



**Agriculture & NYS
Horse Breeding
Development Fund**

REQUEST FOR PROPOSALS

FOR

Equine Marketing and Public Relations

2022-01

June 16, 2022

Notice to Bidders

- The Designated Contacts and Procurement Lobbying Restrictions that apply to this Request for Proposals (“RFP”) are outlined in Sections 1.10 and 1.11.
- Bidders are responsible for checking the Fund’s website www.nysirestakes.com for updated information relative to the procurement process and the RFP. The Fund will not be responsible for a bidder’s failure to obtain updated information.
- By submission of a Proposal in response to this RFP, the bidder agrees to the terms of the Contract in the form incorporated into the RFP, or as revised through the RFP process. As defined in Section 1.3 of the RFP, the Fund does not intend to negotiate terms of the Contract form after receipt of Proposals.
- By submission of a Proposal in response to this solicitation, the bidder agrees with all of the terms and conditions for Equal Employment Opportunities for Minorities and Women, as set forth in Section 2.18 and **Appendix I** of this RFP
 - **The MWBE goal established under this RFP is 30%.**
- By submission of a Proposal in response to this solicitation, the bidder agrees with all of the terms and conditions for utilization of Service-Disabled Veteran-Owned Businesses, as set forth in Section 2.19 and **Appendix H** of this RFP.
 - **The Service-Disabled Veteran-Owned Business goal established under this RFP is 6%.**
- By submission of a Proposal in response to this solicitation, the bidder agrees to comply with the insurance requirements as defined in Section 2.12 of the RFP.
- To assist bidders in completion and submittal of the required documents, a **Technical Proposal Submittal Checklist** is incorporated into this RFP as **Attachment 3**.
- Bidders choosing not to submit a Proposal in response to this RFP are requested to submit the “**No Bid Response**” form, included in this RFP as **Appendix M**, as the information is useful to the Fund in the planning and development of future RFPs and bidders’ lists.

NOTE: The annual budget under an agreement resulting from this solicitation is comprised of the following: (1) Account Budget: this amount shall not exceed \$200,000 and with exception of promotional items, will cover all costs associated with carrying out the Scope of Work under this RFP, such as the fixed annual fee, hourly event staff, and media placements; (2) Promotional Budget: this amount shall not exceed \$50,000 and shall be for the purchase of related promotional items (pass-through/no mark-up).

PART 1 – GENERAL INFORMATION

1.1 INTRODUCTION

The Agriculture and New York State Horse Breeding Development Fund (the “Fund”), a public benefit corporation established in 1965 by the Laverne Law (Laws of New York, Chapter 567 of the Laws of 1965), is issuing this RFP to solicit responses from a firm to provide equine marketing and public relation services.

The range of services that falls within the scope of this RFP include, but are not limited to, the following:

- A. Market Research/Strategic Account Planning /Advertising Communication Tracking
- B. Promotion & Event Management
- C. Creative development, production and distribution of all advertising, marketing communications, and promotional materials
- D. Digital Marketing & Advertising and Social Media Management
- E. Creative Development & Content Management of Fund Website
- F. Budget and Account Management

The Detailed Scope of Work for is provided in Part 3 of this RFP.

Mission Statement of the Fund

The mission of the Agriculture and NYS Horse Breeding Development Fund and the New York Sire Stakes is to promote agriculture through the breeding of horses. To that end, the Fund directs the state's premier harness racing program designed to stimulate the breeding, buying and racing of Standardbred horses in New York State. The New York Sire Stakes is the nation's oldest harness racing program of its kind. We believe that these goals can best be accomplished by supporting educational programs, equine research and supplementation of racing purses at NYS pari-mutuel tracks, County Fairs and the Goshen Historic Track. Our authority accepts that by accomplishing our mission we will improve the economic wellbeing of the Empire State, keep agricultural lands in service producing products of value, preserve open space and increase employment opportunities throughout the whole of New York State. In order to carry out its legislative mission, the Fund receives money from the pari-mutuel handle and video lottery terminals at the licensed tracks across the state and uses this money to provide purse money for the New York Sire Stakes in these major areas:

1. **New York Sire Stakes (“NYSS”) Races at the Pari-Mutuel Tracks---**The most talented New York-bred 2 and 3 year olds vie for enhanced purses at the state's pari-mutuel tracks. The top performers meet for the "Night of Champions".
2. **Excelsior/State Fair Series---** It is an additional racing opportunity for 2-year-old and 3-year-old New York-bred trotters and pacers who have staked into the Excelsior/State Fair series.

3. **County Fair Racing**---The best "earn as you learn" program in Sire Stakes racing. In 2023, there will be 19 non-pari-mutuel racing events at agricultural fairs throughout New York State with the Finals at Monticello (pari-mutuel) for each age and gait topping off a summer of local fairs throughout the state.
4. **Additional Objectives**--In addition to the above, the Fund provides assistance and grants to county agricultural societies to maintain and repair racing facilities. The Fund also contributes to both the 4-H program and the Dr. Harry M. Zweig Fund for Equine Research at Cornell University.

By law, the Agriculture and New York State Horse Breeding Development Fund cannot incur debt. The Fund has no subsidiaries.

1.2 RESPONSIBILITIES PURSUANT TO CONTRACT AWARD

The Bidder awarded a contract under this solicitation will provide equine marketing and public relation services as described in Part 3 and will abide by the following guiding principles of the Fund:

- Ensure that all work provided on behalf of the Fund remains true to the legislative mission, intent and objectives of the Fund;
- Ensure that any use of the Fund's logo is consistent with the Fund's Style Guide;
- Ensure that all correspondence created or written on behalf of the New York Sire Stakes is reviewed and approved by the Executive Director, or person acting in such capacity, and/or Fund Attorney;
- Ensure a transparent and open process in subcontracting services and materials, including declaration of any interests in or agreements with any supplier of services or commodities;
- Ensure that all projects are carried out with a balanced budget or surplus;
- Ensure that all work performed is consistent with New York State procurement and ethics laws, guidelines and regulations; and
- Make every attempt to utilize regional staff and/or members in carrying out projects detailed in this RFP to reduce expenses. For example, when executing track promotional events, the Successful Bidder should delegate a staff or organization member who resides nearby the track at which the event is held whenever possible.

1.3 FORM OF CONTRACTUAL AGREEMENT

Following notification of award, the Successful Bidder will be expected to sign a contract with the Fund. The final Contract will be in the form incorporated into the RFP as **Appendix B** (the "Contract"), or as revised through the RFP amendment process. **Appendix A**, Standard Clauses for Contracts with the Agriculture and New York State Breeding Development Fund, is incorporated into the Contract.

The Contract will become binding and effective after approval by the Trustees of the Fund.

Every Bidder responding to this RFP must include in its Proposal a signed Contract in the form attached as **Appendix B**. Signing the contract form and submitting it as part of the Technical Proposal serves as acknowledgment and agreement to the terms of the Contract if deemed the Successful Bidder under the RFP process. Therefore, any exception to the Contract must be raised in a bidder question submitted to the Fund pursuant to the Schedule and in accordance with the Question and Answer process set forth in this Part 1.

The Fund does not intend to negotiate any changes in the provisions of the Contract subsequent to the receipt of Proposals.

Failure to comply with this submission requirement will deem the Proposal non-responsive.

1.4 BACKGROUND INFORMATION

The New York Sire Stakes was the first program of its kind developed in North America and later became the model for state-bred racing programs in nearly all of the major harness racing states and provinces on the continent.

Sponsored by NYS harness racing industry organizations, the first NYSS events were held in 1961. The official New York Sire Stakes program was inaugurated in 1965 when the state's harness tracks and breeding industry leaders who sought to spur the breeding industry successfully lobbied the State Legislature for support of their endeavor.

The group was led by the late Dr. Harry M. Zweig, a distinguished veterinarian from Nassau, NY. Dr. Zweig's tireless efforts proved successful when the Laverne Law was enacted.

The legislation created the Agriculture and New York State Horse Breeding Development Fund, the public benefit corporation that administers the New York Sire Stakes program. The law mandates the Fund to receive a percentage of the industry's betting handle to manage the NYSS program and to perpetuate its mission.

The New York horse racing industry came together once again in 2001 to advance the sport of harness racing in the state through the addition of video lottery terminals at each race track. With harness racing's late Bruce Hamilton leading the way, the industry again ran a successful campaign and the NYS legislature amended the pari-mutuel law, allowing video lottery terminals at the state's harness racetracks.

The first racino opened at Saratoga Raceway in 2004, paving the way for racinos at the remaining six harness race tracks statewide.

Since the inception of racinos at harness tracks, New York Sire Stakes purses have more than doubled and continue to increase.

1.5 MINIMUM QUALIFICATIONS

Any Bidder submitting a Proposal in response to this RFP must meet the minimum qualifications listed below. Information demonstrating the qualifications defined below must be incorporated into the bidder's response to Part 4 of this RFP – Information Required from Bidders.

1. Bidder must be an established firm with at least two (2) years demonstrated experience in marketing and public relations services relevant to the scope of work required under this RFP, as outlined in Part 3. The Bidder must indicate in its response whether any of the functions required under this contract have been handled by sub-contractors or partner agencies on previous accounts.
2. Bidder must have experience in event promotions and management, support, execution coordination services and follow-up.

1.6 SCHEDULE

The following dates are established for informational and planning purposes. The Fund reserves the right to make adjustments to this schedule.

Release of RFP:	June 16, 2022
First Round of Bidders' Questions Due by 3:00 p.m.:	June 28, 2022
Response to Questions:	July 1, 2022
Second Round of Bidder's Questions Due by 3:00 p.m.:	July 8, 2022
Response to Questions:	July 14, 2022
Bidder Proposals Due by 3:00 p.m.:	July 27, 2022
Interviews:	August 8 - 12, 2022
Announcement of Award:	October 2022
Anticipated Contract Start:	January 2023

1.7 RFP APPENDICES, ATTACHMENTS, AND EXHIBITS

The following documents are incorporated into this RFP:

- Appendix A: Standard Clauses for Contracts with the Agriculture and New York State Horse Breeding Development Fund
- Appendix B: Contract Form (incorporates Appendix A)
- Appendix C: Procurement Lobbying – Bidder/Offeror Disclosure
- Appendix D: Non-Collusive Bidding Certification
- Appendix E: Vendor Responsibility Questionnaire
- Appendix F: Contractor Certification – Tax Law Section 5-a
- Appendix G: NY Subcontractors and Suppliers
- Appendix H: Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance
- Appendix I: EEO and MWBE Program
- Appendix J: No Conflict of Interest or Detrimental Effect
- Appendix K: Statement on Sexual Harassment
- Appendix L: Anti-Discrimination EO 177 Certification
- Appendix M: No Bid Response

Attachment 1: Bidder Acknowledgement of Addendum
Attachment 2a: Pricing Proposal Form
Attachment 2b: Regional Map
Attachment 3: Technical Proposal Submittal Checklist

Exhibit 1: Racing Schedules & Locations

1.8 BIDDER/CONTRACTOR DIFFERENTIATION

Throughout this RFP the term "Bidder" is used to reference an entity during the preparation and submission of a Proposal and any requirements preceding the award of a final contract. In describing post-contract award requirements, the term "Successful Bidder" is used.

1.9 HEADINGS

The headings used in this RFP are for convenience only and shall not affect the interpretation of any of the terms and conditions of this RFP.

1.10 PERMISSIBLE CONTACTS

Consistent with the public policy established by the Procurement Lobbying Law, described below, the individuals designated below are the only points of contact with regard to matters relating to this RFP, unless additional points of contact are designated by them.

ALL BIDDERS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED IN WRITING TO THE ACTING EXECUTIVE DIRECTOR OR COUNSEL AS NOTED BELOW:

Agriculture & NYS Horse Breeding Development Fund
One Broadway Center
Schenectady, NY 12305

Ron Ochrym, Acting Executive Director

Email: nysirestakes@gaming.ny.gov

1.11 PROCUREMENT LOBBYING RESTRICTIONS

As required by the Procurement Lobbying Law (State Finance Law Sections 139-j and 139-k), this RFP includes and imposes certain restrictions on communications between the Fund and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting Contract by the Trustees of the Fund ("restricted period") to other than designated staff members unless the contact is permitted by the statutory exceptions set forth in New York State Finance Law Section 139-j (3)(a). Designated staff members are identified at the beginning of this RFP.

Fund employees are permitted to communicate with bidders concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any bidder causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.

Fund employees are required to obtain certain information when contacted during the “restricted period” and to make a determination of the responsibility of the bidder pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result in disqualification for a contract award. In the event of two determinations within a four-year period, a bidder will be debarred for a period of four years from obtaining a governmental procurement contract award. Further information about these requirements can be found at: <http://www.ogs.ny.gov/acpl>.

The Fund reserves the right, in its sole discretion, to terminate the Contract in the event that the Fund determines that the certification filed by the bidder in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such determination, the Fund may exercise its termination right by providing written notification to the bidder in accordance with the written notification terms of this Contract.

The BIDDER DISCLOSURE/CERTIFICATION FORM, included with this RFP as Appendix C, must be completed and submitted with the Response.

1.12 QUESTIONS AND INQUIRIES

Questions from bidders regarding this RFP must be submitted via electronic mail to nysirestakes@gaming.ny.gov no later than the date and time specified in the Schedule in Part 1 of this RFP. **Neither faxed nor telephone questions are acceptable.** If questions are provided via an attachment to electronic mail, the questions must be provided in Microsoft Word format.

Bidders are cautioned that any question or inquiry regarding the RFP must be written in generic terms and must not contain pricing information. The inclusion of specific information about a bidder’s Pricing Proposal in an inquiry may result in the bidder’s disqualification.

Responses to all questions, and any changes to the RFP resulting from such questions, will be communicated via published addenda, which will be posted on the Fund’s website.

A Bidder **Acknowledgement of Addendum form**, incorporated into this RFP as **Attachment 1**, will be provided with each addendum. Bidders are required to include a signed Acknowledgement Form for each addendum with their respective Proposals.

1.13 NON-COLLUSIVE BIDDING REQUIREMENT

In accordance with Section 139-d of the New York State Finance Law, if the Contract is awarded based upon the submission of bids, the bidder must warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each bidder must further warrant that, at

the time the bidder submitted its Proposal, an authorized and responsible person executed and delivered to the Fund a Non-Collusive Bidding Certification on bidder's behalf.

The Non-Collusive Bidding Certification Form, included in this RFP as Appendix D, must be completed and submitted with the Proposal.

1.14 VENDOR RESPONSIBILITY

The Fund will make an award on the basis of best value to a responsive and responsible offerer. Prior to making an award of a contract, the Fund shall make a determination of responsibility of the Successful Bidder.

The Fund will perform a review to include, for example, such factors as to ensure that the business entity possesses the integrity to perform the contract; performance at acceptable levels on other contracts; legal capability to perform under the contract; and whether the business entity is financially and organizationally capable of performing the contract.

The business entity has an ongoing obligation to remain responsible throughout the term of the contract.

Bidder agrees to fully and accurately complete the New York State Vendor Responsibility Questionnaire ("Questionnaire"), which is available online at: <https://www.osc.state.ny.us/vendrep/>.

Bidders are encouraged to complete the online form, as it will expedite Contract approval. If the Bidder does not have an online Questionnaire that is current and certified, the Bidder must complete the hardcopy **New York State Vendor Responsibility Questionnaire, Appendix E**. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the Fund's determination that the Bidder is responsible, and that the Fund will be relying upon the Bidder's responses to the Questionnaire in making that determination. The Bidder agrees that if it is determined by the Fund that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Fund may terminate the Contract by providing 10 days' written notification to the Successful Bidder. In no case shall such termination of the Contract by the Fund be deemed a breach thereof, nor shall the Fund be liable for any damages for lost profits or otherwise, which may be sustained by the Successful Bidder as a result of such determination.

Unless the New York State Vendor Responsibility Questionnaire has been filed online, the hardcopy Questionnaire, Appendix E, must be completed and submitted with the bid.

1.15 DESIGNATION OF PROPRIETARY INFORMATION (FOIL)

During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed (except as may be required under the New York State Freedom of Information Law ("FOIL") or other

State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exception applies both during and after the evaluation process.

