

INVITATION FOR BIDS

for

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

IFB #0208

IFB Issued: March 12, 2019
Proposals Due: April 18, 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
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DURING THE ANNUAL NEW YORK STATE FAIR

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1. INTRODUCTION

1.1 OVERVIEW

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

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

The mission of the annual State Fair is to hold an exposition (currently 13 days) ending on Labor Day year, identifying, promoting and showcasing the agricultural practices, history and traditions of the State. In addition to agricultural competitions, the State Fair also hosts a 15-acre Midway and free music venues that host multiple national and regional acts a day with the largest being able to hold over 30,000 people. Additionally, there are approximately 600 vendors, including 175 food vendors. The State Fair attracted over 1.279 million people in 2018. The 2019 State Fair will be held August 21, 2019 through September 2, 2019.

1.2 IFB GOALS

The goal of this IFB is to retain one or more Contractor(s) to provide rental of audio, lighting, staging, and backline for entertainment and concerts held during the annual State Fair. See Section 4.2 of the IFB for information on determination of bid award.

1.3 ELIGIBLE BIDDERS

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

1.4 TERM

The contract(s) resulting from this IFB will commence on July 1, 2019 and end on September 30, 2023.

1.5 IFB TIMELINE

Publication in Contract Reporter	March 12, 2019
Deadline for Submission of Written Questions	March 27, 2019 by 3:00 p.m. (EST)
Last update of answers or issuance of IFB Addendum	April 1, 2019

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Submission Deadline	April 18, 2019 by 3:00 p.m. (EST)
Bid Opening	April 19, 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.

2. DESCRIPTION OF WORK TO BE PERFORMED

2.1 PREMISES

The New York State Fairgrounds is a 375-acre site that, during the State Fair, has an average daily attendance of almost 98,000 people, with total attendance for the 2018 State Fair being over 1.279 million over thirteen (13) days.

The Fairgrounds includes four major stages and several miscellaneous smaller stages that are used every day of the State Fair for multiple acts and competitions. See Exhibit 1 for a map of the Fairgrounds depicting the locations of the stages; Exhibit 2 for a list of acts that performed on the two largest stages at the 2018 State Fair (Chevy Court and the Experience Stage); and Exhibit 3 for photographs of the four major stages (Chevy Court, Experience, Talent Showcase, and Pan African Village stages) during the State Fair.

A. Chevy Court

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

B. Experience Stage

The Experience Stage is located in the NY Experience, a 6-acre grass festival grounds that includes a pond. It is located on the west end of the Fairgrounds. The stage is temporary for the State Fair. In 2018, the stage was 32' x 32' with a stage roof and weather protection.

C. Talent Showcase Stage

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

D. Pan African Village Stage

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

E. Miscellaneous Stages

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

2.2 SCOPE OF WORK

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

A. Lot 1 - Audio

The Contractor shall provide the audio equipment in the quantities listed in “Attachment 1 - Bid Form” each year during the term of the awarded contract. The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all audio equipment for all stages (**NOTE: No stagehands will be provided by AGM to assist with audio equipment supplied by the selected Contractor.**)

In addition, the Contractor shall provide qualified technicians and/or engineers on-site during each State Fair held during the term of the Agreement familiar with all aspects of the supplied sound system, including but not limited to, house operation, monitor operation, basic repair, and maintenance at the following stages during the following hours:

Stage	Number of Audio Technicians/Engineers Required On-site	Hours On-site*	Number of Days On-site
Chevy Court	2	8:00 a.m. to 11:00 p.m.	13 (daily during each State Fair held during the term of the Agreement)
Experience Stage	2	8:00 a.m. to 11:00 p.m.	13 (daily during each State Fair held during the term of the Agreement)
Pan African Village Stage	1	10:00 a.m. to 10:00 p.m.	13 (daily during each State Fair held during the term of the Agreement)

***Approximate hours – actual hours will be determined by the State Fair’s Stage Manager each year during the term of the Agreement.**

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

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

B. Lot 2 - Lighting

The Contractor shall provide the lighting equipment in the quantities listed in “Attachment 1 - Bid Form” each year during the term of the awarded contract. The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all lighting equipment for all stages (**NOTE: No stagehands will be provided by AGM to assist with lighting equipment supplied by the selected Contractor**).

