



**Agriculture  
and Markets**

# **INVITATION FOR BIDS**

**for**

## **EMERGENCY MEDICAL AND INFIRMARY SERVICES FOR THE NEW YORK STATE FAIR**

**IFB #0301**

**IFB Issued: January 19, 2024**

**Proposals Due: March 4, 2024**

**By:**

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

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# 1 INTRODUCTION

## 1.1 OVERVIEW

This Invitation for Bids (IFB) is issued by the New York State Department of Agriculture and Markets (“AGM” or “the Department”) to invite qualified bidders to submit proposals to provide emergency medical and infirmary services during the annual Great New York State Fair (“State Fair”) at the Infirmary located onsite. See **Exhibit 1** for a map of the Fairgrounds depicting the location of the Infirmary; **Exhibit 2** for photographs of the Infirmary; and **Exhibit 3** for a summary of the services provided to patients/visitors at the Infirmary during the 2023 State Fair.

The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is a 375-acre site owned and operated by AGM which is home to the State Fair, an annual multi-day event ending on Labor Day each year (a 13-day event in 2023). The attendance at the 2023 State Fair was 932,699.

The 2024 State Fair will be 13 days and will commence on Wednesday, August 21, 2024 and end on Monday, September 2, 2024.

## 1.2 IFB GOAL

The objective of this IFB is to retain one contractor to provide emergency medical and infirmary services for the 2024, 2025, 2026, 2027 and 2028 State Fairs as further described below.

## 1.3 TERM

The contract resulting from this IFB will begin on May 1, 2024 and end on November 30, 2028.

## 1.4 OPTIONAL SITE VISIT(S)

Two non-mandatory tours of the Infirmary will be made available to prospective bidders on February 6, 2024 at 11:00 a.m. and February 7, 2024 at 11:00 a.m. Prospective bidders are encouraged to attend at least one tour; prospective bidders are invited to attend more than one tour. To schedule a tour, please email [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov) no later than 3:00 p.m. the day prior to the tour. No substantive questions may be asked during the tour. All questions must be submitted in writing as set forth in Section 3.1 of this IFB.

## 1.5 IFB TIMELINE

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

IFB Publication in Contract Reporter:	January 19, 2024
Optional Site Visit(s):	February 7, 2024 at 11:00 AM (local time) February 8, 2024 at 11:00 AM (local time)
Deadline for Submission of Written Questions:	February 15, 2024 by 3:00 PM (local time)
Last Update of answers or issuance of IFB Addendum <a href="https://www.nyscr.ny.gov">https://www.nyscr.ny.gov</a> no later than:	February 22, 2024

Submission Deadline:	March 4, 2024 by 3:00 PM (local time)
Bid Opening:	March 5, 2024

AGM intends to make an award within thirty (30) days of the Bid Response submission deadline. The contract will require approval from the Office of the Attorney General of the State of New York (AG) and the Office of the State Comptroller of the State of New York (OSC) before it becomes effective.

**2 DESCRIPTION OF WORK TO BE PERFORMED**

**2.1 PREMISES**

The New York State Fairgrounds is a 375-acre site that is home to the State Fair. The main mission and function of the State Fair is to hold an exposition (currently 13 days) ending on Labor Day each year, identifying, promoting and showcasing the agricultural practices, history and traditions of the State.

In addition to agricultural competitions, the State Fair also hosts a 15-acre Midway and free music venues that host multiple national and regional acts each day with the largest being able to hold over 30,000 people. There are approximately 600 vendors including 175 food vendors. The entrance to the State Fair is currently available through eight (8) gates. Paid parking is also available in five (5) lots for approximately 20,000 vehicles as well as parking for approximately 1,000 overnight camping vehicles. The State Fair attracted 932,699 people in 2023.

