

Revised 7/8/19 – All revisions are in red

New York State
Department of Agriculture & Markets

REQUEST FOR PROPOSALS

for the

2019 Mobile Markets Grant Program RFP#0200

Competitive Grants

INTRODUCTION

PROPOSAL SUBMISSION REQUIREMENTS

Proposals must be submitted online through the Grants Gateway. This year's grant application is labeled AGM01-MMR219-2019. Proposals are due on Wednesday, July 31, 2019 by 4:00 pm. Late proposals will not be accepted.

QUESTIONS CONCERNING THE RFP

All questions about this Request For Proposal (RFP) must be submitted in writing (e-mail will be accepted) to:

Meg McCabe
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235
E-mail: meg.mccabe@agriculture.ny.gov

All questions must be submitted by 4:30 p.m. on Monday, July 15, 2019. All clarifications must be resolved prior to the submission of a proposal. A list of questions about the program which are received, and answers to those questions, as well as any changes, additions or deletions to the RFP, will be posted in the "Funding Opportunities" section of the Department of Agriculture and Markets' (Department) website, www.agriculture.ny.gov, along with the electronic version of this RFP. **All questions and answers will be posted by Monday, July 22, 2019.**

1. GENERAL PROGRAM INFORMATION

1.1 Program Description

The Mobile Markets Grant Program is a part of Governor Andrew M. Cuomo's Vital Brooklyn Initiative. The Vital Brooklyn Initiative is a new holistic initiative that focuses on eight integrated areas of improvement, one of which is healthy food. Vital Brooklyn is serving the following Central Brooklyn neighborhoods: Bedford Stuyvesant; Brownsville; Bushwick; Canarsie; Crown Heights; Cypress Hills/Ocean Hill; East Flatbush; East New York; Prospect Heights; and Prospect Lefferts Gardens.

The Mobile Markets Grant Program will fund not-for-profit organizations to establish or expand mobile farmers' markets or to serve as mobile emergency food providers carrying fresh, locally sourced food for distribution in Central Brooklyn. The residents in Central Brooklyn often have limited access to healthy food options. These populations may experience higher rates of obesity and diet related diseases resulting from poor nutrition. In urban areas like Brooklyn, high real estate costs may inhibit creation of permanent diversified grocers who have a consistent selection of fresh food. Mobile markets are more flexible and less expensive than constructing and operating full scale grocery stores, and can serve more neighborhoods at a fraction of the cost. Such efforts are funded by a variety of local organizations, private donors, and federal programs, but the need continues to outpace available funding.

1.2 Funding Available

A total of \$500,000 is available for the Mobile Markets Grants Program. The maximum grant award per project is \$150,000. Once a 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 25 percent of the total grant award. The Department shall retain 10 percent of the budget amount to be dispersed to the contractor until such time as the final report is accepted.

2. ELIGIBILITY & SCOPE

2.1 Applicant Eligibility

Eligible applicants include not-for-profit organizations or governmental entities intending to operate mobile farmers' markets or to serve as mobile emergency food providers.

2.2 Ineligible Applicants

The following entities are not eligible to apply for funding:

- For-profit entities
- Individuals
- **In addition, awardees from 2018, (those with contracts commencing August 16, 2018) are not eligible to apply in this round of funding.**

2.3 Eligible Projects

Eligible projects will establish or expand mobile farmers' markets or mobile emergency food providers carrying fresh, locally-sourced food for distribution in Central Brooklyn. The project must benefit, at a minimum, residents of the Central Brooklyn neighborhoods of Bedford Stuyvesant; Brownsville; Bushwick; Canarsie; Crown Heights; Cypress Hills/Ocean Hill; East Flatbush; East New York; Prospect Heights; and Prospect Lefferts Gardens.

2.4 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 the purchase of:

- Vehicle, carts, or other mobile transport unit
- Equipment
- Machinery
- Mobile technology necessary to complete transactions

2.5 Ineligible Costs

Grant funds may not be used for the following:

- Purchase of food
- Salaries and wages
- Costs associated with preparing an application
- Costs incurred prior to the award of a grant
- Other indirect costs

2.6 Project Duration

Duration is 18 months from contract start date.

3. DOCUMENTS AND ADMINISTRATIVE REQUIREMENTS

3.1 Registration and Pre-Qualification

New York State vendors must register in the Grants Gateway and establish users in the system.

