



# **INVITATION FOR BIDS**

**for**

## **PROFESSIONAL STAGE SERVICES DURING THE ANNUAL NEW YORK STATE FAIR**

**IFB #0244**

IFB Issued: December 11, 2020  
Proposals Due: January 20, 2021

**By:**

State of New York  
New York State Department of Agriculture and Markets  
Division of New York State Fair  
10B Airline Drive  
Albany, NY 12235

DEPARTMENT OF AGRICULTURE AND MARKETS  
IFB #0244: PROFESSIONAL STAGE SERVICES  
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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 professional stage service personnel 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 20, 2021 and end on Monday, September 6, 2021.

**1.2 IFB GOAL**

The objective of this IFB is to retain one contractor to provide professional stage service personnel at the New York State Fairgrounds during the 2021 - 2025 State Fairs as further described below.

**1.3 TERM**

The contract resulting from this IFB will commence on June 1, 2021 and end on September 30, 2025.

**1.4 IFB TIMELINE**

Publication in Contract Reporter:	December 11, 2020
Deadline for Submission of Written Questions:	January 5, 2021 by 3:00 p.m. (local time)
Last Update of answers or issuance of IFB Addendum <a href="http://www.agriculture.ny.gov/RFPS.html">http://www.agriculture.ny.gov/RFPS.html</a> no later than:	January 8, 2021
Submission Deadline:	January 20, 2021 by 3:00 p.m. (local time)
Bid Opening:	January 21, 2021

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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) 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 15-acre festival grounds, known as the NY Experience, adjacent to the RV Park.

The two main entertainment stages operated during the annual State Fair are:

- **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 p.m. and 8 p.m.) which are festival style and are included with the cost of admission. A live television program takes place from 10 a.m. – 11 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 p.m. – 10 p.m. each evening. Beginning with the 2021 State Fair, it is anticipated that this stage will host four acts a day including one (1) national act a day (7 p.m.).
- **Miscellaneous Stages**  
During the Term of the Agreement, professional stage 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 major stages. See **Exhibit 2** for a list of acts booked at Chevy Court and the Experience Stage at the 2018 and 2019 State Fairs. See **Exhibit 3** for the total number of professional stage service hours provided during the 2018 and 2019 State Fairs. **NOTE: Exhibit 3 is provided for informational purposes only. The 2018 and 2019 State Fairs were 13 days. It is anticipated that the 2021 State Fair will be 18 days ending on Labor Day. The number of days of the State Fair is subject to change each year.**

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**2.2 SCOPE OF WORK**

**2.2.1 PROFESSIONAL STAGE SERVICES TITLE DESCRIPTIONS AND RESPONSIBILITIES**

Contractor will be responsible for providing professional stage service personnel for various entertainment events held during the annual State Fair. This will include working with AGM and AGM's production manager to determine the number, type and hours of stage service personnel required during the State Fair. The title descriptions and associated duties to be performed shall include, but not be limited to:

- A. **Stagehands:** Shall mean any person whose primary duties involve setting up and striking of stage and entertainment equipment, loading and unloading of stage trucks, focusing different types of stage lighting instruments, and operating various types of follow spots. As directed, Stagehands shall perform the following duties:
1. Setup and striking of concert and entertainment equipment for the main stage or any satellite stages.
  2. Loading and unloading of equipment from production trucks.
  3. Setup or striking of the main stage and/or roof structure.
  4. Set up and striking of stage lighting and sound systems
  5. Setup and striking of audio/visual equipment
  6. Involved in focusing different types of stage lighting instruments.
  7. Operating various types of follow spots.
  8. Any additional stage service related duties as needed by AGM (all Stagehands must arrive to work with proper stage tools).
- B. **Stage Rigger:** Shall mean any person that handles event rigging with experience and knowledge of rigging knots, chain motors, wire rope, shackles, trusses and block and tackle. All Stage Riggers must have their own tools, safety harnesses and climbing ropes which are compliant with industry and federal and state standards. As directed, Stage Riggers shall perform the following duties:
1. Perform as event rigger with experience and knowledge of rigging knots, chain motors, baskets, bridles, wire rope, shackles, trusses, and block and tackle.
  2. Perform any additional stage service related duties as needed by AGM.
- C. **Forklift Operator:** Shall mean any person that is duly qualified and certified to operate forklifts. Operators must be in possession of an OSHA certification. The forklift shall be provided by Contractor. As directed, Forklift Operators must perform the following duties:
1. Load and unload equipment and materials as needed and directed.
  2. Transport materials to different locations onsite.
  3. Secure loads to machine before transportation.
  4. Perform any additional related duties as needed by AGM.

