

## FUNDING OPPORTUNITY

RFP 0318

Grants Gateway AGM01-UFC24-2024

**New York State Department of Agriculture and Markets**

**Request for Proposals**

### ***New York State 2024 Urban Farms and Community Gardens Grant Program***

Release Request for Proposals (RFP)	October 16, 2023
Question and Answer Period	October 16 – November 13, 2023
Final Questions and Answers Posted	November 17, 2023
<b>Deadline for Applications</b>	<b>December 1, 2023 4:00 PM</b>
Announcement of Grant Awards	February 2024

## 1. APPLICATION SUBMISSION REQUIREMENTS

The New York State Department of Agriculture and Markets (the “Department”) is pleased to announce the availability of funds for of the Urban Farms and Community Gardens Competitive Grants Program. Applications for funding must conform to the format provided in the Grants Gateway. **APPLICATIONS MUST BE SUBMITTED via the Grants Gateway** to be considered for funding. Faxed, mailed, or e-mailed applications will not be accepted. The name for this opportunity is **“New York State 2024 Urban Farms and Community Gardens Grant Program RFP #0318”** and the **Grant Opportunity ID is AGM01-UFC24-2024**.

**Proposals are due on December 1, 2023 at 4:00PM.** Late proposals will not be accepted.

## 2. QUESTIONS & ANSWERS

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

Megan Haggerty  
NYS Department of Agriculture and Markets  
10B Airline Drive, Albany, NY 12235  
Fax: (518) 457-2716  
E-mail: [megan.haggerty@agriculture.ny.gov](mailto:megan.haggerty@agriculture.ny.gov)

All questions must be submitted by 4:00 p.m. on November 13, 2023. Applicants must note that all clarifications are to be resolved prior to the submission of a proposal. A list of questions about the program received from potential applicants, and answers to those questions, as well as any changes, additions or deletions to the RFP, will be posted on the New York State Contract Reporter website (<https://www.nyscr.ny.gov>) on or before November 17, 2023. Such official addenda are the only authorized method used to communicate substantive information, including the clarification or modification of the timeline, terms, or other requirements of this RFP.

All bidders are responsible for keeping informed of any revisions to this invitation. All addenda shall be incorporated into the RFP, which will be part of the awarded contract. If you are unable to access the Contract Reporter website, please contact John Ross at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov).

### **3. GENERAL PROGRAM INFORMATION**

#### **A. Program Description**

The Urban Farms and Community Gardens Grant Program will have funds available through a competitive process to support the development and expansion of community gardens, school gardens, and urban farms across the state. The Commissioner, in consultation with the New York State Community Gardens Task Force, has developed this grant program to recognize the important impacts of community growing spaces on food security and to promote the expansion and sustainability of these sites. This grant complements the work of the Department in providing technical assistance to community growing organizations statewide.

The grant program will fund projects for the development and enhancement of urban farms, school gardens, and community gardens. The Department is seeking feedback on the greatest needs and ways for this funding to create a lasting impact on local food resiliency.

Across New York State, there are over one thousand community growing spaces in both rural and urban landscapes, and there is demand to establish more and expand existing sites. Most community growing spaces are in underserved communities and often, the mission to grow one's own plot is to feed themselves. There is little capital to help maintain these plots. Similarly, coordinators of these spaces are often not-for-profits with limited support to expand and sustain capacity, develop infrastructure, and secure reliable tenancy to the land. This grant program was established as a strategy to improve food security by making resources available to ensure the viability and sustainability of these community growing spaces.

#### **B. Funding Available**

A total of \$1,000,000 is available for the Urban Farms and Community Gardens Grant Program. The State will cover up to 90% of the total project costs, with the total State contribution not to exceed \$50,000. Minimum grant amount of \$20,000.

Grant recipients must provide a match of a minimum of ten percent (10%) of the total project costs. Please refer to the instructions page, which is posted on the Department website and available in the opportunity on Grants Gateway, for guidance in calculating your budget amounts and entering them into your application. Matching funds may include cash, donated goods, and/or services. In-kind labor is not an eligible match. The value of match must be documented by the applicant. New York State funds may not be used as matching funds.