If you believe your firm's Proposal contains any such trade secrets or other confidential information, you must submit a request with your Proposal to exempt such information from disclosure. Such request must: (a) identify the specific material in the Proposal; (b) identify the location (section, page number) of such material; (c) state the reasons why the information should be exempted from disclosure.

Requests for exemption of the entire contents of a Proposal from disclosure have generally not been found to be meritorious and are discouraged. Please limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

Upon receipt of proprietary designations, the Fund, as directed by the Designated Contacts, will review each designation and communicate with the bidder in the determination of such designation. The designation shall not become final until accepted by the Fund via formal letter. Once the designation is final, the bidder will be required to submit a redacted version of the Proposal consistent with the accepted designation. The redacted version will be the material that is released upon a FOIL request.

1.16 PROPOSALS

Bidders must submit a complete Proposal as outlined below. A Proposal that does not comply with these requirements may be deemed non-responsive.

A. **Proposal Content:**

Each bidder is expected to provide the Fund with information, evidence and demonstrations that will make possible a Contract award that best serves the stated interests of the Fund. Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.

There is no limit on the number of pages in each Proposal; however, bidders should prepare their Proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals containing preponderance of boilerplate text are discouraged. Special bindings, colored displays, promotional material, etc., will receive no evaluation credit. Emphasis in each Proposal should be on completeness and clarity of content.

Failure by a bidder to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the evaluation or determination of a non-responsive

Proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to “bidder agrees to comply” may be rejected for non-responsiveness at the discretion of the Fund.

B. Proposal Format:

Each bidder must submit a complete Proposal in the format described below and in response to the RFP.

Each Proposal must consist of two (2) volumes: Volume 1 - Technical Proposal and Volume II - Pricing Proposal. Each Volume must be sealed separately from the other and packaged together when submitted to the Fund as defined in Item C of this section.

Volume I – Technical (non-price) Proposal:

The Technical Proposal must include a transmittal letter, signed in ink by an official authorized to bind the bidder to its provisions, and must include information outlined below in Item 1.

This Proposal shall include descriptive and technical matters only. No pricing information shall be contained in the Technical Proposal.

The contents of the Technical Proposal (Volume 1) must follow the outline below and include divider pages with tabs to separate the response sections, appropriate headings as represented in the RFP, and page numbers.

To assist bidders in their Proposal response and submittal of the required documents, a **Technical Proposal Submittal Checklist** is incorporated into this RFP as **Attachment 3**. This Checklist must be completed and included with the bidder’s Technical Proposal.

1. Transmittal Letter: The transmittal letter must be signed and shall contain names, addresses (physical and e-mail), and telephone numbers of individuals who are authorized by the bidder to address matters related to the Proposal including, but not limited to, contractual, technical, site visit, and references.

The transmittal letter must also contain an explicit formal agreement by the bidder to comply with all contractual provisions and contain a statement that the Proposal will remain valid at least 180 days from the due date of Proposals.

2. Technical Proposal Submittal Checklist – Attachment 3.
3. Acknowledgement Form (Attachment 1) of all RFP addenda.
4. Signed Contract (Appendix B) (Section 1.3).

5. Designation of proprietary information in the form described in this RFP (Section 1.15).
6. Disclosure of Litigation and Other Information (Section 1.20).
7. Conflict of Interest Disclosure (Sections 1.21).
8. Certifications and representations as required by this RFP and as listed in the Technical Proposal Submittal Checklist.
9. Response to specifications and in the order provided for in Part 4 – Information Required from Bidders, including technical documentation as appendices.

Volume II – Pricing Proposal:

The Pricing Proposal must be prepared as provided in Part 4 of this RFP using the Pricing Proposal form provided as **Attachment 2 (pages 1 and 2)** of this RFP. Bidders should carefully review the basis and terms of compensation set forth. Any deviation from this format may cause the Proposal to be deemed non-responsive.

The contents of the Pricing Proposal volume must follow this outline:

1. Transmittal letter.
2. Pricing in the format provided as Attachment 2.

C. Proposal Submission:

Both Volumes of each Proposal must be submitted to the Fund as set forth below and must be received by the date and time set forth in the Schedule in Part 1 of this RFP. Originals should be clearly marked so as to differentiate from the copies.

Technical Proposal

Both hardcopy and electronic versions of the entire Technical Proposal must be submitted as noted below and must be marked clearly to differentiate.

- **Hardcopy: One original and six copies.**
- **Electronic (non-redacted): Two USB Memory Sticks containing a PDF file.**
- **Electronic (redacted): One USB Memory Stick containing a PDF file.**

The electronic version must include all Proposal sections within a single file to facilitate searches for terms across the breadth of the Proposal.

The electronic version must mirror the full Technical Proposal.

Note: If there are any differences between the hardcopy and electronic versions of the Technical Proposal, the hard copy version will be deemed to be the Proposal considered.

Pricing Proposal

Both hardcopy and electronic versions of the entire Pricing Proposal must be submitted as noted below and must be marked clearly to differentiate.

- **Hardcopy: One original and two copies.**
- **Electronic (non-redacted): One USB Memory Stick containing a PDF file.**

The electronic version must mirror the hard copy.

Note: If there are any differences between the hardcopy and electronic versions of the Pricing Proposal, the hard copy version will be deemed to be the Proposal considered.

Packaging the Proposals

Each Volume of the Proposal must be separately sealed and labeled to identify the Volumes. The separately sealed Volumes should then be packaged together, and the package must contain the following identifying information on the outside of the package:

Identification label containing: "Sealed Proposal", the RFP Contract number from the RFP cover page, company or organization name, Proposal due date and time from the Schedule in Part 1 of the RFP.

If a delivery service is used which prohibits such markings on the envelope or package, this information must be placed on the outside of an interior envelope or package.

The address for Proposals submitted by Contract carrier, courier delivery, in person delivery, or by U. S. Postal Service is:

Ronald Ochrym
Acting Executive Director
Agriculture & NYS Horse Breeding Development Fund
One Broadway Center
Schenectady, NY 12305

If a Proposal is to be delivered by a method other than U.S. Postal Service, the bidder should contact the Acting Executive Director identified in this RFP, prior to delivery to assure proper receipt of the Proposal. **Fax or e-mail submissions are not acceptable and will not be considered.**

D. Proposal Receipt:

If hand delivered, an individual from the Fund's Office will provide a receipt indicating when the Proposal is received at the Security Desk in the Lobby on the ground floor of One Broadway Center. The time indicated on this receipt will be the official time of receipt. In addition, whether hand delivered or delivered by any other method, the Fund will confirm receipt by electronic mail.

Upon receipt of a Proposal, the Pricing Proposal (**Volume II**) will be secured by the Fund and will not be opened (or accessible) until after the Technical Evaluation process is complete.

The Technical Proposal (**Volume I**) will remain with the Fund's Office for initial review of document submission as provided in this RFP and subsequently distributed to the Evaluation Committee members at the start of the evaluation process.

E. Late Proposal:

A Proposal must be received by the Fund on or before the due date and time specified in the Schedule – Part 1 of this RFP. The bidder is responsible for timely receipt of its Proposal and should plan for delivery accordingly. Failure of a bidder to submit a Proposal by the specified time may result in rejection or disqualification of the Proposal. Proposals rejected or disqualified for lateness may be returned unopened to the bidder.

F. Joint Proposals:

Two or more firms may join together to submit a Proposal in response to this RFP. If a joint Proposal is submitted, the Proposal must define the responsibilities that each firm is proposing to undertake. Of the firms submitting a joint Proposal, one must be designated as the primary bidder. Any Contract award issued as a result of such a submission will be made exclusively to the primary bidder. A joint Proposal must designate a single authorized official from one of the firms participating in such joint Proposal to serve as the sole point of contact between the Fund and the firms that are responding together.

G. Multiple Proposals from one bidder Prohibited:

Multiple Proposals from one bidder is not permitted under this RFP. A bidder shall submit only a single Proposal. However, a bidder may, within the single Proposal, and separate from the response to the requirements of this RFP, identify options, including solicited and unsolicited products, services, and features, absent of price, which the bidder believes may be appealing and useful to the Fund. The inclusion of options accommodates the purpose of defining alternatives through multiple Proposals.

H. Costs Associated with Preparation of Proposals:

The Fund shall not be liable for any of the costs incurred by a bidder in preparing or submitting a Proposal, and, therefore, the Fund will not assume any responsibility or liability for any costs incurred by a bidder prior to the award and approval of a Contract. The responsibilities and liabilities of the Fund shall be limited to those set forth in the Contract.

1.17 CLARIFICATION PROCESS

The Fund may request clarification from a bidder for the purpose of resolving any ambiguity or questioning information presented in the Proposal. Clarifications are an opportunity to explain, but not to enhance, a Proposal. Requests for clarification may occur throughout the Proposal submission review and/or the Proposal evaluation process. Clarification responses must be in writing and must address only the information requested. Responses must be submitted to the Fund within the time stipulated at the time of the request. As applicable, clarifications will be treated as addendums to the bidder's Proposal.

1.18 SITE VISITS TO VENDOR FACILITIES

The Fund may visit any site where the bidder conducts, or has conducted, operations similar to the services required in this RFP. The bidder shall cooperate in arranging and coordinating such site visits, but the bidder shall not be permitted to pay for any travel, accommodations, or other expenses of such site visits.

1.19 DISCLOSURE AND INVESTIGATIONS DURING PROPOSAL EVALUATION

Subsequent to Proposal submission, the Fund may initiate investigations into the backgrounds of the bidder and individuals or entities related to any officers, directors, members, principals, investors, owners, subcontractors, employees, or any other individuals or entities related to the bidder, as the Fund may deem appropriate, in the discretion of the Fund. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation, and such additional investigation as may be required.

The Fund may reject a Proposal based upon the results of these background checks. Each bidder is advised that any bidder who knowingly provides false or intentionally misleading information in connection with any investigation by the Fund may cause the Proposal of such bidder to be rejected, or a Contract to be canceled by the Fund, in the sole discretion of the Fund.

If a Bidder or a substantial subcontractor is a subsidiary of a parent entity, the Fund may request the above disclosures from the parent entity as the Fund may require in its sole discretion.

1.20 DISCLOSURE OF LITIGATION AND OTHER INFORMATION

Because the Fund has a strong interest in the Successful Bidder's continuing ability to provide secure, high-quality products and services, the Fund requires that a bidder list and summarize pending or threatened litigation, administrative or regulatory

proceedings or similar matters that could materially affect the bidder. As part of its disclosure requirement, a bidder must state whether the bidder or any of the owners, officers, directors, or partners of such bidder have ever been convicted of a felony. Failure to disclose any such matter may result in rejection of the Proposal or in termination of a Contract. **Such disclosures must be included in the Proposal.**

This disclosure obligation is a continuing requirement. Any such matter commencing after submission of a Proposal and, with respect to the Successful Bidder after the approval of a Contract, must be disclosed to the Fund in a timely manner in a written statement to the Fund.

1.21 CONFLICTS OF INTEREST

Bidder must provide information pertaining to existing or potential conflicts of interest, as follows:

- A. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
- B. The Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, "JCOPE"), and if so, a brief description must be included indicating how any matter before JCOPE was resolved or whether it remains unresolved.

In addition, the bidder must complete and return with its Proposal, the No Conflict of Interest or Detrimental Effect Form, incorporated into this RFP as **Appendix J**.

Throughout the procurement process Bidders must identify, and bring to the attention of the Fund, actual or apparent conflicts of interest as knowledge of such conflicts arise.

Any Bidder awarded a contract under this RFP will have an on-going obligation to inform the Fund of any actual or apparent conflicts of interest as such conflicts arise.

1.22 CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(I)

By submission of the bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of New York State's Labor Law section

201-g. Bidder certification of compliance with New York State's State Finance Law § 139-l is included with this IFB as **Appendix K, Statement on Sexual Harassment**.

1.23 EXECUTIVE ORDER NO. 177 CERTIFICATION

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status, or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability or pregnancy-related condition to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

In accordance with Executive Order No. 177, the Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. The certification is included with this IFB as **Appendix L, Anti-Discrimination EO 177 Certification**.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including, but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and section 296(11) of the New York State Human Rights Law.

1.24 CHANGE IN FINANCIAL CONDITION

If a bidder who has submitted a Proposal in response to this RFP experiences a substantial change in financial condition prior to the award of a Contract pursuant to this RFP, or if a Successful Bidder experiences a substantial change in financial condition during the term of the Contract with the Fund, the bidder is required to notify the Fund in writing at the time the change occurs or is identified. Failure to notify the Fund of such a change may result in rejection of bidder's Proposal or termination of the Contract, in the sole discretion of the Fund.

1.25 CHANGE IN OWNERSHIP

If a bidder experiences a material change in ownership prior to the award of a Contract or during the term of a Contract with the Fund, the bidder is required to notify the Fund at the time the change occurs or is identified. "Material change in ownership" is defined as any merger, acquisition, assignment or change in parties who, in the aggregate, own greater than 5% of the bidder or the parent company of the bidder. Failure to notify the Fund of such a change may result in the rejection of a bidder's Proposal or termination of the Contract. The Fund reserves the right, based

on its assessment of a material change in ownership, to reject a bidder's Proposal or terminate a Contract.

1.26 NEWS RELEASES

A news release pertaining to this RFP or the services, evaluation, or project to which this RFP relates may not be made without prior written Fund approval, and then only in accordance with express written instructions from the Fund. No outcome of the award under this procurement may be released without prior approval by the Fund and then only to persons designated by the Fund.

1.27 ADVERTISING

Each respondent agrees not to use the Fund's name, logos, images, nor any data or results arising from this procurement or Contract as part of any commercial advertising without prior written approval by the Fund, and then only in consultation and cooperation with the Fund.

1.28 METHOD OF AWARD

The method of award under this RFP will be "Best Value," the evaluation method for awarding a Contract to the bidder whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination of Best Value will be based on a scoring of Technical and Pricing Proposals in response to the RFP specifications and as defined in Part 5 of this RFP.

1.29 THE FUND'S RESERVED AUTHORITY

In addition to any authority set forth elsewhere in this RFP, the Fund reserves the authority to:

- A. Award a Contract for all, part or none of the services requested by this RFP;
- B. Waive any informality or technical defect if, in the judgment of the Fund the best interest of the Fund will be so served;
- C. Eliminate any non-material specification(s) that cannot be complied with by any of the prospective bidders;
- D. Amend the RFP and direct bidders to submit Proposal modifications accordingly;
- E. Change any of the scheduled dates stated herein;
- F. Reject any or all Proposals received in response to this RFP, and reissue a modified version of this RFP;
- G. Withdraw the RFP at any time, at the sole discretion of the Fund;
- H. Seek clarifications and revisions to Proposals;

- I. Use Proposal information obtained through site visits, management interviews and the Fund's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the request by the Fund for clarifying information in the course of evaluation and/or selection under this RFP;
- J. Disqualify any bidder whose conduct and/or Proposal fails to conform to the requirements of this RFP;
- K. Negotiate with the Successful Bidder within the scope of the RFP in the best interests of the Fund;
- L. Set aside the original Successful Bidder if the Fund determines that the bidder is non-responsible. The Fund may then award a Contract to the responsible bidder with the next highest total combined score;
- M. The Fund reserves the right to stop the work covered by this proposal and the contract at any time that it is deemed the Successful Bidder is unable or incapable of performing the work to their satisfaction. In the event of such stopping, the Fund shall have the right to arrange for the completion of the work in such a manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the Successful Bidder and its surety shall be liable to the Fund for any such cost on account thereof. In the event that the Fund stops the work as provided thereof, together with the reason thereof, and the Successful Bidder shall have ten (10) working days to respond thereto before any such stop order shall become effective.

1.30 PROTEST OR APPEAL

In the event that a bidder decides to protest the award decision, the following protest procedures will be followed:

- Any protest of the award decision must be filed with the Executive Director of the Fund, or person acting in such capacity, no later than ten business days following the date of written Notification of Award to the unsuccessful bidder.
- The protest must clearly state the basis for the protest and include all relevant documentation supporting such protest.
- The Executive Director will conduct a review of the protest and will issue a written determination to the protesting party within 15 business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Executive Director will inform the bidder of the delay and of the time frame within which a determination may be expected. The final written determination provided to the bidder will constitute the Executive Director's final administrative determination of the protest.
- If an unsuccessful bidder decides to appeal the Executive Director's protest determination, the unsuccessful bidder must submit such an appeal to the Board of Trustees (the "Trustees"), within ten business days of receipt of the Executive Director's final written determination. The protest appeal 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 Fund. A copy of the appeal must be served on the Fund, the Successful Bidder(s), and any other party that participated in the review of the protest conducted by the Fund. The unsuccessful bidder's appeal must contain written affirmation that a copy of the appeal has been served as required by this paragraph.

