

INVITATION FOR BIDS

for

BOTTLED WATER

AT THE NEW YORK STATE FAIRGROUNDS

IFB #0201

IFB Issued: December 21, 2018
Proposals Due: January 23, 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 #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

Table of Contents

1.	INTRODUCTION	4
1.1	OVERVIEW	4
1.2	IFB GOAL	4
1.3	TERM	4
1.4	IFB TIMELINE	4
2.	DESCRIPTION OF WORK TO BE PERFORMED.....	5
2.1	PREMISES	5
2.2	SCOPE OF WORK.....	5
2.2.1	PRODUCT SPECIFICATIONS	5
2.2.2	DELIVERY/PERFORMANCE SCHEDULE	6
2.2.3	ORDERS	8
3.	BID SUBMISSION	8
3.1	SUBMISSION TIMELINE	8
3.2	SUBMISSION METHOD	9
3.3	MINIMUM QUALIFICATIONS	10
3.4	MANDATORY CONTRACT REQUIREMENTS	10
3.5	BID FORM	11
4.	EVALUATION	11
4.1	CONSIDERATION	11
4.2	DETERMINATION OF BID AWARD	11
4.2.1	ITEM 1 ASSESSMENT (55%)	11
4.2.2	ITEM 2 ASSESSMENT (45%)	12
4.2.3	DETERMINATION OF HIGHEST BID SCORE	12
4.2.4	BIDDING EXAMPLE.....	12
5.	CONSIDERATIONS RELATED TO THIS PROCUREMENT.....	13
5.1	DEPARTMENT’S RESERVATION OF RIGHTS.....	13
5.2	SUBCONTRACTING	14
5.3	NOTIFICATION OF AWARD	15
5.4	DEBRIEFING PROCEDURES.....	15
5.5	BID PROTEST PROCEDURES	15

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

5.6 NEW YORK LAW..... 16
5.7 REQUIRED APPROVALS..... 16
5.8 VENDOR RESPONSIBILITY AND NYS VENDOR ID 16
5.9 COST LIABILITY 17
5.10 FREEDOM OF INFORMATION..... 17
5.11 PROCUREMENT LOBBYING LAW 17
6. REQUIRED ASSURANCES 18
6.1 SUBMISSION DOCUMENTS 18
6.2 CONTRACT DOCUMENTS AND REQUIREMENTS..... 19
7. RECOMMENDED SUBMISSIONS..... 19

EXHIBIT 1 – MAP OF THE FAIRGROUNDS

EXHIBIT 2 – BOTTLED WATER SOLD AT NON-FAIR EVENTS 2017-2018

EXHIBIT 3 – INSURANCE REQUIREMENTS

EXHIBIT 4 – SAMPLE NYS AGM CONTRACT

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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 to submit proposals for providing all unflavored bottled water vended or offered for sale at the New York State Fairgrounds (“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 AGM.

AGM is responsible for producing the Great New York State Fair (“State Fair”). The State Fair is an annual 13-day event that always ends on the Monday designated as Labor Day. In addition to the annual 13-day Fair, the Fairgrounds are operated year-round with more than 150 trade and other shows taking place throughout the year. The attendance at events during the State Fair and non-Fair shows totals over 2 million people annually.

The selected Vendor shall be the exclusive provider of bottled water at the Fairgrounds during the annual State Fair and for all other shows on the Fairgrounds as more specifically outlined in this IFB. All bottled water sold on the Fairgrounds by concessionaires must be purchased directly from the selected Vendor.

1.2 IFB GOAL:

The objective of this IFB is to retain one Vendor to be the exclusive provider of all unflavored bottled water during the State Fair and all non-Fair events held at the Fairgrounds.

1.3 TERM:

The contract resulting from this IFB will begin on April 1, 2019 and end on March 31, 2022.

1.4 IFB TIMELINE:

Publication in Contract Reporter	December 21, 2018
Deadline for Submission of Written Questions	January 8, 2019 by 3:00 p.m. (EST)
Last update of answers or issuance of IFB Addendum	January 10, 2019
Submission Deadline	January 23, 2019 by 3:00 pm (EST)
Bid Opening	January 24, 2019

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.

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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 which is a 13-day event that includes 600 vendors, a carnival and midway with over 60 rides, 23 national touring acts that are presented for free on Chevy Court and a strong presence from the agriculture and farming community. The Fair drew 1.279 million people in 2018.

The Fairgrounds also hosts approximately 150 non-Fair shows that range from horse and cattle shows to trade shows, concerts and equipment shows. Included in that, the Fairgrounds annually hosts the Syracuse Nationals which is the largest classic custom car show in the Northeast. All total, the non-Fair events draw an additional 1 million people annually.