### **4. PROJECT REQUIREMENTS**

#### **A. Project Plan of Work**

The objective of the Urban Farms and Community Gardens projects must be to support the development and expansion of community gardens, school gardens and urban farms across the state focusing on food production, food safety, and food distribution while creating a lasting impact on local food resiliency.

## **B. Eligible Applicants**

Eligible applicants include:

- Not-for-profit organizations
- Not-for-profit Educational Institutions, including K-12 schools and universities
- Municipal Government Entities
- Community-led groups can work with a fiscal sponsor to apply
- Indian tribal organizations

Applicants must be **registered and pre-qualified** in the Grants Gateway. Applicants who are not registered or whose document vaults have expired will be disqualified. See Section 5 D-F below for instructions on registering, qualifying, and maintaining pre-qualification.

Public schools are exempt from pre-qualification.

## **C. Ineligible Applicants**

The following entities are not eligible to apply for funding:

1. For-Profit organizations
2. Individuals
3. 2023 Urban Farms and Community Gardens Awardees

To ensure equity across the NYS urban growing landscape, 2023 Urban Farms and Community Gardens Awardees are not eligible for 2024 funding.

## **D. Eligible Projects**

Eligible projects will establish new growing spaces, and/or expand infrastructure in existing community growing spaces, and/or build capacity through programming and staff. Projects may include but are not limited to:

- Re-granting to other organizations to support start-ups and capacity building
- Personnel expenses including salaries, internships, stipends, and training opportunities
- Purchase of materials, equipment, and tools
- Planning and consulting
- Improvements to infrastructure related to food production (growing), food storage, food distribution areas

Eligible projects must establish new or expand current community gardens, school gardens and urban farms projects.

Projects and expenses must be kept separate and distinct from other grant funded projects and expenses may not overlap with other grant funding, such as SNAP-Ed funding.

## **E. Project Duration**

Proposed projects must be completed within the project term of 3/1/2024-12/31/24.

## **F. 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:

1. Salary/wages for farm or garden workers, internships, student stipends
2. Contractual expenses, including staff training, planning, consultants
3. Equipment for food storage: examples include refrigerator, food storage bins, shelves
4. Equipment for food production and gardening: examples include costs for the rental or purchase of garden equipment and tools (wagons, tractors, rototiller, cultivator, greenhouses, etc.)
5. Equipment for food distribution: vehicle for transportation (3 quotes required), transportation bins, sales systems (sales systems up to \$500 in total cost)
6. Operating expenses, including seeds, plants, pollinator plants, fencing, irrigation supplies, garden maintenance
7. Legal expenses directly related to organization development, land acquisition, and program development
8. Scholarships and student aid, training costs

## **G. Ineligible Costs:**

Grant funds may not be used for the following:

- Purchase of food
- Purchase of cell phones, tablets, laptops
- Rent or lease of garden site
- Indirect costs – all administrative costs associated with the project need to be itemized in the budget proposal
- Salaries and wages unrelated to the proposal
- Costs associated with preparing an application
- Costs incurred prior to the award of a grant

## **5. HOW TO APPLY**

### **A. APPLICATION FORMAT**

Applications must be submitted through the New York State Grants Gateway. All sections of the application must be completed in order for you to be enabled to submit your digital application.

### **B. APPLICATION CONTENT**

Applicants must respond to each of the sections as provided in the [Grants Gateway](#) to create each application to be submitted to the Department. Each application is comprised of responses to “Program Specific Questions,” a work plan, and budget for the proposed project.

Please be advised that there are space limits for your response to each question in the online application. Evaluation of your application will be limited to review and consideration of only the information contained in your responses comprising your application. Material that is not required or otherwise specifically requested to be included in the application should not be submitted.

For information regarding how to navigate the online application, please refer to the “Grants Gateway Application Submission Instructions” document available on Grants Gateway associated with this grant opportunity or as posted on the **Department’s** web site (“[Funding Opportunities](#)” web page).

**C. NUMBER OF APPLICATIONS**

Applicants may apply for only one grant per funding period either individually or as a group.

**D. ACCESSING GRANTS GATEWAY**

Applicants must be **registered and pre-qualified** in the Grants Gateway to apply. New York State (NYS) vendors must register in the Gateway and establish users in the Grants Gateway system.

For existing NYS 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 its 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 NYS, you will need to submit a Substitute W-9 Form to obtain a NYS SFS Vendor ID, in addition to the Registration Form for Administrators, in order to register.