- A Successful Bidder may, but is not required to, submit an answer to the appeal with the Trustees. Such answer must include written affirmation that the answer was simultaneously delivered to the Fund and the protester and must meet the submission requirements as noted above for the Fund.
- The Trustees shall evaluate the merits of the protest, the Executive Director's determination and any response submitted by an interested party. In its review, the Trustees may require the Fund, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised; may obtain information from an outside source; or may determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.
- The Trustees shall issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

1.31 MATERIAL DEVIATIONS

Material requirements of the RFP are those requirements designated as mandatory, without which an adequate analysis and comparison of Proposals is impossible, or those requirements that affect the competitiveness of Proposals or the cost to the Fund.

Proposals that do not meet all material requirements of this RFP, or that fail to provide all required and mandatory information, documents, or supporting materials, or include language that is conditional or contrary to terms, conditions, and requirements, may be rejected as nonresponsive.

The Fund, in its sole discretion, reserves the right to determine whether a Proposal meets the requirements of the RFP.

1.32 NON-EXCLUSIVE RIGHTS

Nothing in this RFP or the Contract resulting from this RFP shall preclude the Fund from purchasing other products, services, or equipment from other sources throughout the duration of the resulting Contract.

PART 2 – CONTRACTUAL PROVISIONS

2.1 GOVERNING LAW

The Proposal submission process, the evaluation of Proposals, the award procedure, and any Contract resulting from this RFP shall be governed by the laws of the State of New York and shall be interpreted according to New York State law. Any and all disputes of claims arising under this RFP or any Contract resulting from this RFP, other than as specifically set forth in this RFP, shall be brought exclusively in the appropriate court of the State of New York; and, by submitting a Proposal, a bidder waives access to any other court or forum that may have concurrent jurisdiction within or outside New York State to hear or resolve any such dispute or claim.

2.2 STANDARD CLAUSES FOR CONTRACTS WITH THE AGRICULTURE AND NEW YORK STATE HORSE BREEDING AND DEVELOPMENT FUND

Appendix A - Standard Clauses for Contracts with the Agriculture and New York State Horse Breeding Development Fund is incorporated in the Contract form – **Appendix B** of this RFP.

2.3 CONTRACT ELEMENTS

The Contract resulting from this RFP will include the following parts:

- Appendix A – Standard Clauses for Contracts with the Agriculture and New York State Horse Breeding Development Fund
- Addendums to the Contract
- Contract
- Clarifications and Addendums to the RFP
- RFP
- Clarifications to the bidder's Proposal
- Bidder's Proposal

In the event of a conflict in any provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

2.4 COMPETITIVE BIDDING PURCHASING REQUIREMENT

No payment shall be made for promotional items unless the Successful Bidder shall have obtained competitive bids. Requests for such bids must be confirmed in writing, and at least three (3) written bids must be solicited in order to achieve the best price.

Specifications for products to be competitively bid must be provided in as complete written detail as possible to the bidders.

2.5 SEVERABILITY

If a court of competent jurisdiction determines any portion of a Contract to be invalid, it shall be severed, and the remaining portion of a Contract shall remain in effect.

2.6 TERM OF CONTRACT

The Agreement shall be effective from January 1, 2023 through December 31, 2025, with two optional one-year renewals.

2.7 FULL SERVICE

This is a full service contract. Unless otherwise specified, for the purpose of this contract full service shall mean that the Successful Bidder's bid price includes, but is not necessarily limited to: all labor, all material and supplies, all emergency work and special requests; all administrative, reporting or other requirements, all overhead costs and profit. It shall also include all travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc. Details of service not explicitly stated in these specifications, but necessarily attendant, are deemed to be understood by the Successful Bidder and herein.

2.8 COMPENSATION

Successful Bidder will be compensated from the account budget, as outlined below, for services provided in accordance with the Scope of Work, defined in Part 3 of this RFP, at the rates set forth in the Pricing Proposal (Attachment 2). The rates proposed in the Pricing Proposal shall be guaranteed for the term of the contract. The pricing shall be inclusive of all costs associated with carrying out the duties described in the scope of work. Travel costs will not be compensated.

(1) Annual Fixed Fee: the annual fixed fee will be paid in equal monthly installments.

(2) Racing Series', Horse Sales, and Banquets: Compensation for these events shall be made following the events and upon monthly invoice.

(3) Additional Events: Compensation for any additional events shall be made following such events and upon monthly invoice.

NOTE: Reimbursement to the Successful Bidder for promotional items will be made through the promotional budget and will be based upon actual receipts (no mark-up).

2.9 CONTRACT INVOICING AND PAYMENT

Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). Payment for services will be made upon completion of services and upon receipt by the Fund of a proper invoice.

Itemized invoices shall be submitted, as defined in Section 2.8, on a monthly basis and directed to the Executive Director of the Fund at nysirestakes@gaming.ny.gov.

Sales tax should not be included on invoices as the Fund is tax exempt.

The Fund shall promptly process all payments due to the Successful Bidder that conform to the provisions of this RFP and are approved by the Fund.

2.10 TAX LAW SECTION 5-A

The bidder awarded a Contract pursuant to this RFP must comply with the requirements of Tax Law Section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. The Successful Bidder, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The Contract may not be approved unless the Successful Bidder is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes.

The Contract Certification forms, included in this RFP as Appendix F – ST-220-TD and Appendix F – ST-220-CA, must be filed in compliance with Tax Law Section 5-a. Any bidder awarded under this RFP will, within seven calendar days of notification of award, file ST-220-TD directly with the Department of Taxation and Finance at the address provided on the form and ST-220-CA with the Fund.

Bidders can visit the New York State Department of Taxation and Finance website to obtain more information:

<http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>

2.11 INSURER QUALIFICATIONS

All insurance required under this RFP must be written by company rating of “A-” or better rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted (If coverage is provided by a non-admitted carrier, an ELANY Affidavit must accompany the certificate), and authorized to do business in the State of New York, and are approved by the Fund.

Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Fund.

2.12 INSURANCE REQUIREMENTS

Prior to the start of work the Successful Bidder shall procure at its sole cost and expense and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York (Admitted Carriers). The Fund may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be

construed to require the Fund to accept insurance placed with a non-authorized carrier under any circumstances.

Upon award, the Successful Bidder shall deliver to the Fund evidence of such policies as defined below. In the event there is a claim asserted that is covered by insurance and upon request of the Fund, the Successful Bidder shall make available for inspection to the Fund, at the Fund's offices in Schenectady, during reasonable business hours, any applicable policy required by this Contract.

Throughout the Contract period, the Successful Bidder shall notify the Fund of any material changes to the policy, or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

General Conditions

A. ***Conditions Applicable to Insurance.*** All policies of insurance required by this agreement must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Successful Bidder are specified in Paragraph B below – Specific Coverages and Limits.

2. Policy Forms. Policies must be written on an ***occurrence*** basis, except as may be otherwise specifically provided herein, or agreed to in writing by the Fund. Under certain circumstances, the Fund may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Successful Bidder must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the Fund prior to the expiration or cancellation of the policy.

3. Certificates of Insurance/Notices. Successful Bidder shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Fund, before commencing any work under this Contract. Certificates shall be mailed using the contact information provided in Part 1 of this RFP.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the Fund.

Certificates of Insurance shall:

a. Be in the form approved by the Fund.

- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the Fund for any claim arising from the Successful Bidder's Work under this Contract, or as a result of the Successful Bidder's activities. Any other insurance maintained by the Fund shall be excess of and shall not contribute with the Successful Bidder's insurance regardless of the "other insurance" clause contained in the Fund's own policy of insurance.

5. Policy Renewal/Expiration. At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Fund than the expiring policies shall be delivered to the Fund in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Fund, the Successful Bidder shall immediately cease Work on the Project. The Successful Bidder shall not resume Work on the Project until authorized to do so by the Fund. Any delay, time lost, or additional cost incurred as a result of the Successful Bidder not having insurance required by the Contract or not providing proof of same in a form acceptable to the Fund, shall not give rise to a delay claim or any other claim against the Fund. Should the Successful Bidder fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided to the Fund, the Fund may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Successful Bidder, require the Surety if, any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Successful Bidder.

6. Self-Insured Retention/Deductibles. Additional surety/security may be required in certain circumstances. The Successful Bidder shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors. Should the Successful Bidder engage a Sub-contractor, the Successful Bidder shall endeavor to impose the insurance requirements of this document on the Sub-contractor, as applicable. Required insurance limits should

be determined commensurate with the work of the Sub-contractor. Proof thereof shall be supplied to the Fund.

B. Specific Coverages and Limits. The types of insurance and minimum policy limits shall be as provided below.

1. General Liability. Commercial General Liability Insurance (CGL), covering the liability of the Successful Bidder for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$1,000,000
- General Aggregate: \$2,000,000
- Products/Completed Operations should equal the General Aggregate limit
- Personal Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Medical Expense \$5,000

Coverage shall include, but not be limited to, the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a Contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross liability for additional insured's; products/completed operations for a term of no less than three years, commencing upon acceptance of the work, as required by the Contract; explosion, collapse, and underground hazards; contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the CGL policy:

- CG 20 37 12 19 or the equivalent
- CG 20 10 12 19 or the equivalent
- CG 20 38 12 19 or the equivalent

Limits may be provided through a combination of primary and umbrella/excess liability policies.

Policies shall name the Fund as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Fund. Any other insurance maintained by the Fund shall be in excess of and shall not contribute with the Successful Bidder's or Subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy of insurance.

2. Professional Liability. The Professional and any Professional sub-bidder retained by the Professional to work on the Contract shall procure and maintain during and for a period of three (3) years after completion of this Contract, Professional Liability Insurance in the amount of \$1,000,000 issued to and covering damage for liability imposed on the Professional by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract . The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed, if coverage is cancelled or not renewed.

3. Comprehensive Advertising Liability. With a limit of not less than \$1,000,000 to cover claims arising from, but not limited to, occurrences committed by Successful Bidder such as:

- defamation, libel, slander, product disparagement or trade libel;
- invasion of or interference with the right to privacy or publicity, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
- negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
- false arrest, detention or imprisonment, or malicious prosecution;
- trespass, wrongful entry or eviction;
- infringement of copyright, piracy, plagiarism and misappropriation of ideas under implied contract;
- infringement or dilution of title or slogan, trademark, trade name, trade dress, service mark or service name.

4. New York State Workers' Compensation. For work to be performed in New York State, the Successful Bidder shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the NYS Workers' Compensation Law. Evidence of Workers' Compensation and Employers Liability coverage must be provided on **one** of the following forms specified by the Commissioner of the Workers' Compensation Board:

- a. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov); or
- b. Form C-105.2 (9/15 or most current version), Certificate of Workers' Compensation Insurance, sent to the Fund by the Successful Bidder's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, Successful Bidder will provide Form U-26.3 to the Fund upon request from the Successful Bidder; or

- c. Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Bidder's Group Self-Insurance Administrator.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier. (**ACORD forms are NOT acceptable proof of Workers' Compensation coverage.**) **All forms must name the Agriculture & NYS Horse Breeding Development Fund as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

5. New York State Disability Benefits Law. For work to be performed in New York State, the Successful Bidder shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law.

- a. Evidence of Disability Benefits coverage must be provided on: **Form DB-120.1** (9/15 or most current version), *Certificate of Insurance Coverage under the NYS Disability Benefits Law*. Successful Bidder must request its business insurance carrier to send this form to the Fund.
- b. If the Successful Bidder is legally exempt from obtaining Workers' Compensation Disability Insurance, Successful Bidder must provide: **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us)
- c. If the Successful Bidder is self-insured, Successful Bidder must provide: **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier. **All forms must name Agriculture & NYS Horse Breeding Development Fund as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

2.13 NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS

Proposers are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Subcontractor and supplier requirements are set forth in Appendix G of this RFP.

2.14 SUCCESSFUL BIDDER RESPONSIBILITIES AS PRIMARY CONTRACTOR

The Successful Bidder will be required to assume responsibility for all contractual activities offered in the Proposal whether or not the Successful Bidder performs such activities. Further, the Fund will consider the Successful Bidder to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.

The Successful Bidder may have subcontractors; however, the Successful Bidder must accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFP must include a list of subcontractors, as provided in Part 4 of this RFP.

2.15 APPROVAL OF STAFFING

The Fund reserves the right to review and, if perceived necessary, disapprove any employee of the Successful Bidder who is assigned to the Fund Contract, either at Contract inception or during the term or any extension thereof.

2.16 NEW YORK STATE PUBLIC OFFICERS LAW

Successful Bidders, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration during their tenure with the State Agency or Authority.

2.17 ETHICS REQUIREMENTS

The Successful Bidder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Successful Bidder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Successful Bidder or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Successful Bidder or its Subcontractors derived from this Contract. The Successful Bidder shall identify and provide the State with notice of those employees of the Successful Bidder and its Subcontractors who are former employees of the State that will be assigned to

perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The Fund may request that the Successful Bidder provide it with whatever information the Fund deems appropriate about each such person's engagement, work cooperatively with the Fund to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the Fund, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The Fund shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The Fund shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

2.18 VENDOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES

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 Fund 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 Fund contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Fund hereby establishes an overall goal of **thirty percent (30%)** for MWBE participation, based on the current availability of qualified 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 RFP, the respondent agrees that the Fund 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 Fund 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 30 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 Fund 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 Fund.

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Fund for review and approval.

The Fund will review the submitted MWBE Utilization Plan and advise the respondent of the Fund's acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt, 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 Fund to be inadequate, the Fund 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 Fund may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If the Fund 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 Fund 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 MWBE Contractor Compliance & Payment Report to the Fund, 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 concerning 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 to the Fund 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 Fund on a quarterly basis during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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

The EEO and MWBE requirements are set forth in **Appendix I** of this RFP.

The MWBE goal established under this RFP is 30%.

2.19 NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Pursuant to Article 17-B of New York State Executive Law, bidders shall consider businesses certified under the New York State Service-Disabled Veteran-Owned Business program in fulfillment of the requirements of the Contract. A list of NYS certified service-disabled veteran owned businesses (SDVOBs) can be accessed at: <http://ogs.ny.gov/Core/SDVOBA.asp>.

Any contractor who willfully and intentionally fails to comply with the service-disabled veteran owned business participation requirements of these regulations as set forth in such State contract shall be liable to the contracting agency for damages and shall provide for other appropriate remedies on account of such breach. Damages shall be calculated based on the actual cost incurred by the State agency related to the State agency's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified service-disabled veteran-owned business enterprise programmatic goals.

The SDVOB goal established under this RFP is 6%.

The "Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance" Form, included with this RFP as Appendix H, must be completed and submitted with the Response.

2.20 SUB-CONTRACT APPROVAL

The Fund must approve subcontractors and may require the Successful Bidder to replace Subcontractors who are determined to be unacceptable upon inception or during the term or any extension thereof. Subcontractors are subject to background checks of personnel and principals and may also require bidder licensing.

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

The Successful Bidder may arrange for a portion(s) of its responsibilities under this Agreement to be subcontracted to qualified, responsible Subcontractors, subject to approval of the Fund. If the Successful Bidder 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 Successful Bidder to the Fund. As part of this explanation, the Subcontractor must submit to the Fund a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, incorporated into this RFP as **Appendix J**, as required by the Successful Bidder prior to execution of this Agreement.

The Successful Bidder 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 this Agreement, **Appendix A** – Standard Clauses for Contracts

with the Agriculture and New York State Breeding Development Fund and the RFP. Unless waived in writing by the Fund, all subcontracts between the Successful Bidder and Subcontractors shall expressly name the Fund, as the sole intended third party beneficiary of such subcontract. The Fund 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 Fund a party to any subcontract or create any right, claim, or interest in the Subcontractor or proposed Subcontractor against the Fund.