**2.2 SCOPE OF WORK**

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

**A. Operations Services**

- (i) Provide scheduling and coordination of all staff for the operation of the Infirmary. The Infirmary shall be open to the public between the hours of 8:00 a.m. and 11:00 p.m. or later if needed at the discretion of AGM for the duration of each State Fair held during the term of the Agreement.
- (ii) Provide onsite administrative support a minimum of four (4) hours each day of each State Fair held during the term of the Agreement or as otherwise requested by AGM.
- (iii) Provide AGM a list of all staff who will be assigned to provide services under this Agreement at least seven (7) days prior to the first day of each State Fair held during the term of the Agreement. This list should include the certifications and/or licenses for each of the individuals assigned to the Infirmary.
- (iv) Provide security staff for the Infirmary, if needed, at contractor’s sole cost and expense.
- (v) Meet with AGM, the Solvay Fire Department, the New York State Police and AGM’s Emergency Medical Ambulance provider at least seven (7) days prior to the first day of each State Fair held during the term of the Agreement to coordinate protocol for the sharing of information between the agencies.
- (vi) Participate in briefings the day prior to the opening day of the State Fair, daily morning briefings, and, as needed, additional peak day briefings scheduled at the discretion of AGM during each State Fair held during the term of the Agreement.
- (vii) Provide real-time data (accurate within 15 minutes) of the status of the Infirmary including but not limited to bed occupancy, total number of patients, chief complaint, patients transported from the Infirmary to area hospitals (specify hospital), and average length of stay (i.e. online dashboard accessible by authorized AGM staff).
- (viii) Provide operational reports to AGM. Reports should include, but not be limited to:

- A Daily Report of the hours worked by employees at the Infirmary. This should include time sheets that validate the titles, dates, times/hours worked by each employee assigned to the Infirmary.
- A Final Report within ten (10) days after the last day of each State Fair held during the term of the Agreement that includes a breakdown of services rendered as follows: (a) Number of patients seen and treated at the Infirmary each day of the State Fair, (b) Number of patients brought to the Infirmary by AGM's Emergency Medical Ambulance provider, (c) Number of Infirmary patients released back to the State Fair, (d) Number of Infirmary patients stating they would return home, (e) Number of Infirmary patients requiring transport to area hospitals, (f) Number of patrons utilizing the Infirmary for over the counter medications, suntan lotion, and feminine hygiene products, (g) Number of patrons utilizing the Infirmary for infant nursing and diaper changes, and (h) Total number of patient/patron visits.

**B. Physician Coverage**

- Provide one (1) emergency medicine attending physician ("Physician") onsite between the hours of 8:00 a.m. and 11:00 p.m. each day of each State Fair held during the term of the Agreement (shifts may be split among two or more Physicians provided one (1) Physician is scheduled at all times during the hours of 8:00 a.m. and 11:00 p.m. each day). All attending Physicians shall be licensed by the State of New York and shall be primarily, currently and actively involved in the practice of emergency medicine.
- The Physician(s) assigned to the Infirmary shall have a doctor of medicine degree or doctor of osteopathy degree and must possess a valid license to practice medicine in the State of New York in accordance with NYS Education Law Article 131. The Physician(s) assigned to the Infirmary must also be certified in Basic Cardiac Life Support (BCLS), Advanced Cardiac Life Support (ACLS), and Pediatric Advanced Life Support (PALS). The Physician(s) assigned to the Infirmary should also be familiar with CNY Collaborative protocols when giving orders and/or providing direction to State Fair EMS on patient care.
- At the request of AGM, provide one (1) additional Physician as needed to adequately manage higher patient volumes at the Infirmary. Additional Physicians must report within one (1) hour request by AGM.

**C. Nurse Coverage**

- Provide one (1) registered nurse ("RN") onsite between the hours of 8:00 a.m. and 11:00 p.m. each day of each State Fair held during the term of the Agreement (shifts may be split among two or more RNs provided one (1) RN is scheduled at all times during the hours of 8:00 a.m. and 11:00 p.m. each day).
- The RN(s) assigned to the Infirmary shall possess a valid license to practice as a registered professional nurse in New York State. The RN(s) shall also be certified in Basic Cardiac Life Support (BCLS), Advanced Cardiac Life Support (ACLS), and Pediatric Advanced Life Support (PALS).

