



# **REQUEST FOR PROPOSALS**

**for**

## **MARKETING AND ADVERTISING OF NEW YORK STATE GROWN & CERTIFIED SPECIALTY CROPS**

RFP #0285

RFP Issued: February 3, 2023  
Proposals Due: March 30, 2023

By:

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

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# **1 INTRODUCTION**

## **1.1 OVERVIEW**

This Request for Proposals (RFP) is issued by the New York State Department of Agriculture and Markets (AGM or Department) to invite qualified bidders to submit proposals for marketing and advertising to promote New York State Grown & Certified (NYS G&C), as well as to assist in the marketing of Specialty Crops in the New York State Grown & Certified program.

The mission of the New York State Grown & Certified program is to identify, promote, and showcase New York State agricultural producers. In addition to receiving free marketing on the certified.ny.gov website, through NYS G&C social media platforms, and national tradeshow representation, there is the opportunity for representation in affiliated programs, such as Farm-to-School and Nourish NY. New York State is a leading producer of a diverse array of Specialty Crops, including fruits, vegetables, maple syrup, honey, greenhouse/horticultural products, and more. These agricultural products are vitally important to the State's economy, environment, consumers, and local communities. Using one million dollars (\$1,000,000) in federal United States Department of Agriculture (USDA) grant funds, the NYS Department of Agriculture and Markets (AGM) seeks to develop a multi-faceted marketing campaign to gain consumer attention and help the State's farmers brand edible Specialty Crops grown or processed in New York.

Following the substantial and widespread impact of COVID-19 on the food system, consumers care more than ever about where their food comes from, how it is grown and that they have a diversity of nutritious, local, Specialty Crop products readily available to them. When consumer presence declined at farmers' markets across the state due to the pandemic, the message to support our local farmers became even more critical. Consumer realization of the importance of a local food supply and the vital role that NYS farmers played in meeting community demands will be a key message. This project will revitalize consumer commitment to sustaining our local food systems by executing a statewide campaign highlighting local product availability at farmers' markets, farm stands, and retail grocery stores throughout New York State. In 2022, AGM contracted with an advertising agency to run a pilot statewide "Look for the Label" campaign that appeared on billboards, social media, radio, and banner ads. This next comprehensive, multifaceted campaign will expand on the previous projects and include print and television. Funds provided through this RFP will be used to broaden the scope of previous promotional activities throughout the State with special focus on NY metro-centers (i.e., Buffalo, New York, and Rochester), conduct consumer research, and engage new farmers, farmers' markets, and retailers.

## **1.2 NEEDS STATEMENT**

The purpose of this RFP is to contract with a qualified Proposer to develop, produce and distribute messaging and collateral items that:

- Allow edible Specialty Crop commodities to be marketed more widely across the state and include seasonally appropriate messaging that reminds New Yorkers that our Specialty Crops are available year-round while directing buyers to search out local produce at retail locations, farmers' markets, and farm stands.
- Use innovative promotional approaches that will grab consumer, retailer, and distributor attention. By reaching new and broader audiences, AGM will educate and reinforce how the purchase and support of locally grown Specialty Crops and the NYS Grown & Certified program enhances the resiliency of New York State's food system.

## **1.3 RFP GOALS**

The purpose of this RFP is to retain one contractor to provide a comprehensive marketing and advertising campaign, and public relations services for the NYS Grown & Certified program to:

- A. Research and review current NYS G&C social media platforms, website engagement data, and current collateral to develop recommendations on how to best raise consumer awareness and recognition of the program, as well as drive consumers to retail grocers, farmers' markets/stands.
- B. Conduct consumer research to determine a baseline awareness of the NYS G&C program and test messaging.
- C. Develop strategic messaging and digital marketing plan to increase consumption of New York State-grown edible specialty crops (fruits, vegetables, maple syrup, honey, horticultural crops) and raise awareness of NYS G&C.
- D. Utilize NYS Grown & Certified program/brand as the basis for all marketing activities and collateral.
- E. Design and produce digital marketing collateral, including all content creation. All materials must adhere to NYS G&C brand guidelines. AGM will provide logo files and current brand guidelines.
- F. Purchase and place digital, print, radio, television and billboard advertising, and social media messaging.
- G. Manage ads and provide monthly reporting that includes performance metrics, insights, and recommendations. Live dashboard preferred.
- H. Design printed promotional materials/retailer and farmers' market kits to correlate with advertising promotions, capture consumer attention and help consumers identify NYS products at retail locations, including Taste NY Markets at NYS Welcome Center locations (see <https://taste.ny.gov/taste-ny-store-locations>), and farmers' markets/stands.
- I. Metrics should include at a minimum: number of consumers reached, amount of collateral produced and distributed, number of retail stores or farmers' markets/stands displaying point of sale promotional materials. Consumer surveys regarding brand awareness prior to and on completion of campaign will also be required.
- J. Total budget is \$1,000,000. The winning contractor will only be compensated for actual services rendered in accordance with the payment terms set forth below.
- K. Project must adhere to NYS Grown & Certified Branding Guidelines referenced in **Exhibit 1**.

