



**RFP0312**

**REQUEST FOR PROPOSALS**

**for**

**2023-2024 NEW YORK STATE  
COMPANION ANIMAL CAPITAL PROJECTS FUND**

***Competitive Grants to Not-for-Profit Pounds, Shelters Humane Societies, and  
Rescue Facilities***

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# 1. INTRODUCTION

## 1.1 Overview

The New York State Department of Agriculture and Markets (the “Department”) invites eligible not-for-profit pounds, shelters, humane societies and rescue facilities, excluding rescues operating from a residence, to submit proposals for funding consideration from the Companion Animal Capital Projects Fund. Grant funds are available for the costs of capital projects, including construction, renovation, rehabilitation, installation acquisition or expansion of buildings, equipment or facilities necessary for the secure containment, health and adequate care of sheltered dogs and cats.

Funding for this RFP is available pursuant to an appropriation in the 2023-2024 state fiscal year capital projects budget.

## 1.2 Timeline

RFP Posted	November 6, 2023
Questions Due	January 8, 2024
Final Answers Posted	January 16, 2024
Proposals Due	January 29, 2024, 4:00PM
Tentative Award Date	March 4, 2024
Tentative Contract Start Date (2-year contracts)	April 4, 2024

## 1.3 Questions and Answers

All questions must be submitted in writing and must be received by 4:00 PM, January 8, 2024. Please submit all written questions to:

Name: Ana Colon, LVT  
Address: 10B Airline Drive, Albany, NY 12235  
Email: [Ana.Colon@agriculture.ny.gov](mailto:Ana.Colon@agriculture.ny.gov)

A list of questions, 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’s website at <https://agriculture.ny.gov/funding-opportunities>. The Department will post Questions and Answers as soon as possible, but in no event later than January 16, 2024. All questions and answers shall be incorporated in the RFP as a formal addendum.

## 1.4 Eligible Applicants

Duly incorporated pounds, shelters, humane societies, or rescue facilities, excluding rescues operating from a residence, that are not operated by or under contract with one or more municipalities for the provision of pound or shelter services but that are registered with the

Department pursuant to section 408 of the New York Agriculture and Markets Law, and can demonstrate providing similar pound or shelter services in underserved municipalities or regions.

Underserved being defined as any municipality or region where there is insufficient shelter capacity for dogs and/or cats.

*Please note, entities that have been awarded funds during previous Companion Animal Capital Projects funding opportunities are eligible to apply for an award under this RFP. Previously funded projects must be complete before an entity can apply for an award under this RFP.*

All not-for-profit applicants must be pre-qualified in the Grants Gateway at the time the application is submitted for their application to be eligible for review. See section 3.2 of this RFP for information on how to register and prequalify in the Grants Gateway.

## **1.5 Available Funding**

Funding in the amount of \$1,187,500 will be available under this RFP.

Grants will be awarded in amounts of not less than fifty thousand dollars (\$50,000) and not more than two hundred thousand dollars (\$200,000), not to exceed ninety percent (90%) of the total project cost.

## **2. PROJECT REQUIREMENTS**

### **2.1 Eligible Projects**

Only capital projects necessary for the secure containment, health and adequate care of sheltered dogs and cats are eligible for funding. For purposes of this program, a *project* may be a portion of a larger overall capital project. For example, if your organization is building a new shelter, you may request funding for only a heating and ventilation system, with the understanding that this is a portion of a larger capital project that you are funding with other resources. The *total project cost* for this program would be the cost of the heating and ventilation system.

### **2.2 Eligible Costs**

Eligible expenses include direct costs related to the:

- construction
- renovation
- rehabilitation
- installation
- acquisition, or
- expansion of buildings, equipment or facilities.

*Note: Please see Appendix 1 of this RFP for further guidance on eligible costs.*

### **2.3 Match Requirements**

Applicants will need to provide a minimum of ten percent (10%) of the *total project costs*. Matching funds must be in the form of cash and applied to cost categories listed in Section 2.2. **Upon award, successful applicants will be required to provide evidence of the availability of matching funds before a contract is issued.**

*NOTE: Please disregard the match percentage calculated by the Grants Gateway, as this is inaccurate for the purposes of this grant program. See Appendix 2 of this RFP for further guidance on the proper calculation of matching funds.*

## 2.4 Project Duration

Actual construction must begin within 3 months of the date the contract is approved by the Office of the New York State Comptroller (OSC). Projects must be completed within 2 years of the date the contract is approved by OSC.

## 3. PROPOSAL REQUIREMENTS

### 3.1 Proposal Format

**All proposals must be submitted online through the [Grants Gateway](#) by 4:00 PM local time on January 29, 2024.** Applicants, and not computers or servers, are responsible for the timely submission of proposals. Proposals received after the scheduled date and time will not be accepted. Faxed, mailed or e-mailed proposals will not be accepted.

