



New York State
Department of Agriculture and Markets

RFP#0217 - REQUEST FOR PROPOSALS

for the

2019 - New York State Farm-to-School Program

Competitive Grants

INTRODUCTION

The New York State Department of Agriculture and Markets invites proposals that will increase the capacity of schools to procure and to serve New York State farm products in school meal programs.

PROPOSAL SUBMISSION REQUIREMENTS

Proposals must be submitted online through the Grants Gateway. The name for this opportunity is "2019 New York State Farm-To-School Program" and the Grant Opportunity ID is AGM01-FTS19-2019. Proposals are due on Thursday, November 21, 2019 at 4:00 pm. Late proposals will not be accepted.

Questions concerning the Request for Proposal (RFP)

All questions about this RFP must be submitted in writing (fax or e-mail) to:

Mark McMullen
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235
Fax: (518) 457-4383
E-mail: Mark.McMullen@agriculture.ny.gov

All questions must be submitted to Mr. McMullen by 4:00 p.m. on October 24, 2019. Applicants must note that all clarifications are to be resolved prior to the submission of a proposal. A list of questions about the program which are received from potential applicants, and answers to those questions, as well as any changes, additions or deletions to the RFP, will be posted in the “Funding Opportunities” section of the Department of Agriculture and Market’s website, (the Department) www.agriculture.ny.gov, along with the electronic version of this RFP. All questions and answers will be posted by October 31, 2019.

1. GENERAL PROGRAM INFORMATION

1.1 Program Description

Farm-to-School is the promotion and use of foods produced by New York State farmers in meals served in cafeterias of K-12 schools. Associations between farms and schools through the cafeteria and classroom can enhance the quality of food served. With over 700 school districts in New York State, there is the opportunity to foster relationships among New York State farmers, food hubs, producers, processors, and distributors to benefit school-age children.

While serving New York State produced food in school cafeterias may seem simple, developing Farm-to-School connections highlights several challenges, particularly the lack of an established infrastructure or network of stakeholders that includes all the necessary parties: farmers, food service directors, food service contract management companies, food distributors, processors, agricultural organizations, and commodity organizations. Other challenges include:

- Seasonality: Farmers plan their crops in January, long before schools make purchasing decisions and place bids for products in the summer. In addition, the summer growing season is when schools are not in session.
- Inconsistent quality, quantity, and sizing: schools require produce to be served in standard units and meet specifications.

- Processing and packaging: schools require vegetables and fruits to be processed and packaged in standard units.
- Bidding: sending and reviewing bids from individual farmers can be time-consuming and complex for school procurement and fiscal staff.
- Delivery/pick up: distribution can be complicated when purchasing from multiple growers.
- Lack of equipment and skills to store, prepare and serve fresh produce procured for school meals programs.
- Connecting diverse populations with their culturally appropriate foods.

Governor Cuomo launched the New York State Farm-to-School Competitive Grants Program in 2015 to increase the purchase of local specialty crops by school districts and by individual schools, through developing existing strengths while building additional relationships between schools and suppliers. The Farm-to-School Competitive Grants Program has grown from \$325,000 in 2015 to \$1,500,000 in 2019.

1.2 Funding Available

A total of \$1,500,000 is available for the Farm-to-School Competitive Grants Program. Grant awards may range from \$25,000 to \$100,000. **Applicants may apply for only one grant per funding period either individually or as a group.**

2. ELIGIBILITY and SCOPE

2.1 Applicant Eligibility

Eligible applicants include:

- K-12 School Food Authorities
- Charter schools
- Not-for-profit organizations
- Indian tribal organizations

2.2 Ineligible Applicants

The following entities are not eligible to apply for funding:

- For-profit organizations
- Individuals

2.3 Definitions

- **School Meal Program:** Feeding programs administered at the school or district level including school lunch, school breakfast, school snack and summer meals programs.

2.4 Project Duration

Proposed projects must be completed within two years of the contract start date.