**E. Registration:** New York State applicants must register in Grants Gateway and establish themselves as a user in the system. To start this process, please read the instructions found here: <https://grantsmanagement.ny.gov/register-your-organization>

The following table provides a snapshot of which roles are allowed to Initiate, Complete, and Submit the Grant Application(s) in the Grants Gateway.

Role	Create and Maintain User Accounts	Initiate Application	Complete Application	Submit Application
Grantee Delegated Administrator	X			
Grantee		X	X	
Grantee Contract Signatory		X	X	X
Grantee Payment Signatory		X	X	
Grantee System Administrator		X	X	X

**Please Note** Waiting until the last several days to complete your application online is not recommended, as you may have technical questions. Beginning the process of applying as soon as possible will produce the best results. Late applications will not be accepted. Applications will not be accepted via fax, e-mail, hardcopy, or hand delivery.

## **F. Prequalification**

Not-for-profit applicants must be prequalified in Grants Gateway on the due date for this application submission. Be sure to maintain prequalification status between funding opportunities. Three of a not-for-profit's essential financial documents - the IRS990, Financial Statement, and Charities Bureau filing - expire on an annual basis. If these documents are allowed to expire, the not-for-profit's prequalification status expires as well, and it will not be eligible for State grant funding until its documentation is updated and approved, and prequalified status is reinstated. For more information regarding the pre-qualification process, please view the [Vendor Prequalification Manual](#) and [Maintaining Prequalification](#) as provided by the New York State Grants Reform Team.

**Public schools do not have to pre-qualify.**

## **G. How to File the Application**

After registering and prequalifying in Grants Gateway, applicants may begin the application by following these steps:

1. Log into the Grants Gateway as either a "Grantee", "Grantee System Administrator", or "Grantee Contract Signatory."
2. On the Grants Gateway home page, click the "View Opportunities" button.
3. Use the search fields to locate an opportunity; search by State agency (AGM) or by the name or partial name. Searching for the word "farm" will locate the Grant Opportunity.
4. Click on the "Search" button to initiate the search.
5. Click on the name of the Grant Opportunity (New York State 2024 Urban Farms and Community Gardens Grant Program RFP #0318) from the search results grid and then select the "APPLY FOR GRANT OPPORTUNITY" button located bottom left of the Main page of the Grant Opportunity.

## **H. SUBMITTING AN APPLICATION**

1. Only individuals with the roles "Grantee Contract Signatory" or "Grantee System Administrator" can submit an application.
2. Provide all information requested in the online Grants Gateway application form. Each question must have a response, or the application will be considered ineligible.
3. 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. Upload letters of support into the Grants Gateway Document Folder on the 'Forms' menu. Do not include links to information.

## **I. TECHNICAL ASSISTANCE WITH GRANTS GATEWAY**

Reference materials and videos are available for Grantees applying to funding opportunities on the NYS Grants Gateway. Please visit the Grants Management website at the following web address: <https://grantsmanagement.ny.gov/> and <https://grantsmanagement.ny.gov/resources-grant-applicants>. Grants Gateway Videos (are available at: <https://grantsmanagement.ny.gov/videos-grant-applicants>).

Training webinars are also provided by the Grants Gateway Team. Dates and times for webinar instruction can be located at the following web address: <https://grantsmanagement.ny.gov/live-webinars>.

**To reach the technical assistance team, contact:**

Grants Gateway Help Desk:

Email: grantsgateway@its.ny.gov (fastest method of contact)

Phone: 518-474-5595

Hours: Monday through Friday 8am to 4pm

(User roles, prequalification, and registration questions)

## **6. WRITING THE PLAN OF WORK AND BUDGET**

Applicants will describe their plan of work through the identification of “Objectives, Tasks and Performance Measures” in Grants Gateway.

The Objective of the Urban Farms and Community Gardens Competitive Grants Program is:

**To support the development and expansion of community gardens, school gardens and urban farms across the state focusing on food production, food safety and food distribution while creating a lasting impact on local food resiliency.**

A wide variety of tasks may be proposed to meet this objective. Examples of some possible tasks intended to meet this objective include, but are not limited to:

1. Re-granting to other organizations to support start-ups and capacity building.
2. Personnel support including the support of salaries/wages. Providing internships and youth scholarships programs and providing staff learning and training opportunities.
3. Planning and consulting to improve, grow and/or develop a growing space as well as organizational development and staff training.
4. Improving infrastructure related to food production (growing), food storage, food distribution areas
5. Having a positive impact on the local community and local food resiliency.