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**2.2.2 SCHEDULING AND STAFFING EXPECTATIONS**

Professional stage service personnel staffing and scheduling needs for events held during the State Fair will be provided to Contractor in writing at least twenty-four (24) hours prior to any event including the number of personnel needed for each title, date(s), time, and location onsite. AGM will make every effort to inform Contractor of staffing needs as early as possible but short notice requests will occur due to changing event needs. The number and composition of personnel required per event will vary depending on needs.

In the event Contractor has received at least twenty-four (24) hours advance notice for staffing each event and is unable to provide the requested qualified staff, AGM reserves the right to have the services performed by another vendor. In such circumstance, Contractor will be liable for any additional costs incurred.

All Contractor staff provided for this engagement shall:

- Be properly trained and qualified for the duties being performed.
- Report to work on time and in appropriate dress attire including proper safety shoes for the work being performed and readily identifiable as an employee of the Contractor by wearing company staff shirts. Determination of appropriate dress attire is at the discretion of AGM.
- Be equipped with proper safety equipment including but not limited to harnesses, fall protection, hard hats, and personal protective equipment (PPE).
- Be prohibited from use of the backstage area.
- Be responsible for their own meals. AGM will not provide any meals for Contractor's staff.
- Conduct themselves in a professional manner with AGM staff and with the general public.

Failure of Contractor's staff to comply with any of the requirements of this solicitation may result in the removal of the staff member(s) from the premises as well as being precluded from working at future event(s) at the Fairgrounds. Contractor's staff assigned to any event are considered employees of the Contractor, and as such are not State employees and are not eligible for any NYS benefits. This is a non-exclusive contract. AGM reserves the right to have these services performed by in-house personnel and/or another contractor as deemed in the best interest of the State.

**2.2.3 CONTRACTOR RESPONSIBILITIES**

In addition to the responsibilities outlined in Section 2.2.1 and 2.2.2 above, Contractor shall:

- Provide a designated point of contact with working mobile phone number and email address. The designated contact must be on-call 24 hours a day during the State Fair and respond within no more than thirty (30) minutes from receipt of the call.
- Provide a representative onsite each day during the State Fair to oversee services provided for this engagement.
- 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 any concerns about the operation of the stages during the State Fair.

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**2.2.4 DEPARTMENT RESPONSIBILITIES**

The Department will provide:

- Contact information for the AGM designated point of contact.
- All credentials for admission and parking.

**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 January 20, 2021 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 January 5, 2021. Questions must be submitted in writing via email to Carrie Lindemann or Joyce Willi at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list “PROFESSIONAL STAGE SERVICES DURING THE ANNUAL NEW YORK STATE FAIR IFB#0244” in the subject line.

A Question and Answer document will be posted to the Department website: [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under “Funding Opportunities” no later than January 8, 2021. No individual written responses will be provided.