2.5 Eligible Costs

Grant funds may be used for any of the following purposes directly related to completion of an eligible project, including but not limited to:

- Salaries and wages including fringe benefits
- Contractor services
- Permanent physical/structural improvements
- Insurance and permits (excluding permit to operate a farmers' market at proposed location)
- Transportation costs (including the leasing of a vehicle for a two-year period)
- Supplies and equipment*

***Eligible equipment costs must be directly related to the eligible project.**

2.6 Ineligible Costs

Grant funds may not be used for the following:

- Purchase of food
- Purchase of cell phones
- Purchase of computer hardware and office equipment
- Salaries and wages unrelated to the proposal
- Costs associated with preparing an application
- Costs incurred prior to the award of a grant

3. DOCUMENTS AND ADMINISTRATIVE REQUIREMENTS

3.1 Registration and Pre-Qualification

New York State applicants must register in Grants Gateway and establish themselves as a user in the system. To start this process, from the Grant Opportunity Portal https://grantsgateway.ny.gov/IntelliGrants_NYSGG/module/nysgg/goportal.aspx: under Registration, click “Request Access Now!” to view your options.

For existing New York State vendors, there is only one step. You must submit a Registration Form for Administrators identifying a Delegated Administrator responsible for managing your organization’s profile and users.

To find out if your organization has already registered, enter your State Financial System (SFS) Vendor ID number and search. If your organization is registered, the search result will include contact information for its Delegated Administrator, and you can contact this individual to request access to the system. If your organization is not registered, the search result will provide a link to the Request Form for Administrator, which you will need to complete and submit pursuant to the instructions provided.

If your organization is not currently doing business with New York State, you will need to submit a Substitute W-9 Form to obtain an SFS Vendor ID, in addition to the Registration Form for Administrators, in order to register.

All not-for-profit organizations that intend to submit a proposal in response to this RFP must also be pre-qualified prior to the submission of your proposal. **If you have not pre-qualified with the Grants Gateway by the time that you submit your proposal, your proposal will be rejected and not considered for funding under this RFP.** For more information regarding the pre-qualification process, please check the grants reform website here: <https://grantsreform.ny.gov/Grantees> for manuals, guides, and videos.

If you have not yet registered as user or, as a not-for-profit prequalified in the Grants Gateway, please do so immediately.

If you are having trouble registering, prequalifying, or filling out the grant application, please call the Grants Gateway help desk. They are available Monday – Friday, from 8:00 am – 4:00 pm, and can be reached by calling 518-474-5595, or by emailing grantsgateway@its.ny.gov.

3.2 Workers’ Compensation & Disability Insurance

New York State Workers’ Compensation Law sections 57 and 220 require that the Department of Agriculture and Markets not enter into a contract unless proof of Workers’ Compensation and Disability Insurance in a form satisfactory to the New York State Workers’ Compensation Board has been secured.

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

3.3 New York State Charities Bureau Registration

All not-for-profits organizations contracting with NYS or serving as a fiscal agent must be registered with the New York State Charities Bureau unless a proper exemption is obtained. All applicants must therefore provide either:

- The organization's charitable registration number and written documentation from the Office of the Attorney General that the charitable organization is currently up-to-date with its Charities Registration; or
- A statement from the applicant that the organization is exempt pursuant to one of the categories indicated on the Office of the Attorney General's Request for Registration Exemption (Schedule E). The statement must identify the specific category under which the charitable organization is exempt.

To obtain written documentation of an organization's charities registration status, or if you have questions regarding the statutory requirements for registration, contact the New York State Office of the Attorney General, Bureau of Charities Registration, 120 Broadway, New York, NY 10271-0332, or call (212) 416-8402, email charities.bureau@oag.state.ny.us or visit their website at <https://www.charitiesnys.com/home.html>

Eligible 501(c)(3) not-for-profit corporations acting as the applicant must have a New York State Attorney General Charities Bureau Registration number or an Exemption Certificate issued by the New York State Attorney General Charities Bureau explaining why the organization is exempt from registering with the Charities Bureau.

4. PROPOSAL FORMAT

All proposals must be submitted online through the Grants Gateway.

<https://grantsgateway.ny.gov>

1. Provide all information requested in the online Grants Gateway application form.
2. Attach all required documents, photos, letters of support at the end of the online application. Letters of support are strongly encouraged. Multiple letters of support should be attached to the Grants Gateway application as one PDF.