#### **1.4 ELIGIBLE BIDDERS**

Any bidder authorized to conduct business in New York State that can provide comprehensive marketing, advertising, and public relations services is eligible to submit a bid. Please see **Section 3.3** for minimum qualifications for this engagement.

#### **1.5 TERM**

The contract resulting from this RFP will commence on July 1, 2023 and will end on September 29, 2025.

#### **1.6 RFP TIMELINE**

The following timetable is established for this RFP and is subject to change. AGM may extend the due date for proposals by issuance of addenda to this RFP. Prior to submitting a proposal, respondents should check the NY State Contract Reporter website (<https://www.nyscr.ny.gov>) to confirm the issuance of addenda relating to the RFP schedule.

[See Timeline on Following Page]

RFP Publication in Contract Reporter:	February 3, 2023
Deadline for Submission of Written Questions:	February 22, 2023 by 3:00 PM (local time)
Last Update of answers or issuance of RFP Addendum <a href="https://www.nyscr.ny.gov">https://www.nyscr.ny.gov</a> no later than:	March 10, 2023
Submission Deadline:	March 30, 2023 by 3:00 PM (local time)
Bid Opening:	March 31, 2023
Creative Concept Pitch “CCP”/Oral Presentation at the New York State Department of Agriculture & Markets, 10B Airline Drive, Albany, New York:	April 25, April 26, April 27, 2023*

AGM intends to make an award within sixty (60) 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.

*\*Depending on social distancing guidance from New York State, AGM may change the in-person presentation to videoconference. Dates are subject to change.*

## **2 DESCRIPTION OF WORK TO BE PERFORMED**

### **BACKGROUND**

Established in 2016 as the next generation of New York State agricultural products branding program, NYS G&C is a consumer-driven marketing campaign that has a mission to promote New York agricultural products. It is the first State program to address consumer awareness of safe food handling and environmental sustainability. Since its inception, the state has contracted with several advertising agencies to conduct market research, create social media, digital, print, television, radio, and billboard marketing campaigns. This round of funding seeks to further engage retailers and farmers’ markets/stands in promoting NYS G&C within their stores and markets.

Various NY associations (examples of which include the NY Apple Association, NY Vegetable Growers Association, NYS Maple Producers Association, etc.) support the NYS G&C program and, subsequently, this project because it seeks to increase profitability for growers and Specialty Crop retailers. The USDA Definition of Specialty Crops is defined as “fruits and vegetables, tree nuts, dried fruits and horticulture and nursery crops, including floriculture.” (A full definition of all USDA Specialty Crops can be found at [https://www.ams.usda.gov/sites/default/files/media/USDA\\_Specialty\\_Crop\\_Definition.pdf](https://www.ams.usda.gov/sites/default/files/media/USDA_Specialty_Crop_Definition.pdf).) For the purposes of this project focus will be placed on edible Specialty Crops.

### **2.1 SCOPE OF WORK/DELIVERABLES**

The selected agency shall provide comprehensive advertising and marketing services as requested and authorized by AGM, including, but not limited to:

#### **2.1.1 New York State Grown & Certified, New York Specialty Crops, Retail and Farmers’ Markets, and Roadside Stands**

- A. Promote and advertise NYS G&C and Specialty Crops to the public, retailers, distributors, institutions, processors of food and beverages,
- B. Conceive and design NYS G&C annual printed materials, including but not limited to flyers, brochures, programs, billboards, and credentials
- C. Conceive, design, place, and purchase advertising for NYS G&C program
- D. Conceive and produce text, printed, audio, video, digital, and mobile materials

- E. Provide support and assistance to NYS G&C in the creation, maintenance, look, and content of its website including updating design and content as requested
- F. Assist with procurement, production and placement of seasonal retail displays
- G. Conduct an annual survey of retailers and consumers
- H. Assist with related marketing, advertising, and public relations duties as requested

### **2.1.2 Media Types**

Deliverables may include, but are not limited to:

- Pre-recorded television advertising and other pre-recorded video
- Pre-recorded radio advertising and other pre-recorded audio
- Print display advertising
- Billboard advertising
- Banner and other digital display advertising
- Online “native” advertising (paid content)
- Print and electronic publications
- Point of Sale signage
- Raw video, audio, and photos

### **2.1.3 Advertising Plans**

Prior to the start of each growing season, AGM will provide the selected agency with business priorities and goals. Within sixty (60) days of receiving said business priorities and goals from AGM, the selected agency shall prepare and provide a written advertising plan for this project. The advertising plan must be approved by AGM and must include at a minimum the following:

- A. Innovative approaches for planned business initiatives, including how these strategies achieve AGM’s goals with measurable Key Performance Indicators (KPIs) for post-initiative evaluations.
- B. A general breakdown of proposed spending for professional services, production, and media.
- C. Opportunities for special events, promotional activities, and any other topics specified by AGM.

