



INVITATION FOR BIDS

for

PRODUCTION OF CONCERTS DURING THE NEW YORK STATE FAIR

IFB #0239

IFB Issued: July 1, 2020

Proposals Due: August 4, 2020

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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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” or “Bidders”) to submit proposals to provide concert production services during the annual Great New York State Fair (“State Fair”) at the New York State Fairgrounds (“Fairgrounds”). The recipient of the contract award from this IFB (“Contractor”) shall provide these services during the annual State Fair, commencing with the 2021 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. The mission of the annual State Fair is to hold a multi-day exposition ending on Labor Day each year identifying, promoting and showcasing the agricultural practices, history and traditions of the State.

In addition to agricultural competitions, the State Fair also hosts a 15-acre Midway. There are approximately 600 vendors, including 200 food vendors. Entertainment is presented daily during the State Fair at festival-style outdoor venues which include Chevy Court (approximate capacity of 30,000 persons) and the Experience Stage (approximate capacity of 20,000 persons). Admission to Chevy Court and the Experience Stage are free with admission to the State Fair. In 2019, these concerts included national, regional and local touring acts and drew almost 300,000 spectators. The State Fair attracted over 1.329 million people in 2019.

It is anticipated that the 2021 State Fair will be 18 days and will commence on Friday, August 19, 2021 and end on Monday, September 6, 2021.

1.2 IFB GOAL

The objective of this IFB is to retain one contractor to provide concert production services at the New York State Fairgrounds during the 2021 - 2024 State Fairs as further described below.

1.3 TERM

The contract resulting from this IFB will commence on October 1, 2020 and end on September 30, 2024.

1.4 IFB TIMELINE

Publication in Contract Reporter:	July 1, 2020
Deadline for Submission of Written Questions:	July 20, 2020 by 3:00 p.m. (local time)
Last Update of answers or issuance of IFB Addendum http://www.agriculture.ny.gov/RFPS.html no later than:	July 23, 2020
Submission Deadline:	August 4, 2020 by 3:00 p.m. (local time)
Bid Opening:	August 5, 2020

The Department intends to make an award within fifteen (15) 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)

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and the Office of the State Comptroller of the State of New York (OSC) before it becomes effective.

2. DESCRIPTION OF WORK TO BE PERFORMED

2.1 PREMISES

The New York State Fairgrounds is a 375-acre site that is home to the annual New York State Fair, which is a multi-day event that includes 600 vendors, a carnival and midway with over 60 rides, free music venues featuring national, regional, and local touring acts, and a strong presence from the agriculture and farming community. The State Fair drew over 1.329 million visitors in 2019.

The Fairgrounds has undergone a \$120 million renovation and expansion that included an expanded 15-acre Midway that features new rides and attractions, a 313-site RV park, a new 136,000 square foot Exposition Center, 15 acres of flexible park space, various parking and pedestrian safety improvements, and a 6-acre festival grounds adjacent to the RV Park.

For purposes of this engagement, the selected contractor will be responsible for providing concert production services at the following stages:

- **Chevrolet Court (Chevy Court)**
Chevy Court is an outdoor festival stage located just inside the main gate of the New York State Fair. The stage is covered and is approximately 58' wide and 30' long with a front extension that is approximately 40' wide and 8' long. During the State Fair, the stage has traditionally hosted two different national touring acts a day (2:00 p.m. and 8:00 p.m.) which are festival style and are included with the cost of admission. A live television program takes place from 10:00 a.m. – 11:00 a.m. each weekday of the State Fair.
- **NY Experience Stage (Experience Stage)**
The Experience Stage is an outdoor festival stage located adjacent to Gate 10 of the New York State Fair. The stage is covered and is 40' x 40' with 16' x 16' sound wings. During the 2019 State Fair, the stage hosted concerts from 3:00 p.m. – 10:00 p.m. each evening. Beginning with the 2021 State Fair, it is anticipated that this stage will host up to four acts a day including two (2) national acts a day (4:00 p.m. and 7:00 p.m.).
- **Miscellaneous Stages**
During the Term of the Agreement, concert production services may be required at other miscellaneous stages at the Fairgrounds.