To start this process, from the Grant Opportunity Portal (https://grantsgateway.ny.gov/IntelliGrants_NYSGG/module/nysgg/goportal.aspx), under Registration, click “Request Access Now!” to view your options.

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

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

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

All not-for-profit organizations that intend to submit a proposal in response to this RFP must also be pre-qualified prior to the submission of your proposal(s). If you have not pre-qualified with the Division of the Budget by the time that you submit your proposal(s), each proposal you submit will be rejected and not considered for funding under this RFP. For more information regarding the pre-qualification process, please view [FAQs About Prequalification](#) as provided by the New York State Grants Management Team.

If you have not yet registered or, as a not-for-profit, prequalified, please do so immediately.

3.2 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 refer to the Workers’ Compensation and Disability Insurance Requirements posted on the Department’s website, www.agriculture.ny.gov, under the heading of this RFP or visit the New York State Workers’ Compensation Board website, www.wcb.ny.gov, for more information. You may contact the Board’s Bureau of Compliance with any questions related to workers’ compensation or disability insurance at (866) 298-7830.

3.3 New York State Charities Bureau Registration

All not-for-profit organizations contracting with New York State 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 Attorney General's Request for Registration Exemption (Schedule E). The statement must identify the specific category under which the charitable organization is exempt.

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

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

4. PROPOSAL FORMAT

All proposals must be submitted online through Grants Gateway.

(<https://grantsgateway.ny.gov>) The application is labeled **AGM01-MMR219-2019**.

1. Provide all information requested in the online Grants Gateway application form.
2. Letters of support are encouraged, but not required. Please upload any letters of support on the Program Specific Questions page under question #6b.

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.

4.1 Evaluation Factors

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

1. **Organizational Capacity** (10 points)
Degree to which the applicant demonstrates the organization's capacity to successfully implement a mobile market project, including the following factors:

- a. Past experiences administering mobile markets or community food programs, including sourcing, maintaining, and marketing fresh locally-sourced food.
 - b. Associations and partnerships with other community food programs.
2. **Project Description and Plan of Work** (20 points)
- a. Degree to which the organization can achieve the goal of increasing access to healthy fresh locally-sourced food for residents in Central Brooklyn by operating a mobile market.
 - b. Degree to which the project will prioritize fresh locally-sourced food.
 - c. Degree to which the project incorporates nutrition benefit programs into the mobile market project.
 - d. Degree to which the project will ensure food is consistently and regularly available via the mobile market.
3. **Uphold Community Priorities** (20 points)
- a. Degree to which the mobile market project will serve the populations most in need, as defined by the applicant, including, but not limited to, elderly, individuals with limited mobility, New York City Housing Authority residents, geographically isolated neighborhoods, undocumented communities or families with perinatal mothers and young children.
 - b. Degree to which the project/program is currently working in partnership or cooperation with other food access services (food pantries, community gardens, farmers markets, etc.) in their vicinity.
 - c. Degree to which a variety of foods are made available, including, but not limited to, fresh produce, dairy, grains, meat, and poultry products.
4. **Project Evaluation and Quantification of Benefits** (10 points)
- a. How have project benefits been quantified, both as a starting baseline at the beginning of the project and with targeted increases as a result of the project?
 - b. Projected population in Central Brooklyn to be served by the project.
 - c. Degree to which an evaluation process is established that tracks the success of project goals.
5. **Personnel** (10 points)
- What degree of experience do the key personnel involved in the project have in operating mobile markets or community food programs, procuring locally-sourced food products, and fostering community partnerships?
6. **Reasonableness of Cost** (20 points)
- a. Are the project costs reasonable for the proposed activities?
 - b. Will the project be financially supported and sustainable at the end of the contract period?

7. **Outside Support** (10 points)

Degree to which the project has support from local community partners (partners can include but are not limited to entities who can help identify source(s) of local food, food distributors, aggregators, New York State farms, local community-based organizations, citizens groups, faith-based groups, elected officials and other public figures).

5. AWARD PROCESS

The Department will first screen applications to ensure that they meet eligibility requirements. All proposals deemed eligible by the Department will be evaluated by a Department panel according to the funding criteria; scores will be averaged and ranked in order from highest to lowest. Those proposals receiving the highest numerical scores above the threshold score (55), continuing until available funds are exhausted, or until all proposals are funded, whichever occurs first, will be funded.