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

The Successful Bidder shall give the Fund 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 Successful Bidder's duties under the Agreement. Any subcontract shall not relieve the Successful Bidder in any way of any responsibility, duty and/or obligation of the Agreement.

If at any time during the performance under this Agreement total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

2.21 DELEGATION AND/OR ASSIGNMENT

No delegation of any duties under this Contract to another entity shall be binding until the Fund has given written consent to such delegation; nor shall assignments of rights to moneys due or to become due under this Contract be permitted to any entity other than Successful Bidder, except by express written consent of the Fund.

2.22 CODE OF CONDUCT FOR BIDDER

The Fund is an extremely sensitive enterprise because of the nature of the business and because it is government operated. Therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Due to this, Successful Bidders associated with the Fund are expected to:

- A. Offer goods and services only of the highest standards;
- B. Use their best efforts to prevent the industry from becoming embroiled in unfavorable publicity;
- C. Make sales presentations in a responsible manner; and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for the industry;
- D. Avoid promotional activities that could be interpreted as improper and result in embarrassment to the industry;
- E. Report security problems or potential security problems promptly to the Fund;

F. Not offer or give any gift, gratuity, favor, entertainment, loan or any other thing of material monetary value to any Fund employee, or to any individual influencing the outcome of this project.

2.23 OWNERSHIP OF PROPOSAL CONTENTS, MATERIALS AND INTELLECTUAL PROPERTY; USE OF TALENT

(a) Any and all materials submitted with a Proposal shall not be returned and will be maintained by the Fund as part of the procurement record. It is not the intent of the Fund to use materials submitted with a Proposal for anything other than supporting documentation. However, the Fund will not be held liable for the unintentional use of such materials, including any payment for such materials.

(b) Ownership of all data, documentary material and operating reports originated and prepared exclusively for the Fund pursuant to any Contract resulting from this RFP shall belong to the Fund. Successful Bidder agrees that, except where noted by the Fund, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this agreement by vendor are the sole exclusive property of the Fund and that they shall not be used by the vendor or any other person or destroyed without express written permission of the Fund. Any work product created pursuant to this Agreement and any subcontract shall be "works made for hire" and shall become the property of the Fund, which shall have all rights of ownership and authorship in such work product. Additionally, the Successful Bidder hereby assigns to the Fund any and all intellectual property rights to any such work product. Upon termination of the Agreement, Successful Bidder shall deliver to the Fund all property that is in its possession and that is the Fund's property or relates to the Fund's business, including, but not limited to records, notes, data, memoranda, software, electronic information, equipment, and any copies of the same.

(c) Successful Bidder or its representative shall take commercially reasonable steps to obtain copyright and or trademark registration on behalf of the Fund for advertising material as requested by the Fund.

(d) The Fund understands and agrees that Successful Bidder is party to various talent and performing rights agreements in various parts of the world. For example, in the United States, agreements with the Screen Actors Guild ("SAG"), the American Federation of Television and Radio Artists ("AFTRA") and the American Federation of Musicians ("AFM") make the use of talent by Successful Bidder on Fund's behalf subject to the terms of such agreements and provide for Successful Bidder will be ultimately liable to performers for payments that may become due because of use of commercials by the Fund or any party to whom the Fund provides any of the commercials.

2.24 PARTISAN POLITICAL ACTIVITY

Funds provided pursuant to this Agreement shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

2.25 LICENSED INTELLECTUAL PROPERTY

To the extent that the bidder utilizes or relies upon the intellectual property rights of a third party in fulfilling its obligations under the Contract, the bidder will provide the Fund with whatever assurance the Fund deems necessary that the use of such third party intellectual property is permissible. In addition, in the event of failure to perform or breach of Contract the bidder must ensure continued right of use of licensed intellectual property by the Fund. The Fund will not pay a fee for rights already held by the bidder; however, if fees are incurred for the licensing of intellectual property owned by any third party relevant to the fulfillment of the services under this RFP, any fees to be paid by the Fund for use of a third party's intellectual property will be negotiated on a case by case basis. As part of its Proposal, the bidder must provide a list of any third party's intellectual property relevant to this procurement that the bidder is currently licensed to use.

2.26 SECURITY REQUIREMENTS

The Successful Bidder, including its employees, officers, agents and subcontractors, shall be required to comply with all present and future security policies of the Fund. In addition, the Successful Bidder, its subcontractors, project managers, their employees, officers and agents, and any and all persons involved in projects and work assignments under this Contract will be required, prior to access to any Fund site, to be given a security clearance by Fund. Anyone seeking access to a Fund site must provide their name, address, date of birth, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit. Once preliminary access approval is granted by the Fund, all visitors to a site must provide two (2) forms of valid identification, including one photo ID and written authorization that they are acting on behalf of a designated employer and/or Successful Bidder. Only after site authorization is confirmed will access to the Fund site be approved.

A. Physical Security During the Delivery of Contracted Services

(i) The Successful Bidder shall be solely responsible for the safety and security of the project sites, facilities, and components under this Contract, with the exception that the Successful Bidder is not responsible for overall building security at locations under the control and management of Fund, State, local or federal agencies. The Successful Bidder remains responsible, however, for security of project components or equipment within such buildings, e.g. secure equipment enclosures within the space provided by such agencies. The Successful Bidder shall be responsible for and shall correct its failure or theft of any components or portion of the project due to the Successful Bidder's inadequate physical and/or information security at its cost and expense.

(ii) The physical security and the information security of project data shall be provided at a level commensurate with that normally established for a similar system in today's heightened security environment. All components of site

security shall be of suitable strength and design, and shall reasonably withstand attempts to gain unauthorized access.

B. Access by Personnel

(i) The Successful Bidder, its officers, agents, subcontractors, and their employees and independent contractors, shall be required to comply with all applicable facility and information security policies and procedures of the Fund in performing the scope of work under this RFP. Such policies and procedures shall be communicated to the Successful Bidder as a condition precedent to Successful Bidder's obligations under this paragraph.

(ii) The Successful Bidder warrants that each individual performing work under this RFP is legally eligible to work in the United States and that such eligibility shall be maintained at all times during the engagement while the individual is accessing any Fund site, information systems or data contained therein. In addition, prior to accessing any Fund site, project information systems or data contained therein, the Successful Bidder, and its officers, agents, subcontractors, and their collective employees and independent contractors performing work under this RFP, shall be required to:

(a) Obtain security clearance from the Fund, which may include, at the Fund's discretion, a criminal history and/or background investigation of each individual proposed to perform work under the Contract. Each individual assigned to the project by or through the Successful Bidder shall be required to submit identifying information to the Fund.

(b) Obtain from the Fund and prominently display on their person, Fund issued identification cards at all times while physically present at any Fund site.

(iii) When an emergency or other circumstances occur which render immediate compliance with the foregoing requirements impractical, the Fund may, in its sole judgment, defer an individual's compliance with the foregoing requirements and grant temporary access. Such deferment shall not be construed as a waiver of the Fund's right to subsequently require security clearance as to any individual previously granted such temporary access; provided however, that even in such circumstances, the Fund shall approve such individual's access prior to such individual accessing a site, system or data and the Fund may accompany such individual at all times when on-site.

(iv) The Fund reserves the right, in its sole discretion, and without liability to the Successful Bidder's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access prior to such individual accessing a site, system or data and the Fund may accompany such individual at all times when on-site. The Fund reserves the right, in its sole discretion, and without liability to the Successful Bidder's officers, agents, subcontractors, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access to Fund facilities, electronic information systems or data contained therein to any individual proposed by or through the Successful Bidder (A) who refuses to comply with the security procedures outlined in this section, or (B) where the

Fund determines that the individual may present a risk to the Fund's security interests. The Fund shall not be liable for payments or damages of any kind if the Successful Bidder is delayed or unable to perform under the Contract as a result of the Fund's denial of access to any individual(s) pursuant to this section.

PART 3- SCOPE OF WORK

3.1 SCOPE

The services to be provided under a contract resulting from this RFP are described in this Part. Each year, the Successful Bidder will be required to develop an advertising and promotional plan (the "Plan"), which will define the advertising and promotional activities to be carried out that year.

All projects under the contract will be carried out in collaboration with the Fund and within the defined budget.

The major events to be covered under the contract are listed below. Exhibit 1, included in this RFP, contains a list of Sire Stakes series race dates (2022) and Excelsior series race dates (2022), as well as locations. The county fair racing schedule can be accessed on the website at <http://www.nysirestakes.com/racing/> when available.

- (a) County Fair Racing Series (19 fair event days) and the Series Final to be held in the fall.
- (b) Sire Stakes Racing Series Final to be held in the fall, which will include the Night of Champions Reception.
- (c) Excelsior Racing Series Final to be held in the fall.
- (d) Annual Horse Sales:
 - Goshen, NY (1 day event – date pending)
 - Morrisville, NY (1 day event – date pending)
 - Harrisburg, PA (5 day event – date pending)
- (e) Annual Awards Banquet & Night of Champions Event
- (f) "New Owner" Seminar

Note: The Fund may desire that the Successful Bidder represent the Fund at two or more additional events throughout the year, such as at a race during the Sire Stakes racing series and/or Excelsior racing series, if the budget permits, and to be determined between the Fund and the Successful Bidder.

Following execution of the contract the Successful Bidder will meet with the Fund to discuss the advertising and promotional activities to be carried out in the first year of the contract. Within thirty days following this meeting the Successful Bidder will provide the Fund with the Plan and annually thereafter thirty days prior to the start of a new season.

The Plan will be reviewed by the Fund and a response provided to the Successful Bidder, either of acceptance of such Plan or for further discussion and revision. Every attempt will be made by the Fund to provide a response to the Plan within 15 days of receipt from the Successful Bidder. Following acceptance of the Plan,

Successful Bidder shall obtain written approval from the Fund prior to any deviations from the approved Plan.

The Fund believes that an online ad campaign developed to promote New York Bred horses and their triumphs should be an integral part of the Plan that will be developed. The ads should focus on NY Standardbred horses and their successes on the track and in the breeding sheds at state, national and international levels. The Plan must also include the following elements of the Scope of Work to be executed throughout the contract term:

A. Market Research/Strategic Account Planning/Advertising Communication Tracking:

1. Successful Bidder shall use all research, analytical tools and data at its disposal to develop the most creative and effective marketing plans to achieve stated objectives.
2. Successful Bidder shall propose, conduct and analyze market research as necessary to gain insights to inform strategic direction for the account.

The Fund will provide the Successful Bidder with reports that include detailed, quantifiable analysis comparing NY-breds sold at each event to horses bred elsewhere, including comparisons in price, quality, quantity, a professional opinion regarding the reason for the outcome of NY-breds sold at each sale, quotes from appropriate horsemen, owners, buyers, and/or sale representatives, and any other pertinent information.

3. As the Budget permits, Successful Bidder shall identify and analyze appropriate State and local marketing programs or events beyond those required under this RFP, at which the Fund should be represented to promote the NYSS program. This includes, but is not limited to, coordination of event scheduling, reservations, staffing, set-up, and procurement of any giveaway items.
4. Successful Bidder shall provide a schedule of advertising and promotional activities to be undertaken by the Successful Bidder and specifics as to the implementation of such plan.

B. Promotion & Event Management:

Successful Bidder will be responsible for development and management of all promotional activities related to the major events identified (race series horse sales, banquets and seminars) as well as additional events agreed to by the Fund and Successful Bidder throughout the racing season. Responsibilities will include, but not limited to; planning, staffing, advertising, and purchase and distribution of promotional items.

1. **Staffing Plan.** The Successful Bidder is required to provide event and exhibit staffing for all events. Staff representing the Fund will be expected to interact with attendees, distribute promotional items, and answer general questions

and relay questions related to the industry to Fund staff as appropriate. Staffing requirements for each of these events is approximately six hours. As stipulated in the guiding principles in Part 1 of this RFP, the Successful Bidder will make every effort to use local/regional staff to carry out racetrack promotional activities. The staffing plan must identify the staffing to be provided at each event and the associated cost.

2. **Banquets:** There are two annual banquets that the Fund may request the Successful Bidder to plan, organize, implement, and staff in conjunction with the Fund, as outlined below. Event reports shall be provided to the Fund following each exhibit, banquet or event.

- i. Annual Awards Banquet. The awards banquet is a formal dinner, including a casual reception, held annually at the conclusion of the racing season in conjunction with United States Trotting Association (“USTA”) District 8. The banquet typically hosts 150 attendees. The Successful Bidder shall work with the USTA in arranging a date for the event subject to the Fund’s approval.

The responsibilities of the Successful Bidder under this project include: Creating tickets, invitation, press release and program brochure for the event; selling tickets at a rate adequate to cover the cost of the banquet; RSVP coordination; site selection (to be approved by the Fund); event décor and food/beverage coordination; event set-up/take-down; event supervision; procurement of awards; coordination of event personnel; gift bag and/or favors to be provided for assembly and distribution; coordination of the event schedules; arranging for photographers.

As soon as practical, but no less than one (1) month prior to this event, the Successful Bidder will submit to the Fund a thorough event plan to include all event details. The Successful Bidder shall provide to the Fund a post-event analysis report no later than five (5) business days following the event.

- ii. Night of Champions Event. Plan, direct and implement the Night of Champions “NOC” event, including a cocktail party. The NOC event is free; therefore, there will not be tickets and all costs related to the event will be out of the account budget. The responsibilities of the Successful Bidder under this project include: Successful Bidder to outline the event and meet with Fund staff for review and approval; creation of invitations and mailing lists; handling of reservations; development of a program containing final standings; arrange for menu, decorations, signage, trophies, tee-shirts, party favors, food for paddock workers, buglers, photographer, winners circle staff, presenters, and clean up. The event should be captured via videos and photos for the next Stallion Directory.

3. **New Owner Seminar.** Successful Bidder shall develop and hold a “new owner” seminar on all aspects of Standardbred ownership which shall be conducted at least once, at each of seven pari-mutuel tracks in New York, during the peak season months of June, July and August. The Successful Bidder shall work with the Fund to arrange for an event speaker. The seminars would cover topics such as how to select a trainer, choosing young horses or

claimers, actual costs, risks and rewards and provided for in the Promotion/Advertising Plan. Note: staffing by the Successful Bidder is not required for this event.

4. **Promotional Items.** Successful Bidder will be expected to purchase promotional items, in consultation with the Fund, and pursuant to the approved Plan that will be utilized for racing events and the promotion of the Sire Stakes program at race tracks, county fairs, horse sales or any other venue where the Fund would benefit from such promotional items being given away.

The promotional items will be covered by the \$50,000 budget amount per year. One item that must be included in this budget and purchased each year is blankets/coolers that will be provided to the winners of Finals and Consolations across all series. Other promotional items are subject to the Successful Bidder's promotional plans and may include such items as hats, coolers/fly scrims, final's coolers, lead shanks, tote bags, etc. The Plan shall identify the types of products to be purchased for each event and specify the quantities and the cost.

C. Creative development, production and distribution of all advertising, marketing communications, and promotional materials:

1. The annual plan shall identify the marketing efforts for each event in the plan, such as media placements (print, radio, tv, digital, social, etc.) and all associated costs. The Successful Bidder shall be responsible for the placement and purchase of all media and will be responsible for auditing and verifying all media placements.
2. Create advertisements for trade publications and other appropriate outlets, including local radio and television. If producing TV, Radio, or print ads, provide the Fund with production schedules.
3. Create and order New York Sire Stakes promotional items. Successful Bidder will be responsible for designing promotional giveaways and interactive activities in support of the Fund's initiatives, subject to Fund approval under the Plan.
4. Produce a New York Sire Stakes calendar for 3500 classrooms in New York State that includes information on the Sire Stakes, Excelsior and County Fair Racing Series.
5. Develop annual Stallion Directory for NYSS Eligible Stallions. The NYSS Stallion Directory promotes NYSS-eligible Stallions to mare owners for the purpose of breeding in New York. This project requires development of a Directory annually, beginning with 2024-eligible stallions with stallion registrations beginning 11/15/2022 through 12/31/2025, including the 2026 Stallion Directory. This project includes promoting the Directory to stallion owners; collecting stallion pedigrees and photos for stallions that are standing for service in New York State; collecting fees from those advertising in the

Directory to offset the printing and distribution costs, with any excess funds received remitted back to the Fund.