In addition, the Contractor shall provide qualified technicians and/or engineers on-site during each State Fair held during the term of the Agreement familiar with all aspects of the supplied lighting system, including but not limited to, operation, basic repair, and maintenance at the following stages during the following hours:

Stage	Number of Lighting Technicians/Engineers Required On-site	Hours On-site*	Number of Days On-site
Chevy Court	2 (Lighting)	8:00 a.m. to 11:00 p.m.	13 (daily during each State Fair held during the term of the Agreement)
	2 (Spotlights)	Up to 5 hours- generally one hour before the afternoon show throughout show (2.5 hours), and; one hour before the evening show throughout the show (2.5 hours)	13 (daily during each State Fair held during the term of the Agreement)

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Experience Stage	2	8:00 a.m. to 11:00 p.m.	13 (daily during each State Fair held during the term of the Agreement)
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***Approximate hours – actual hours will be determined by the State Fair’s Stage Manager each year during the term of the Agreement.**

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

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

C. Lot 3 - Staging

The Contractor shall provide the staging listed in “Attachment 1 - Bid Form” each year during the term of the awarded contract. Staging for the Experience Stage includes Option #1 and Option #2. The Department, at its discretion, will choose the option that best fits its needs on or before July 1st each year (only one of the two stage options for the Experience Stage will be ordered by AGM each year). The Contractor will be responsible for the delivery, set-up, tear down and pick-up of all requested staging and equipment (**NOTE: No stagehands will be provided by AGM to assist with staging equipment supplied by the selected Contractor**).

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

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

D. Lot 4 - Backline

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

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

AGM will reimburse the selected contractor up to a maximum of \$4,500.00 for 3rd Party Equipment Rentals each year. This amount is reflected on Attachment 1 Bid Form, Lot 4 pricing sheet. Bidders must enter a percentage mark-up over 3rd party invoices on the Bid Form.

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

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

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

2.3 AGM RESPONSIBILITIES

AGM will provide the following:

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

3. PROPOSAL FORMAT, CONTENTS AND SUBMISSION

3.1 SUBMISSION TIMELINE

All bid submission documents required to be responsive for bid evaluation must be received by the Department no later than 3:00 PM (EST) on April 18, 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 March 27, 2019. Questions must be submitted in writing via email to Carrie Lindemann at procurement.info@agriculture.ny.gov. Please list "AUDIO, LIGHTING, STAGING, AND BACKLINE DURING THE ANNUAL NEW YORK STATE FAIR IFB#0208" in the subject line.

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A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under “Funding Opportunities” no later than April 1, 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 Carrie Lindemann 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: Carrie Lindemann, 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 #0208 Minimum Qualifications and Forms and Assurances.”

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

- Cover Sheet and Submission Documents Checklist
- Attachment 3 - Mandatory Contract Requirements Certification Form (Original Signatures)
- Attachment 4 - Non-Collusive Bidding Certification (Original Signatures)
- Attachment 5 - MacBride Nondiscrimination Certification Form (Original Signatures)
- Attachment 6 - Procurement Lobbying Law Forms (Original Signatures)
- Attachment 7 - Vendor Responsibility (Original Signatures)
- Attachment 8 – Vendor Assurance No Conflict of Interest (Original Signatures)
- Attachment 9 – Executive Order No. 177 (Original Signatures)
- Attachment 10 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)
- Attachment 11 - References Form demonstrating proof of having met the Minimum Qualification set forth in Section 3.3 of this IFB.

Envelope 2, titled “IFB#0208 Bid Form/Cost Proposal – Do Not Open.”

- *Original plus one (1) paper copy* of Attachment 1 - Bid Form (Original Signatures)
- *One (1) electronic copy* of Attachment 1 – Bid Form. Electronic media shall be submitted on a USB 2 or 3 compliant Flash Drive and clearly labeled. The electronic version of the Bid Form must be sealed within the same envelope as the corresponding hard copies. In the event that there are any inconsistencies between the electronic submissions and the hard copy submissions, or

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between multiple hard copy submissions, the original, wet ink, hard copy will be deemed controlling by AGM when reviewing each Cost Proposal.