The Department of Agriculture and Markets and the State Comptroller's Office reserve the right to audit the applicant's books and records relating to the performance of the project during and up to six years after the completion of the project.

4.1 Evaluation Factors

All eligible proposals will be competitively rated by a panel designated by the Department. A total of one hundred (100) points can be achieved from the following criteria. The evaluation panel shall consider the following factors in rating proposals:

1. **Project Description** (20 points)
How well does the project address the increase in volume and variety of New York State farm products procured by schools for inclusion in school meal programs? (5 pts)

How well has the anticipated positive impact on New York State farmers and students been described? (15 pts)
2. **Plan of Work** (10 points)
How well have the short-term and long-term goals been identified along with specific achievable benchmarks and specified deliverables?
3. **Reasonableness of Cost** (20 Points)
Are the project costs reasonable for the proposed activities?
4. **Quantification of Project Benefits** (40 points)
How well have project benefits been quantified both as a baseline at the beginning of the project and with targeted percent increases as a result of the project:
 - a. Projected **number** of students educated about New York State farm products (10 pts)
 - b. Projected **percent increase** in the availability of New York State farm products to students in schools (10 pts)
 - c. Projected **percent increase** in the number of farmers, producers, distributors and/or food hubs supplying New York State farm products to schools (10 pts)
 - d. Projected **percent increase** in dollar amount of New York State farm products procured (10 pts)
5. **Personnel** (5 points)
What degree of experience do the key persons involved in the project have in grant administration, school food procurement, school wellness committees, developing and fostering project partnerships and/or conducting outreach to New York State farmers?
6. **Outside Support** (5 points)
What is the level of project support from the school/school district, project partners and farmers? Are the project partners and farmers specified? Is the support they will provide specified?

4.2 Plan of Work

The **Objective** of the Farm-to-School Competitive Grants Program is:

To increase the volume and variety of New York State farm products procured by schools/districts for inclusion in school meal programs.

A wide variety of **tasks** may be proposed to meet this objective. Examples of some possible tasks intended to meet this objective would be:

1. Employ a local or regional Farm-to-School coordinator.
2. Conduct training for school food authorities on how to procure New York State farm products.
3. Conduct training for food service staff on how to prepare and serve fresh produce.
4. Purchase the equipment needed to increase the capacity of a school kitchen and food service staff to prepare and serve New York State farm products.
5. Implement capital improvements to support the processing, transport and/or storage of New York State farm products.
6. Implement a school meal program that features New York State farm products.
7. Work with other school districts to implement a coordinated local buying program with or without the assistance of distributor or other aggregating entity such as a food hub.
8. Introduce culturally appropriate foods in school meals while creating new markets for farmers.

These “tasks” are intended as suggestions. Proposals may include these tasks or other tasks not listed to meet the overall objective. Each task must be accompanied by one or more performance measure(s). The success of the proposed project will be judged by **performance-measures components set forth in section 4.1 Evaluation Factors.**

4.3 Geographic Distribution

Should there be areas of NYS where no funds are awarded for projects, after completing the above evaluation utilizing the Application Form and criteria set forth in it, an award up to a total of five (5) additional points per application may be given to help achieve geographic diversity for the Farm-to-School Program. The following ten (10) regions will be used for this purpose:

Western New York: Allegany, Cattaraugus, Chautauqua, Erie, Niagara

Finger Lakes: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates

Southern Tier: Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, Tompkins

Central New York: Cayuga, Cortland, Madison, Onondaga, Oswego

Mohawk Valley: Fulton, Herkimer, Montgomery, Oneida, Otsego, Schoharie

North Country: Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, St. Lawrence

Capital Region: Albany, Columbia, Greene, Saratoga, Schenectady, Rensselaer, Warren, Washington

Mid-Hudson: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester

New York City: Bronx, Kings, New York, Richmond, Queens

Long Island: Nassau, Suffolk

5. AWARD PROCESS

The Department will first screen applications to ensure that they meet eligibility requirements. All proposals deemed eligible by the Department will be evaluated by a Department panel according to the funding criteria; scores will be averaged and ranked in order from highest to lowest. Those proposals receiving the highest numerical scores at or above the scoring threshold of 65, will continue to be awarded funding until available funds are exhausted, or until all proposals are funded, whichever occurs first, will be funded.