### 3.2 Grants Gateway Registration

New York State applicants must register in the Grants Gateway and establish users 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

For existing NYS vendors, there is only one step to complete the registration process in the Grants Gateway. 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, go to the [Grant Opportunity Portal](#) under Registration, click “Request Access Now!”, enter your organization’s SFS Vendor ID number and search. If your organization is registered, the search result will include contact information for the 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.

### 3.3 Pre-Qualification in the Grants Gateway

All not-for-profit organizations that intend to submit a proposal in response to this RFP must be prequalified by the date and time applications are due. **Your proposal will be rejected and not considered for funding under this RFP if your organization is not prequalified in the Grants Gateway by the date and time applications are due.** To prequalify, a not-for-profit organization must register with Grants Gateway and complete an online Prequalification Application. This includes completing a series of forms by answering basic questions regarding the organization and uploading key organizational documents.

Note: Once your organization is pre-qualified in the Grants Gateway you should 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 expire, the organization's prequalification status expires as well, and it will not be eligible for State grant funding until the 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.

**If you have not yet registered (or, as a not-for-profit, prequalified), please do so immediately. New York State reserves 5-10 business days from the receipt of complete prequalification applications to conduct its review. If supplementary information or updates are required, review times will be longer.**

*NOTE: New York is transitioning grantmaking activities from the Grants Gateway to the Statewide Financial System (SFS). For more information on the Transition to SFS please see <https://grantsmanagement.ny.gov/transition-sfs>. If your organization is not prequalified in the Grants Gateway, or if your organization's prequalification status is expired or due to expire soon, the Department encourages you to submit a Prequalification Application and upload all required documents by December 15, 2023, to ensure the timely approval of your application.*

### 3.4 Completing an 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 phrase “companion animal” will locate the Grant Opportunity.
4. Click on the “Search” button to initiate the search.
5. Click on the name of the Grant Opportunity 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.

6. Work through the “Forms Menu”. Everything that is required of you will be found in the “Forms Menu” of the application. The Forms Menu includes several pages of forms and documents that you must complete and save. This includes your project address, questions to be answered (Program Specific Questions), your budget, a work plan, and required attachments.

### **3.5 Submitting an Application**

1. Only individuals with the roles “Grantee Contract Signatory” or “Grantee System Administrator” can submit an application.
2. Review and confirm all information requested in the “Forms Menu” of the application is provided.
3. Upload all required documents.
4. Submit the application. Click on Status Changes and apply the status of Application Submitted.

### **3.6 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](mailto:grantsgateway@its.ny.gov) (fastest method of contact)

Phone: 518-474-5595

Hours: Monday through Friday 8:00 AM to 4:00 PM

(User roles, prequalification, and registration questions)

## **4. PROPOSAL EVALUATION & AWARDS**

### **4.1 Receipt of Proposals**

The Department will first screen applications to ensure that they meet all eligibility and proposal completeness requirements. All proposals deemed eligible by the Department will be competitively rated by evaluator(s) designated by the Department.

### **4.2 Scoring Criteria**

The applicant will be asked to answer the following project specific questions as part of the online application in the Grants Gateway. **Applicants should reference the Association of Shelter**



**Veterinarians (ASV) Guidelines in their response to each question.** Specific ASV guidelines that will be addressed by the project must be referenced in the proposal. Proposals will be scored based on the applicant's responses to the questions in each category. A total of 100 points are available based on the scoring criteria outlined below. Scores will be averaged and ranked in order from highest to lowest.

**1) Need Assessment (40 points)**

- a) What are the main objectives as they relate to the secure containment, health, and adequate care of sheltered dogs and cats?
- b) How will the project help the applicant meet the requirements of the new shelter standards of care, signed into law as Chapter 683 of the laws of 2022, to take effect in 2025?
- c) Why is the project important and/or needed in the target municipality(ies) or region?
- d) Why and how is the need to complete the project urgent?
- e) How will the project positively impact animals in your organization's care?
- f) Complete the Annual Statistics Report worksheet provided in the Pre-Submission Uploads section and attach it to your application.

**2) Project Description (30 points)**

- a) Provide detailed project cost estimate(s) from appropriate vendors.
- b) Provide a list of construction materials and/or equipment that **comply with ASV guidelines**. Please cite the specific ASV guidelines related to the project.
- c) Provide detailed floor plan(s) of intended construction drawn by an architect or, if the project involves the installation or acquisition of equipment or building repairs, provide contractor and/or vendor specifications as appropriate.
- d) Does your organization have local support? Upload letters of support from your municipal government and/or any not-for-profit organizations that you partner or collaborate with on an ongoing basis. The content of the letters should adequately describe the writer's knowledge of your organization and the intended project. Multiple letters are encouraged. **Letters from corporate sponsors, volunteers, or adopters will not be considered. Only letters that are uploaded onto the Grants Gateway (do not mail or e-mail) will be considered.**
- e) The Work Plan that you will develop in Grants Gateway, which includes objectives, tasks and performance measures, will be scored as part of this section.