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).

Identify at least one performance measure per task. Performance measures should be clearly defined results against which the project can be evaluated.

Budgets should include personnel services described as annual salary x % effort funded = amount budgeted or hourly rate x # hours worked. Equipment budget lines do not need to include quotes or specific models but should describe type of equipment and use.

## **7. 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:



## Technical Review Criteria

### Project Description (Max 15 points)

- a. How well does the project address impact on the local community around community gardens, urban farms, and/or school gardens? (5 points)
- b. How well does the project describe the commitment that the organization has made and is making to establish and sustain community gardening and/or urban farming projects? (5 points)
- c. How well does the project focus on food production, food safety and/or food distribution? And making a positive impact on local food resiliency? (5 points)

### Plan of Work (Max 20 points)

- a. Is there a clearly described plan of work including a timeline? (5 points)
- b. Does the project have specific tasks involved in food production (growing), food safety and/or food distribution? (5 points)
- c. Does the project have specific tasks involved in impact on local community and/or local food resiliency? (5 points)
- d. Does the project describe who is responsible for completing each task? (5 points)

### Reasonableness of Cost (Max 20 points)

- a. Are project costs reasonable for the proposed activities? (10 points)
- b. How well does the project impact relate to the budget? (10 points)

### Quantification of Project Benefits (Max 25 points)

- a. Does the project have baseline goal(s) with a detailed outline of how this/these goal(s) will be achieved? (5 points)
- b. Does the project have local impact benefits and how those benefits will increase because of the project? Does the project include education and training for growers to adopt best practices? (5 points)
- c. Does the project have a projected quantitative benefit? Example: Projected number of people who will benefit from this project. Or projected percent increase in participation in the urban farm, community garden and/or school garden (5 points)
- d. Does the project describe how urban farm and/or community gardening activities will be sustained after the grant ends? (10 points)

### Personnel (Max 5 points)

- a. What degree of experience do the key people involved in managing the project have and how long have they been at the organization? What skills in community gardening, urban farming and/or program development do key people possess? Is contact information provided for the primary point person for contract development and administration of funds? (5 points)

### Outside Support (Max 15 points)

- a. Does the applicant provide proof that they have control of the site for the proposed project? If proof is not available, is there a support letter from the landowner stating likelihood that the site may be accessed for the proposed project? Is the plan to obtain site control on new growing spaces secure? (5 points)
- b. Does the applicant describe that their organization has been supported by local partners and municipalities? Are letters of support included? (10 points)

### Technical Score (maximum 100 points)

## Geographic preference (5 pts)

Should there be areas of New York State 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 Community gardens and Urban Farms Grant. 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

## 8. 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 above the threshold score (55), continuing until available funds are exhausted, or until all proposals are funded, whichever occurs first, will be funded.

If a tie occurs between projects, the first proposal received by the Department will be awarded. If the two tied proposals are received at the same time, a coin flip will be used to break the tie.

A contract defining all terms and conditions and responsibilities of the successful applicant shall be developed by the Department after 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.

## 9. ADMINISTRATIVE REQUIREMENTS FOR CONTRACTING WITH NEW YORK STATE

### A. Worker's Compensation and 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](http://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.

## **B. New York State Charities Bureau Registration**

All not-for-profit 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](mailto: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 York State Attorney General Charities Bureau explaining why the organization is exempt from registering with the Charities Bureau.

## **C. CONTRACTS & PAYMENT TERMS**

### **1. Contracts**

A contract defining all terms and conditions and responsibilities of the awardee will be developed by the Department after funds have been awarded. The contract will incorporate the work plan and budget included in the awardee's project proposal, among its provisions.

Upon execution of the contract by the awardee and the Department, 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.

## **2. New York State Master Contract**

New York State has developed a standard “Master Contract” containing standard clauses required in all State Contracts. The Master Contract will be executed for all projects awarded under the Urban Farms and Community Gardens Grant Program, and awardees are responsible for complying with the terms and conditions contained therein.

