



**Agriculture
and Markets**

REQUEST FOR PROPOSALS

for

**MARKETING AND ADVERTISING FOR NEW YORK STATE
COUNTY AND LOCAL FAIRS**

RFP0314

RFP Issued: August 23, 2023
Proposals Due: October 18, 2023

By:

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

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EXHIBIT 1: List of Article 24 Fairs (https://www.nyfairs.org/fairs_by_date.htm)

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SUBMISSION DOCUMENTS PACKAGE

1 INTRODUCTION

1.1 Overview

This Request for Proposals (“RFP”) is issued by the New York State Department of Agriculture and Markets (“the Department”) to invite qualified bidders to submit proposals to design and implement a marketing and advertising campaign to promote the over 50 annual county and local fairs for the promotion of agriculture and domestic arts operating throughout New York State pursuant to Article 24 of the New York Agriculture and Markets Law (hereinafter “county and local fairs”).

The mission of county and local fairs is to assist in showcasing the agricultural products, practices, history and traditions of the State. In addition to agricultural competitions and exhibitions these fairs offer different attractions, often including a Midway, a diverse selection of foods, musical acts, exhibits, and demonstrations. Using \$1 million in State funds appropriated in the 2023-2024 Fiscal Year Budget for the promotion of county and local fairs, the Department seeks to develop a multi-faceted marketing campaign to gain consumer attention and help increase attendance and participation at agricultural fairs across the State.

1.2 Needs Statement

The Department seeks a qualified entity to produce and provide messages and message products and to develop collateral items that:

- Increase attendance at county and local fairs statewide, including attendance by individuals at multiple fairs.
- Allow county and local fairs to be marketed widely across the state -- appealing to all demographics of New Yorkers -- with messaging that these fairs are an exciting and affordable entertainment destination.
- Educate the general public and reinforce the message that attending county and local fairs supports local agriculture and the economy. Messaging should engage the general public and encourage attendance at and participation in the various shows, competitions, and demonstrations that showcase the local production of crops, livestock and livestock products.

1.3 RFP Goals

The purpose of this RFP is to retain one contractor to provide comprehensive marketing and advertising for county and local fairs. The successful contractor will be expected to:

- A. Conduct research to determine the most effective messaging to increase attendance at county and local fairs statewide.
- B. Identify the regional media markets to target as part of a statewide campaign to increase attendance to county and local fairs.
- C. Implement marketing and advertising activities informed by tasks A and B above to increase attendance to county and local fairs.
- D. Communicate the benefits of being an exhibitor at county and local fairs and direct potential exhibitors to fair entry information.
- E. Expand the ability of county and local fairs to attract attendees from a larger geographic radius.

F. Increase the diversity of patron demographics attending county and local fairs.

1.4 Eligible Bidders

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

1.5 Term

The contract resulting from this RFP will begin on January 1, 2024, and end on December 15, 2024.

1.6 RFP Timeline

The following timetable is established for this RFP and is subject to change. The Department 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.

| | |
|--|--|
| RFP Publication in Contract Reporter: | August 23, 2023 |
| Deadline for Submission of Written Questions: | September 8, 2023, by 3:00 p.m. (local time) |
| Last Update of answers or issuance of RFP Addenda posted in the Contract Reporter no later than: | September 20, 2023 |
| Submission Deadline: | October 18, 2023 by 3:00 p.m. (local time) |
| Bid Opening: | October 19, 2023 |

The Department 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.

1.7 Questions and Answers

Any questions concerning this RFP must be received by 3:00 p.m. (local time) on **September 8, 2023**. Questions must be submitted in writing via email to Lindsay Blair or John Ross at procurement.info@agriculture.ny.gov. Please list "RFP0314 – MARKETING AND ADVERTISING FOR NEW YORK STATE COUNTY AND LOCAL FAIRS" in the subject line. Individual responses will not be provided. The Department 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 September 20, 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 respondents are responsible for keeping informed of any revisions to this RFP. All addenda 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 Lindsay Blair or John Ross at procurement.info@agriculture.ny.gov.

2 DESCRIPTION OF WORK TO BE PERFORMED

2.1 Background

In addition to the Great New York State Fair, New York State is home to more than 50 county and local fairs that operate from July through early October (see **Exhibit 1** for a current list of fairs). Local fairs offer a unique opportunity for New Yorkers and visitors alike to learn about local agriculture, including where our food comes from, and how it is grown, harvested, and prepared. Fairs also provide fairgoers with family-friendly fun, music of various genres, and, the ability to see first-hand the hard work entailed in growing our delicious, locally produced food. Additionally, today's agricultural fairs offer youth the venue to proudly showcase everything from their prized Holsteins to American Crested guinea pigs to their Cayuga duck, continuing generations of family traditions.