The Fairgrounds has undergone a \$120 million renovation and expansion that included a larger 15-acre Midway that featured new rides, attractions and improved the visitor experience. The redesign plan included a 313-site RV park, 15 acres of flexible park space, and various parking and pedestrian safety improvements. The improvements also created a 6-acre festival grounds adjacent to the RV Park that includes a historic set of barns and will be used for music concerts/festivals, lantern festivals, seasonal celebrations and much more. The most recent project was the construction of a 136,000 square foot Exposition Center that will greatly increase the number and size of exhibits and shows during the State Fair and non-Fair.

See Exhibit 1 for a map of the Fairgrounds.

2.2 SCOPE OF WORK:

The selected Vendor shall furnish all labor, equipment, vehicles and supplies required to perform the services described hereunder. The State Fair has approximately 200 concessionaires who are eligible to sell bottled water at the Fairgrounds. During the 2017 State Fair, 14,577 cases of bottled water were sold (20 oz. bottles/24 bottles in each case). The Fairgrounds also hosts approximately 150 non-Fair shows each year. See Exhibit 2 for the estimated number of cases of bottled water sold at non-Fair events held at the Fairgrounds 2017-2018. During the term of the contract, the selected Vendor will be responsible for providing the following:

2.2.1 PRODUCT SPECIFICATIONS

All bottled water provided pursuant to this engagement must meet the following specifications:

Type:	Unflavored Bottled Water
Bottle Size:	20 ounces with twist off cap
Bottles per Case:	24
Bottle Specifications:	Must be either unique in that it is only available through a distributor and not for sale, in bulk, at retailers (e.g. Costco, BJ's, etc); or each bottle must have affixed to it a NYS Fair

DEPARTMENT OF AGRICULTURE AND MARKETS
 IFB #0201: BOTTLED WATER
 AT THE NEW YORK STATE FAIRGROUNDS

	logo to demonstrate that it is exclusive for sale by State Fair concessionaires
Location of Bottling Facility:	All water must be bottled in New York State and the location of the bottling facility must be noted on the Bid Form
Certification Required:	New York State Department of Health Sanitary Code Regulation Chapter 1 sub-part 5-6. Provide Certification number on the Bid Form.
Shelf Life:	2 years

2.2.2 DELIVERY/PERFORMANCE SCHEDULE

Upon receipt of orders from State Fair concessionaires and non-Fair event promoters and concessionaires, the selected Vendor shall coordinate product delivery pursuant to the following:

	State Fair (13-Day Event ending on Labor Day each year)	non-Fair Events
Orders	(1) Advance Orders: The selected Vendor shall commence accepting orders from State Fair concessionaires by May 1 each year during the Term of the Agreement. Delivery shall be made three (3) days prior to the first day of each State Fair held during the Term of the Agreement. AGM will provide a list of State Fair concessionaires to the selected Vendor by April 1 each year and an updated list on or before the 1 st day of each month throughout the Term of the Agreement.	(1) Advance Orders: The selected Vendor shall commence accepting orders from non-Fair event promoters and concessionaires on April 1, 2019 throughout the Term of the Agreement. Delivery shall be made within fifteen (15) days from receipt of the Order or as mutually agreed upon. AGM will provide a list of scheduled non-Fair shows to the selected Vendor by January 1 each year and an updated list on or before the 1 st day of each month throughout the Term of the Agreement.

DEPARTMENT OF AGRICULTURE AND MARKETS
 IFB #0201: BOTTLED WATER
 AT THE NEW YORK STATE FAIRGROUNDS

	<p>(2) On-site Orders: The selected Vendor <i>shall</i> maintain a distribution center on-site with adequate inventory to accept orders from State Fair Concessionaires. At a minimum, the distribution center shall be staffed from 8:00 a.m. to 6:00 p.m. commencing three (3) days prior to the first day of the State Fair and each day of each State Fair held during the Term of the Agreement. Orders placed on-site shall be available for pick-up or delivered to the State Fair concessionaire's site prior to 9:30 a.m. the following morning. Deliveries made after 9:30 a.m. during the State Fair shall be transported by hand cart or golf cart pursuant to AGM rules. The selected Vendor must maintain at least one (1) refrigerated storage trailer or unit on-site at a location approved by AGM to stock and store inventory three (3) days prior to the first day of each State Fair held during the Term of the Agreement and for the duration of each State Fair held during the Term of the Agreement.</p>	<p>(2) On-site Orders: The selected Vendor <i>may</i> maintain a distribution center on-site with adequate inventory to fulfill orders for larger non-Fair events, including but not limited to, the Syracuse Nationals each year. The location of the distribution center and hours of operation shall be as mutually agreed upon between the non-Fair event promoters and concessionaires and the selected Vendor and AGM. The selected Vendor may maintain a storage trailer or unit on-site at a location approved by AGM to stock and store inventory.</p>
<p>Delivery Location (Price includes all customs, duties and charges and are net, F.O.B. destination and include all costs necessary to produce the product as specified, including delivery to):</p>	<p>New York State Fair 581 State Fair Blvd. Syracuse, NY 13209</p>	<p>New York State Fair 581 State Fair Blvd. Syracuse, NY 13209</p>

