

# DEPARTMENT OF AGRICULTURE AND MARKETS 2008-2009 (Round 12) REQUEST FOR PROPOSALS

for State Assistance Payments for

## FARMLAND PROTECTION IMPLEMENTATION PROJECTS

### INTRODUCTION

The New York State Department of Agriculture and Markets invites proposals for funding to implement certain farmland protection implementation activities described in agricultural and farmland protection plans that have been developed by counties and municipalities. Proposals should conform with the format and content specified in this Request For Proposals (RFP), which is posted in the "Funding Opportunities" section of the Department's website ([www.agmkt.state.ny.us](http://www.agmkt.state.ny.us)).

Funding for this program is from the appropriation for these purposes in the State Fiscal Year 2008-2009 Budget.

Proposals for Fiscal Year 2008-2009 (Round 12) funding ***MUST BE RECEIVED*** by the Department's Division of Fiscal Management by 4:30 p.m. EDT on September 15, 2008. Applicants, not delivery services or other intermediaries, are responsible for the timely submission of proposals.

Faxed and e-mailed proposals will not be accepted. Proposals delivered after the scheduled date and time will not be accepted. Envelopes should be clearly marked "RFP-Farmland Protection Implementation Grants."

Five (5) copies of each proposal should be submitted to:

Lucy Roberson, Director  
Division of Fiscal Management  
NYS Dept. of Agriculture and Markets  
10B Airline Drive  
Albany, New York 12235

### QUESTIONS CONCERNING THE RFP

Applicants with questions about requirements contained in this RFP should contact:

David Behm  
Farmland Protection Program Manager  
NYS Dept. of Agriculture and Markets  
Fax: (518) 457-2716  
E-mail: [david.behm@agmkt.state.ny.us](mailto:david.behm@agmkt.state.ny.us)

All questions to the Department must be submitted in writing (by mail, fax or e-mail) and must be received by the Department by 4:00 p.m., July 18, 2008. A list of questions about the program, which are received from potential applicants, and answers to those questions, as well as any changes, additions or deletions to the RFP, will be posted in the “Funding Opportunities” section of the Department's website, [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us) by July 25, 2008. If you are unable to access the website, please contact David Behm to arrange for alternate delivery. The final list of Questions & Answers will be a formal addendum to this RFP. **Applicants are urged to check the Department’s website frequently for notices of any changes, additions, or deletions to the RFP.**

## **BACKGROUND AND PURPOSE**

Article 25-AAA of the Agriculture and Markets Law authorizes the Commissioner to maintain a state agricultural and farmland protection program to provide financial and technical assistance, within funds available, to assist counties and municipalities in developing agricultural and farmland protection plans and to assist both in the implementation of such plans. The purpose of these programs is to fund local initiatives that are intended to maintain the economic viability of the State's agricultural industry and its supporting land base and to protect the environmental and landscape preservation values associated with agriculture.

## **ELIGIBILITY**

### **Applicant Eligibility**

Proposals for funding will be accepted from only: (1) county agricultural and farmland protection boards in counties with an approved county plan developed pursuant to Section 324 of Article 25-AAA of the Agriculture and Markets Law; or (2) any municipality which has in place a local farmland protection plan, provided the proposed project is endorsed for funding by the agricultural and farmland protection board for the county in which the municipality is located. For purposes of this section, a “local farmland protection plan” may include a town, village or city comprehensive plan as defined in the Town Law, the Village Law, or General City Law, if such plan includes an element which considers agricultural uses and needs; an open space plan adopted by the municipality which presents strategies for the preservation of viable agricultural land; or any other formal agricultural and farmland protection planning document provided that if the plan was developed on or after January 1, 2006, it must comply with section 324-a of Article 25-AAA of the Agriculture and Markets Law. **Any municipality intending to submit an application for the first time is urged to contact the Department regarding the applicant’s eligibility prior to submitting its application.**

While local land trusts and other non-profit organizations concerned with protecting agricultural land are not eligible by law to apply directly for farmland protection implementation funds, they may work cooperatively with county or municipal governments in support of a project for which funding is requested. Such organizations may also participate in a project's implementation at the discretion of the involved county or municipality and they may, for example, hold and/or monitor conservation easements under conditions acceptable to the Department.

Applicants should avoid any actual or potential conflicts of interest in the selection or approval of properties included in their proposal (e.g., ownership or other interest in a subject

property by an individual having a role in selecting and/or approving property to be submitted for funding consideration). Individuals who own or otherwise have some interest in property which may be considered are not automatically barred from funding. If the potential for a conflict exists, applicants should consult their municipal attorney or the Department in advance of submitting a proposal.