### **2.1.4 Performance Measures**

The selected agency shall work with AGM to:

- A. Develop strategic plans that include measurable KPIs for monitoring the extent to which marketing, public relations, and advertising efforts have had a positive impact on desired outcomes.
- B. Set specific targets, goals, and benchmarks for evaluating performance outcomes and use these measures to monitor program performance.
- C. Evaluate the program outcomes associated with marketing, public relations, and advertising efforts on a quarterly basis, and use this information to adjust program goals, strategies, and resource allocations as needed.

### **2.1.5 Advertising Effectiveness Analysis/Optimization**

AGM will evaluate the effectiveness of all advertising initiatives upon completion based on KPIs and measurement tools established with AGM prior to the development of any campaign. KPIs may include improvements in participation (increased producer participation), increased website traffic, frequency and awareness measures, sales goals or

other criteria determined as “What success looks like” by AGM prior to the development of the work and detailed in the annual plan objectives.

**2.1.6 Post-Campaign/Promotional Report**

Within sixty (60) days following the conclusion of a campaign, the selected agency shall provide a PowerPoint recap of the initiative, including total expenses and performance against KPIs established in the awarded contract.

**2.1.7 Deliverables Timeline**

- A. Advertising Plan - Within sixty (60) days receipt of business priorities and goals per **Section 2.2.3** above.
- B. Post-Campaign/Promotional Report – Within sixty (60) days following the conclusion of a campaign phase or promotional event pursuant to **Section 2.2.6** above.
- C. Creative - The selected agency shall plan creative development schedules that allow sufficient time for developing and presenting integrated creative solutions, editing, and revising selected options, obtaining final approvals from AGM, producing the final product, and distributing the finished product according to AGM specifications. Creative development timescales should also allow for concept and script refinement, through qualitative testing ensuring target audience message clarity, general comprehension and appeal. All timelines shall be mutually agreed upon in writing between AGM and the selected Contractor at every stage of each job or project. The selected agency shall provide detailed production schedules with task milestones for each job. Prior to conference calls between the selected agency and AGM, all required materials must be sent via email no later than 1 hour before the call unless otherwise approved by AGM. AGM will not be responsible for any additional costs incurred as a result of the selected agency’s failure to adhere to set timelines.

**2.1.8 Reports to AGM**

In addition to reports specified above in **Section 2.2**, the selected contractor shall be responsible for providing the following reports to AGM and understands and hereby agrees that any violation of the above terms and conditions could be considered cause for cancellation of the contract.

- A. Certified payroll. The selected contractor shall keep accurate certified payroll records of workers and shall electronically submit certified payroll records to AGM with each invoice. The contractor is also responsible for obtaining and submitting all subcontractors’ certified payroll records within the aforementioned time period.
- B. Proof of Payment to contractors. The selected contractor must provide proof of payment by the contractor to its subcontractors. Acceptable proofs of payment include a copy of a cancelled check to the subcontractor for the invoice amount or a copy of a bank statement highlighting the payment(s) to the subcontractor(s)/supplier(s).
- C. Budget reports. The selected contractor shall submit a monthly report to AGM of a cumulative budget to date by project assigned.

**2.1.9 Ownership of Contract Work Product**

All materials produced, created, improved, maintained, or conceived by the Contractor for AGM during the term of the Agreement, including but not limited to any software, website creation and development, documentation, products, materials, advertising for television, radio, print, internet or other media, and deliverables which result from services rendered



by the Contractor to AGM shall be turned over to AGM within ninety (90) days of the expiration of the Agreement, or within thirty (30) days of early termination of the Agreement, at no additional cost to AGM. AGM shall own all rights, title, and interest in said material.

### **3 PROPOSAL FORMAT, CONTENTS AND SUBMISSION**

#### **3.1 SUBMISSION TIMELINE**

All required documents must be received by AGM no later than 3:00 p.m. (local time) on March 30, 2023, in order to be considered. AGM 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 AGM 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 AGM by the selected contractor prior to execution of the contract.

Any questions concerning this RFP must be received by 3:00 p.m. (local time) on February 22, 2023. Questions must be submitted in writing via email to Amanda Shults or Ryan von Linden at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list “RFP0285 – MARKETING AND ADVERTISING OF NEW YORK STATE GROWN & CERTIFIED SPECIALTY CROPS” in the subject line. Individual responses will not be provided. AGM will provide written responses to questions in the form of one or more addenda to the RFP which will be published on the NY State Contract Reporter website (<https://www.nyscr.ny.gov>) on or before March 10, 2023. Such official addenda are the only authorized method used to communicate substantive information, including the clarification or modification of the timeline, terms, or other requirements of this RFP.