Fairs date back thousands of years as agricultural market events for people to sell wares, break from daily labor, and experience flavors and cultures they would not otherwise have access to. This tradition continues today with expansion into entertainment, demonstrations and exhibits, competitions for prizes, education, and advancements in agricultural technology. Agricultural competitions and demonstrations provide a way for people to celebrate agricultural achievements and reward producers for their hard work, dedication and skill, while connecting people with limited agricultural background to rural life and food production.

In 2022, county and local fairs in New York State brought in almost \$14 million in admission revenue, and over 3 million attendees. These statistics were an increase from 2021, but still not at pre-pandemic levels. Each year, the organizations that operate county and local fairs use state and/or local funding available to fund exhibits, conduct educational programs and make improvements to infrastructure. Increasing participation of exhibitors and attendance at county and local fairs statewide is crucial to continuing the awareness of the value of agriculture to New York State as well as the people and establishments behind its success.

2.2 Scope of Work/Deliverables

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

2.2.1 New York State County and Local Fairs Marketing Program

- A. Research the strategic messaging that will drive attendance to agricultural fairs and agriculture related exhibits, and develop and implement a marketing strategy to best raise consumer awareness and attendance at the fairs, including surveying Fairgoers and non-Fairgoers.
- B. Use metrics to gather pre and post campaign interest levels and feedback on reasons for attending fairs, such as: what activities/events they participated in, if they attended more than one local fair, and if they plan to attend future fairs.
- C. Metrics should include at a minimum: number of people reached, amount of collateral produced and distributed, number of video views, social media engagement, and all digital media metrics.
- D. Conceive, design, produce, purchase/place, and distribute marketing collateral, such as print, audio, video, digital and mobile materials. (i.e.- Flyers, brochures, billboards, transit advertising, banner ads, etc.). This should include geo-targeted regional advertising that ties into the

statewide campaign. The Department will provide a limited amount of raw video and photography from the 2023 fair season that may be used for campaign visuals.

- E. Assist with design, production, and distribution of any collateral used at individual fairgrounds, as directed by the Department.
- F. Consult with the Department to ensure consistency with other related marketing activities.
- G. Total budget is \$1,000,000. The selected contractor will only be compensated for actual services rendered in accordance with the payment terms set forth below.

2.2.2 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
- Digital apps
- Public signage
- Video, audio, or photos

2.2.3 Advertising Plans

The selected agency shall prepare and provide a written statewide advertising plan for the county and local fairs (**EXHIBIT 1**). The advertising plan must be approved by the Department and must include at a minimum the following:

- A. Innovative approaches to achieve the stated goals.
- 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 the Department.

2.2.4 Performance Measures

The selected agency shall work with the Department to:

- A. Develop strategic plans that include measurable KPIs for monitoring the extent to which marketing 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 and advertising efforts on a quarterly basis, and use this information to adjust program goals, strategies, and resource allocations as needed.

2.2.5 Advertising Effectiveness Analysis/Optimization

The Department will evaluate the effectiveness of all advertising initiatives throughout the course of and upon completion of the campaign. Metrics must include at a minimum: number of people reached, amount of collateral produced and distributed, number of video views, social media engagement, and all digital media impressions. The Department will also monitor improvements in vendor and exhibitor participation, increased attendance, increased website traffic, increased revenue or other criteria identified by the Department.

2.2.6 Post-Campaign/Promotional Report

Following the conclusion of the campaign, the contractor shall provide a slide deck recap of the initiative, including total expenses and performance against established scope of work and goals to assist the Department in the evaluation of its success.

2.2.7 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 contractor 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 the Department, producing the final product, and distributing the finished product according to 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 between the Department and the selected Contractor for approval 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 the Department all required materials must be sent via email no later than 1 hour before the call unless otherwise approved by the Department. The Department will not be responsible for any additional costs incurred as a result of the contractor’s failure to adhere to set timelines.

2.2.8 Reports to the Department

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

- A. 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).
- B. Budget reports. The selected contractor shall submit a monthly report to the Department of a cumulative budget to date by project assigned.