The Successful Bidder shall provide an accounting to the Fund within 30 days of final mailing as to the exact cost of preparing the Directory including costs associated with designing, preparing, printing and mailing.

The timeline for deliverables for the Stallion Directory project shall be determined in cooperation with and approval by the Fund; however, the Directory shall be printed with distribution starting as close as possible to January 15, 2023.

D. Digital Marketing & Advertising and Social Media Management:

1. Create digital marketing campaigns to effectively communicate with target audiences through all digital touch points.
2. Strategic development, content & creative development, community management, optimization and performance analysis through monthly reporting.

E. Fund Website: Creative Development & Content Management:

The Successful Bidder will provide creative input into the design and content of the NYSS website. Successful Bidder will also manage the NYSS website and update information with guidance from the Fund. The Fund will provide access to their web content management system for required updates. The responsibilities of the Successful Bidder include but are not limited to: posting articles relevant to the NYSS program (daily during NYSS season); posting forms and related materials; posting all reports, notices and financial documents when received from the Fund; posting champion results and replays; posting all audio and written minutes from the NYSS meetings, as provided by the Fund.

F. Budget and Account Management:

Successful Bidder will be responsible for carrying out all services defined in this RFP, within the budget allocated as outlined below.

1. **Account Budget:** The annual Account Budget under the resulting agreement shall not exceed \$200,000 and, with the exception of promotional items, which shall be covered under the Promotional Budget, will cover all costs associated with carrying out the Scope of Work, such as the fixed annual fee, hourly event staff, and media placements. Certain costs may be offset by fees collected, for example, the Awards Banquet, which may be offset with the sale of event tickets, and the Stallion Directory, which may be offset with the placement of ads in the directory.

On a quarterly basis, the Successful Bidder shall provide the Fund with the following:

- i. A planned expenditure report which shall show all planned media and promotional expenses for the upcoming quarter. Approved expenses will be paid upon approval of the report.
 - ii. A quarterly Status reports detailing current projects, production jobs, promotional events, reporting and meetings. Status reports shall include timelines for all initiatives.
2. **Promotional Budget:** The annual Promotional Budget under the resulting agreement shall not exceed \$50,000 and shall be used for the purchase of promotional items to be distributed at the events defined in the Scope of Work. Reimbursement to the Successful Bidder under the Promotional Budget will be based on actual receipts (pass-through/no mark-up).

Upon contract approval, and annually thereafter, the Successful Bidder shall provide the Fund with a detailed schedule for planned promotional item purchases for the upcoming period. Such schedule shall provide an estimated breakdown of annual budget. Promotional expenses such as coordinating and staffing promotional give-away events at NYSS races (this includes at least two promotional events at each pari-mutuel track, coordinating the events with the tracks, distributing NYSS promotional items to race tracks and other related venues provided by the Fund, i.e., hats, brochures, posters, etc.), and performing other promotional activities, as directed by the Fund, shall be separately identified in the Plan.

PART – 4 INFORMATION REQUIRED FROM BIDDERS

In preparation of the Proposal, each bidder should pay special attention to the requirements and information being requested in order to respond fully to the RFP. Any Proposal found to be incomplete or placing conditions in response to the requirements under this RFP may be deemed non-responsive and removed from further consideration.

4.1 BUSINESS ORGANIZATION

The Proposal must include the information listed below.

1. State the full name and address of its organization and any branch office or other subordinate element that will perform or assist in the performance of the work hereunder. The bidder shall indicate whether it operates as an individual, partnership, corporation, joint venture, or other specified form of business organization. Each bidder must state whether they are qualified and/or registered to do business in the State of New York.
2. Indicate the name, address (including e-mail) and telephone number of the individual from your organization that is authorized to enter into and bind the organization to the terms and conditions of its Proposal.
3. Provide a company organizational chart by staff title.
4. Provide information demonstrating the bidders' financial viability, integrity and stability, for example, financial statements.
5. The bidder shall describe key corporate personnel, ownership control, and facilities available to satisfy the requirements of the proposed Contract.
6. Brief summary of Bidder's mission, culture and guiding philosophy.
7. List of Bidder's strengths and capabilities with relevance to the Fund's business.
8. Client list, including tenure with the Bidder.
9. List of any accounts lost or resigned over the past two years and comments on why this occurred.

4.2 EXPERIENCE OF THE BIDDER'S ORGANIZATION

The bidder must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services defined in the RFP. Include sufficient detail to demonstrate the relevance of such experience.

The Proposal must include the following:

1. Description of the bidder's organization that would be considered relevant to the successful accomplishment of the scope of work required herein, including employee capacity to undertake and successfully carry out the proposed services.
2. The credentials of the organization and examples of past projects that illustrate such, including specific events and outreach efforts.
3. Whether any of the experience described has been due to a subcontractor relationship and to what extent (prime and subcontractor roles and responsibilities).
4. Describe your firm's experience in the equine industry, or Standardbred breeding industry in particular, if any. Also address how your firm's experience might lend itself to the mission of the Fund.
5. Describe your firm's experience with various media output, such as approximate percentage breakdown of the creative output by media type (e.g., television, radio, magazine, newspaper, outdoor, direct, interactive/digital, collateral/POS, or other media specific types of creative products).

References

The firm must include at least three references relevant to any of the requested services. References must include company name, contact person (name, title, phone number, email address and mailing address) and include a general statement of the type of engagement performed for this reference.

If submitting a joint proposal, include an additional three references for the joint firm. If utilizing a subcontractor, include an additional three references for the subcontractor.

The Fund reserves the right to contact references as many times as is necessary and to contact as many references as is necessary to obtain a complete understanding of the bidder's performance and experience. The Committee also reserves the right to request additional or alternative references to those provided in the Proposal, as needed.

References will be used to substantiate the technical proposal.

4.3 PROJECT MANAGEMENT AND STAFFING

The Proposal must include the information listed below.

1. Identify all staff (name and title/position), including a full time dedicated staff project director, and other personnel to be used under an ensuing Contract. The Fund expects that the project director will have overall responsibility for all work conducted pursuant to this RFP. Exceptions may be made only with the approval of the Fund.

Note: If staff is "To Be Determined", bidder must indicate the staff title and the qualifications and attributes required for the position.

2. Describe staff availability for communication with the Fund.
3. Provide resumes (not biographies) for all proposed staff indicating the relevant experience of each individual. **Biographies do not provide sufficient information to allow for adequate evaluation of the individual's capabilities.**
4. Indicate the role each staff will have in the project and the anticipated percentage of time allocated for each individual in the proposed work effort.
5. Indicate the organization's hiring practices, including suitability standards.
6. Describe the organization's training philosophy and training process for new employees.
7. If applicable, list all subcontractors, to be utilized, including firm name and address, contact person, and a complete description of work to be subcontracted. Descriptive information relative to the subcontractor's organization and capabilities must be included. If the bidder does not intend to utilize subcontractors, that too should be indicated in the Technical Proposal.

4.4 WORK PLAN

1. Describe how your firm is going to approach a successful and comprehensive advertising/marketing plan for the Fund, including concept of the project and the methodology to be used; strategy and tactics by which you would segment the market, geographically and demographically, to best attain the Fund's overall goals.
2. Describe your firm's learning curve, and training process for understanding the equine and harness racing industry to achieve the desired results under this RFP.
3. Describe the method to be used for outreach efforts to generate interest in the program, attendance at racing events and attract new owners and breeders.
4. Describe your firm's ability to perform the duties as stated in this RFP under varying budgetary circumstances. Include information on how the budget will be managed and how planning will be flexible each year based on varied locations and dates of races. **Note: Do not provide any pricing information within your Technical Proposal.**
5. Indicate the anticipated level of regular communication with the Fund, as well as ability to handle incoming inquiries and requests.
6. Provide specific examples that demonstrate your firm's strength in local media planning and buying within New York State. Include a description of your approach to ensuring that local media plans are developed with a thorough understanding of the local market dynamics and that the media is purchased effectively and efficiently to maximize the investment and achieve the Fund's goals.

7. The Proposal should also include details of how the media will be purchased, monitored and analyzed to ensure maximum efficiencies and ROI on marketing investment for the Fund.

4.5 CREATIVE ASSIGNMENT

As part of its technical proposal and as a means of demonstrating to the Fund the bidder's experience and approach to a campaign, the bidder must provide a creative plan/campaign in response to this assignment.

The Goshen Yearling Sale was created in 2015 because of the lack of an early-fall yearling sale with the proximity to many of the richest racing programs. 113 yearlings were sold at the inaugural edition, generating gross sales of \$1.4 million.

The sales events are an opportunity to promote the program to buyers. Promoting how much the program provides NY-breds and information about the program is important. As states cut funding it is important for people, especially out of state, to be aware that the program is alive and what it provides. At the event, the Fund hosts a tent with the Sire Stakes logo, and information is provided to attendees on the program.

Provide a creative plan to demonstrate how your company would use this event as an opportunity to showcase the Fund. The creative plan should demonstrate how your company would approach the following areas as they relate to the campaign being presented:

1. Analysis of the marketing situation
2. Assessment of target audience and how the consumer insight was determined
3. Development of marketing & advertising strategy to deliver on the consumer insight
4. Campaign development process, including brief
5. Production process
6. Tracking and analysis of effectiveness. Bidder should include an overview as to how the campaign would be evaluated for effectiveness and efficiency to ensure that dollars invested are being maximized and that the campaign is meeting its stated objectives. This response must include specific measurement tools and processes the bidder intends to use to evaluate the campaign.

4.6 PRICING PROPOSAL

Utilizing **Attachment 2**, Pricing Proposal form, the bidder must provide all-inclusive pricing for each deliverable, as indicated.

Media placement costs will be paid each quarter in advance at the amount approved in the Plan. These costs are covered under the Account Budget.

Promotional products will be paid at actual cost following production and receipt of goods by the Successful Bidder and upon receipt of invoice by the Fund. These costs are covered under the Promotional Budget.

Bidders must use Attachment 2 for their Pricing Proposal. Alternate forms will be considered non-responsive.

PART 5 – EVALUATION AND SELECTION

5.1 INTRODUCTION

This section describes the evaluation process that will be used to determine which Proposal provides the greatest overall benefits to the Fund. The ability of the Fund to evaluate a bidder's Proposal is dependent upon the completeness and proper submission of the Proposal. The failure of a bidder to provide information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request or demonstration request, may result in rejection of the bidder's Proposal or reduction in scoring during the evaluation.

5.2 EVALUATION METHODOLOGY

The Fund will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. In making a selection, the Fund will be represented by an Evaluation Committee (the "Committee") comprising Fund staff members and one Trustee of the Fund. The Fund reserves the right to make changes in the Committee's membership as necessary.

Scoring of the Technical Proposals will be by consensus of the Committee. The Pricing Proposals will be scored following Technical Proposal scoring. **The relative weight of Technical to Price will be: Technical 70%; Price 30%.**

5.3 EVALUATION AND AWARD STEPS

The evaluation and award process will comprise all of the following:

- A. Pass/Fail evaluation of the minimum qualifying requirements of the bidder as provided for in Part 1 of this RFP.
- B. Review of Proposals to assess compliance with proposal submission requirements, including responsiveness to terms, conditions and requirements.
- C. Detailed review by the Committee of the Technical Proposals relative to proposed functions, features, services, and references, using the requirements and criteria defined in this RFP.
- D. Proposal clarifications, if applicable.
- E. Scoring of Technical Proposals by the Committee (including reference checks and bidder interviews).
- F. Assessment and scoring of Pricing Proposals after finalization of the technical scoring process.
- G. Compilation of the technical and pricing score of each bidder into a summary score sheet.

- H. Preparation of a Recommendation of Award Memorandum, on behalf of the Committee. Signature by the Committee Chair on behalf of the Committee, of the final Memorandum.
- I. Signature of the Memorandum by the Trustees of the Fund.
- J. Notice of Award.

5.4 INFORMATION FROM OTHER SOURCES

The Fund reserves the right to obtain from sources other than the bidder, information concerning a bidder, the bidder’s offerings and capabilities, and the bidder’s performance, that the Fund deems pertinent to this RFP and to consider such information in evaluating the bidder’s Proposal. This may include, but is not limited to, the Chair of the Evaluation Committee engaging bidders and additional experts from outside the Committee to better inform the Committee’s findings.

5.5 EVALUATION & SELECTION CRITERIA

Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Part 4 – Information Required from Bidders – of this RFP will be evaluated based on the following criteria:

- A. Technical Evaluation - 70%
 - Experience of the Bidder’s Organization (15 points)
 - Project Management & Staffing (15 points)
 - Work Plan (20 points)
 - Creative Assignment (20 points)
- B. Pricing Evaluation - 30%

The bidder with the lowest price will be awarded the full points allocated to the pricing evaluation. The score for each of the remaining bidders will be proportionate to the lowest bidder.

Note: Points awarded will be rounded to the nearest hundredth place.

INTERVIEWS:

The Evaluation Committee will hold interviews during the technical evaluation process. The interviews will be in person, or by video conference, and will provide the bidder with the opportunity to demonstrate its understanding of the project. Information obtained during interviews may impact the technical scoring.

5.6 FINAL COMPOSITE SCORE/DETERMINATION OF AWARD PROCESS

The technical and pricing scores will be combined to determine the final composite score for each bidder. Award will be made to the responsive and responsible bidder who achieves the highest composite score.

5.7 NOTICE OF AWARD

A Contract award notification letter will be sent to the Successful Bidder and unsuccessful bidders indicating award subject to approval by the Trustees of the Fund.

No public discussion or news releases relating to this RFP or the resulting Contract shall be made by any bidder without the prior approval of the Fund.

5.8 DEBRIEFINGS

The Fund shall, upon request, provide a debriefing to any unsuccessful bidder that responded to this solicitation regarding the reasons that the Bidder's response was not selected for an award. If an unsuccessful bidder desires a debriefing, it must be requested by the unsuccessful bidder within fifteen (15) calendar days of release by the Fund of a notice in writing or electronically that the Bidder's bid was unsuccessful.

APPENDIX A

STANDARD CLAUSES FOR CONTRACTS WITH THE

AGRICULTURE AND NEW YORK STATE HORSE BREEDING

DEVELOPMENT FUND

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the Agriculture and New York State Breeding Development Fund ("Fund"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. This contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the Fund's previous written consent, and attempts to do so are null and void.

3. COMPTROLLER APPROVAL. Unless otherwise provided by resolution of the Fund, if this contract involves the expenditure of funds for goods or services in excess of \$1 million, this contract shall not be valid, effective or binding upon the Fund until it has been approved by the State Comptroller and filed in his office.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the Fund of any Fund-approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The Fund shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Fund's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the Fund with regard to this contract, any other contract with any State department or agency, including any contract for a

term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Fund shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Fund shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Fund official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Fund's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to the Fund by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Fund is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals,

businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained at the Agriculture and New York State Breeding Development Fund, 1 Broadway Center, Suite 602, Schenectady, New York 12305.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Fund is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Fund; or (ii) a written agreement in excess of \$100,000.00 whereby the Fund is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Fund contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Fund, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 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 Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The Fund shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Fund shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Fund's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Fund, in writing, of each and every change of address to which service of process can be made. Service by the Fund to the last

known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the Fund.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the Fund; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Fund.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Fund;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the Fund upon request; and

(d) The Contractor acknowledges notice that the Fund may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Fund in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming,

Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the Fund may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency

26. NON-PUBLIC PERSONAL INFORMATION. The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Fund which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or

the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

27. IRAN DIVESTMENT ACT. In accordance with State Public Authorities Law §2879-c, if this is a contract for work or services performed or to be performed, or goods sold or to be sold, the Contractor subscribes and affirms, under penalty of perjury, that: by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. For the purposes of this clause, the term "person" shall be as defined in subdivision (1)(e) of Section 165-a of the State Finance Law.

28. OBSERVANCE OF LAWS. The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

29. NO WAIVER OF PROVISIONS. The Fund's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Fund of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Fund, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

30. ENTIRE AGREEMENT. This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

31. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

INDEPENDENT CONTRACTOR (I.C.) AGREEMENT

Contract 2022-01

THIS AGREEMENT made this _____ day of _____, 2022 by and between the Agriculture and New York State Horse Breeding Development Fund, a New York State Public Benefit Corporation (the "Fund"), having an office at One Broadway Center, Schenectady, NY 12305, and [contractor] having an office at [address] (the "Contractor").

