

QUESTIONS AND ANSWERS
Round 16 Farmland Protection Implementation Grants Request For Proposals
(Funding Opportunity announced May 30, 2018)

PLEASE NOTE: *Errors were discovered in some of the documents associated with this grant opportunity. We apologize for any confusion and inconvenience to you.*

Errata:

Request For Proposals (PDF uploaded in Grants Gateway), “Policy Guidance” (page 11) = Unfortunately, the following link does not work:

- “Definition of ‘Qualified Farmer’ for a Preemptive Purchase Right;” use [this link](#) instead.

The following questions were submitted to the Department of Agriculture and Markets regarding this Request For Proposals (RFP) for Round 16 Farmland Protection Implementation Grants. Each question appears as it was submitted in the order each was received.

Each question is answered below.

1. **Q:** Regarding FPIG Round 16 RFP (**pages 7-8**), Section V. C. (1) (3), Eligible Project Costs: Is a 2’x3’ cast steel “Protected Farmland” sign, to be placed on the FPIG protected farmland, an eligible separate line item transaction cost in the project budget?

A: No, since a sign is not an eligible “transaction cost” identified as part of item (3), nor is it an eligible cost identified as items (1) (“value of development rights”) or (2) (“value of a Preemptive Purchase Right”).

2. **Q:** Regarding FPIG Round 16 RFP, VI. F (General Specifications), paragraph 3 (Provisions Upon Default) (**page 18**): The Round 14 version had two subparagraphs (a and b) in the section. Round 16 has one (but it is still labeled as “a.”) Did you intend to eliminate subparagraph b or was that an oversight?

A: Yes, the former subparagraph “(b)” was intentionally deleted for Round 16 RFP. Subparagraph (b) would be considered termination for cause and would fall within the provisions of subparagraph (a).

3. **Q:** Section V.C.(1)(2)b. (**page 7 of RFP**): Will NYSDAM provide written guidance on what appraisals are deemed acceptable to the Department for valuing Preemptive Purchase Right, similar to the current PDR appraisal guidelines?

A: Not at this time. However, the appraisal report must provide the estimated value for development rights separate and apart from the estimated value for the Preemptive Purchase Right. In other words, each value must be identified in the appraisal report.

QUESTIONS AND ANSWERS

Round 16 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced May 30, 2018)

4. **Q:** Section V.E. (**pages 11-12 of RFP**): Can an easement for a Farmland Protection Implementation Grant project that includes a Preemptive Purchase Right include language *in addition to* the RFP's definition of a Qualified Farmer? For example:

Can a land trust include additional requirements to terms of the Preemptive Purchase Right and/or the Exempt Transactions in order to elaborate on what transactions would or would not trigger the land trust's preemptive purchase right?

A: You must incorporate the Department's definition of "Qualified Farmer" in the Preemptive Purchase Right portion of the conservation easement document. (Refer to "[Definition of 'Qualified Farmer' for a Preemptive Purchase Right](#)" on **page 11**.) The Department will not allow, however, any language elsewhere in the conservation easement document that contradicts or limits or that may otherwise create a discrepancy with the substantive content of that required definition, or that may be deemed to be an unreasonable restriction.

5. **Q:** When doing an application with multiple easements, should there be a single budget and financial worksheet that encompasses all the easements or should each easement have its own financial worksheet and budget?

A: When preparing an application, please note that you must submit one Excel spreadsheet file (the "Financial Worksheet") for the Conservation Easement Project that you are proposing. (Refer to **Program Specific Question #12** and also to "**Pre-Submission Uploads**" in Grants Gateway associated with this grant opportunity.) The Excel spreadsheet has individually tabbed worksheets for up to five easements (labeled as "Easement1" through "Easement5") to accommodate any multiple-easement Conservation Easement Project. However, please do NOT use any one of those five tabs as a "summary page." Instead, you must enter each requested sum total in the respective place in the "Instructions for Attachment B-2," which is the last tab in the Excel spreadsheet file. That tab is comprised of four pages of calculations to determine each of the four lines of the Performance-based Budget that will be inserted into your contract should your Conservation Easement Project receive an award.