All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the RFP which will be part of the awarded contract. If you are unable to access the NY State Contract Reporter website, please contact Amanda Shults or Ryan von Linden at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov).

#### **3.2 SUBMISSION METHOD**

Facsimiles or e-mailed copies are not acceptable. Materials received after the deadline may be returned unopened to the sender. **See Section 3.8–** Submission Documents, for information on completing a bid response.

Mail or hand-deliver a bid response in one package containing the following five (5) separately labeled and sealed envelopes:

**Envelope 1**, titled “**RFP #0285 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)
- **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 Form

**Envelope 2**, titled “**RFP #0285 Technical Proposal – Do Not Open**”

- Original plus four (4) paper copies of the completed Technical Proposal addressing the criteria set forth in **Section 3.5** of this RFP.
- An electronic version of the Technical Proposal in MS Word, on either a USB 2 or 3 compliant Flash Drive.
- Original plus four (4) paper copies of **Attachment 2** - Subcontracting Form

**Envelope 3**, titled “**RFP#0285 Bid Form/Cost Proposal – Do Not Open**”

- Original plus one (1) paper copy of **Attachment 1** - Bid Form (Original Signatures Hard Copy)
- One (1) electronic copy of **Attachment 1** – Bid Form. Electronic media shall be submitted on a USB 2 or 3 compliant Flash Drive and clearly labeled. The electronic version of the Bid Form must be sealed within the same envelope as the corresponding hard copies. In the event that there are any inconsistencies between the electronic submissions and the hard copy submissions, or between multiple hard copy submissions, the original, wet ink, hard copy will be deemed controlling by AGM when reviewing each Cost Proposal.

**Envelope 4**, titled “**RFP#0285 MWBE/EEO Documents – Do Not Open**”

- Original plus one (1) paper copy of **Attachment 12 – MWBE/EEO Documents** (Original Signatures)

**Envelope 5**, titled “**RFP#0285 SDVOB Forms – Do Not Open**”

- Original plus one (1) paper copy of **Attachment 13** - SDVOB Forms (Original Signatures)

*Place the five (5) 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: Amanda Shults or Ryan von Linden (RFP#0285)

**3.3 MINIMUM QUALIFICATIONS**

Respondents are advised that AGM’s intent is to ensure that only qualified, responsive and responsible Proposers enter into a contract to provide marketing, advertising, and public relations services as defined in this RFP. AGM considers the following qualifications a pre-requisite in order to be considered a qualified Respondent for the purposes of this solicitation. The Respondent must:

Be a going concern with a minimum of five (5) consecutive years’ experience in the advertising industry with annual billing of \$2 million or more. Please provide the above information using **Attachment 11 – Experience Form** of the Submission Documents and include financial documentation such as audited financial statements to demonstrate the requisite experience. Any bidder who fails to meet any of these qualifications will be disqualified.

### 3.4 MANDATORY CONTRACT REQUIREMENTS

Each bidder must certify that:

- A. No other obligation or engagement, contractual or otherwise, will impact the selected contractor's ability to provide advertising, marketing, and public relations services during the contract period.
- B. The selected contractor will have full control of all services provided pursuant to this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The selected Contractor will indemnify and hold harmless the State of New York, AGM, 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, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- C. The selected Contractor will obtain and maintain insurance policies that meet the requirements set forth in **Exhibit 2: Insurance Requirements**.
- D. 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 RFP as **Exhibit 3**.

### 3.5 TECHNICAL PROPOSAL (Maximum score – 90 points)

See **Section 3.2--Submission Method** for information on packaging the proposal. The proposal should describe the bidder's approach to performing marketing and advertising and address all the elements below. Proposals should include a title page with the RFP number and title, offeror's contact information, and a Table of Contents and narrative that follows the headers set forth in subsections A, B, C, E, and F.

#### **A. Experience and Key Personnel (Maximum Score –15 points)**

- i. Demonstrate an ability to provide advertising, marketing, and public relations services in operations comparable to the scale and scope to the demands of this project. Describe what distinguishes your company in the industry. Describe relevant experience comparable in scale and scope to the services contemplated herein. **(10 points)**
- ii. Describe the background and relevant experience of key personnel, partners, or subcontractors. Include an organizational chart which shows all divisions, sections or units including executive, creative, public relations, media department, accounting and other programmatic functions, as well as a list of all personnel and anticipated subcontractors who will be involved with the contract awarded from this RFP, and the percentage of their time expected to be devoted to the contract. The proposer should also indicate the percentage of work that is expected to be done in-house and the type and percentage it expects to subcontract. Affirmatively state whether the bidding firm and/or key personnel have worked for any New York State agency or department, as an employee, contractor, or subcontractor. **(5 points)**