WHEREAS the Fund was established pursuant to Chapter 567 of the Laws of 1965 and operates pursuant to that law, as amended (the "Statute") to advance and promote the breeding and racing of Standardbred horses in the State of New York, and is authorized by Statute to make awards to owners and breeders of progeny of registered New York-based stallions during the year of conception, and to conduct racing for New York-breds; and

WHEREAS the Fund is directed by Statute to advance and promote the Standardbred breeding industry in this State by, among other things, the publication and dissemination of information and the encouragement of interest among the general public in the breeding and racing of New York-breds, and to advance general interests in all aspects of agricultural pursuits throughout the State; and

WHEREAS the Fund issued a Request for Proposals ("RFP") on June 16, 2022 soliciting proposals from qualified firms to provide equine marketing and public relation services for the Fund, and clarified the requirements of the RFP with Questions and Answers dated July 1, 2022 and July 14, 2022, (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____, 2022] (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Fund's evaluation team;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services. The Contractor agrees to provide the Fund with equine marketing and public relation services, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

2. Term. The Agreement shall be effective from January 1, 2023 through December 31, 2025, with the option for two, one-year renewals.

3. Compensation.

(a) In full consideration for all goods and services specified in the RFP and the Proposal, the Fund agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal, as follows:

(i) Contractor shall be paid an annual fixed fee, in equal monthly payments that shall not exceed the following:

Year 1: \$[XXXXXXX]

Year 2: \$[XXXXXXX]

Year 3: \$[XXXXXXX]

(ii) Contractor shall be compensated at the hourly rate of \$[XXXXXXX] throughout the contract term for event staffing as quoted in Contractor's Pricing Proposal.

(b) The annual Account Budget, as defined in the RFP, shall not exceed \$200,000. The annual Promotional Budget, as defined in the RFP, shall not exceed \$50,000.

(c) No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor.

4. Approvals Required. This Agreement, and any extension of the term of this Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Fund or the Contractor unless and until approved by the Board of Trustees for the Agriculture and New York State Horse Breeding Development Fund.

5. Mutual Cooperation. The objective of this Agreement is to provide equine marketing and public relation services to the Fund as set forth in this Agreement. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

6. Termination and Suspension.

(a) In addition to the bases referenced in the RFP, the Fund shall have the right to terminate this Contract for convenience or for any of the following causes:

- (i) a material breach by the Contractor of any of the provisions of this Contract;
- (ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- (iii) a good faith determination by the Fund that continuation of the Contract could place the integrity of the Fund in jeopardy; or
- (iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Fund's Executive Director, or the Executive Director's designee (collectively referred to here as "the Executive Director"), would be prejudicial to public confidence in the Fund;
- (v) in the judgment of the Fund, a real or potential conflict of interest cannot be cured; or
- (vi) the refusal by the Contractor or any of its directors, officers, or employees to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract, when called before a grand jury, head of a state

department, the Fund, a temporary state commission or other state agency, or the organized crime task force in a department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any such transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority.

If the Contract is cancelled or terminated based on the grounds listed in paragraph 6.(a)(vi), above, such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the State or any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of this Contract, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

(b) In the event that the Fund decides to exercise the right to terminate this Contract for cause, the Fund shall give the Contractor written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Fund in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or

obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) The Fund also reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State's State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Fund may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Contract.

(d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Fund officials or staff, the Contract may be terminated by the Executive Director at the Contractor's expense where the Contractor is determined by the Executive Director to be non-responsible or nonresponsible. In such event, the Executive Director may complete the contractual requirements in any manner the Executive Director may deem advisable and pursue available legal or equitable remedies for breach.

(e) Due to the critical nature of the services to the Fund's, Treasury's, and the State's operations, the Contractor may not terminate the provisioning of any of the services to the Fund except in the event that the Contractor discontinues provisioning of those services as part of its business operations to other similarly-situated customers, generally. Moreover, such discontinuance of services to the Fund may not occur on less than two years' prior written notice.

(f) To ensure uninterrupted services, the Contractor's continued financial stability shall be a material condition of the Contract. The Fund reserves the right to immediately terminate such Contract if the Contractor's financial stability is reasonably determined by the Fund, or any State agency, to be deficient.

(g) Upon termination or expiration of this Contract, the Contractor and the Fund shall cooperate to the fullest extent to develop and execute a transition plan with any successor contractor that contains reasonable procedures for transition and time schedules for scaling down operations of the Contractor in order to allow services to continue without interruption.

In the event of expiration or termination of this Contract for any reason, the Contractor shall continue to perform the services required hereunder under these same terms and conditions in order to complete any transactions pending on the effective termination date and to facilitate an orderly transition to a successor contractor (“Transition Period”), including but not limited to (i) cooperating with the Fund to ensure an accurate final accounting of all activity occurring with respect to the services; (ii) providing access to all necessary records, transferring all necessary data, information, and other files related to the Services to the Fund; (iii) making appropriate members of its staff reasonably available to answer reasonable questions that the Fund and its staff, agents, and designees may have with respect to the records and information being accessed and transferred, as applicable; and (v) otherwise assist with such transition, and cooperate with the Fund and any successor contractor in order to accomplish a smooth and orderly transition, so that the services are uninterrupted and are not adversely impacted. If a successor contractor shall be appointed by the Fund, the Contractor shall deliver to such successor contractor at the office of the successor contractor, or as otherwise directed by the Fund, duly endorsed and in the form for transfer, all property then held by the Contractor hereunder.

(h) Termination will not affect any of the liabilities either party owes to the other arising under this Contract prior to such termination.

(i) The Executive Director, in the Executive Director’s sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when the Executive Director discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director issues a written notice authorizing a resumption of performance under the Contract.

7. Conflict of Interest.

(a) The Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

(b) The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify the Fund immediately of any actual or potential conflicts of interest.

(c) In conjunction with any subcontract under this Agreement, the Contractor shall obtain and deliver to the Fund, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Fund a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

(d) The Fund and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The Fund will review the nature of any relationships and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the Fund, a real or potential conflict of interest cannot be cured.

8. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, “Confidential Information” means any information not generally known to the public, whether oral or written, that the Fund identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Fund pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Fund deems confidential. The Fund will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.

(b) Confidential Information does not include information that, at the time of Fund disclosure to the Contractor:

- (i) is already in the public domain or becomes publicly known through no act of the Contractor;
- (ii) is already known by the Contractor free of any confidentiality obligations;
- (iii) is information that the Fund has approved in writing for disclosure; or
- (iv) is required to be disclosed by the Contractor pursuant to law or applicable professional standards, so long as the Contractor provides the Fund with notice of such disclosure requirement and opportunity to defend prior to any such disclosure.

(c) The Contractor may use Confidential Information solely for the purposes of providing services to the Fund pursuant to this Agreement. The Contractor shall not make copies of any written Confidential Information except as necessary to perform the services required by this Agreement,” without the express written permission of the Fund. The Fund’s disclosure of

Confidential Information to the Contractor shall not convey to the Contractor any right or interest in such Confidential Information and the Fund shall retain all right and title to such Confidential Information at all times.

(d) The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Contractor uses to maintain its own confidential information.

(e) Upon written request by the Fund, the Contractor shall return all written Confidential Information to the Fund.

9. Records Retention. Records required by this Agreement to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

10. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Fund:

Executive Director of the Fund
One Broadway Center
Schenectady NY 12305

(b) As to the Contractor:

Company Name:
Address:

11. Liability and Indemnification. The Contractor shall forever defend, indemnify, and hold harmless the State of New York, the Fund, and their respective officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors

of such contractors and sales agents (“the Indemnified Parties”), from and against any and all claims, liabilities, losses, damages, costs, injuries, debts or expenses (including reasonable fees, court costs, and expenses of attorneys of the Fund's choice), which may be made, incurred, suffered, or required in whole or in part based on, arising out of, or being related to:

- A. the Contractor’s response to the RFP,
- B. the Contractor’s obligations to the Fund, the State or other governmental or legal authority,
- C. the Contractor’s contracts and subcontracts,
- D. products and services provided by the Contractor under the Contract,
- E. claims that any or all of the products or services provided by the Contractor under the Contract violate the Intellectual Property Rights of a third party, and/or
- F. an actual or alleged act or omission of:
 - 1. the Contractor;
 - 2. a subcontractor of the Contractor; or,
 - 3. any person directly or indirectly employed by or in an agency relationship with the Contractor or a subcontractor, or which may arise out of or be related to the Contractor’s response to the RFP or its or any of its subcontractor's performance or failure to perform under any Contract.

All obligations to defend, indemnify, and hold harmless shall survive the termination of the Contract.

Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the State shall hold the Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment.

12. Relationship. The relationship of the Contractor to the Fund arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Fund or by reason hereof, and that it will not by reason hereof, make any claim, demand or application for

any right or privilege applicable to an officer or employee of the Fund, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Fund, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Fund against any such liabilities.

13. Force Majeure. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither the Contractor nor the Fund shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

14. Documents Incorporated. Appendix A, Standard Clauses for Contracts with the Agriculture and New York State Breeding and Development Fund, the RFP, and the Proposal are hereby incorporated herein to the same force and effect as if set forth at length hereat.

15. Order of Precedence. Any conflict between the provisions of this Agreement and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- (a) Appendix A – Standard Clauses for Contracts with the Agriculture and New York State Breeding and Development Fund;
- (b) Any amendments to the Agreement;
- (c) Agreement;
- (d) Request for Proposal and any clarifying responses by the Fund;
- (e) Vendor Proposal and any clarifying responses by the vendor.

16. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire agreement between the Fund and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

(c) The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

(d) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Director of the Fund or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(e) If any term of this Contract is declared by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

(f) This Contract may be executed in counterparts, each of which shall be deemed an original. Except to the extent that original executed versions are otherwise required by the RFP, executed copies of this Contract may be sent as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[CONTRACTOR NAME]

THE AGRICULTURE AND NEW
YORK STATE HORSE BREEDING
DEVELOPMENT FUND

By: _____
(signature)

By: _____
(signature)

Name: _____
(please print)

Name: _____
(please print)

Title: _____

Title: _____

Date: _____

Date: _____

Acknowledgement

ACKNOWLEDGEMENT BY INDIVIDUAL (STATE OF NEW YORK)

SS.:
COUNTY OF)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION (STATE OF NEW YORK)

SS.:
COUNTY OF)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

ACKNOWLEDGEMENT BY CORPORATION (STATE OF NEW YORK)

SS.:
COUNTY OF)

On this _____ day of _____, in the year 20____, before me personally came _____, to me known, who, being by me duly sworn did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM

CONTRACT/PROJECT DESCRIPTION: Equine Marketing and Public Relations

CONTRACT/PROJECT NUMBER: #2022-01

RESTRICTED PERIOD FOR THIS PROCUREMENT: June 16, 2022 through approval by the Agriculture and NYS Horse Breeding Development Fund’s Board of Trustees.

PERMISSABLE CONTACTS: Ron Ochrym

1. CONTACTS - Contractor affirms that it understands and agrees to comply with the procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k. I agree

2. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

Yes No

If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

Yes No

(c) If “Yes” was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

Yes No

If “Yes”, please provide details regarding the finding of non-responsibility:

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility (attach additional sheets if necessary): _____

3. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

Yes No

If yes, provide details:

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: (add additional pages if necessary) _____

4. TERMINATION CLAUSE:

Contractor certifies that all information provided to the Agency with respect to State Finance Law §§139 (j) and 139 (k) is complete true and accurate. If found to be in violation of State Finance Law §§139 (j) and 139 (k), the contract will result in termination.

I agree

Name of Contractor’s Firm/Company: _____

Contractor Address: _____

Contractor’s signature: _____
I understand that my signature represents that I am signing and responding to both certifications listed above

Print Name: _____

Occupation of Person signing this form: _____

Email Address: _____

**Non-Collusive Bidding Certification
Required By Section 139-D of the State Finance Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDEDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day _____, 20__ as the act and deed of said corporation.

Title

Signature

The submission of the attached Vendor Responsibility Questionnaire is required with your bid.

You must include your ten-digit Vendor ID identifier number issued by New York State. Please insert the Vendor ID number on the top right corner of pages 2-10 of the questionnaire.

If you have previously submitted a New York State Vendor Questionnaire that was signed less than one year ago in connection with another State solicitation or contract, and there are no material changes to that questionnaire, you may submit an Affidavit of No Change along with a copy of the previously completed Vendor Questionnaire.

You are encouraged to complete the questionnaire online. By doing so, you will not be required to complete the questionnaire for future contracts with New York State agencies, so long as you certify the information every six months.

If you are interested in completing the online questionnaire, please visit the following website for additional information:

<https://www.osc.state.ny.us/vendrep/>

If you have filed your questionnaire online, please sign below and return only this page with your bid.

Complete the below only if you have filed your questionnaire online, otherwise, please complete the attached questionnaire.

Contractor Name (print)

Signature

Company Name

Date

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or owner's official representative authorized to legally bind the Reporting Entity must certify the truth of the questionnaire answers.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor must read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered fully. Each response must provide **all** relevant information to appropriately explain the answer. If you have concerns as to the legal requirements behind your answers, please seek clarification from your counsel. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity is not required to be identified. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity, or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity. Please refer to the Definitions List for the complete definition.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION			
<u>Legal Business Entity Name*</u>		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone Ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>)		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If ‘No,’ indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” Enter <u>DUNS</u> Number			

*All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the <u>Legal Business Entity</u> 's <u>Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
--	--

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> (MBE), <u>Women-Owned Business Enterprise</u> (WBE), <u>Service-Disabled Veteran-Owned Business</u> (SDVOB), <u>New York State Small Business</u> (SB) or a federally certified <u>Disadvantaged Business Enterprise</u> (DBE)? If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> New York State certified <u>Service-Disabled Veteran-Owned Business</u> (SDVOB) <input type="checkbox"/> <u>New York State Small Business</u> (SB) <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

1.6 Identify Officials and Principal Owners of the Reporting Entity, if applicable. For each person, include name, title, date of birth, and percentage of ownership. For each Business Entity that is a Principal Owner, include name, address, EIN, and percentage ownership. Identify all Business Entities owning 25% or more of the Reporting Entity and include name, address, EIN and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional. Each Business Entity identified as a Principal Owner must also submit a vendor responsibility questionnaire.

If there is no person or Business Entity that owns 25% or more of the Reporting Entity (or 10% or more if the Reporting Entity is publicly traded), check here.

Name of Officials and Principal Owners (for each person, please include a middle initial)	Title	Date of Birth	Percentage Ownership <i>(Enter 0% if not applicable)</i>
Name of each Business Entity owning 25% or more of Reporting Entity	Address	EIN	Percentage Ownership

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:
 Note: Select only one.
 Legal Business Entity
Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)
 Organizational Unit within and operating under the authority of the Legal Business Entity
 SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.
Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) <u>Reporting Entity</u> Name	
Address of the <u>Primary Place of Business</u> (street, city, state, zip code)	Telephone ext.
b) Describe the relationship of the <u>Reporting Entity</u> to the <u>Legal Business Entity</u>	
c) Attach an <u>organizational chart</u>	
d) Does the Reporting Entity have a <u>DUNS</u> Number? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If “Yes,” enter <u>DUNS</u> Number	
e) Identify the designated manager(s) responsible for the business of the <u>Reporting Entity</u> . <i>For each person, include name and title. Attach additional pages if necessary.</i>	
Name	Title

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY	
<i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” provide an explanation for the response and attach additional sheets with numbered responses if necessary:	

IV. INTEGRITY – CONTRACT BIDDING	
<i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the reporting entity:

5.0 Been suspended, cancelled or terminated for cause on any government contract including, but not limited to, a non-responsibility finding? Yes No

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? Yes No

5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity? Yes No

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the reporting entity:

6.0 Had a revocation, suspension or disbarment of any business or professional permit and/or license? Yes No

6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership? Yes No

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

VII. LEGAL PROCEEDINGS

Within the past five (5) years, has the reporting entity:

7.0 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? Yes No

7.1 Been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime? Yes No

7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? Yes No

7.3 Had a government entity find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law? Yes No

7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any government entity involving a violation of federal, state or local environmental laws? Yes No

7.5 Other than previously disclosed:
 a) Been subject to fines or penalties imposed by government entities which in the aggregate total \$25,000 or more; or
 b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? Yes No

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered response if necessary:

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY	
8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000 for any reason, including failure to meet <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> , or <u>Disadvantaged Business Enterprise goals</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens, claims</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien(s)</u> , the current status of the issue(s), and the balance of the <u>lien</u> or <u>judgment</u> not yet paid. Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

IX. ASSOCIATED ENTITIES

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.
(See definition of "associated entity" for additional information to complete this section.)*

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> - An <u>Organizational Unit</u>; or - The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies). <p>If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X. If "Yes," provide the name, address and EIN of each <u>Associated Entity</u> and its relationship to the <u>Reporting Entity</u>.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <p>a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes," provide an explanation of the issue(s), the individual involved, their title and role in the <u>Associated Entity</u>, identify the <u>Associated Entity</u>'s name(s), <u>EIN</u>(s), primary business activity, the individual's relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s).</p>	
<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$50,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes," provide an explanation of the issue(s), identify the <u>Associated Entity</u>'s name(s), <u>EIN</u>(s), primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien</u>(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government contract</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

IX. ASSOCIATED ENTITIES

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.
(See definition of "associated entity" for additional information to complete this section.)*

For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," indicate the question number(s) and explain the basis for the claim.