6. **Q:** Section IV ("Eligibility") Paragraph B ("Project Eligibility"), second bullet ("Lands subject to an existing conservation easement, regardless of its duration." are not eligible under the RFP) (**page 5 of RFP**): If a portion of a property is subject to a term USDA Wetlands Reserve easement, may we submit an application to place a conservation easement on the entire property so long as FPIG funds are used exclusively on the remainder (unencumbered) portion of the farm property? Example: The 200-acre Farm Property has 50 acres subject to a term WRP conservation easement. The landowner would like to grant a single conservation easement on all 200 acres so that there will be one conservation at the expiration of the WRP easement covering their entire farm. FPIG application

QUESTIONS AND ANSWERS

Round 16 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced May 30, 2018)

and funding, if awarded, would be exclusively for the 150-acre portion of the property that is unencumbered and otherwise eligible. No FPIG funds would be applied to the portion of the property subject to the term easement.

A: Yes, provided the existing limited duration easement does not conflict with the proposed agricultural conservation easement and, if applicable, the agency providing funding for the existing limited duration easement does not object to the overlay of a perpetual agricultural conservation easement.

7. **Q:** Section V. (“Detailed Specifications...”) Paragraph C (“Eligible Project Costs”) (**page 7 of RFP**): Is an affirmative covenant to farm, as part of a PPR, an eligible cost?

A: Yes, since you have incorporated “an affirmative covenant to farm, as part of a PPR” and a PPR is an eligible project cost.

8. **Q:** Section V. (“Detailed Specifications...”) Paragraph C.(1)(2) (“Eligible Project Costs”, PPR) (**page 7 of RFP**): May a project that includes a PPR, but does not meet the soils specifications of section V.C.(1)(2)a. be eligible for an FPIG award so long as the cost of the PPR is covered by a separate cash source and is not part of the FPIG application or award?

A: Yes, provided that the PPR is not contained in the conservation easement(s) comprising the awarded Conservation Easement Project and that the actual costs associated with the PPR are not reflected anywhere on the Financial Worksheet in the grant proposal and will not be reflected on the Financial Worksheet in the project file should the Conservation Easement Project be awarded.

9. **Q:** Section V. (“Detailed Specifications...”) Paragraph D(2) (“Match Requirements, 75% project”) (**page 9 of RFP**): During the June 5 webinar I thought I heard from Mr. Behm, in response to a question asked, indicate the value of a PPR, within the allowable limits of less than \$250,000 and 40% of CE value, may be eligible for funding entirely from FPIG funds. However, Section V.D.(2) and the table on page 10 of the RFP, as well as the example budgets shown during that same webinar seem to indicate that a PPR, as a portion of the total “Value of Development Rights” is subject to the total overall project cost share or “Maximum state Contribution” as identified in the table on Page 10. Is this correct; is the PPR portion of the project simply part of the “total project cost” and therefore subject to the prevailing maximum state contribution by percent and total dollar amount (e.g., 75%, \$2mm)?

A: Yes. Please refer to [“Sample #4 \(PDF\)”](#) and [“Sample #5 \(PDF\)”](#) for more information.

QUESTIONS AND ANSWERS

Round 16 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced May 30, 2018)

10.Q: Application, Supplemental Bonus Points #18d (*page 5 of Appendix A of RFP*) - If an applicant performs annual monitoring of the easements it holds and documents such monitoring (completed monitoring form, updated photographs showing changes, etc.) and has a baseline documentation policy that states photographs should be updated as necessary to evidence man-made and natural changes to the property that affect the easement terms or as warranted by amendments, does that sufficiently provide the necessary information to earn bonus points?

A: No, since your policy does not reflect “updating the baseline inventory reports for each easement area on a regular interval.”

11.Q: General, budgets (*pages 7-8 of RFP* and the “Financial Worksheet” in “*Pre-Submission Uploads*” in Grants Gateway associated with this grant opportunity) - If the stewardship fee request is more than \$10K and the landowner is willing to pay the difference, can that payment come directly out of the landowner's proceeds at closing or would the landowner need to provide their own funding (i.e. check) to cover the difference?

