairgrounds.
<b>LAWN AERATION – BLUE AREA (approximately 6 acres)</b>	Once in May and once in October the selected contractor shall aerate the grass areas in Chevy Court and Indian Village.
<b>VETERANS MEMORIAL TRIMMING – RED AREA (approximately 7,500 square feet)</b>	Biweekly beginning in April until October (weather permitting) the brick and paver areas at the Veterans Memorial shall be trimmed and/or weeded.

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**3. BID SUBMISSION**

**3.1 SUBMISSION TIMELINE**

All bid submission documents required to be responsive for bid evaluation must be received by the Department no later than 3:00 PM (EST) on January 25, 2019 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 January 14, 2019. Questions must be submitted in writing via email to Judy Giovannetti at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list "LAWN CARE SERVICES IFB#0199" 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 January 17, 2019. 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 Judy Giovannetti 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: Judy Giovannetti, 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 four (4) separately labeled and sealed envelopes:**

**Envelope 1, titled "IFB #0199 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)

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- 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 - Executive Order No. 177 Form (Original Signatures)
- Attachment 9 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)
- Attachment 10 - Experience Form demonstrating proof of having met the Minimum Qualification set forth in Section 3.3(1) of this IFB.
- Attachment 11 - References Form demonstrating proof of having met the Minimum Qualification set forth in Section 3.3(2) of this IFB.

**Envelope 2, titled “IFB#0199 Bid Form – Do Not Open.”**

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

- Attachment 1 - Bid Form and Subcontracting Form (Original Signatures)

**Envelope 3, titled “IFB#0199 MWBE Forms – Do Not Open.”**

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

- Attachment 12 - MWBE Forms (Original Signatures)

**Envelope 4, titled “IFB#0199 SDVOB Forms – Do Not Open.”**

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

- Attachment 13 - SDVOB Forms (Original Signatures)

Place the four (4) 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: Judy Giovannetti (IFB#0199)

### 3.3 MINIMUM QUALIFICATIONS

To be considered:

- (1) Bidder and/or Bidder’s employees or subcontractors must have a minimum of five (5) consecutive years of experience in providing lawn mowing services to commercial and/or residential clients. Please provide the above information demonstrating the requisite experience in “Attachment 9 - Experience Form” located in the Submission Documents. Include a description of the lawn mowing services provided and the dates services were provided (must have a minimum of five (5) consecutive years of experience). Bidder may attach resumes or company bios to supplement the information provided in Attachment 9. The Department reserves the right to confirm the information provided in Attachment 9.
- (2) References: Bidder shall provide the name, address and phone number of two (2) commercial and/or residential clients or accounts that the Bidder has provided lawn mowing and lawn care

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services for within the last thirty-six (36) months preceding submission of this bid. At least 1 of the 2 clients or accounts referenced must include lawn mowing services of at least twenty (20) acres a minimum of biweekly and at least 1 of the 2 clients or accounts referenced must include lawn mowing services of at least five (5) acres a minimum of biweekly. Bidder must provide the name and location of the area mowed, the size of the area mowed, the frequency of mowing, and the name and phone number of the client or account. The Department would prefer that the references listed are two different clients, however, the same client may be used as a reference if the client has two different size locations, one of which is at least 20 acres (one contiguous parcel or multiple parcels at one geographic location that total at least 20 acres) and the other at least 5 acres (one contiguous parcel or multiple parcels at one geographic location that total at least 5 acres) requiring lawn mowing a minimum of biweekly. Note that the Department will contact the references provided for negative and positive references 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.

### **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 lawn care services 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 services and supplies/equipment provided. The selected contractor will indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the selected contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) The selected contractor will obtain and maintain the insurance policies that meet the requirements set forth in Exhibit 4 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 AGM contract attached to this IFB as Exhibit 5.

### **3.5 BID FORM**

All bids must be submitted on the "Bid Form" included in the Submission Documents section. The Bid Form must not be altered in any way. Bidders must enter a unit price for each item on the Bid Form. All unit prices shall be inclusive of all costs and profit (includes but is not limited to: Direct & Indirect Costs, Payroll, Fringe Benefits, Supplies and Materials, Equipment, Overhead and Profit). Unit prices shall be multiplied by the estimated quantities for evaluation purposes only. The selected contractor will only be

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paid for actual services provided. Unit prices submitted on the Bid Form shall remain firm for the duration of the contract subject to any price adjustment pursuant to Section 5.3 of this IFB.

**4. EVALUATION**

**4.1 CONSIDERATION**

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

**4.2 DETERMINATION OF BID AWARD**

The award will be made to a qualified, responsible bidder submitting the lowest total bid on the Bid Form. The total Bid will be calculated by multiplying the unit prices bid by the estimated quantities for evaluation purposes only. The selected contractor will only be paid for the actual services provided. Unit prices submitted on the Bid Form shall remain firm for the duration of the contract subject to any price adjustment pursuant to Section 5.3 of this IFB.

**5. CONSIDERATIONS RELATED TO THIS PROCUREMENT**

**5.1 DEPARTMENT'S RESERVATION OF RIGHTS**

The Department reserves the right to:

- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals.
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Prior to the *bid opening*, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;

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- 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 Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the Department. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to approval of the Department. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to the Department. As part of this explanation, the subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this Agreement.