See **Exhibit 1** for a map of the Fairgrounds depicting the location of the stages. See **Exhibit 2** for a list of acts booked at Chevy Court and the Experience Stage at the 2018 and 2019 State Fairs.

2.2 SCOPE OF WORK

2.2.1 CONCERT PRODUCTION SERVICES

The selected contractor will be responsible for providing concert production services for entertainment acts booked during the New York State Fair. This will include acting as a liaison between AGM, agents for the entertainers and booking company, security and event and show management to coordinate the presentation of entertainment acts at Chevy Court, the Experience Stage, and other miscellaneous stages as needed. Concert production services will include, but not be limited to:

- A. Advance each show with Artist's Management/Production staff to include the coordination of all

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- aspects of production with AGM's stagehands and AGM's audio, lighting, video, staging and backline contractors. This includes, but is not limited to, coordinating: load in and load out times, show calls, stage and show staffing requirements (stagehands), stage space allocation, loading dock space allocation, video production management, lighting production management, audio production management, and coordinating parking for show buses and vehicles.
- B. Provide on-site management and oversee technical coordination of shows including front of house production and stage management to oversee set-up, operation and breakdown of all staging, audio and lighting. Manage load-in and load-out. This shall include on-site representation from 7:00 a.m. – 11:00 p.m. each day of each State Fair held during the Term of the Agreement.
- C. Review Artist's riders with AGM to advance any special needs or items that include, but are not limited to:
- Determine the catering requirements for each show and arrange for catering with the caterer designated by AGM. All orders will be placed and picked up by the selected contractor. This shall include, but not be limited to, determining water, sundry supplies and bulk needs to fulfill rider requirements for scheduled shows. When determining these requirements note that AGM does not provide alcoholic beverages to any act scheduled to perform at the State Fair. This shall be completed and approved by AGM no later than thirty (30) days prior to the first day of the State Fair each year.
 - Determine any change in the standard audio, lighting and backline needs. This shall be completed by the selected contractor and approved by AGM no later than thirty (30) days prior to the first day of the State Fair each year.
- D. Determine Artist's local transportation requirements for event and show personnel and arrange for transportation as needed and required. Assist AGM in obtaining the requisite number of vehicles needed to provide transportation during the State Fair.
- E. Schedule and run Artist's rehearsals, sound checks for performances; review upcoming schedules for operation of events each day; create stage diagrams and coordinate with stage workers; keep areas onstage and backstage free of debris and obstacles; serve as main point of contact with Artist's production manager, video production, local production and stagehand crews; produce and distribute daily load in, load out and performance schedules for all technical staff as directed by Artist's production manager. The selected contractor's front of house manager must have general knowledge of lighting, staging, sound design and theatrical rigging and should be able to lift, push or pull up to 50 lbs.
- F. Coordinate with AGM's Security Manager and State Police on security needs for each show.
- G. Coordinate with AGM's Property Manager to schedule trash clean up and removal as well as to address any maintenance and/or property needs.
- H. Provide staffing recommendations for runners, assistants and backstage security. Staff will be hired on AGM payroll with processing and approval of all staff through AGM's Division of Human Resources. Manage staff hired for these positions. Track time worked by employees as they are brought on AGM payroll. The employees will be employed by AGM and managed by the selected contractor. Time tracking includes the daily monitoring of the staff hours via the online payroll system used by AGM. All corrections, additions and changes to staff hours must be made on a daily basis and will be monitored by AGM.
- I. Review and verify all stagehand staff payroll and submit to AGM's stagehand contractor for processing. All hours and signed timecards must be verified against the stage calls and discrepancies resolved prior to the payroll being submitted to AGM's stagehand contractor.
- J. Provide on-site management representatives throughout the annual New York State Fair and such other personnel necessary to provide the required services. Staff should arrive and be on-site no later than five (5) days prior to the first day of the State Fair each year.