The Master Contract can be found at:

<https://grantsmanagement.ny.gov/system/files/documents/2018/09/sample-complete-nys-mcq.pdf>.

Attachments to the Master Contract will include: (A-1) “Program Specific Terms and Conditions”; (B-1) “Expenditure Budget”; (C) “Work Plan”; and (D) “Payment and Reporting Schedule”.

## **3. Payment**

Once the contract is fully executed, grant funds will be disbursed by reimbursement only. Awardees may request, at the discretion of the Department, an initial payment of up to twenty- fivepercent (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 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.

The Department and 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.

## **C. REPORTING REQUIREMENTS**

### **1. Reimbursement Reports**

The Department will monitor contract performance. A Reimbursement Request Report summarizing 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.

### **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.

### **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 to determine long-term impacts.

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

## **D. 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.

## **10. OTHER REQUIREMENTS**

### **A. NYS OFFICE OF PARKS RECREATION & HISTORIC PRESERVATION REQUIREMENTS**

Projects that 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.

## B. 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.

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

### I. General Provisions

- A. The **Department of Agriculture and Markets** (“**Department**”) 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 Agreement (the “**Contractor**” and the “Agreement”, respectively) agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the **Department**, to fully comply and cooperate with the **Department** in the 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 the Agreement, leading to the assessment of liquidated damages pursuant to Section VII hereof and such other remedies available to the **Department** pursuant to the Agreement and applicable law.

### II. Contract Goals

- A. For purposes of this Agreement, the **Department** hereby establishes an overall goal of 0% for MWBE participation, 0% for New York State-certified minority-owned business enterprise (“MBE”) participation and 0% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Agreement 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 Agreement.
- C. 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 an Agreement with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty-five percent (25%) of the total value of the Agreement.

- D. 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 Agreement. 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 **Department** with MWBEs; and
  5. Information describing specific steps undertaken by the **Contractor** to reasonably structure the Agreement’s 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 Agreement.
- B. In performing the Agreement, the **Contractor** shall:
1. Ensure that each **Contractor** and subcontractor performing work on the Agreement 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 **Department** within seventy-two (72) hours after the date of the notice by the **Department** to award the Agreement to the **Contractor**.
  3. If the **Contractor**, or any of its subcontractors, does not have an existing EEO policy statement, the **Department** may require the **Contractor** or subcontractor to adopt a model statement (see Form MWBE EE01 – MWBE and 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 Agreement, 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 "D" 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 Agreement.
- C. Form MWBE/EEO3 - Workforce Employment Utilization Report
1. The **Contractor** shall submit a Workforce Employment Utilization Report, and shall require each of its subcontractors to submit a Workforce Employment Utilization Report, in such form as shall be required by the **Department** on a **quarterly** basis during the term of the Agreement.
  2. Separate forms shall be completed by the **Contractor** and any subcontractors.
- D. 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 Employment Utilization Plan, or shall submit an MWBE Employment Utilization Plan at such time as shall be required by the **Department**, 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 **Department**, either prior to, or at the time of, the execution of the Agreement.
- B. The **Contractor** agrees to adhere to such MWBE Employment Utilization Plan in the performance of the Agreement.
- C. The **Contractor** further agrees that failure to submit and/or adhere to such MWBE Employment 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 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 **Department**. 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 **Department** shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the **Department**, upon review of the MWBE Employment 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 regardsto such non-compliance, the **Department** may issue a notice of deficiency to the **Contractor**. The **Contractor** must respond to the notice of deficiency within seven (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 **Department** by the 10<sup>th</sup> day following the end of each quarter during the term of the Agreement.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where the **Department** 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 **Department** 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 Agreement.
- 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 **Department**, the **Contractor** shall pay such liquidated damages to the **Department** 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.

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Department contracts.

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

For purposes of this procurement, the Department conducted a comprehensive search and determined that the Agreement does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Agreement for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Agreement.

## 11. 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.

## 12. FREEDOM OF INFORMATION

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

## 13. 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 Megan Haggerty, Program Manager, via e-mail at [megan.haggerty@agriculture.ny.gov](mailto:megan.haggerty@agriculture.ny.gov). A review should be requested by an unsuccessful applicant within 15 calendar days of the date of the notice that its proposal was not selected for an award.