A: No, you may *never* make any such payment “out of the landowner’s proceeds at closing.”

12.Q: General, Ineligible Project Costs (*page 8 of RFP*) - Can you confirm that any contribution beyond the \$10K NYSDAM cap toward the stewardship fee could be placed in a legal defense fund? For example, if the applicant is requiring \$12K for stewardship related purposes, \$10k provided by NYSDAM would have to be used toward annual stewardship related activities but then \$2K provided by the landowner, applicant or another funding source could be deposited into a legal defense fund?

A: As noted in the third bullet under “**(2) Ineligible Project Costs**” on **page 8 of the RFP**, any contribution to your legal defense fund is ineligible.

13.Q: General, Project Costs (*pages 7-8 of RFP*) - Can applicant charge its billing rate provided it is not adding an overhead percentage that would be deemed ineligible as indirect or overhead costs?

A: Yes.

14.Q: Is the American Battlefield Protection Program (National Park Service) funding deemed an eligible local match of funds? If so, would the applicant be limited to applying to the state for just the 25% funding option (plus transaction costs)?

A: Yes to both questions.

QUESTIONS AND ANSWERS

Round 16 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced May 30, 2018)

15. Q: If the project involved a pre-emptive purchase right, does the pre-emptive purchase right language need to be incorporated directly into the conservation easement or can it be a separate agreement that cross references the easement and is recorded simultaneously with the easement?

A: *(Page 10, including its footnote, of the RFP)* If the State will contribute toward cost of the Preemptive Purchase Right, the PPR must be incorporated into the applicable conservation easement document.

16. Q: Section IV. Eligibility B. Project Eligibility, second bullet: “Lands subject to an existing conservation easement (regardless of its duration)” *(page 5 of the RFP)*

—
(a) If a property has a “conservation easement designation” with the Municipality that is temporary (e.g. 10 or 20 years) and is actually a property tax benefit for the landowner rather than a deed restriction that is recorded, is the property ineligible due to the language appearing in Section IV. Eligibility B. Project Eligibility, second bullet: “Lands subject to an existing conservation easement (regardless of its duration)”?

(b) If per the above question the property is ineligible, would it be eligible if there is an agreement with the town to remove the term conservation easement (tax benefit) prior to closing on the perpetual conservation easement should the project be awarded by NYSDAM under this RFP?

(c) If per both questions above the property is ineligible, it would seem it is eligible if the term conservation easement (tax benefit) is removed prior to application by August 31, 2018. Is this correct?

A: (a) “Lands subject to an existing conservation easement” refers to a “conservation easement” as authorized by either (1) Article 49 of the New York State Environmental Conservation Law, or (2) §247 of New York State General Municipal Law. Thus, if the land is not already encumbered by a “conservation easement,” then the land is eligible provided it is viable agricultural land associated with one or more Farm Operation(s). However, if the subject land is already encumbered by a “conservation easement,” then it is not eligible as a Conservation Easement Project under this RFP. Please note, however, that if only a portion of the land is subject to a “conservation easement,” then you may include it in a Conservation Easement Project provided that no State funds will be used on that portion of the awarded Conservation Easement Project; **refer to Question #6 above.**

(b) If the land is deemed to be not eligible as described in (a) immediately above, then, no, the subject land would not become eligible if the “term

QUESTIONS AND ANSWERS

Round 16 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced May 30, 2018)

conservation easement” were removed prior to closing on the proposed perpetual agricultural conservation easement.

(c) If the land is deemed to be not eligible as described in (a) immediately above, but the “term conservation easement” were *removed prior to the submission of an application via Grants Gateway* then, yes, the land would be deemed eligible provided it is viable agricultural land associated with one or more Farm Operation(s). Please note that the “term conservation easement” must be removed by no later than the date of submission of the grant proposal (whether or not the date of submission is August 31, 2018).