2.2.9 Ownership of Contract Work Product

All materials produced, created, improved, maintained, or conceived by the Contractor for the Department 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 the Department shall be turned over to the Department 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 the Department. The Department shall own all rights, title, and interest in said material.

3 PROPOSAL SUBMISSION, CONTENTS AND FORMAT

3.1 Proposal Submission Requirements

Proposals must be received by the Department's Division of Fiscal Management by **3:00 p.m.** local time on **October 18, 2023**.

Mail or hand-deliver your proposal, in one sealed envelope or package addressed to:

NYS Department of Agriculture and Markets
Division of Fiscal Management
10B Airline Drive
Albany, NY 12235
ATTN: Lindsay Blair or John Ross (RFP0314)

Proposers are solely responsible for insuring the timely delivery of their proposal. Proposals may not be submitted electronically or by fax. Materials received after the deadline will be returned unopened to the sender.

3.2 Proposal Content

The respondent is solely responsible for the content and completeness of the proposal. The Department may request clarification from any respondent regarding items in the proposal.

Your complete proposal package must contain the following five (5) separately labeled and sealed envelopes:

Envelope 1, titled "**RFP0314 Minimum Qualifications and Forms and Assurances**"
Original plus one (1) paper copy of (See **Section 5.1** Required 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** – Minimum Qualifications Form

Envelope 2, titled “**RFP0314 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 “**RFP0314 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. If 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 the Department when reviewing each Cost Proposal.

Envelope 4, titled “**RFP0314 MWBE/EEO Documents – Do Not Open**”

- Original plus four (4) paper copies of **Attachment 12 – MWBE/EEO Documents** (Original Signatures)

Envelope 5, titled “**RFP0314 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
Division of Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Lindsay Blair or John Ross (RFP0314)

3.3 Minimum Qualifications

Respondents are advised that the Department’s intent is to ensure that only qualified, responsive and responsible entities enter into a contract to provide marketing, advertising, and public relations services as defined in this RFP. The Department 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 consecutive years’ experience in the advertising industry with annual billing of \$1 million or more for at least two of those years. Please provide the above information using **Attachment 11 – Minimum Qualifications 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 respondent 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 for New York county and local fairs 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, 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, 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 Department of Agriculture & Markets Agreement attached to this RFP as **Exhibit 3**.

3.5 Technical Proposal (Maximum score – 80 points)

The proposal should describe the respondent's approach to performing marketing, advertising, and public relations services and address all of the elements below. Proposals must include a title page with the RFP number and title, respondent's contact information, and a Table of Contents and narrative that follows the headers set forth in subsections 3.5.1, 3.5.2, 3.5.3, 3.5.4 and 3.5.5.

3.5.1 Experience and Key Personnel (Maximum Score –15 points)

- A. Demonstrate the ability to provide advertising and marketing services comparable in scale and scope to the demands of this project. Describe what distinguishes your company's ability to achieve the goals of this project. Describe relevant experience comparable in scale and scope to the services contemplated herein. *See also section 3.5.5 for Reference requirements. (10 points)*
- B. Describe the background and experience of key personnel, partners, or subcontractors as it relates to the scope and services of this project. Include an organizational chart which shows all divisions, sections or units including executive, creative, media department, accounting and other programmatic functions, as well as a list of all personnel and relevant 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)**

3.5.2 Creative Examples and Case Histories (Maximum Score – 20 points)

- A. Provide a visual portfolio on a flash drive with 3 multi-media, creative campaigns that demonstrate proficiency in all aspects of marketing and advertising. **(10 points)**
- B. For each of the examples 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. Include specific metrics. **(10 points)**

3.5.3 Proposed Campaign (Maximum Score – 35 points)

- A. Describe an overall concept and strategy to increase attendance, diversity and geographic representation of participants and attendees at county and local agricultural fairs throughout New York State. **(10 points)**
- B. Describe the types of paid media (e.g., newspapers, periodicals, television, radio, digital/online, social, billboards, etc.) and collateral marketing items (e.g., flyers, brochures, signage, banners, etc.) that will be utilized to achieve desired outcomes. **(10 points)**
- C. Describe your assumptions and understanding of local fairs and fairgoers. How will your proposed campaign increase the diversity of attendees? **(10 points)**
- D. Describe an overall timeline of implementation phases and components, including checkpoints and delivery dates. All advertising and marketing activities shall be completed and/or run by September 30, 2024. **(5 points)**

3.5.4 Performance Measures (Maximum score – 10 points)

The bidder should include a plan that identifies targets, goals, and benchmarks for evaluating performance outcomes and what measures will be provided to the Department with relevant information to monitor program performance. The bidder should describe the tools it will provide to the Department to monitor the extent to which its marketing, and advertising efforts have a positive impact on the Department’s desired outcomes.