The Contractor retains ultimate responsibility for all services performed under the Agreement. All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement including, but not limited to, the body of the Agreement, Appendix A – Standard Clauses for New York State Contracts, and required proof of workers compensation and disability insurance.

Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as the 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 Agreement, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this Agreement.

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

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All subcontractors shall be required to complete and submit a Vendor Responsibility Questionnaire for subcontracts valued at \$100,000 or more over the term of the contract, or a Contractor Information Checklist for subcontracts valued at less than \$100,000 over the term of the contract, unless the subcontractor is an entity that is exempt from reporting by OSC (exempt entities can be found online at [http://www.osc.state.ny.us/vendrep/resources\\_docreq\\_agency.htm](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm)).

**5.3 PRICE ADJUSTMENT**

The unit prices agreed upon in the contract on the Bid Form may be increased up to the same percentage as the change in the U.S. city average, Consumer Price Index (All Items) for All Urban Consumers (CPI-U), not to exceed 3%, during the 12 calendar months ending March 31<sup>st</sup> of the previous contract year, as reported by the U.S. Department of Labor Bureau of Labor Statistics in the CPI Detailed Report. It shall be the responsibility of the Contractor to annually request a payment change based upon the CPI, not to exceed 3%, which may be granted at the sole discretion of the Department. Requests for changes must be submitted in writing 90 days prior to March 31<sup>st</sup> each year. Only one price adjustment per year will be granted at the sole discretion of the Department. The Department reserves the right to request a price decrease should the relevant index referenced herein decrease.

**5.4 PREVAILING WAGE RATE - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS**

Prevailing Wage Rate as part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, requires public work contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law Article 9 Sections 230-239. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid. The selected contractor shall comply with the prevailing wage rates set forth in PRC# 2018012886 available online at <https://applications.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1466821>. All invoices submitted must include supporting documentation that the selected contractor has complied with the prevailing wage rates for this Agreement.

**5.5 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.

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**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. 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.

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- 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:

- 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.

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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.

**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.**

**5.6 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.

**I. Contract Goals**

- A. AGM hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [https://ogs.ny.gov/veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to Carrie Lindemann at [Carrie.Lindemann@agriculture.ny.gov](mailto:Carrie.Lindemann@agriculture.ny.gov). Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

**II. SDVOB Utilization Plan**

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- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to AGM.
- C. AGM will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of AGM acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to AGM a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by AGM to be inadequate, AGM shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by AGM, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. AGM may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If AGM determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, AGM shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### III. Request for Waiver

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall contact the SDVOB liaison at [Carrie.Lindemann@agriculture.ny.gov](mailto:Carrie.Lindemann@agriculture.ny.gov) for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a

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partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by AGM at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, AGM shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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 AGM, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If AGM, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, AGM may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent at the time of bid submission.

#### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by AGM with certified SDVOBs whom AGM determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

#### **V. Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to AGM during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the Contractor and submitted to AGM, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Carrie Lindemann at [Carrie.Lindemann@agriculture.ny.gov](mailto:Carrie.Lindemann@agriculture.ny.gov).

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**VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/veterans/>

**5.7 NOTIFICATION OF AWARD**

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

**5.8 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.

**5.9 BID PROTEST PROCEDURES**

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

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

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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/>.

**5.10 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.

**5.11 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.

**5.12 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](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).

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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.

Contractors awarded a contract valued at less than \$100,000 over the term of the Agreement shall complete and submit a Contractor Information Checklist.

**Subcontractors:**

For vendors using subcontractors, all subcontractors shall be required to complete and submit a Vendor Responsibility Questionnaire for subcontracts valued at \$100,000 or more over the term of the contract, or a Contractor Information Checklist for subcontracts valued at less than \$100,000 over the term of the contract, unless the subcontractor is an entity that is exempt from reporting by OSC (exempt entities can be found online at [http://www.osc.state.ny.us/vendrep/resources\\_docreq\\_agency.htm](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm)).

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

**5.13 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.

**5.14 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.

**5.15 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>

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The Department has designated the following staff member(s) to receive contacts pertaining to this Bid:

Judy Giovannetti  
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:

- **Bid Form and Subcontracting Form** (Signature Required - the form is included in the **Submission Documents as Attachment 1**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 3**)
- **MacBride Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 4**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents as Attachment 5**)
- **Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents as Attachment 6**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the **Submission Documents as Attachment 7**)
- **Executive Order No. 177** (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**)
- **Experience Form** (the form is included in the **Submission Documents as Attachment 10**)

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- **Reference Form** (the forms are included in the **Submission Documents as Attachment 11**)
- **MWBE/EEO Documents** (the forms are included in the **Submission Documents as Attachment 12**)
- **SDVOB Documents** (the forms are included in the **Submission Documents as Attachment 13**)

## 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.

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**

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

**Proof of Workers' Compensation Coverage**

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

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

**Proof of Disability Benefits Coverage**

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

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

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

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

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

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

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0199: LAWN CARE SERVICES  
AT THE NEW YORK STATE FAIRGROUNDS

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.**