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone	Fax
	ext.	
Title	Email	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY**

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or federal law, as well as a finding of non-responsibility, contract suspension or contract termination.

It being acknowledged and agreed that all responses included in this questionnaire are to the knowledge, information and belief of the Business Entity, the undersigned certifies under penalties of perjury that they:

The undersigned certifies that he/she:

- are knowledgeable about the submitting Business Entity's business and operations;
- have legal authority to bind the Business Entity;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- are under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Date _____



Contractor Certification

(Pursuant to Tax Law Section 5-a, as amended, effective April 26, 2006)

ST-220-TD

(4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business		City	State ZIP code
Contractor's mailing address (if different than above)		City	State ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ()	
Covered agency or state agency	Contract number or description	Covered agency telephone number ()	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department 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 specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.


Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?


 Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

 **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- The contractor has 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not 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 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20___, before me personally appeared _____,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): _he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



- Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



Agriculture & NYS Horse Breeding Development Fund

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The Agriculture & NYS Horse Breeding Development Fund (the “Fund”) 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 Fund 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 are 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 Fund hereby establishes an overall goal of **6%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to Christine Carpenter, Christine.Carpenter@gaming.ny.gov. Additionally, following Contract execution, Contractor is encouraged to contact the Fund 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 Fund.

- C. The Fund will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Fund 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 Fund 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 Fund to be inadequate, the Fund shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Fund, 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 Fund 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 Fund 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 Fund 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 speak to the Fund 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

- 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 Fund but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If the Fund, 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 Fund 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 Christine.Carpenter@gaming.ny.gov

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 Fund with certified SDVOBs whom the Fund 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 Fund 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 available at <https://ogs.ny.gov/veterans/>, and should be completed by the Contractor and submitted to the Fund, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: Christine.Carpenter@gaming.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.



Agriculture & NYS Horse Breeding Development Fund

SDVOB UTILIZATION PLAN

Initial Plan Revised plan Contract/Solicitation 2022-01_____

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. 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. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION			SDVOB Goals In Contract	
Bidder/Contractor Name:	NYS Vendor ID:		6%	
Bidder/Contractor Address (Street, City, State and Zip Code):				
Bidder/Contractor Telephone Number:		Contract Work Location/Region:		
Contract Description/Title:				
CONTRACTOR INFORMATION				
Prepared by (Signature):		Name and Title of Preparer:		Telephone Number:
Date:				
Email Address:				
<i>If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.</i>				
SDVOB Subcontractor/Supplier Name:				
Please identify the person you contacted:		Federal Identification No.:		Telephone No.:
Address:		Email Address:		
Detailed description of work to be provided by subcontractor/supplier:				
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%				
SDVOB Subcontractor/Supplier Name:				
Please identify the person you contacted:		Federal Identification No.:		Telephone No.:
Address:		Email Address:		
Detailed Description of work to be provided by subcontractor/supplier:				
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%				

FOR DOCCS USE ONLY				
DOCCS Authorized Signature:		<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
NAME (Please Print):		SDVOB %/\$ _____	Date Received:	Date Processed:
Comments:				
NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at: https://ogs.ny.gov/Veterans/default.asp Note: All listed Subcontractors/Suppliers will be contacted and verified by DOCCS.				

ADDITIONAL SHEET

Bidder/Contractor Name:		Contract/Solicitation #2022-01	
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SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

SDVOB Subcontractor/Supplier Name:			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

APPENDIX I

EEO and MWBE Program

I: Contractor Requirements and Procedures for Business Participation

Opportunities for EEO and MWBE Program

I-1: Work Force Employment Utilization Report Instructions

I-2: Work Force Employment Staffing Plan

I-3: Work Force Employment Periodic Report

I-4: MWBE Utilization Plan Form

I-5: MWBE Quarterly Subcontracting/Supplier Activity Report

I-6: MWBE Request for Waiver Form

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The NYS Agriculture and Horse Breeding Development Fund (the “Fund”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Hwpf, to fully comply and cooperate with the Hwpf in y g implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to the Hwpf pursuant to the Contract and applicable law.

II. Contract Goals

*****For purposes of this solicitation, the Hwpf hereby establishes an overall goal of **30%** *****for MWBE participation, based on the current availability of qualified MBEs and WBEs.

- A. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- B. The Contractor 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 25percent of the total value of the contract.

- C. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Hwpf with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the Hwpf within seventy-two (72) hours after the date of the notice by the Hwpf to award the Contract to the Contractor.
 3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Hwpf may require the Contractor or subcontractor to adopt a model statement (see Form – Equal Employment Opportunity Policy Statement).
 4. The Contractor’s EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that

minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form I -2- Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by the Hwpf.

D. Form I -3 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Hwpf on a quarterly basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall 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.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by the Hwpf, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Hwpf, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Hwpf shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Hwpf. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Hwpf shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the Hwpf, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the Hwpf may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to the Hwpf by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where the Hwpf determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Hwpf liquidated damages.
- B. 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.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Hwpf, the Contractor shall pay such liquidated damages to the Hwpf within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

EEO

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the Hwpf "cpf solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall 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.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____percent Minority and Women's Business Enterprise Participation

_____percent Minority Business Enterprise Participation

_____percent Women's Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce shall be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, within ten (10) days of the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. Enter the number of the contract that the Report applies to along with the name and address of the contractor or subcontractor for which the Report has been prepared.
3. Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report.
4. Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
5. Verify that job titles are provided under the column titled “SOC Job Title” for each employee whose work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the “EEO 1 Job Categories” “SOC Job Title” and “SOC Job Code” columns from the list of job categories, SOC titles, and SOC codes reflected on the attached Classification Guide.
6. In the first group of boxes, identify the number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. In the second group of boxes, identify the number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
8. Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However,

no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact the Executive Director [of the Fund.](#)

WORK FORCE EMPLOYMENT STAFFING PLAN

Project/RFP Title _____ Location of Contract _____
 County _____ Zip _____
 Contractor/Firm Name _____ Address _____
 State _____ Zip _____

Check applicable categories (1) Staff Estimates include: Contract/Project Staff __ Total Work Force __ Subcontractors __
 (2) Type of Contract: Construction Consultants __ Commodities __ Services/Consultants __

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
TOTALS												

Company Official's Name _____ Title _____
 Company Official's Signature _____ Date _____
 Telephone Number _____

**INSTRUCTIONS FOR COMPLETING THE NYS AGRICULTURE AND HORSE BREEDING
DEVELOPMENT FUND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE
PROGRAM VENDOR/CONTRACTOR'S MWBE UTILIZATION PLAN FORM**

As mandated by Article 15-A of the Executive Law and the new subtitle N of 9 NYCRR 540 et seq, the New York State Office of General Services (the "Hwpf") has established a goal of 30% participation by New York State Certified Minority and Women owned Business Enterprise (MWBE) as subcontractors/suppliers in this contract. Contractors must submit the attached MWBE Utilization Plan Form indicating how they will intend to comply with the established goals.

For the directory of New York State certified MWBE's, please visit the New York State's Division of Minority and Women-owned Business Development website at:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Completion of the Form:

The Hwpf will complete all the un-shaded areas including: agency information, contract details, and summary of allocation of MWBE utilization and related value.

The contractor will complete the remaining, shaded, areas. It is important that the contractor provide detailed contact information including: name, phone number and email address.

Within the utilization section of the form, the contractor must list the names and addresses of all subcontractors or suppliers that will be utilized during this contract. The following items should be completed for each vendor listed:

- Subcontractor's Federal ID#;
- Subcontractor information as follows:
 - By checking the appropriate boxes, indicate whether the subcontractors are "SUB" or "SUP", minority-owned business enterprise "MBE" or women-owned business enterprise "WBE", and if they are NYS Certified.
- Brief description of the work the subcontractor's will provide.

Note: additional sheets may be used if necessary.

Attestation and Form Acceptance

The preparer must attest to the information provided by signing in the appropriate space; in addition, print the name of the contractor, provide telephone number, and date.

The last section, bottom right, will be completed by the Hwpf upon its review of the form. The contractor will be notified of the acceptance or deficiency of the MWBE Utilization Plan Form.

If assistance is required in completing this form or locating a New York State certified vendor to utilize as subcontractors or suppliers, please contact the Executive Director of the Fund at (518) 388-0815.

Bidder/Contractor Name _____
 Contact _____
 Street Address _____
 City/State/Zip _____
 Phone _____ Email _____

Federal ID _____
 Solicitation/Contract # _____
 Project Number _____
 Region/Work Location _____

M/WBE UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women owned Business Enterprise (M/WBE) under the contract.

Attach additional sheets if necessary and submit plan to nysirestakes@gaming.ny.gov

<i>This plan covers the period:</i>	through					
SUBCONTRACTOR INFORMATION	PHONE	ESD CERTIFIED	FEDERAL ID NUMBER	DETAILED DESCRIPTION OF WORK (attach additional sheets if necessary)	SUBCONTRACT SUPPLY, SVC., ETC.	PERCENT
Name _____ Street Address _____ City/State/Zip _____		<input type="checkbox"/> MBE <input type="checkbox"/> WBE				
Name _____ Street Address _____ City/State/Zip _____		<input type="checkbox"/> MBE <input type="checkbox"/> WBE				
Name _____ Street Address _____ City/State/Zip _____		<input type="checkbox"/> MBE <input type="checkbox"/> WBE				
Name _____ Street Address _____ City/State/Zip _____		<input type="checkbox"/> MBE <input type="checkbox"/> WBE				
Name _____ Street Address _____ City/State/Zip _____		<input type="checkbox"/> MBE <input type="checkbox"/> WBE				

IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER.

Prepared By _____
 Date _____
 Name and Title of Preparer _____

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

FOR NYSGC USE ONLY

Reviewed By _____
 Estimated Date of Completion _____

UTILIZATION PLAN APPROVED Yes No Date _____
 NOTICE OF DEFICIENCY ISSUED Yes No Date _____
 NOTICE OF ACCEPTANCE ISSUED Yes No Date _____



Primary Contractor Information

Business Name _____
 Contact Person _____
 Street Address _____
 City/State/Zip _____
 Business Phone _____
 Contract # _____

QUARTERLY CERTIFIED MINORITY & WOMEN
 OWNED BUSINESS ENTERPRISES UTILIZED

Reporting Period

Reporting is due no later than 10 days following the end of each reporting quarter.

Facility Name: _____

PARTICIPATION GOALS: Contractors should, whenever possible, follow the recommended overall goal of 30% for M/WBE participation, attempting to equally utilize MBE and/or WBE in the performance of the contract.

ENTER TOTAL AMOUNT OF MBE AND WBE SPENDING PER QUARTER

January 1 - March 31		April 1 - June 30		July 1 - September 30		October 1 - December 31		Total M/WBE Spending to Date		Primary Contractor's
MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE	Combined M/WBE Spending

For Fund Use Only

Accepted

Accepted as Noted*

Notice of Deficiency Issued**

 Print or Type Name

 Signature

 Date

* Comments:

** Date:

Primary Contractor Information

Business Name _____
 Contact Person _____
 Street Address _____
 City/State/Zip _____
 Business Phone _____
 Contract # _____

Reporting Period

Reporting is due no later than 10 days following the end of each reporting quarter.

QUARTERLY CERTIFIED MINORITY & WOMEN OWNED BUSINESS ENTERPRISES UTILIZED

Facility Name: _____

			<i>primary contractor's TOTAL quarterly spending less exemptions and exclusions:</i>				
PRIMARY OR SUBCONTRACTOR NAME	DESCRIPTION OF SERVICE	ESD CERTIFIED	TYPE OF PURCHASE/ SERVICE	PRODUCT CODE	Amount\$	% of Spend	
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	SELECT ONE:	SELECT ONE:			Remove
							+ -

Digital Signature

submit by email

Signed By _____

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offerer/Contractor Name:	Federal Identification No.:
Address:	Solicitation/Contract No.:
City, State, Zip Code:	M/WBE Goals: MBE % WBE %
By submitting this form and the required information, the offerer/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.	
Contractor is requesting a:	
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial	
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial	
PREPARED BY (Signature):	Date:
SUBMISSION OF THIS FORM CONSTITUTES THE OFFERER/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.	
Name and Title of Preparer (Printed or Typed):	Telephone Number:
	Email Address:
Submit with the bid or proposal or if submitting after award submit to: NYS Agriculture and Horse Breeding Development Fund One Broadway Center Schenectady, NY 12305	***** FUND USE ONLY *****
	REVIEWED BY:
	DATE:
	Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ *Comments:

REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 10, as listed below.. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offerer/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offerer/contractor's representative authorized to discuss and negotiate this waiver request.

Note: Unless a Total Waiver has been granted, the offerer or contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract.

Vendor Assurance of No Conflict of Interest or Detrimental Effect

The Firm offering to provide services pursuant to this [RFP/Contract], as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this [RFP/Contract] should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative.

Statement on Sexual Harassment

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Contractor certifies that this statement provided to the Agency with respect to State Finance Law §139 (l) is complete, true and accurate.

Authorized Signatory

Signature

Title

Company Name

Anti-Discrimination EO 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. 3

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor:

By: _____

Name: _____

Title: _____

Date: _____, 20__



**Agriculture & NYS
Horse Breeding
Development Fund**

NON-BID RESPONSE

RFP: 2022-01 Equine Marketing and Public Relations

If your company will not be submitting a response to the RFP, it would be helpful in the preparation of future bidding opportunities to understand why your company is not submitting a proposal. Please help us by selecting your reason from the choices below, or selecting "Other" with a brief explanation.

_____ Although the bid is within the scope of our business, and we are interested in principle, at present, we are unable to respond, due to other commitments.

_____ The services / products described in the subject RFP are not within our area of expertise.

_____ We do not have the staffing / resources available at this time to provide the services requested.

_____ There were certain requirements or restrictions stated in the RFP that preclude our company from bidding. Those requirements are:

_____ Other: _____

This form may be emailed to: nysirestakes@gaming.ny.gov, or mailed to:

Agriculture & NYS Horse Breeding Development Fund
One Broadway Center, Suite 602
Schenectady, NY 12301-7500

Please be advised that **no response** may result in removal of your company from our bidders' List.

ATTACHMENTS

- Attachment 1: Bidder Acknowledgement of Addendum**
- Attachment 2a: Pricing Proposal Form**
- Attachment 2b: Regional Map**
- Attachment 3: Technical Proposal Submittal Checklist**



**Agriculture & NYS
Horse Breeding
Development Fund**

RFP: 2022-01 Equine Marketing and Public Relations

VENDOR ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: _____

Date Issued: _____

Summary:

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____

Pricing Proposal Form

DIRECTIONS FOR COMPLETING THIS FORM: Bidder must complete each of the categories enumerated below as directed for each category. Bidder must use this Attachment 2. Alternate forms or a variation of this form will deem the Pricing Proposal non-responsive.