#### **B. Creative Examples and Case Histories (Maximum Score – 20 points)**

- i. Provide a visual portfolio on a flash drive of examples of relevant creative work performed for and used by its clients. Brief descriptions should accompany creative

items in the portfolio. The portfolio should address the breadth of the bidder's capabilities in all forms of media and marketing. **(10 points)**

- ii. Provide three detailed case histories relevant in scale and scope to the scope of work as defined in **Section 2** of this RFP, demonstrating proficiency in all aspects of marketing, advertising, and public relations. **(5 points)**
- iii. For each of the case histories provided, describe how the bidding firm's ideas and implementation helped to achieve the clients' goals, and indicate how success in achieving the clients' goals were measured. **(5 points)**

**C. Proposed Campaign (Maximum Score – 40 points)**

- i. Describe an overall concept and strategy to garner customer attention to purchase NYS Specialty Crops, increase the awareness of the quality and diversity of NYS Specialty crop products and NYS Grown & Certified, and drive consumers to retail and farmers' markets. **(10 points)**
- ii. Describe the types of paid media (e.g., newspapers, periodicals, television, radio, digital/online, social, billboards, etc.) and collateral marketing items you will use to optimize performance and achieve desired outcomes. **(10 points)**
- iii. Describe the production services (e.g., artwork, layouts, engravings, electrotypes, plastic plates, typography, mats, photostats, photo prints, photography, videography, retouching, printing, mechanicals, transcriptions, storyboards, video, and radio talent, etc.) that will be utilized for this campaign and if they will be in house or subcontracted. **(10 points)**
- iv. What geographic coverage and demographic will the proposed plan center around? Describe your assumptions about the audience and food/beverage industry. **(5 points)**
- v. Describe the implementation phases and components, including checkpoints, milestones and delivery dates. All advertising and marketing activities shall be completed and/or run by September 29, 2025. **(5 points)**

**D. Creative Concept Pitch "CCP"/Oral Presentation (Maximum Score – 5 points)**

If AGM receives 3 or more eligible proposals, the proposers that receive composite scores within 5 points of the top score will be required to give an in-person\* oral presentation to the Technical Evaluation Team, not to exceed one hour. The oral presentation will be worth a maximum of 5 points. AGM will not require oral presentations if there are less than 3 eligible proposals **and** the difference in the composite scores of the 1<sup>st</sup> and 2<sup>nd</sup> ranked proposals is greater than 5 points. If no oral presentations are held, then each proposer automatically receives 5 points for this factor.

The proposer should demonstrate how it would promote the NYS Grown & Certified program and New York Specialty Crops to New York markets to increase participation and program awareness to the public, retailers, distributors, institutions, growers and processors of food and beverages.

The presentation should consist of:

- i. An overview of the strategy outlined in **Section 3.5 C.** with discussion of obstacles to overcome.
- ii. Specific sample marketing and advertising materials to be used in such a campaign to make clear the strategy and implementation of bidder's proposal and an explanation/justification as to why the bidder believes the type(s) of marketing and advertising materials they propose to implement will best serve to increase purchasing of NY Specialty Crops, participation in NYS G&C, and attendance at local farmers' markets.

The "CCP/oral presentations will be held on April 25, April 26, and April 27, 2023 at the New York State Department of Agriculture and Markets located at 10B Airline Drive, Albany, NY 12235 (\*Depending on social distancing guidance from New York State, AGM may change the in-person presentation to videoconference. Dates are subject to change.).

**E. Performance Measures (Maximum score – 5 points)**

The bidder should describe its plan for monitoring the extent to which its marketing, public relations, and advertising efforts have a positive impact on AGM desired outcomes. The plan should include specific KPIs that the bidder will employ to evaluate its marketing, public relations, and advertising plan (e.g., identify targets, goals, pre- and post-consumer research, and benchmarks for evaluating performance outcomes and what measures bidder will use to provide AGM with relevant information to monitor program performance).

**F. References (Maximum Score- 5 points)**

The bidder must provide a minimum of two (2) verifiable references that can substantiate the quality of the bidder's work and service. References should be from clients for which the bidder provided work similar in scale and scope as that requested in this RFP. The references must include:

- Name, title, address, email, and phone number of each reference
- Length of the relationship
- Detailed description of the services provided

Note that AGM will contact the references to verify and evaluate the information provided. The Bidder is solely responsible for the availability of the submitted references.

**3.6 COST PROPOSAL (Maximum score – 10 points)**

The cost proposal 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. Bidders who do not fully complete and submit the attached Bid Form may be disqualified.