**3) Reasonableness of Cost (30 points)**

- a) Justify equipment purchases and infrastructure costs.
- b) Provide evidence that costs are commensurate with the number of animals benefited.
- c) Provide evidence that costs **align with ASV guidelines**. Please cite the specific ASV guidelines related to the project.
- d) Provide a financial overview for your project. Identify the primary sources of funding for the project. If you are only applying for funds to cover the cost of a portion of an overall larger capital project, please explain how the remaining portions of the project will be

funded. The information you provide in this section should identify all sources of funding for the overall capital project, and the budget section of your Grants Gateway application should reflect the discrete portion of the project for which you are applying for funding. Please see Appendix 2 of this RFP for further guidance on answering this question.

#### **4.3 Awards**

Awards will be made to those proposals receiving the highest scores above the threshold score (65 points) and continuing until available funds are exhausted, or until all such proposals are funded, whichever occurs first.

If two or more proposals have the same final score and there are not enough available funds remaining to fully fund all those proposals, then the projects to be awarded shall be determined by the following tie-breaking procedure (in order of priority sequence).

**First Category** – If only enough funding is available to award one of the tied proposals in its entirety, then that proposal shall receive the award.

**Second Category** – If enough funds are available to cover the amount of more than one tied proposal then the proposal that includes a higher cash/match contribution percentage will receive the funding award.

#### **4.4 Debriefing**

Upon request, the Department will provide a debriefing to any unsuccessful applicant as to the reasons the proposal submitted was not selected for an award. To request a review of an unsuccessful application, contact the Division of Fiscal Management via e-mail at [procurement.info@agriculture.ny.gov](mailto:procurement.info@agriculture.ny.gov). A debriefing must be requested within fifteen (15) calendar days of the date of the notice of non-award.

Following a debriefing, any unsuccessful applicant will have ten (10) calendar days to protest the non-award decision. Protests must be submitted in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the non-award decision by Department.

### **5. PROJECT REPORTING REQUIREMENTS**

#### **5.1 Quarterly Reports**

Awardees will be required to submit brief quarterly reports to the Department to provide timely information on the success of the project. Claim for Payment Forms submitted will not be processed for projects that are not up to date with the filing of their quarterly reports.

#### **5.2 Reimbursement Request Reports**

An interim progress report and an updated revised budget that summarizes work completed on the project shall accompany each request for reimbursement of project expenses (Claim for Payment Form). The Department will monitor contract performance and reserves the right to modify reporting requirements during the project term.

### **5.3 Final Report**

A final report will be required within thirty (30) days following completion of the project. 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 and OSC reserve the right to audit the applicant's books and records relating to the performance of the project during and up to six (6) years after the completion of the project.

## **6. CONTRACTS & PAYMENT TERMS**

### **6.1 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 Office of the New York State Attorney General (OAG) and OSC.

### **6.2 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 Companion Animal Capital Projects 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-3) "Capital Budget"; (C) "Work Plan"; (D) "Payment and Reporting Schedule"; and (E) "Insurance Requirements".

### **6.3 Payment**

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 award amount to be disbursed to the contractor upon acceptance of the Final Report. A signed 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, 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 OSC'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 OSC's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

#### **6.4 Workers' Compensation & Disability Insurance**

New York State Workers' Compensation Law sections 57 and 220 require that the Department 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.

#### **6.5 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.

### **7. CONSIDERATIONS**

#### **7.1 Reserved Rights**

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;
- conduct a follow-up survey of funded projects to determine long-term impacts;
- 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.

#### **7.2 Freedom of Information**

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

### **7.3 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 NYS 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.

### **7.4 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.

### **7.5 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**

*Note: MWBE requirements are not expected to be fulfilled until after a grant has been awarded and a contract has been executed.*

#### **New York State Law**

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

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

For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent (30%) for MWBE participation, 15 percent (15%) for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 15 percent (15%) for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this 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.

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

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

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Department’s MWBE Liaison at 518-485-1325 or [supplierdiversity@agriculture.ny.gov](mailto: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’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 by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

- 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 Department determines that the respondent has failed to document good faith efforts.

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

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to the Department, by the 10<sup>th</sup> 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 proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of the State of New York Master Contract for Grants including Section (IV)(J) - Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises. 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 Master Contract; or (ii) employment outside New York State.

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

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

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 nondiscrimination 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.*

### **7.6 Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses**

*Note: SDVOB requirements are not expected to be fulfilled until after a grant has been awarded and a contract has been executed.*

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 ("SDVOB"s), 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 six percent (6%) for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Department's Supplier Diversity Liaison at [supplierdiversity@agriculture.ny.gov](mailto:supplierdiversity@agriculture.ny.gov). Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

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

### **II. SDVOB Utilization Plan**

A. In accordance with 9 NYCRR § 252.2(i), Contractor 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 (7) business days of receipt, by submitting to the Department a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify Contractor and direct Contractor to submit, within five (5) 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 (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

#### **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](mailto:supplierdiversity@agriculture.ny.gov).

#### **VI. Breach of Contract and Damages**

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

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