**D. Triage Coverage**

- Provide two (2) Emergency Medical Technicians (EMTs) onsite between the hours of 8:00 a.m. and 11:00 p.m. each day of each State Fair held during the term of the Agreement for triage coverage (shifts may be split among four (4) or more EMTs

provided two (2) EMTs are scheduled at all times during the hours of 8:00 a.m. and 11:00 p.m. each day).

- (ii) The EMTs assigned to the Infirmary shall be certified as Emergency Technicians by the New York State Department of Health.

**E. Cleaning Personnel**

- (i) Two (2) days prior to the first day of each State Fair held during the term of the Agreement, provide all service, labor and supplies necessary to clean and sanitize the interior of the Infirmary.
- (ii) During each State Fair held during the term of the Agreement, provide all service, labor, equipment and supplies necessary to sanitize, clean and maintain the interior of the Infirmary a minimum of six (6) hours daily.
- (iii) To the extent required by law, rule or regulation, all cleaning staff assigned at the Infirmary must have received blood borne pathogens training. Disposal of medical waste shall be in compliance with all local and state laws, rules and regulations.

**F. Medical Equipment**

- (i) All medical equipment needed for the operation of the Infirmary must be provided by the selected contractor. All inspections of any medical equipment is the responsibility of the selected contractor. See **Exhibit 4** for a list of medical equipment provided by previous operators of the Infirmary (“Medical Equipment”). Please note the Medical Equipment depicted in the photographs of the Infirmary (**Exhibit 2**) is **not** owned by AGM and will be removed from the Infirmary on or before April 30, 2024.
- (ii) The Infirmary must be equipped, at a minimum, with the necessary Medical Equipment to meet the guidelines outlined in Title 10, Part 18.2 of the NYCRR.

**G. Medical/Pharmacy Supplies**

- (i) All medical/pharmacy supplies (“Medical Supplies”) needed for the operation of the Infirmary must be provided by the selected contractor. The selected contractor must coordinate with AGM’s Emergency Medical Ambulance service provider to determine the Medical Supplies necessary for providing the services contemplated for this engagement. This should include but not be limited to all medication, bandages, linens, pillows, pillowcases, blankets, towels, etc. necessary to operate the Infirmary. All linens should be disposable except for the blankets. Any narcotics that are needed shall be obtained by the selected contractor in accordance with applicable laws, rules and regulations.

The selected contractor will be reimbursed at cost for all Medical Supplies actually ordered for this engagement, up to five thousand dollars (\$5,000.00) each year, upon submission of an invoice to AGM and accompanying receipts. Thirty (30) days prior to the first day of each State Fair held during the term of the Agreement, the selected contractor must submit a budget to AGM for Medical Supplies. Invoices and receipts for Medical Supplies must be submitted to AGM for reimbursement within fourteen (14) days after the conclusion of each State Fair held during the term of the Agreement along with a list of Medical Supplies that may be stored and kept for the following year State Fair.

- (ii) The Infirmary must be equipped, at a minimum, with the necessary Medical Supplies to meet the guidelines outlined in Title 10, Part 18.2 of the NYCRR.

See **Exhibit 5** for a list of Medical Supplies ordered in 2023.

#### **H. Office Equipment and Office Supplies**

- (i) The selected contractor must provide all necessary office equipment and office supplies (“Office Equipment and Office Supplies”), other than those specifically provided by the Department, including but not limited to:
  - Copy machines, printers, computers, pens, pencils, staplers, staples, pins, paperclips, paper and scissors.
  - Internet access.
- (ii) AGM will provide the following:
  - Admission and parking credentials for all scheduled staff. A list of the total number of staff should be provided annually to AGM thirty (30) days prior to the first day of the State Fair.
  - Phone line and phone number.
  - A radio or radios for monitoring information on the Fairgrounds.