17.Q: Section V. Detailed Specifications and Deliverables of the Funding Agreement E. Policy Guidance: the referenced “2016 Model Agricultural Conservation Easement” does not appear to include any language regarding Preemptive Purchase Right (PPR), nor does the referenced “Farmland Protection Implementation Grants (FPIG) Program Required Easement Provisions (2016 version)”. Will standard or required language regarding PPR be provided, or is it up to awardees under this RFP to develop such language?

A: The Department will not provide text or other policy guidance specific to the Preemptive Purchase Right.

18.Q: Section V. Detailed Specifications and Deliverables of the Funding Agreement D. Match Requirements: This section mentions Preemptive Purchase Right (PPR) under the 75% state contribution in subpart (2), but not in subpart (1) that discussed the 87.5% state contribution. However, in the following table in the same section, the 40%/\$250,000 cap on PPR is mentioned in the row regarding 87.5% state contribution:

- (a) Can a PPR be associated with the proposed Conservation Easement Project and receive 87.5% State contribution?
- (b) If so, can the state funds be applied 100% to the PPR with a lesser percentage of the Development Rights funded by the State contribution as a result, such that no landowner contribution is attributed to the PPR and no cash is involved?
- (c) If cash that is not from the landowner is required to fund a portion of the PPR on a project applying for 87.5% state contribution, what percentage of the PPR value must be funded with cash? Would that local cash contribution cause the project to become ineligible for 87.5% and only eligible for up to 75% State contribution?

A: (a) Yes, provided the “Other State Requirements” stipulated in the **footnote on page 10 of the RFP** are met.

QUESTIONS AND ANSWERS

Round 16 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced May 30, 2018)

(b) Yes, provided you do not exceed any “cap” stipulated in the **table on page 10 of the RFP**.

(c) When requesting 87.5% State cost-share assistance, only cash provided by the State and the participating landowner(s) shall be used to cover any expense associated with the proposed Conservation Easement Project – no other source of match contribution (cash OR in-kind) is allowed. Therefore, if a PPR will be part of an 87.5% State award, then (presumably) the PPR would be covered by the State’s contribution (provided you do not exceed any “cap” stipulated in the **table on page 10 of the RFP**). However, if there is insufficient State funds to fully cover the expense of the PPR, then the participating landowner(s) are required to make a bargain sale donation of the uncompensated portion of the PPR expense (similar to that when they are not fully compensated for the value of development rights).

19. Q: If a project applies with a Preemptive Purchase Right (PPR) contemplated (e.g. included in the budget and awarded), but subsequent to award decides not to proceed with the PPR for some reason and only follow through with the sale of development rights, is this acceptable to NYSDAM? One would assume that the award would adjust in value accordingly as the appraisal of development rights alone should be lower than award that considered both development rights and PPR.

A: Yes, such a result would be acceptable to the Department since each conservation easement is entered into by the participating landowner(s) on a voluntary basis.

20. Q: (a) If a Town is to be the applicant and sole grantee of a perpetual conservation easement resulting from the sale of development rights, and a land trust would like to complete an application on their behalf and, in the event of award, be contracted as consultant/project manager, what is the proper way of navigating the application process through Grants Gateway?

(b) Can the land trust (consultant) apply directly under its own Grants Gateway account on behalf of the Town, and if so how?

(c) Can a staff person from the land trust be assigned a user name ID by the Town to access Grants Gateway under the town’s name?

(d) Or must the Town apply directly (perhaps based upon materials prepared by the land trust)?

A: (a) The entity that will be the Grantee of the proposed conservation easement(s) must be the applicant. In your example, the Town is the applicant. The Town must register to enable it to make any online applications through

QUESTIONS AND ANSWERS
Round 16 Farmland Protection Implementation Grants Request For Proposals
(Funding Opportunity announced May 30, 2018)

Grants Gateway. For more information on how to register, the Town should refer to “Vendor Access to Grants Gateway” atop **page 17 of the RFP**.

(b) No.

(c) and (d) Please refer to the answer provided to subpart (a) of this question immediately above.

###