Please follow the instructions in **Attachment 1** when completing your bid. Per the Bid Form Instructions tab on **Attachment 1 – Bid Form**, vendors should enter required data 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. Hourly rates should be single

numbers, not a range of rates, and shall be inclusive of all costs including but not limited to travel, benefits, licenses, insurance, administrative, profit and other ancillary costs. Preparation of billing and invoicing is not a reimbursable expense and should not be a part of the cost structure of any proposal. Purchase of meals or gifts is prohibited and is therefore not a reimbursable or commissionable expense.

In accordance with the attached Bid Form:

**A. Personnel costs—Blended Hourly Rate and Estimated Hours**

- a. Provide a single, blended hourly rate and estimated hours for all personnel who provide administrative support for the account. The hourly rate should be a single number, not a range of rates, and shall be inclusive of all costs including but not limited to travel, benefits, licenses, insurance, administrative, profit and other ancillary costs. Preparation of billing and invoicing is not a reimbursable expense and should not be a part of the cost structure of any proposal.
- b. Provide a single, blended hourly rate and estimated hours for all other professionals, **excluding those specified in Section 3.6C below**, that will be assigned to the account. The hourly rate should be a single number, not a range of rates, and shall be inclusive of all costs including but not limited to travel, benefits, licenses, insurance, administrative, profit and other ancillary costs. Preparation of billing and invoicing is not a reimbursable expense and should not be a part of the cost structure of any proposal.

**B. Media Spend and Percent Commission on Media**

State the estimated media spend and the commission, expressed as a whole number percentage of the cost to be charged by the bidder on media purchased by the bidder in and on newspapers, periodicals, television, radio, digital/online, social media, and billboards. The commission rate should be inclusive of all costs including time spent by agency staff who research advertising rates and negotiate the purchase of advertising space on behalf of clients. The agency should exclude any commission cost from negotiation with media outlet(s). The media outlet should bill only the cost of the advertising.

The commission percentage shall be inclusive of all costs including but not limited to travel, benefits, licenses, insurance, administrative, profit and other ancillary costs. Preparation of billing and invoicing is not a reimbursable expense and should not be a part of the cost structure of any proposal.

**C. Production Spend and Percent Commission on Production**

State the estimated production spend and the commission, expressed as a whole number percentage of the cost to be charged by the bidder for production costs incurred for AGM by the bidder for artwork, layouts, engravings, electrotypes, plastic plates, typography, mats, photostats, photo prints, photography, videography, retouching, printing, mechanicals, transcriptions, storyboards, and video and radio talent. The commission percentage shall be inclusive of all costs including but not limited to travel, benefits, licenses, insurance, administrative, profit and other ancillary costs. Preparation of billing and invoicing is not a reimbursable expense and should not be a part of the cost structure of any proposal.

NOTE: The bidder awarded the contract will only be paid for the actual number of hours expended and for commission on actual media and production services provided. All requests for payment shall be accompanied with a detailed invoice and supporting documentation evidencing the service(s) provided and proof of payment and shall include the names and titles of personnel performing the work, number of hours worked for Administrative personnel and Other personnel (excluding media buying), and a description of the services/work provided.

### **3.7 CALCULATION OF THE SCORE FOR COSTS (Maximum score – 10 points)**

The cost proposal represents 10 points of the overall score and will be awarded pursuant to a formula. This calculation will be computed by Fiscal Management independently of the technical scoring by the evaluation committee.

The submitted cost information will be awarded points, pursuant to a formula which awards 10 points to the bidder that offers the lowest grand total cost on the Bid Form. The remaining bids will be awarded points based on the calculation below that computes the relative difference between each bid and the lowest bid. As stated in **Section 1.3 J.**, the total budget is \$1,000,000. The winning contractor will only be compensated for actual services rendered in accordance with the hourly rates and percentage commission rates on production and media bid on the Bid Form.

**Cost Score Calculation: Points = (lowest bid divided by the bid being evaluated) x cost points (10)**

### **3.8 SUBMISSION DOCUMENTS**

Bidders must submit all proposal submission documents required to be responsive for proposal evaluation by the bid response due date. The packet of submission documents is posted on the New York State Contract Reporter website at <https://www.nyscr.ny.gov>. The submission must include paper documents of the technical proposal, bid form cost proposal and required assurances and documentation.

Proposals should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond what is required to provide a complete presentation. If supplemental materials are a necessary part of the proposal, the bidder should reference these materials in the technical proposal, identifying the document(s) and citing the appropriate section(s) and page(s) to be reviewed. Any proprietary material considered confidential by the bidder must be specifically so identified, and the basis for such confidentiality must be specifically set forth in the proposal. Be advised that AGM is subject to the Freedom of Information Act as codified in the New York State Public Officers Law.

## **4 EVALUATION CRITERIA AND METHOD OF AWARD**

### **4.1 CONSIDERATION**

For a bidder to be eligible for consideration, it must meet the Minimum Qualifications. To be awarded a contract, the bidder must certify that it will meet the Mandatory Contract Requirements.