### **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 4, 2024, 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 IFB must be received by 3:00 p.m. (local time) on February 15, 2024. Questions must be submitted in writing via email to Ryan von Linden or Viktoriia Borsuk at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). Please list “IFB0301 – EMERGENCY MEDICAL AND INFIRMARY SERVICES FOR THE NEW YORK STATE FAIR” 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 IFB, which will be published on the New York State Contract Reporter website (<https://www.nyscr.ny.gov>) on or before February 22, 2024. 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 IFB.

All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the IFB, which will be part of the awarded contract. If you are unable to access the New York State Contract Reporter website, please contact Ryan von Linden or Viktoriia Borsuk 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 6.1** Submission Documents, for information on completing a bid response.

Mail or hand-deliver a bid response in one package containing the following four (4) separately labeled and sealed envelopes:

**Envelope 1, titled “IFB0301 Minimum Qualifications and Forms and Assurances”**

*Original plus one (1) paper copy of:*

- **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)

**Envelope 2, titled “IFB0301 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.
- *Original plus one (1) paper copy* of **Attachment 2 – Subcontracting Form**

**Envelope 3, titled “IFB0301 MWBE Forms – Do Not Open.”**

*Original plus one (1) paper copy of:*

- **Attachment 11 - MWBE Forms** (Original Signatures)

**Envelope 4, titled “IFB0301 SDVOB Forms – Do Not Open.”**

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

- **Attachment 12 - SDVOB Forms** (Original Signatures)

*Place the four (4) 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: Ryan von Linden or Viktoriia Borsuk (IFB0301)

### 3.3 MINIMUM QUALIFICATIONS

To be considered:

The Proposing Entity(ies) must be currently operating or under contract with an Entity currently operating in compliance with Article 28 of the New York State Public Health Law; under direction of a physician, duly licensed in the State of New York who is credentialed to operate in an emergency department within the Central New York region; and further credentialed as a medical control physician in CNY Emergency Medical Services Council (EMSC). AGM will contact the New York State Department of Health to verify that the lowest bidder meets the minimum qualifications set forth above.

### 3.4 MANDATORY CONTRACT REQUIREMENTS

Each bidder must certify that:

- 1) No other obligation or engagement, contractual or otherwise, will impact the selected Contractor's ability to provide emergency medical and infirmary services at the New York State Fairgrounds during the contract period.
- 2) The selected contractor will have full control of the personnel, materials, supplies, equipment, and services provided pursuant to this engagement and assumes total responsibility for financial loss, accident, injury, or death that may occur as a result of the services provided. The selected Contractor will indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the selected Contractor, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) The selected Contractor will obtain and maintain the insurance policies that meet the requirements set forth in **Exhibit 6** of this IFB.
- 4) The selected Contractor agrees to comply with "Appendix A, Standard Clauses for New York State Contracts," a copy of which is included in the sample New York State AGM contract attached to this IFB as **Exhibit 7**.

### 3.5 BID FORM/COST PROPOSAL

All bids must be submitted on **Attachment 1 – Bid Form** included in the Submission Documents. The Bid Form must not be altered in any way. Please refer to **Section 3.2** Submission Method for information on how to package your proposal. 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 pricing 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.

## 4 EVALUATION

### 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 DETERMINATION OF BID AWARD

The award will be made to the lowest responsive and responsible bidder with the lowest grand total bid on **Attachment 1 – Bid Form**. As noted in the **Attachment 1 – Bid Form** instruction tab, bidders should

enter bid prices in the highlighted (green) fields ONLY; all other fields are locked and calculations are formula formatted to automatically calculate results of each vendor's bid.

In the event of a tie for the lowest grand total bid on the Bid Form, the bidder who is part of the tie with the lowest price for physicians will be considered the winning bidder. In the event that multiple bidders have identical grand total bids and identical pricing for physicians, the winner will be determined by a coin toss.

Prices submitted on the Bid Form shall remain firm for the duration of the Agreement subject to any price adjustment pursuant to **Section 5.3** of this IFB.