(1) Annual Fixed Fee: the Annual Fixed Fee will cover all responsibilities and efforts required of the successful bidder to carry out the services under the Scope of Work.

Note: Hourly rates for staffing of events will be paid at the rates outlined below in this form. All costs for annual fees, event staffing, media placements and any other activities needed to carry out the scope of work will be paid out of the Account Budget. Promotional items will be covered under the Promotional Budget as defined in the RFP. Any future renewals will be compensated at 2025 rates.

	January 1, 2023 - December 31, 2023	January 1, 2024 - December 31, 2024	January 1, 2025 - December 31, 2025	Sum of Annual Fees for three years
Annual Fixed Fee	\$ _____	\$ _____	\$ _____	(1) \$ _____

(2) Racing Finals, Horse Sales, and Banquets: It is anticipated that staffing of the events below will be accomplished utilizing contract staffing. The rates stated herein will be utilized, and the associated costs will be charged to the Account Budget. Enter the staffing rate for each category below for each contract year (columns a through c). Enter the sum of all years in column d. Multiply the sum from column (d) by the estimated number of hours per event in column (e). Enter the total cost in column (f) for each event. **Note:** Quantities are an estimate only. Payment will be based on actual hours worked. Any future renewals will be compensated at 2025 rates.

	(a) January 1, 2023 - December 31, 2023	(b) January 1, 2024 - December 31, 2024	(c) January 1, 2025 - December 31, 2025	(d) Sum of Rates for three years	(e) Estimated # of Hours Per Event	(f) Total Estimated Three Year Cost Per Event
Racing Finals						
County Fair Racing Final	\$ _____	\$ _____	\$ _____	\$ _____	x 6	\$ _____
Sire Stakes Racing Series Final	\$ _____	\$ _____	\$ _____	\$ _____	x 6	\$ _____
Excelsior Racing Series Final	\$ _____	\$ _____	\$ _____	\$ _____	x 6	\$ _____
Annual Horse Sales						
Goshen, NY (one-day event)	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Morrisville, NY (one-day event)	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Harrisburg, PA (five-day event)	\$ _____	\$ _____	\$ _____	\$ _____	x 40	\$ _____
Annual Banquets (staffing only)						
Annual Awards Banquet	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
"Night of Champions" Event	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Total						(2) \$ _____

Pricing Proposal Form

(3) Additional Events: The regional rates below will apply to staffing of the county fair racing series events (excluding finals), by the successful bidder in the event Fund staff is not available, as well as staffing of events proposed by the successful bidder in their Plan. In cases where the Fund staff may be utilized, their time is not charged to the Account Budget (RFP §3.2). In cases where the contractor will provide staffing, the rates stated herein will be utilized, and the associated costs will be charged to the Account Budget. A regional map of New York State is attached to this Pricing Proposal Form. Bidder shall enter the hourly rates specific to each region for each year of the contract (a - c). Enter the sum of all years in column (d). Multiply the sum from column (d) by the estimated number of hours per event in column (e). Enter the total cost in column (f) for each event. **Note:** Quantities are an estimate only. Payment will be based on actual hours worked. Any future renewals will be compensated at 2025 rates.

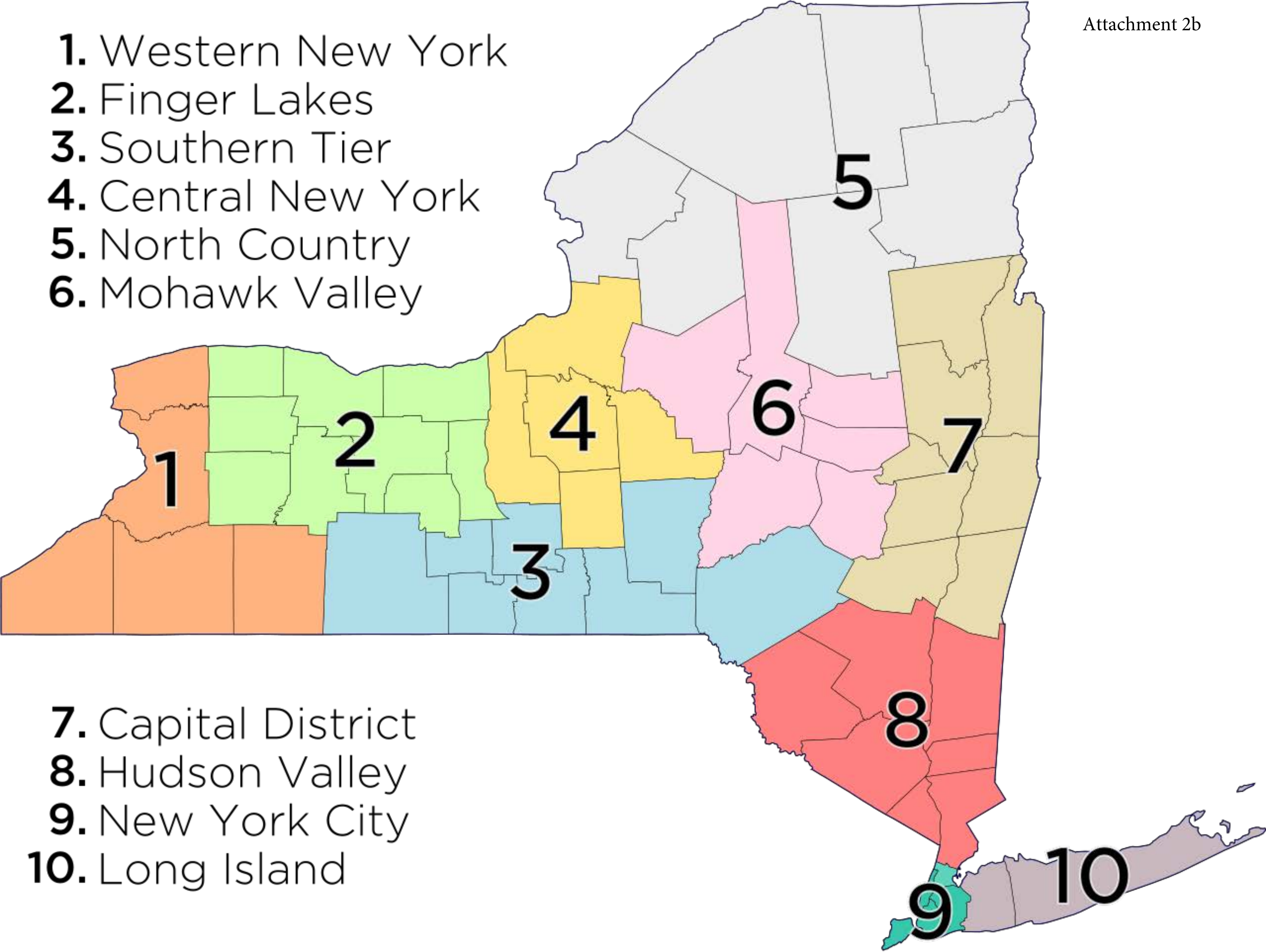
	(a) January 1, 2023 - December 31, 2023	(b) January 1, 2024 - December 31, 2024	(c) January 1, 2025 - December 31, 2025	(d) Sum of Rates for three years	(e) Estimated # of Hours Per Event	(f) Total Cost Per Event
Hourly Rate Per Region (see Regional Map, attached)						
Region 1	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 2	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 3	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 4	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 5	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 6	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 7	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____
Region 8	\$ _____	\$ _____	\$ _____	\$ _____	x 8	\$ _____

(3) \$ _____

Grand Total (sum of (1) (2) (3))

\$ _____

- 1. Western New York
- 2. Finger Lakes
- 3. Southern Tier
- 4. Central New York
- 5. North Country
- 6. Mohawk Valley



- 7. Capital District
- 8. Hudson Valley
- 9. New York City
- 10. Long Island



Agriculture & NYS Horse Breeding Development Fund

RFP – Equine Marketing & Public Relations

DOCUMENT SUBMITTAL CHECKLIST

Submissions Required:

Description of Document	RFP	Submittal Requirements	Checklist
Contract Form (Appendix B) (incorporates Appendix A)	§1.3	With Proposal (must be signed)	
Procurement Lobbying BODC Form (Appendix C)	§1.11	With Proposal	
Non-Collusive Bidding Certification (Appendix D)	§1.13	With Proposal	
Designation of Proprietary Information	§1.15	With Proposal	
Technical & Pricing Proposals	§1.16	Submit Technical and Pricing Proposals Separately as Defined in RFP	
No Conflicts of Interest or Detrimental Effect (Appendix J)	§1.21	With Proposal	
Insurance Documentation	§2.12	Proof of coverage with Proposal	
New York State Contractors & Suppliers (Appendix G)	§2.13	With Proposal	
Equal Employment Opportunity (EEO) (Appendix I) <ul style="list-style-type: none"> • Policy Statement • Staffing Plan (I-2) 	§2.18	Policy Statement: with Proposal; I-2: proposed staffing plan – with Proposal	
Use of Service-Disabled Veteran Owned Business (Appendix H)	§2.19	With Proposal	
Statement on Sexual Harassment (Appendix K)	§1.22	With Proposal	
Anti-Discrimination EO 177 Certification (Appendix L)	§1.23	With Proposal	
References	§4.2	With Proposal	

Submissions Required Subsequent to Award:

Description of Document	RFP	Submittal Requirements	Checklist
Sales & Use Tax (Appendix F) <ul style="list-style-type: none">• ST220-CA (submit to Lottery)• ST220-TD (submit to DTF)	§2.10	Within seven calendar days of notification of award	
Insurance Documentation	§2.12	Proof of Additional Insured.	
Equal Employment Opportunity (EEO) (Appendix I) <ul style="list-style-type: none">• Utilization Report (I-3)	§2.18	I-3: quarterly	

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____

Exhibit 1

Racing Schedules and Locations

- **2022 New York Sire Stakes Schedule, Finals locations to be determined**
- **2022 Excelsior Schedule, Finals locations to be determined**
- **List of Harness Tracks**

2022 SIRE STAKES SCHEDULE

Revised Final 1/20/22

APPROVED 1/20/22

3-Year-Old Colt Pace

Wednesday	June 1	Buffalo
Sunday	June 12	Saratoga
Sunday	June 19	Vernon
Saturday	July 2	Goshen*
Monday	July 18	Monticello
Wednesday	July 27	Batavia
Tuesday	August 9	Yonkers
Sunday	August 21	Tioga
Sunday	August 28	EBC Finals Tioga

Saturday September 10 Final Tioga

3-Year-Old Colt Trot

Wednesday	May 18	Buffalo
Sunday	May 29	Tioga
Friday	June 10	Vernon
Friday	June 17	EBC FINALS Vernon
Sunday	July 3	Goshen*
Monday	July 11	Monticello
Tuesday	July 19	Yonkers
Sunday	August 14	Saratoga
Friday	August 26	Batavia

Saturday September 10 Final Tioga

3-Year-Old Filly Pace

Wednesday	May 25	Buffalo
Monday	June 6	Monticello
Friday	June 17	Vernon
Saturday	July 2	Goshen*
Tuesday	July 12	Yonkers
Sunday	July 24	Tioga
Friday	August 5	Saratoga
Wednesday	August 17	Batavia
Sunday	August 28	EBC Finals Tioga

Saturday September 10 Final Tioga

3-Year-Old Filly Trot

Monday	May 16	Yonkers
Monday	May 30	Vernon
Wednesday	June 8	Buffalo
Friday	June 17	EBC Finals Vernon
Sunday	July 3	Goshen*
Sunday	July 17	Saratoga
Monday	August 15	Monticello
Friday	August 26	Batavia
Saturday	September 3	Tioga

Saturday September 10 Final Tioga

2-Year-Old Colt Pace

Sunday	June 26	Tioga
Tuesday	July 5	Yonkers
Wednesday	July 13	Buffalo
Saturday	July 23	Saratoga
Wednesday	August 3	Batavia
Friday	August 12	Vernon
Monday	August 22	Monticello

Saturday September 10 Final Tioga

2-Year-Old Colt Trot

Wednesday	June 29	Buffalo
Friday	July 8	Saratoga
Friday	July 22	Vernon
Monday	August 1	Monticello
Saturday	August 13	Tioga
Tuesday	August 23	Yonkers
Wednesday	August 31	Batavia

Saturday September 10 Final Tioga

2-Year-Old Filly Pace

Wednesday	June 22	Buffalo
Monday	July 4	Saratoga
Friday	July 15	Tioga
Monday	July 25	Monticello
Tuesday	August 2	Yonkers
Wednesday	August 10	Batavia
Saturday	August 27	Vernon

Saturday September 10 Final Tioga

2-Year-Old Filly Trot

Monday	June 20	Saratoga
Wednesday	July 6	Buffalo
Wednesday	July 20	Batavia
Thursday	July 28	Yonkers
Monday	August 8	Monticello
Friday	August 19	Vernon
Sunday	August 28	Tioga

Saturday September 10 Final Tioga

* EXCELSIOR ELIGIBLE NO POINTS AWARDED

2022 SIRE STAKES SCHEDULE

Revised Final 1/20/22

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Wednesday	June 1	Buffalo
Sunday	June 12	Saratoga
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Sunday	May 29	Tioga
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Monday	July 11	Monticello
Tuesday	July 19	Yonkers
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Friday	August 26	Batavia

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Friday	July 22	Vernon
Monday	August 1	Monticello
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Saturday	August 27	Vernon

Saturday September 10 Final Tioga

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Monday	June 20	Saratoga
Wednesday	July 6	Buffalo
Wednesday	July 20	Batavia
Thursday	July 28	Yonkers
Monday	August 8	Monticello
Friday	August 19	Vernon
Sunday	August 28	Tioga

Saturday September 10 Final Tioga

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2022 EXCELSIOR SCHEDULE
Approved 1/20/22

Revised 1/20/22

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Wednesday	June 1	Buffalo
Sunday	June 12	Saratoga
Sunday	June 19	Vernon
Saturday	July 2	Goshen*
Monday	July 18	Monticello
Wednesday	July 27	Batavia
Tuesday	August 9	Yonkers
Sunday	August 21	Tioga
Sunday	September 11	Ex Final Saratoga

3-Year-Old Colt Trot

Wednesday	May 18	Buffalo
Sunday	May 29	Tioga
Friday	June 10	Vernon
Sunday	July 3	Goshen*
Monday	July 11	Monticello
Tuesday	July 19	Yonkers
Sunday	August 14	Saratoga
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Monday	August 22	Monticello
Sunday	September 11	Ex Final Saratoga

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Wednesday	August 10	Batavia
Saturday	August 27	Vernon
Sunday	September 11	Ex Final Saratoga

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Wednesday	July 6	Buffalo
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Thursday	July 28	Yonkers
Monday	August 8	Monticello
Friday	August 19	Vernon
Sunday	August 28	Tioga
Sunday	September 11	Ex Final Saratoga

* EXCELSIOR ELIGIBLE NO POINTS AWARDED

HARNESS TRACKS

	<p>8315 Park Rd. Batavia, NY 14020 585-343-3750 Race Office: x 304 www.bataviadownsgaming.com</p>
	<p>5600 McKinley Pkwy. Hamburg, NY 14075 716-649-1280 Race Office: x 6234 www.buffaloraceway.com</p>
	<p>44 Park Place Goshen, NY 10924 845-294-5333 info@goshenhistorictrack.com www.goshenhistorictrack.com</p>
	<p>204 State Rte. 17B P.O. Box 5013 Monticello, NY 12701 845-794-4100 Race Office: x 557 www.monticelloraceway.com</p>
	<p>PO Box 356 342 Jefferson Street Saratoga Springs, NY 12866 518-584-2110 Race Off.: 518-581-5860 www.saratogacasino.com</p>
	<p>2384 W. River Rd. Nichols, NY 13812 Mailing: PO Box 50, 13817 607-699-3900 Race Office: 607-699-7688 www.tiogadowns.com</p>
	<p>4229 Stuhlman Rd. Vernon, NY 13476 315-829-6825 Race Off: 315-829-6825 www.vernondowns.com</p>
	<p>810 Central Park Ave. Yonkers, NY 10704 914-968-4200 Race Off: 914-457-2627 www.yonkersraceway.com</p>