3.5.5 References

The bidder must provide a minimum of three (3) verifiable references that can substantiate the quality of the bidder’s work and service. References should be from clients for which the bidder provided similar work 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 the Department will contact the references to verify the information provided. The Bidder is solely responsible for the availability of the submitted references.

3.5.6 Creative Concept Pitch “CCP”/Oral Presentation

In the event of a tie, proposers 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.* The Department will not require oral presentations if there if there is not a tie.

The presentation will be scored as follows and should consist of:

- 1) An overview of the strategy outlined in Section 3.5.3 with discussion of obstacles to overcome. (2 points)
- 2) Specific sample marketing and advertising materials to be used in such a campaign to make clear the strategy and implementation of respondent's proposal and an explanation/justification as to why the respondent believes the type(s) of marketing and advertising materials they propose to implement will best serve to increase attendance and participation at county and local fairs. (3 points)

In the event that "CCP"/oral presentations are required they will be held at the New York State Department of Agriculture and Markets located at 10B Airline Drive, Albany, NY 12235.

3.6 Cost Proposal (Maximum score – 20 points)

The cost proposal must be submitted on "**Attachment 1 - Bid Form**" included in the Submission Documents. Respondents 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**, bidders 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 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 Media

State the estimated production spend and the commission, expressed as a whole number percentage of the cost to be charged for production costs incurred for the Department by the respondent 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 selected Contractor 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.

4 EVALUATION CRITERIA AND METHOD OF AWARD

All complete proposals received by the deadline will be reviewed using the following criteria and ratings. A proposal will first be reviewed by the Department’s staff to ensure that the proposal is complete, and that the minimum qualifications have been met. 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.

Points will be allocated as follows:

| | |
|---------------------------------|-------------------|
| Technical Criteria (80%) | |
| Technical Proposal | 80 points |
| Cost Criteria (20%) | |
| Cost Proposal | 20 points |
| <hr/> | |
| Maximum Score | 100 points |

The Department will make the award to the respondent whose proposal provides the best value to the State of New York.

4.1 Technical Evaluation

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.

The Department 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 80 points of the overall score. All complete proposals received from eligible and qualified bidders will be evaluated.

4.2 Cost Evaluation

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 20 points of the overall score and points will be awarded pursuant to the formula below. This calculation will be computed by staff from the Department's Division of Fiscal Management independently of the technical scoring committee.

20 points will be awarded 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. *The total budget is \$1 million.* 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: $\text{Points} = (\text{lowest bid divided by the bid being evaluated}) \times \text{cost points (20)}$

4.3 Method of Award

The Department intends to make a single contract award to the eligible and qualified respondent whose proposal results in the highest aggregate technical and cost score thereby providing the best value to the State of New York. The Department will compile the technical and cost scores and compute the aggregate score for each proposal and rank the proposals from highest to lowest. The aggregate score for each proposal 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 score, the respondent among the tied group with the highest number of points received from the Oral Presentations (see section 3.5.6) will be awarded the contract. In the event of a tie score after the Oral Presentations, the respondent among the tied group with the highest cost proposal score will be awarded the contract.

4.4 Notification of Award

The Department will notify the selected respondent verbally, followed by a written confirmation. Unsuccessful respondents will be notified in writing by the Department within ten (10) business days after the award.

4.5 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 Department that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to Lindsay Blair or John Ross at procurement.info@agriculture.ny.gov.

4.6 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 the Department.
- 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 Lindsay Blair or John Ross at:

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

- C. The Department's Division of Fiscal Management will convene a review team that will include at least one staff member from each of: the Department's Counsel's Office, the Department's Division of Fiscal Management, and Department'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, 11th Floor, Albany, New York 12236. More information on the Office of the State Comptroller's (OSC) Contract Award Protest Procedures can be found in OSC's Guide to Financial Operations (GFO), Chapter XI.17, available on the internet at <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

5. SUBMISSION DOCUMENTS & CONTRACT TERMS

5.1 Required 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 Respondent. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful Respondent and the Department. Please refer to **Section 3.2**, "Proposal Content" 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 Contract 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 Nondiscrimination 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**)
- Minimum Qualifications 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**)

5.2 Mandatory Contract Terms

The successful respondent 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 RFP as Exhibit 3. By submitting a proposal, respondent 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."