DEPARTMENT OF AGRICULTURE AND MARKETS
 IFB #0201: BOTTLED WATER
 AT THE NEW YORK STATE FAIRGROUNDS

Credentials	The selected Vendor will receive credentials to park two (2) trailers on-site for purposes of storing bottled water during the State Fair (one of the two trailers on-site must be refrigerated). Any other parking credentials and any admission credentials will be the responsibility of the selected Vendor.	The selected Vendor will receive credentials to park two (2) trailers on-site for purposes of storing bottled water for any non-Fair shows where on-site storage is needed. Any other parking credentials and any admission credentials will be the responsibility of the selected Vendor.
Payment and Reporting Requirements	Sales reports shall be submitted to AGM on or before the fifteenth (15 th) day of every month for the prior month's sales. The reports should include, but not be limited to, all sales of bottled water sold to State Fair concessionaires (provide copies of all orders). The Fee on the Bid Form shall be made payable to AGM no later than the thirtieth (30 th) day of each month for the prior month's sales.	Sales reports shall be submitted to AGM on or before the fifteenth (15 th) day of every month for the prior month's sales. The reports should include, but not be limited to, all sales of bottled water sold to non-Fair event promoters and concessionaires (provide copies of all orders). The Fee on the Bid Form shall be made payable to AGM no later than the thirtieth (30 th) day of each month for the prior month's sales.
Vending Machines	Place and service up to four (4) vending machines on-site year-round stocked with at least five (5) different types of bottled water that meet the product specifications set forth in Section 2.2.1 of this IFB. Placement on-site shall be at location(s) mutually agreed upon by AGM and the selected Vendor.	

2.2.3 ORDERS

The selected Vendor is responsible for accepting orders and obtaining payment for all bottled water sold on the Fairgrounds directly from State Fair concessionaires and non-Fair event promoters and concessionaires. AGM is not responsible for any State Fair concessionaire or non-Fair event promoter or concessionaire that does not pay their invoice(s). The selected Vendor shall accept payment by cash, check or credit card.

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 23, 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

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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 8, 2019. Questions must be submitted in writing via email to Joyce Willi at procurement.info@agriculture.ny.gov. Please list "BOTTLED WATER IFB#0201" 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 January 10, 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 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 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 two (2) separately labeled and sealed envelopes:**

Envelope 1, titled "IFB #0201 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 - 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.

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

- 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#0201 Bid Form – Do Not Open.”

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

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

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#0201)

3.3 MINIMUM QUALIFICATIONS

To be considered,

- (1) The Bidder must have a minimum of five (5) consecutive years of experience in:
 - producing bottled water at a volume greater than 50,000 bottles per year; or
 - distributing alcoholic or non-alcoholic beverages including bottled water at a volume greater than 50,000 bottles per year.

Bidder should provide the name and address of their business. Any distributor submitting a bid hereby guarantees it is an authorized distributor of the manufacturer and that the manufacturer has agreed to supply the distributor with all quantities of products required by the distributor in fulfillment of its obligations under any resultant contract. Provide the information requested above demonstrating the requisite experience on the “Experience Form” located in the Submission Documents as Attachment 10.

- (2) References: Bidder shall provide the name of three (3) clients that the Bidder has provided bottled water and/or beverage distribution to within the last twenty-four (24) months preceding submission of this bid. At least 1 of the 3 clients must be a client for which the Bidder has sold at least 10,000 bottles of water to. The New York State Fair cannot be used as a reference. Note that the Department will contact the references provided and the Proposer is solely responsible for the availability of the submitted references. Please provide the above information using the “References Form” located in the Submission Documents as Attachment 11.

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 bottled water at the New York State Fairgrounds during the contract period.
- 2) The selected contractor will have full control of the personnel and products provided and associated services and assumes total responsibility for financial loss, accident, injury, or death that may occur as

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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

- 3) The selected contractor will obtain and maintain the insurance policies that meet the requirements set forth in Exhibit 3 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 4.