A contract defining all terms and conditions and responsibilities of the successful applicant shall be developed by the Department subsequent to the awarding of funds. The contract will incorporate project details and a budget approved by the Department, among its provisions.

Upon agreement by the awardee and the Department to the provisions of the contract, it will be submitted for approval to the Attorney General of the State of New York and the Comptroller of the State of New York.

6. REIMBURSEMENT FOR FUNDING

Once the contract is fully executed, grant funds will be disbursed on a reimbursement basis.

Awardees may request, at the discretion of the Department, an initial payment of up to twenty-five percent (25%) of the total grant award.

The Department shall retain ten percent (10%) of the budget amount to be disbursed to the contractor until such time as the final report is accepted.

A New York State Claim for Payment Form must be submitted to the Department in order for the contractor to be reimbursed for funds expended.

Payment to the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner of Agriculture and Markets, at the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary state procedures and practices. The Contractor shall comply with the State Comptroller of New York's procedures to authorize electronic payments. Contractor acknowledges that it will not receive payment on any Claim for Payment Form submitted under this agreement if it does not comply with the State Comptroller of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

7. REPORTING REQUIREMENTS

7.1 Reimbursement Request Reports

The Department will monitor contract performance. A Reimbursement Request Report that summarizes work completed on the project shall accompany each Claim for Payment submitted for reimbursement of project expenses. A Reimbursement Request Report template will be provided by the Department to generate the reports.

7.2 Quarterly Progress Reports

Awarded applicants will be required to submit Quarterly Progress Reports to the Department to provide timely information on the success of the project. A Quarterly Progress Report template will be provided by the Department to generate the reports. Claim for Payment Forms submitted will not be processed for projects that are not up to date with the filing of their quarterly reports.

7.3 Final Report

A Final Report will be required within sixty (60) days following completion of the project. A Final Report template will be provided by the Department to generate the report. The Final Report shall include a detailed description of the work completed; an assessment of the potential for future viability of the project; and a description of problems encountered, if any, which affected completion of the project. In addition, to the Final Report, the Department reserves the right to conduct a follow-up survey of funded projects in order to determine long-term impacts.

The Department reserves the right to modify reporting requirements during the course of the project.

8. LIABILITY

The Department shall not be held liable for any costs incurred by any party for work performed in the preparation of and production of a proposal or for any work performed prior to the formal execution of a contract.

9. NYS OFFICE OF PARKS, RECREATION & HISTORIC PRESERVATION REQUIREMENTS

Projects which include ground-disturbing activities, construction of new buildings, or modification of buildings over 50 years old will be subject to further review by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). The Department reserves the right to request such additional information as is necessary to allow OPRHP to make a determination regarding the potential impacts of the project on historical sites or artifacts and possible alternatives which avoid or mitigate adverse impacts.

10. NYS ENVIRONMENTAL QUALITY REVIEW ACT REQUIREMENTS

Some projects may be subject to review under the New York State Environmental Quality Review Act (SEQRA). The Department reserves the right to request additional information as needed to comply with SEQRA requirements.

11. MINORITY AND WOMEN BUSINESS ENTERPRISES

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

NEW YORK STATE LAW

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

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. 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 the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall

be 25 percent of the total value of the contract]

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

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

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Department’s MWBE Liaison at 518-485-8740 or SupplierDiversity@agriculture.ny.gov. All MWBE Forms and Instructions are included in the Submission Documents.

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

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

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

- b. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department of Agriculture and Markets, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

- 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 a waiver; or
- d. If the Department determines that the respondent has failed to document good faith efforts.

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

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

Equal Employment Opportunity Requirements

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

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

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

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim

status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of a 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.

12. STUDENT MEAL CHARGE POLICY

Applicants responding to this Request for Proposals must be familiar with and in compliance with all state and federal requirements related to unpaid meal charges. This includes, but is not limited to, USDA memo SP 23-2017 “Unpaid Meal Charges; Guidance and Q&A”, March 23, 2017 and New York State Education Department Memorandum “Student Meal Charge Policy” from Paula Tyner-Doyle, Coordinator to School Food Authorities dated May 30, 2017.