- Original plus one (1) paper copy of Attachment 2 - Subcontracting Form (Original Signatures)

Place the three (3) envelopes described above into one package and mail or hand-deliver to:
New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Carrie Lindemann (IFB#0208)

3.3 MINIMUM QUALIFICATIONS

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

The Bidder must provide the name of at least three (3) events (including but limited to a concert or similar event) or venues that the Bidder or the Bidder's proposed subcontractor has provided the rental, installation, and testing of at least one of the following services: audio, lighting, staging, and backline within the past twenty-four (24) months preceding submission of this bid at a venue(s) with an audience capacity of at least 7,500. The Bidder must provide the name and address of the event or venue, the date service was provided, a description of the services provided at the event or venue (please specify if Bidder's proposed subcontractor provided any of the services and provide the name of the subcontractor), the venue capacity, and the name and phone number of the event promoter or event operator or the venue owner or venue manager/operator. Note that the Department will contact the references to verify the information provided and the Bidder is solely responsible for the availability of the submitted references. Please provide the above information using the References Form, Attachment 11 of the Submission Documents. The New York State Fair cannot be used as a reference.

3.4 MANDATORY CONTRACT REQUIREMENTS

Each bidder must certify that:

- 1) No other obligation or engagement, contractual or otherwise, will impact the selected Contractor's ability to provide rental of the equipment and related services at the Fairgrounds during the contract period.
- 2) The selected Contractor will have full control of all equipment and services provided pursuant to this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the equipment 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.

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- 3) The selected Contractor will obtain and maintain insurance policies that meet the requirements set forth in Exhibit 4.
- 4) The selected Contractor agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is attached to this IFB within Exhibit 5.

3.5 BID FORM/COST PROPOSAL

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

4. EVALUATION

4.1 CONSIDERATION

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

4.2 DETERMINATION OF BID AWARD

Two (2) contracts will be awarded:

- (1) A contract will be awarded to the lowest responsive and responsible bidder providing the lowest total cost for Lot 1 (Audio), Lot 2 (Lighting), and Lot 3 (Staging) on “Attachment 1 - Bid Form.” **Bidders must enter a price for all 3 Lots to be considered for this contract.**
- (2) A contract will be awarded to the lowest responsive and responsible bidder providing the lowest total cost for Lot 4 (Backline) on “Attachment 1 – Bid Form.” **Bidders must enter a unit price for each item listed in Lot 4 to be considered for this contract.**

Prices submitted on the Bid Form shall remain firm for the duration of the contract.

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DEPARTMENT’S RESERVATION OF RIGHTS

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

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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.

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

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

NEW YORK STATE LAW

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Department hereby establishes an overall goal of zero (0) percent for MWBE participation, zero (0) percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and zero (0) 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.

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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. All MWBE Forms and Instructions are included in the Submission Documents.

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

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

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

- 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.

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

Equal Employment Opportunity Requirements

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

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

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

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

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

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

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and

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expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

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

5.5 NOTIFICATION OF AWARD

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

5.6 DEBRIEFING PROCEDURES

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

5.7 BID PROTEST PROCEDURES

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

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 Carrie Lindemann at:

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

3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within fourteen (14) business days of receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and, and Fiscal Management will advise OSC that a protest was filed.

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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/>.

5.8 NEW YORK LAW

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

5.9 REQUIRED APPROVALS

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

5.10 VENDOR RESPONSIBILITY AND NYS VENDOR ID

Prime Contractors:

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

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

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

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

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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).

5.11 COST LIABILITY

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

5.12 FREEDOM OF INFORMATION

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

5.13 PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (*See Submission Documents Attachment 6 -- "Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence"*). An offeror/bidder is restricted from making contacts from the earliest 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

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<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:

Carrie Lindemann
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/Cost Proposal** (Signature Required Hard Copy - the form is included in the **Submission Documents as Attachment 1**)
- **Subcontracting Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 3**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 4**)
- **MacBride Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 5**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents as Attachment 6**)
- **Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents as Attachment 7**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the **Submission Documents as Attachment 8**)
- **Executive Order No. 177** (Signature Required – the form is included in the **Submission Documents as Attachment 9**)

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- **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 10**)
- **References Form** (the form is included in the **Submission Documents as Attachment 11**)

6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

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

7. RECOMMENDED SUBMISSIONS

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

Workers’ Compensation Coverage and Debarment

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

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

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

Proof of Coverage Requirements

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

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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)

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

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more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in with 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.