Any revisions to this invitation will be posted on the Department’s website, [www.agriculture.ny.gov](http://www.agriculture.ny.gov) under “Funding Opportunities”. All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the IFB which will be part of the awarded contract. If you are unable to access the Department’s website, please contact Carrie Lindemann or Joyce Willi at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov) to arrange for alternate delivery, or at the following mailing address: New York State Department of Agriculture and Markets, Fiscal Department, Attn: 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 #0244 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 3 - Mandatory Contract Requirements Certification Form (Original Signatures)
- Attachment 4 - Non-Collusive Bidding Certification (Original Signatures)

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- 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 – 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#0244 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 Hard Copy)
- Attachment 2 – Subcontracting Form

Place the two (2) envelopes described above into one package and mail or hand-deliver to:  
New York State Department of Agriculture and Markets  
Fiscal Management  
10B Airline Drive  
Albany, New York 12235  
ATTN: Carrie Lindemann or Joyce Willi (IFB#0244)

**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 professional stage 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:

- A. Experience and References.** The Bidder must have experience providing professional stage services similar in scope to this solicitation for at least three (3) events or venues within the last thirty-six (36) months preceding submission of this bid that required a minimum of five (5) stagehands for each event or venue referenced. The Bidder must provide the name and address of the event or venue, the number of stagehands provided for the event or venue, a description of the services provided at the event or venue, and the date(s) services were provided. 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 11 – 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 professional stage services at the New York State Fairgrounds during the contract period.

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- 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, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) The selected contractor will obtain and maintain the insurance policies that meet the requirements set forth in **Exhibit 4** of this IFB.
- 4) The selected contractor agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is included in the sample New York State AGM contract attached to this IFB as **Exhibit 5**.

### **3.5 BID FORM/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. Per instruction #2 on the Bid Form Instructions tab, enter bid prices in the highlighted (green) fields **ONLY**. All other fields are locked and calculations are formula formatted to automatically calculate results of each vendor’s bid.

Bidders must enter an hourly rate for each job title on the Bid Form. All hourly rates 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). Hourly rates will be multiplied by the estimated number of hours for evaluation purposes only. The rates 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: Contractor will only be paid for the actual number of hours worked in accordance with the hourly rates on the Bid Form.*

## **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 Grand Total bid on the Bid Form. The Grand Total bid will be calculated by multiplying the hourly rates bid for each title by the estimated number of hours for evaluation purposes only. The selected contractor will only be paid for the actual number of hours worked in accordance with the hourly rates provided. Hourly rates 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 Grand 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;

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- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Prior to the *bid opening*, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable until the contract start date (June 1, 2021);
- 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

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.

All subcontracting is subject to the prior written approval of the Department. If the Contractor determines to subcontract any supplies and equipment, the subcontractor(s) must be clearly identified and the nature and extent of the involvement in and/or proposed performance under the Contract 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.

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Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the Department.

The Department reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this Agreement.

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

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

**5.3 PRICE ADJUSTMENT**

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

**5.4 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

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Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this Invitation for Bids (IFB), the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this IFB, such finding constitutes a breach of contract and the Department may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Department’s MWBE Liaison at 518-457-4619 or [mwbe@agriculture.ny.gov](mailto:mwbe@agriculture.ny.gov). All MWBE Forms and Instructions are included in the Submission Documents.

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. The Department will review the submitted MWBE Utilization Plan and advise the respondent of the Department acceptance or issue a notice of deficiency within 30 days of receipt.
- 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:

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

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

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

**Equal Employment Opportunity Requirements**

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

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

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.**

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**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](mailto: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:

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

3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department’s Counsel’s Office, Fiscal and the Program Division. The review team will review

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

4. Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts. An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> Floor, Albany, New York 12236. More information on the Office of the State Comptroller's (OSC) 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](http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm)

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

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

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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](mailto: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](http://www.osc.state.ny.us/vendrep) or may contact the Department or the Office of the State Comptroller's Help Desk for a copy of the paper form.

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

**Subcontractors:**

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

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

**5.12 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 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 <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

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](mailto: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 Hard Copy - the form is included in the **Submission Documents as Attachment 1**)
- **Subcontracting Form** (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**)
- **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**)
- **Experience and 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”; 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.”

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**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
- **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

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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](http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf). Forms are available through these links:

- ST-220 CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
- ST-220 TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

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