## **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 IFB 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 IFB;
- Use 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 IFB;
- 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 in the contract reporter 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 IFB 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 may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to the prior written 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 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. AGM 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 PRICE ADJUSTMENT

The hourly rates agreed upon in the contract on **Attachment 1 - Bid Form** may be increased up to the same percentage as the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), Not Seasonally Adjusted, U.S. City Average All Items, during the 12 calendar months ending April 30<sup>th</sup> of the previous contract year, as reported by the U.S. Department of Labor Bureau of Labor Statistics in the CPI Detailed Report. It shall be the responsibility of the Contractor to annually request a payment change based upon the CPI, which may be granted at the sole discretion of the Department. Requests for changes must be submitted in writing 90 days prior to April 30<sup>th</sup> each year. Only one price adjustment will be granted each year commencing with Year 2 of the contract at the sole discretion of the Department. The Department reserves the right to request a price decrease should the relevant index referenced herein decrease.

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

##### **NEW YORK STATE LAW**

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

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

For purposes of this solicitation, the Department 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 Invitation for Bids (IFB), the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

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

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this IFB, such finding constitutes a breach of contract and the Department may withhold payment as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

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

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

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

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

Article 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. 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. The Department 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, 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](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 Agreement.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Agreement (see clause IV below).

## **II. SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Contractor is 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 Contractor intends to use to perform the Agreement, a description of the work that the Contractor intends the SDVOB to perform to meet the goals on the Agreement, 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, Contractor 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 the Agreement 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 Agreement 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 Contractor of the Department's acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, 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 Contractor and direct 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 a determination of non-responsibility by the Department and disqualification of the bid or proposal.
- E. The Department may deem Contractor disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If Contractor fails to submit an SDVOB Utilization Plan;
  - (b) If Contractor fails to submit a written remedy to a notice of deficiency;
  - (c) If Contractor fails to submit a request for waiver; or
  - (d) If the Department determines that Contractor 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 Agreement 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 Agreement. 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, Contractor shall contact the Department's Supplier Diversity Liaison for guidance at [supplierdiversity@agriculture.ny.gov](mailto:supplierdiversity@agriculture.ny.gov).



- B. In accordance with 9 NYCRR § 252.2(m), a 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. Contractor 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 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 Agreement. Requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Agreement to the Department but must be made no later than prior to the submission of a request for final payment on the Agreement.
- 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 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 to the Department 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 Agreement. 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 Contractor's 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 Agreement.
- (4) Information describing the specific steps undertaken to reasonably structure the Agreement 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 Agreement 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 Contractor and submitted to the Department's Supplier Diversity Liaison by the 10th day of each month during the term of the Agreement for the preceding month's activity to: [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 Agreement, 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/>

### **5.6 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.

### **5.7 DEBRIEFING PROCEDURES**

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

### **5.8 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 Ryan von Linden or Viktoriia Borsuk 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 the Department's Counsel's Office, Office of Fiscal Management, and the appropriate Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within fourteen (14) business days of receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval, and 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/>.

## 5.9 NEW YORK LAW

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

## 5.10 REQUIRED APPROVALS

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

## 5.11 VENDOR RESPONSIBILITY AND NYS VENDOR ID

### Prime Contractors:

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, 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).

### **5.12 COST LIABILITY**

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

### **5.13 FREEDOM OF INFORMATION**

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

### **5.14 PROCUREMENT LOBBYING LAW**

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between AGM 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 IFB 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 members to receive contacts pertaining to this Bid:

Ryan von Linden or Viktoriia Borsuk  
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**)
- MWBE Forms (the forms are included in the Submission Documents as **Attachment 11**)
- SDVOB Forms (the forms are included in the Submission Documents as **Attachment 12**)

### 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 Markets contract is attached to this IFB as **Exhibit 7**. 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 **Appendix E-2** "SDVOB Requirements".

## 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" 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).

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)