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- K. Provide technical assistance to AGM concerning Chevy Court and Experience Stage entertainment events, including information about current industry requirements and standards relating to staging, audio, lighting, video and other entertainment production related services.
- L. Coordinate the sale of Artist's merchandise, if needed, at both Chevy Court and the Experience Stage. This shall include:
 - o Receiving and displaying Artist's merchandise for sale;
 - o Coordinating staffing for the sale of Artist's merchandise onsite (AGM will provide a tent, table(s), power, and lighting for sales only);
 - o Conducting a pre-sale and post-sale audit of Artist's merchandise including preparation of internal AGM cash accounting sheets and other auditing reports as needed, settlement of Artist's merchandise sales percentage payment to AGM, and submission of daily merchandise sales reports including sales and the percentage payment to AGM.

2.2.2 CONTRACTOR RESPONSIBILITIES

In addition to the responsibilities outlined in Section 2.2.1 above, the selected contractor shall:

- o Provide a designated point of contact with working mobile phone number and email address.
- o Be on-call 24 hours a day during each State Fair held during the Term of the Agreement and respond within no more than thirty (30) minutes from receipt of the call.
- o Provide operational reports as requested to State Fair management including, but not limited to, after action reports to be submitted no later than thirty (30) days after the last day of the State Fair each year. Reports should outline ideas, suggestions and concerns about the operation of the stages during the State Fair.

2.2.3 DEPARTMENT RESPONSIBILITIES

The Department will provide:

- o Contact information for the AGM designated point of contact;
- o All credentials for admission and parking;
- o All staging and risers (Chevy Court shows are presented on a permanent stage with additional staging, risers and docking provided by AGM);
- o Audio, lighting, and video for each performance; additions to the specifications sent out by AGM must be approved;
- o Backline equipment (with AGM approval);
- o Staffing (runners) to assist the selected contractor (staff will be approved by the selected contractor prior to hiring);
- o Security staff for backstage Chevy Court and the Experience Stage.
- o Vehicles for transportation of acts;
- o Up to two (2) golf carts for staff;
- o Catering for all acts (the selected contractor must coordinate catering with AGM's approved caterer);
- o Fully furnished dressing rooms for all acts and furniture for all dressing rooms including couch, chairs, lamps, tables, mirrors, refrigerators, shower curtains, soap, tissues, and towels (dressing rooms will be mobile campers for the Experience Stage);
- o Office space at Chevy Court with desk and phone for the selected contractor's use during the State Fair;
- o Office space at the Experience Stage for the selected contractor's use during the State Fair;
- o Fencing, barricades and security for backstage areas;
- o Tent, table, lighting and staffing for novelty sales;
- o Stagehand labor (all coordination including staffing needs, and timecard verification to be handled by the selected contractor).

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- Towels for stage and cleaning for daily use;
- Radio for contact with AGM;
- Tent for overflow/stagehands (final size and placement determined by AGM);
- Supplies for stage (curtains, floor tape, rain covers) etc.

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 (local time) on August 4, 2020 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 (local time) on July 20, 2020. Questions must be submitted in writing via email to Carrie Lindemann or Joyce Willi at procurement.info@agriculture.ny.gov. Please list “PRODUCTION OF CONCERTS DURING THE NEW YORK STATE FAIR IFB#0239” in the subject line.

A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under “Funding Opportunities” no later than July 23, 2020. 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 or 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: Carrie Lindemann or 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 #0239 Minimum Qualifications and Forms and Assurances.”

Original plus one (1) paper copy of (See **Section 6.1**, 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

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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 (Original Signatures)
- Attachment 9 - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)
- Attachment 10 – Experience and References Form demonstrating proof of having met the Minimum Qualifications set forth in **Section 3.3** of this IFB.

Envelope 2, titled “IFB#0239 Bid Form/Cost Proposal – Do Not Open.”