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

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

6. REIMBURSEMENT FOR FUNDING

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

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

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

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

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

this agreement if it does not comply with the State Comptroller of New York's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

7 REPORTING REQUIREMENTS

7.1 Quarterly Reports

Awarded applicants will be required to submit brief quarterly reports to the Department to provide timely information on the success of the project. A quarterly report template will be provided by the Department and this template must be used to generate monthly reports. Claim for Payment Forms submitted will not be processed for projects that are not up to date with the filing of their quarterly reports.

7.2 Reimbursement Request Reports

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

7.3 Final Report

A final report in a format to be directed by the Department 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.

8. LIABILITY

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

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

Projects which include ground-disturbing activities, construction of new buildings, or modification of buildings over 50 years old will be subject to further review by the 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.

10. NYS ENVIRONMENTAL QUALITY REVIEW ACT REQUIREMENTS

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

11. 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 New York State funding.
- Make all final decisions with respect to the amount of New York State funding and the timing of payments to be provided to an applicant.
- Negotiate the terms of the budget.

All proposals submitted in response to this RFP will become the property of the Department.

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 § 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 Judy Giovannetti, Division of Fiscal Management, by phone at: (518) 457-6172 or via e-mail at judy.giovannetti@agriculture.ny.gov. A review should be requested by an unsuccessful applicant within thirty (30) days of the date of the notice that its proposal was not selected for an award.

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The **Department** recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of **Department** contracts.

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

I. Contract Goals

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

II. SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), **Contractor** agrees to submit a completed SDVOB Utilization Plan on Form SDVOB 100 at such time as shall be required by the **Department**.
- B. The Utilization Plan shall list the SDVOBs that **Contractor** intends to use to perform the Agreement, a description of the work that **Contractor** intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, **Contractor** acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in

conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of the Agreement for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to the **Department**.

- C. The **Department** will review the submitted SDVOB Utilization Plan and advise **Contractor** of the **Department's** acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, **Contractor** agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the **Department** a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the **Department** to be inadequate, the **Department** shall notify **Contractor** and direct **Contractor** to submit, within five business days of notification by the **Department**, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for a determination of non-responsibility by the **Department**.
- E. The **Department** may deem **Contractor** non-responsive under the following circumstances:
 - 1. If **Contractor** fails to submit an SDVOB Utilization Plan;
 - 2. If **Contractor** fails to submit a written remedy to a notice of deficiency;
 - 3. If **Contractor** fails to submit a request for waiver; or
 - 4. If the **Department** determines that **Contractor** has failed to document good faith efforts.
- F. **Contractor** certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Agreement pursuant to the prescribed SDVOB contract goals set forth above.
- G. **Contractor** further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the **Department** shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, **Contractor** shall speak to the **Department's** Supplier Diversity Liaison for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. **Contractor** may submit the request for waiver at the same time it

submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the **Department** at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with **Contractor's** waiver request is complete, the **Department** shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. **Contractor** shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Agreement. Requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Agreement to the **Department** but must be made no later than prior to the submission of a request for final payment on the Agreement.
- D. If the **Department**, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101), determines that **Contractor** is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the **Department** may issue a notice of deficiency to **Contractor**. **Contractor** must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

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

IV. Required Good Faith Efforts

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

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

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), **Contractor** is required to report Monthly SDVOB Contractor Compliance to the **Department** during the term of the Agreement for the preceding month's activity, documenting progress made towards achieving the Contract

SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by **Contractor** and submitted to the Department Supplier Diversity Liaison, by the 10th day of each month during the term of the Agreement, for the preceding month's activity to: supplierdiversity@agriculture.ny.gov.

VI. Breach of Contract and Damages

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

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

15. MINORITY AND WOMEN BUSINESS ENTERPRISES

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

NEW YORK STATE LAW

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

Business Participation Opportunities for MWBE

For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent for MWBE participation, 15 percent for New York State-certified Minority-owned Business Enterprise (MBE) participation and 15 percent for New York State-certified Women-owned Business Enterprise (WBE) participation (based on the current availability of MBE and WBE). A contractor (Contractor) on any contract resulting from this procurement (Contract) must document its good faith efforts to provide meaningful participation by MWBE 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 MWBE can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBE for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION

CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]

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

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBE had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBE 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, which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Department's MWBE Liaison at (518) 485-8740 or supplierdiversity@agriculture.ny.gov. All MWBE Forms and Instructions are included in the Submission Documents.

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

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

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

- b. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department 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.
- 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 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

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

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

If awarded a Contract, 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 sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

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