### **4.2 CRITERIA FOR EVALUATING BIDS**

All complete proposals received by the deadline will be reviewed using the following criteria and ratings. A proposal will first be reviewed by AGM staff to ensure that the proposal is complete, and that the minimum qualifications have been met. AGM 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 AGM for those items marked with an asterisk (\*) on the Submission Documents Checklist.

**A. Technical Proposal**

A technical evaluation committee will review each Technical Proposal to determine compliance with the requirements described in this RFP. The technical component of all proposals shall be scored individually by each member of the committee using the point ranges assigned to each component within each criterion when assigning a whole number score for each of the criteria. The committee retains the right to determine whether any deviation from the requirements of the RFP is substantive in nature and may reject, in whole or in part, any and all proposals, and/or waive minor irregularities.

AGM may request written clarifications during evaluations. In the event written clarifications are necessary, the evaluation committee will meet to discuss clarifications and any disparate scores. The evaluation committee will be permitted to review its scoring and to make corrections based upon written clarifications, errors discovered and/or disparate scores.

The Technical Proposal represents 90 points of the overall score. All complete proposals received from eligible and qualified bidders will be evaluated.

**B. Cost Proposal**

The Cost Evaluation will be conducted separately on all bids that are deemed to meet the minimum qualifications. The Bid Form provided must be used, and not altered in any way (See **Attachment 1** - Bid Form included in the Submission Documents packet).

The Cost Proposal represents 10 points of the overall score and points will be awarded pursuant to a formula referenced in **Section 3.7**. This calculation will be computed by Fiscal Management independently of the technical scoring committee.

<b>Technical Criteria (90%)</b>	
Technical Proposal	90 points
<b>Cost Criteria (10%)</b>	
Cost Proposal	10 points
<hr/>	
<b>Maximum Score</b>	<b>100 points</b>

**4.3 METHOD OF AWARD**

AGM intends to make a single contract award to the eligible and qualified Bidder whose proposal results in the highest aggregate technical and cost score. AGM will compile the financial and technical scores and compute the composite score for each bidder and rank the Combined Technical and Cost Proposal scores accordingly. The composite score for each bidder will consist of an average of all technical scores (rounded to two decimal places) from the technical evaluators added to the score from the cost evaluation (rounded to two decimal places). In the case of a tie composite score, the bidder among the tied group with the highest number of points for **Section 3.5 C. (Proposed Campaign)** will be awarded the contract. In the event that multiple bidders have identical composite scores and identical number of points for **Section 3.5 C. (Proposed Campaign)**, the winner will be determined by a coin toss.



## **5 CONSIDERATIONS RELATED TO THIS PROCUREMENT**

### **5.1 AGM'S RESERVATION OF RIGHTS**

AGM reserves the right to:

- Reject any or all proposals received with respect to this invitation;
- Withdraw the RFP at any time, at AGM's sole discretion or otherwise decline to award a contract from this invitation;
- Make an award in whole or in part;
- Require clarification from any bidder to assure a full understanding of the responsiveness to the requirements of the invitation;
- Disqualify any bidder whose conduct and/or bid response fails to conform to the requirements of the RFP;
- 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 AGM's request for clarifying information in the course of evaluation and/or selection under the RFP;
- Waive or modify minor irregularities in bids received;
- Request additional information from bidders as deemed necessary to more fully evaluate bids or to obtain omitted required forms. Bidders will have three (3) business days to respond to the request;
- Prior to the bid opening, amend this solicitation after its release, with appropriate written notice posted on AGM's website to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit bid response modifications addressing subsequent RFP amendments;
- Change any of the scheduled dates;
- Eliminate any minimum or mandatory non-material specifications that cannot be complied with by all of the bidders;
- Waive any requirements that are not material;
- Make mathematical corrections in the event a mathematical error is discovered in computing the cost proposal (e.g., error in formula in excel spreadsheet);
- Conduct contract negotiations with the next responsible bidder, should AGM be unsuccessful in negotiating with the selected bidder; and
- Unless otherwise specified in the solicitation, every offer is firm and not revocable until the contract start date.

### **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 AGM. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to approval of AGM. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to AGM. As part of this explanation, the

subcontractor must submit to AGM a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this Agreement.

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

Unless waived in writing by AGM, all subcontracts between the Contractor and subcontractors shall expressly name the State, through AGM, as the sole intended third party beneficiary of such subcontract. The Department of Agriculture & Markets 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 AGM or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against AGM.

AGM 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 AGM 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 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 AGM 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 AGM contracts.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, AGM hereby establishes an overall goal of thirty (30) percent for MWBE participation, fifteen (15) percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and fifteen (15) percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as

subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this Request for Proposals (RFP), the respondent agrees that AGM may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how AGM 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 RFP, such finding constitutes a breach of contract and AGM 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 AGM'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:

- (1) 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 AGM for review and approval. AGM will review the submitted MWBE Utilization Plan and advise the respondent of AGM acceptance or issue a notice of deficiency within 30 days of receipt.
- (2) 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 AGM, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by AGM to be inadequate, AGM shall notify the 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.