Original plus one (1) paper copy of (See **Section 6.1**, Submission Documents):

- Attachment 1 - Bid Form (Original Signatures)

Place the two (2) envelopes described above into one package and mail or hand-deliver to:
New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Carrie Lindemann or Joyce Willi (IFB#0239)

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 concert production services during the New York State Fair. AGM considers the following qualifications a pre-requisite in order to be considered a qualified Bidder for the purposes of this solicitation:

Experience and References. The Bidder must have experience providing concert production services similar in scope to this solicitation for at least three (3) events or venues within the last eighteen (18) months preceding submission of this bid. The events or venues referenced must have a capacity of at least ten thousand (10,000) people. The Bidder must provide the name of the event or venue, venue/event capacity, and a description of the services provided including dates. In addition, the bidder must provide the name, address, phone number and email for a contact person for each of the events/venues listed. Note that the Department will contact the references to verify the information provided; the Bidder is solely responsible for the availability of the submitted references. Please provide the above information using **Attachment 10 – Experience and References Form** of the Submission Documents.

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 concert production services at the New York State Fairgrounds during the contract period.
- 2) 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,

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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/COST PROPOSAL

All bids must be submitted on “**Attachment 1 - Bid Form**” included in the Submission Documents section. The Bid Form must not be altered in any way. Bidders must enter a unit price for each item on the Bid Form. All unit prices shall be inclusive of all costs and profit (includes but is not limited to: Direct and Indirect Costs, Payroll, Fringe Benefits, Supplies and Materials, Equipment, Travel, Overhead and Profit). Unit prices shall be multiplied by the estimated quantities for evaluation purposes only. The prices bid shall remain fixed for the Term of the contract subject to any price adjustment pursuant to Section 5.3 of the IFB. *Please note: the production service fee per act will be applied to the actual number of acts produced and be the payment for your services.*

4. EVALUATION

4.1 CONSIDERATION

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

4.2 DETERMINATION OF BID AWARD

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

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DEPARTMENT’S RESERVATION OF RIGHTS

The Department reserves the right to:

- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency’s sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State’s investigation of a bidder’s qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the IFB;

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- 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 until the contract start date;
- 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; and
- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department's interpretation is final.

5.2 SUBCONTRACTING

No subcontracting is permitted. AGM will contract only with the successful Bidder who is the Prime Contractor.

5.3 PRICE ADJUSTMENT

The unit prices agreed upon in the contract on the Bid Form may be increased up to the same percentage as the change in the U.S. city average, Consumer Price Index (All Items) for All Urban Consumers (CPI-U), not to exceed 3%, during the 12 calendar months ending September 30th of the previous contract year, as reported by the U.S. Department of Labor Bureau of Labor Statistics in the CPI Detailed Report. It shall be the responsibility of the Contractor to annually request a payment change based upon the CPI, not to exceed 3%, which may be granted at the sole discretion of the Department. Requests for changes must be submitted in writing 90 days prior to September 30th each year commencing in 2022. Only one price adjustment per year will be granted at the sole discretion of the Department. The Department reserves the right to request a price decrease should the relevant index referenced herein decrease.

5.4 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

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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.

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.

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- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

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

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

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to the Department, by the 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.

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

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

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

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

5.6 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.

5.7 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.

5.8 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:

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

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

5.9 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.

5.10 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.

5.11 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

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deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

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

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

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

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).

5.12 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.

5.13 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.

5.14 PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (*See Submission Documents* Attachment 5 -- "Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence"). An offeror/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the IFB through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and

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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:

Carrie Lindemann or 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

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 - the form is included in the **Submission Documents as Attachment 1**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the **Submission Documents as Attachment 2**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 3**)
- **MacBride Certification** (Signature Required - the form is included in the **Submission Documents as Attachment 4**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the **Submission Documents as Attachment 5**)
- **Vendor Responsibility** (Signature Required - the form is included in the **Submission Documents as Attachment 6**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the **Submission Documents as Attachment 7**)
- **Executive Order No. 177** (Signature Required – the form is included in the **Submission Documents as Attachment 8**)
- **Substitute W-9 Form to obtain SFS ID** (Signature Required - Return if SFS Vendor ID is requested – the form is included in the **Submission Documents as Attachment 9**)
- **Experience and References Form** (the form is included in the **Submission Documents as Attachment 10**)

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"; 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.*

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

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- **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 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

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- 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.