3.5 BID FORM

All bids must be submitted on the “Bid Form” included in the Submission Documents section. Bidders will be evaluated on two items:

Item 1 is the fee the selected Vendor will charge State Fair concessionaires and non-Fair event promoters and concessionaires per case of bottled water.

Item 2 is the fee that the selected Vendor will pay AGM for each case of bottled water sold to State Fair concessionaires and non-Fair event promoters and concessionaires.

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 contract will be awarded to the bidder that receives the highest number of points (highest bid score) pursuant to Section 4.2.1 and 4.2.2 based on the following two equally weighted factors: (1) the fee the selected Vendor will charge State Fair concessionaires and non-Fair event promoters and concessionaires per case of bottled water (Item 1); and (2) the fee the selected Vendor will pay AGM for each case of bottled water sold to State Fair concessionaires and non-Fair event promoters and concessionaires (Item 2).

4.2.1 ITEM 1 ASSESSMENT (55%)

Up to 55 points will be awarded for Item 1. The lowest price per case of bottled water under Item 1 will receive the full 55 points. All other bids under Item 1 will receive points based on the lowest bid. The number of points will be determined by dividing the lowest bid by the bid being evaluated,

DEPARTMENT OF AGRICULTURE AND MARKETS
 IFB #0201: BOTTLED WATER
 AT THE NEW YORK STATE FAIRGROUNDS

rounding the resulting decimal to two places, and multiplying that decimal by 55. Please see Section 4.2.4 for bidding example.

4.2.2 ITEM 2 ASSESSMENT (45%)

Up to 45 points will be awarded for Item 2. The highest fee paid to AGM for each case of bottled water sold under Item 2 will receive the full 45 points. All other bids under Item 2 will receive points based on the highest bid. The number of points will be determined by dividing the bid being evaluated by the highest bid, rounding the resulting decimal to two places, and multiplying that decimal by 45. Please see Section 4.2.4 for bidding example.

4.2.3 DETERMINATION OF HIGHEST BID SCORE

The bid score will be determined by adding the points awarded under the Item 1 assessment to the points awarded under the Item 2 assessment. The bidder with the highest aggregate bid score will be considered the winning bidder. In the event of a tie for highest aggregate score, the bidder who is part of the tie with the highest Item 1 score will be considered the winning bidder. In the event that multiple bidders have identical highest aggregate bid scores and identical Item 1 scores, the winning bidder will be determined by coin flip.

4.2.4 BIDDING EXAMPLE

The following example is provided for illustrative purposes only. To the extent that the bidding example is inconsistent with the description of the Evaluation Method provided above, the description above controls.

Bidding Example

Bids Received:

Bidder	Item 1	Item 2
A	\$12	\$2.25
B	\$9	\$2.50
C	\$10.50	\$2.75
D	\$7.50	\$2

Item 1 Assessment:

Bidder	Item 1	Point Multiplier	Times 55	Points Awarded
A	12	$7.50/12=.63$	$.63*55=34.65$	34.65

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

B	9	$7.50/9=.83$	$.83*55=45.65$	45.65
C	10.50	$7.50/10.50=.71$	$.71*55=39.05$	39.05
D	7.50	(lowest bid)	--	55

Item 2 Assessment:

Bidder	Item 2	Point Multiplier	Times 45	Points Awarded
A	2.25	$2.25/2.75=.82$	$.82*45=36.9$	36.9
B	2.50	$2.50/2.75=.91$	$.91*45=40.95$	40.95
C	2.75	(highest bid)	--	45
D	2	$2/2.75=.73$	$.73*45=32.85$	32.85

Determination of Winning Bidder:

Bidder	Item 1 Assessment	Item 2 Assessment	Total Aggregate Points
A	34.65	36.9	71.55
B	45.65	40.95	86.6
C	39.05	45	84.05
D	55	32.85	87.85

Accordingly, Bidder D has the highest Total Aggregate Points and is the winning bidder.

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.

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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

5.2 SUBCONTRACTING

The 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.

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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.

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).

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 business days after the award.

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

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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.

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

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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.

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).

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

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

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

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; 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**)

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

- **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**)
- **Reference Form** (the forms are included in the **Submission Documents as Attachment 11**)

6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

The successful bidder will be required to execute a written contract with the Department. A sample New York State Department of Agriculture and Market’s contract is attached to this IFB as Exhibit 4. 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,

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

Proof of Coverage Requirements

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

Proof of Workers' Compensation Coverage

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

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

Proof of Disability Benefits Coverage

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

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

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:

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0201: BOTTLED WATER
AT THE NEW YORK STATE FAIRGROUNDS

<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.