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

- If a respondent fails to submit an MWBE Utilization Plan;
- If a respondent fails to submit a written remedy to a notice of deficiency;
- If a respondent fails to submit a request for waiver; or
- 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 AGM 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 AGM on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

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 subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the**

**withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

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

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

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

**I. Contract Goals**

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

**II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by

SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to AGM.

- C. AGM will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of AGM acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to AGM a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by AGM to be inadequate, AGM shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by AGM, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. AGM may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If AGM determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, AGM shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall contact the SDVOB liaison at [supplierdiversity@agriculture.ny.gov](mailto:supplierdiversity@agriculture.ny.gov) ATTN: Amanda Shults for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by AGM at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, AGM shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any

time during the term of the Contract to AGM but must be made no later than prior to the submission of a request for final payment on the Contract.

- D. If AGM, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, AGM may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

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

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

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

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

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

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

#### **VI. Breach of Contract and Damages**

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

All forms are available at: <https://ogs.ny.gov/veterans/>

## **5.5 NOTIFICATION OF AWARD**

AGM will notify the selected bidder verbally, followed by a written confirmation. Unsuccessful bidders will be notified in writing by AGM within ten (10) business days after the award.

## **5.6 DEBRIEFING PROCEDURES**

Pursuant to section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within fifteen (15) calendar days of notification by AGM that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov).

## **5.7 BID PROTEST PROCEDURES**

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

- A. 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 AGM.
- B. The protest must be filed within ten (10) business days of receipt 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 Amanda Shults 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)

- C. Fiscal Management will convene a review team that will include at least one staff member from each of: AGM's Office of Counsel, AGM's Office of Fiscal Management, and AGM's Division of Agricultural Development. 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 Fiscal Management will advise OSC that a protest was filed.
- D. 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/>.

## **5.8 NEW YORK LAW**

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



## 5.9 REQUIRED APPROVALS

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

## 5.10 VENDOR RESPONSIBILITY AND NYS VENDOR ID

### **Prime Contractors:**

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, AGM 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 AGM's execution of the Contract will be contingent upon AGM's determination that the bidder is responsible, and that AGM will be relying upon the bidder's responses to the Questionnaire in making that determination. If it is found by AGM that a bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, AGM may terminate the contract by providing ten (10) days written notification to the contractor. In no case shall such termination of the contract by AGM be deemed a breach thereof, nor shall AGM 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 <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system> or go directly to the VendRep System online at <https://onlineservices.osc.state.ny.us/Enrollment/login?0>.

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 [ITServiceDesk@osc.ny.gov](mailto:ITServiceDesk@osc.ny.gov).

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).

**5.11 COST LIABILITY**

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

**5.12 FREEDOM OF INFORMATION**

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

**5.13 PROCUREMENT LOBBYING LAW**

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offerer/bidder during the procurement process. (See Submission Documents Packet, **Attachment 6** -- "Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence"). An offerer/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the RFP through final award and approval of the Procurement Contract by AGM, 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. AGM employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offerer/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 offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in AGM Guidelines, which are attached, and on the Office of General Services Website at <https://ogs.ny.gov/acpl/>

AGM has designated the following staff member to receive contacts pertaining to this Bid:

Amanda Shults or Ryan von Linden  
New York State Department of Agriculture and 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**)
- MWBE/EEO Documents (the forms are included in the Submission Documents as **Attachment 12**)
- SDVOB Forms (the forms are included in the Submission Documents as **Attachment 13**)

### **6.2 CONTRACT DOCUMENTS AND REQUIREMENTS**

The successful bidder will be required to execute a written contract with AGM. A sample New York State Department of Agriculture and Market’s contract is attached to this RFP as **Exhibit 3**. By submitting a bid, bidder agrees to be bound by all terms and conditions in AGM’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;” **Appendix E** “Special Conditions for Agreements New York State Department of Agriculture and Markets;” **Appendix E-1** “MWBE Requirements and Procedures”; and **Appendix E-2** “SDVOB Requirements and Procedures”.

## 7 RECOMMENDED SUBMISSIONS

The following forms are not required to be submitted with the bid response, though each form will be required prior to contract execution. 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" (January 2014). 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.

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

### 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 Agricultural Development, 10B Airline Drive, Albany, NY 12235 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: [www.wcb.ny.gov](http://www.wcb.ny.gov). Alternatively, questions relating to either workers’ compensation or disability benefits coverage should be directed to the NYS Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307.

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

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Licensees 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, AGM encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.**