5.3 Contractor Requirements and Procedures for Participation By New York State-Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

New York State Law

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Department hereby establishes an overall goal of thirty percent (30%) for MWBE participation, fifteen percent (15%) for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and fifteen percent (15%) 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 the Department 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 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 RFP, 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 518-485-1325 or supplierdiversity@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 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.

(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 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:

- 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 the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

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

Equal Employment Opportunity Requirements

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

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

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

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

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

5.4 Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses

Article 3 of the New York State Veterans' Services 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. The Department 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 the Department 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. The Department hereby establishes an overall goal of six percent (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://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Department's Supplier Diversity liaison at 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 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 the Department.
- C. The Department will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the Department 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 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 Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Department, 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. The Department 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 the Department 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, the Department 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 Supplier Diversity liaison at supplierdiversity@agriculture.ny.gov 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 the Department 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, the Department 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 the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the Department, 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 regards to such non-compliance, the Department 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 the Department with certified SDVOBs whom the Department 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 the Department 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 the Department, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: 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 Recommended Submissions

The following forms are not required to be submitted with the proposal, though each form will be required prior to contract execution. Respondents are encouraged to submit these forms to expedite contract execution if the respondent is awarded the contract.

5.5.1 Workers' Compensation Coverage and Debarment

The 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 the WCL. The WCL requires 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 2019) 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

- **CE-200**– Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage

Proof of Disability Benefits Coverage

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

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

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

Please visit the New York State Workers’ Compensation Board website, www.wcb.ny.gov, for more information. You may contact the Workers’ Compensation Board’s Bureau of Compliance with any questions related to workers’ compensation or disability insurance at (866) 298-7830.

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

Tax Law Section 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. 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. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

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

6. CONSIDERATIONS RELATED TO THIS PROCUREMENT

6.1 Department's Reservation of Rights

The Department reserves the right to:

- Reject any or all proposals received with respect to this RFP.
- Withdraw the RFP at any time, at the Department's sole discretion or otherwise decline to award a contract from this RFP.
- Prior to the due date for proposals, amend this solicitation after its release, with appropriate written notice posted on the Department's website to correct errors or oversights, or to supply additional information, as it becomes available.
- Prior to the due date for proposals, direct respondents to submit proposal modifications addressing subsequent RFP amendments.
- Change any of the scheduled dates.
- Make an award in whole or in part.
- Require clarification from any respondent to assure a full understanding of the responsiveness to the requirements of the RFP.
- Request additional information from respondents as deemed necessary to more fully evaluate proposals or to obtain omitted required forms. Respondents will have three (3) business days to respond to the request.
- Disqualify any respondent whose conduct and/or proposal fails to conform to the requirements of the RFP.
- Use proposal information obtained through site visits, management interviews and the Department's investigation of a respondent's qualifications, experience, ability or financial standing, and any material or information submitted by the respondent in response to the Department's request for clarifying information in the course of evaluation and/or selection under the RFP.
- Waive or modify minor irregularities in proposals received.
- Change any of the scheduled dates.
- Eliminate any minimum or mandatory non-material specifications that cannot be complied with by all of the respondents.
- Waive any requirements that are not material.
- Conduct contract negotiations with the next responsible bidder, should the Department 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.

6.2 Subcontracting

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the Department. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to approval of the Department. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to the Department. As part of this explanation, the subcontractor must submit to the Department a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this Agreement.

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

Unless waived in writing by the Department, all subcontracts between the Contractor and subcontractors shall expressly name the State, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract, as 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).

6.3 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.

6.4 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.

6.5 Vendor Responsibility and NYS Vendor Id

6.5.1 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. See: http://www.osc.state.ny.us/vendrep/resources/docreq_agency.htm for a complete list of exempt entities.

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

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

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

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

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

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

6.5.2 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).

6.6 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.

6.7 Freedom of Information

The selected respondent's proposal 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 respondent to designate which components of the proposal are proprietary business information to be withheld from disclosure. A respondent may not designate its entire proposal as confidential, proprietary, or copyrighted.

6.8 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 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 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 the Department's Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Department has designated the following staff members to receive contacts pertaining to this RFP:

Lindsay Blair or John Ross
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Division of Fiscal Management
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