13. 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 **Department** recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of **Department** contracts.

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

I. Contract Goals

- a. The **Department** hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, **Contractor** should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to the Department’s Supplier Diversity Liaison at supplierdiversity@agriculture.ny.gov. Additionally, following Contract execution, **Contractor** is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

- b. **Contractor** must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Agreement (see clause IV below).

II. SDVOB Utilization Plan

- a. In accordance with 9 NYCRR § 252.2(i), **Contractor** agrees to submit a completed SDVOB Utilization Plan on Form SDVOB 100 at such time as shall be required by the **Department**.
- b. The Utilization Plan shall list the SDVOBs that **Contractor** intends to use to perform the Agreement, a description of the work that **Contractor** intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, **Contractor** acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of the Agreement for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to the **Department**.
- c. The **Department** will review the submitted SDVOB Utilization Plan and advise **Contractor** of the **Department’s** acceptance or issue a notice of deficiency within 20 days of receipt.
- d. If a notice of deficiency is issued, **Contractor** agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the **Department** a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the **Department** to be inadequate, the **Department** shall notify **Contractor** and direct **Contractor** to submit, within five business days of notification by the **Department**, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for a determination of non-responsibility by the **Department**.
- e. The **Department** may deem **Contractor** non-responsive under the following circumstances:
 - 1. If **Contractor** fails to submit an SDVOB Utilization Plan;
 - 2. If **Contractor** fails to submit a written remedy to a notice of deficiency;
 - 3. If **Contractor** fails to submit a request for waiver; or
 - 4. If the **Department** determines that **Contractor** has failed to document good faith efforts.
- f. **Contractor** certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Agreement pursuant to the prescribed SDVOB contract goals set forth above.
- g. **Contractor** further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the **Department** shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- a. Prior to submission of a request for a partial or total waiver, **Contractor** shall speak to the **Department's** Supplier Diversity Liaison for guidance.
- b. In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. **Contractor** may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the **Department** at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with **Contractor's** waiver request is complete, the **Department** shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- c. **Contractor** shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Agreement. Requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Agreement to the **Department** but must be made no later than prior to the submission of a request for final payment on the Agreement.
- d. If the **Department**, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101), determines that **Contractor** is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the **Department** may issue a notice of deficiency to **Contractor**. **Contractor** must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the **Department**.

IV. Required Good Faith Efforts

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

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

V. Monthly SDVOB Contractor Compliance Report

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

VI. Breach of Contract and Damages

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

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/veterans/>

14. OTHER CONSIDERATIONS

The Department reserves the right to:

- reject any or all proposals received with respect to this RFP;
- waive or modify minor irregularities in proposals received after prior notification and concurrence of the applicant;
- utilize any or all ideas submitted in the proposals received unless those ideas are covered by legal patent or proprietary rights;
- request from an applicant additional information as deemed necessary to more fully evaluate its proposal;
- amend the program's specifications after their release, with appropriate written notice posted on the Department's website;
- select only certain portions of proposals for state funding;
- make all final decisions with respect to the amount of State funding and the timing of payments to be provided to an applicant; and
- negotiate the terms of the budget.

All proposals submitted in response to this RFP will become the property of the New York State Department of Agriculture and Markets.

15. FREEDOM OF INFORMATION

All proposals submitted and all related contracts and reports may be subject to disclosure under the Freedom of Information Law.

16. DEBRIEFING

Pursuant to section 163(9)(c) of the State Finance Law, an unsuccessful bidder has the right to a debriefing regarding the reasons its application was not selected for award. Upon request, the Department will provide a debriefing to any unsuccessful applicant as to the reasons that the proposal submitted was not selected for an award. To request a review of an unsuccessful application, contact Ms. Carrie Lindemann, Division of Fiscal Management, via e-mail at procurement.info@agriculture.ny.gov. A review should be requested by an unsuccessful applicant within 15 business days of the date of the notice that its proposal was not selected for an award.