### **Project Eligibility**

Agricultural and farmland protection projects eligible for funding under this RFP must, at a minimum, be consistent with the activities, programs and strategies found in the applicant's agricultural and farmland protection plan. Each conservation easement-based proposal submitted to the Department for funding consideration shall involve only one farm; any proposal involving more than one farm will not be considered for funding. Any eligible county may submit no more than five proposals and any eligible town may submit no more than two proposals. **Applicants submitting more than the maximum number of proposals shall not receive any consideration for funding from the Department for all proposals it submitted.**

### **Match Requirements**

Funds to support the implementation of agricultural and farmland protection projects by municipalities are available from the State Environmental Protection Fund (EPF). State funds to a municipality shall not exceed seventy-five percent (75%) of the total project cost. Other State funds may NOT be used to match EPF funds. Applicants will be required to provide a local match, utilizing other public or any private sources, equal to at least twenty-five percent (25%) of the total project cost. **Each contributor of cash comprising the local match contribution must provide a letter acknowledging the amount of its contribution.**

**NOTE: Due to recent changes in the 2008 Farm Bill, the Department may allow Federal Farmland Protection Program (FPP) funds as a local match. The Department will not make a final decision regarding the use of FPP funds as a local match until the program details are finalized through the Federal administrative rulemaking process. In the event the new FPP rules are not compatible with this program, successful applicants who planned on using FPP funds as a local match will be obligated to provide the requisite local match from an alternate funding source. Applicants who intend to apply for and use FPP funds as a local match should they be available, must list a local funding source other than FPP funds on their budget forms and supply the required commitments in the application. Applicants should indicate their intent to use FPP funds as a local match, should this option become available, on the budget form(s) submitted with their proposal.**

In-kind administrative costs may account for up to \$25,000 per project budget or up to eighty percent (80%) of the local match per proposal, whichever is less. In-kind costs may include, but are not limited to, grant management and legal and planning services provided by the applicant (or its contractor(s)) that are necessary for project implementation after a project is awarded.

A landowner may help satisfy all or part of the required local match through a full or partial donation of the value of development rights for his or her property. A bargain sale of development rights occurs when the landowner accepts a purchase price of less than the full appraised value of a conservation easement. A landowner may also choose to cover the

expense of any of the direct cost items (e.g., appraisal, title report, legal survey, etc.) of the conservation easement transaction. Those landowner costs would be considered as part of the total donation made by the landowner since they would not be reimbursed by the State funds awarded to that project. **A landowner making a donation toward the local match requirement must acknowledge a willingness to do so in the Form A portion of the proposal** submitted to the Department for funding consideration. A commitment letter from each participating landowner must also be included as an attachment to the Form A portion of the proposal.

If a full donation of development rights occurs on one or more properties comprising the farm operation, each could be considered a “match” property such that the value of the fully donated development rights could serve as the local match requirement for the request for state funds for that particular proposal. The closing date for each donated conservation easement transaction must occur within the timeframe of the contract period and each must occur before the closing date of all other conservation easement transactions associated with the farm described in the proposal. If not, the value of the fully donated development rights will not be eligible as local match.

### **Eligible Costs**

This program is intended to implement activities identified in or consistent with approved county agricultural and farmland protection plans or in municipal farmland protection plans where the proposed activity has been approved by the county agricultural and farmland protection board.

Eligible costs include the value of the development rights being purchased (if any) and transactional costs acceptable to the Department such as title insurance, property surveys, appraisals, outside legal fees, outside easement consulting fees, and easement recording fees. However, the **State shall not contribute toward that portion of the purchase price of development rights that exceeds \$29,000/acre for any conservation easement-based farmland protection implementation project.** A stewardship fee of up to \$10,000 per conservation easement may also be included in the transactional costs of each project receiving an award. No state funds will be made available for state or local real estate transfer taxes or for personal services of the applicant’s existing staff. The Department will allow in-kind services as part of the 25% local match (see Match Requirements).

## **PROPOSAL FORMAT**

All proposals involving conservation easements should utilize Forms A and B described below. Proposals that do not involve conservation easements must contain a project summary, plan of work, budget and list of key personnel.

Please provide only the materials requested within this RFP. Photographs (or copies of photographs) of any agricultural lands proposed for protection may be provided, but are not required.

### **Form A- Application Information**

Use Form A to provide the information requested about the subject properties comprising the farm described in each proposal submitted for funding consideration. **Please be sure to provide all the information requested.** Failure to do so may result in disqualification of a particular property and/or a lower overall score for the proposal. Department staff will conduct visual surveys of each property comprising the farm that has not been disqualified from funding consideration to verify that the information in the application is accurate. Discrepancies between the facts discerned during the visual survey and those contained in the application may result in disqualification from funding consideration of that proposal.

### **Form B- Budget Information**

**You MUST submit one Form B.1-Budget Summary** to represent the budgetary information for the entire proposal being submitted for funding consideration. In addition, **you MUST also submit one Component Budget for each property comprising the farm described in your proposal.**

**For properties whose value of development rights are less than or equal to \$29,000 per acre, you MUST submit one Form B.2-Component Budget for each such property comprising the subject farm** contained in the proposal.

**For property whose value of development rights exceed \$29,000 per acre, you MUST submit one Form B.3-Component Budget for each such property comprising the subject farm** contained in the proposal.

**Please use the attached “Application Checklist” to ensure that all required forms and supporting information is contained in the proposal** that is submitted for funding consideration.

## **FUNDING PRIORITIES**

The Commissioner shall give priority to proposals that:

- a) will preserve viable agricultural land (defined as “land highly suitable for agricultural production and which will continue to be economically feasible for such use if real property taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of non-agricultural development”);
- b) are located in areas facing significant development pressure; and
- c) serve as a buffer for a significant natural public resource containing important ecosystem or habitat characteristics.

Consideration will also be given to:

- a) long-term potential for the agricultural land described in the proposal to remain in viable agricultural production (i.e., factors beyond the scope of the subject property(ies) – e.g., extent to which property is bordered by or proximate to other

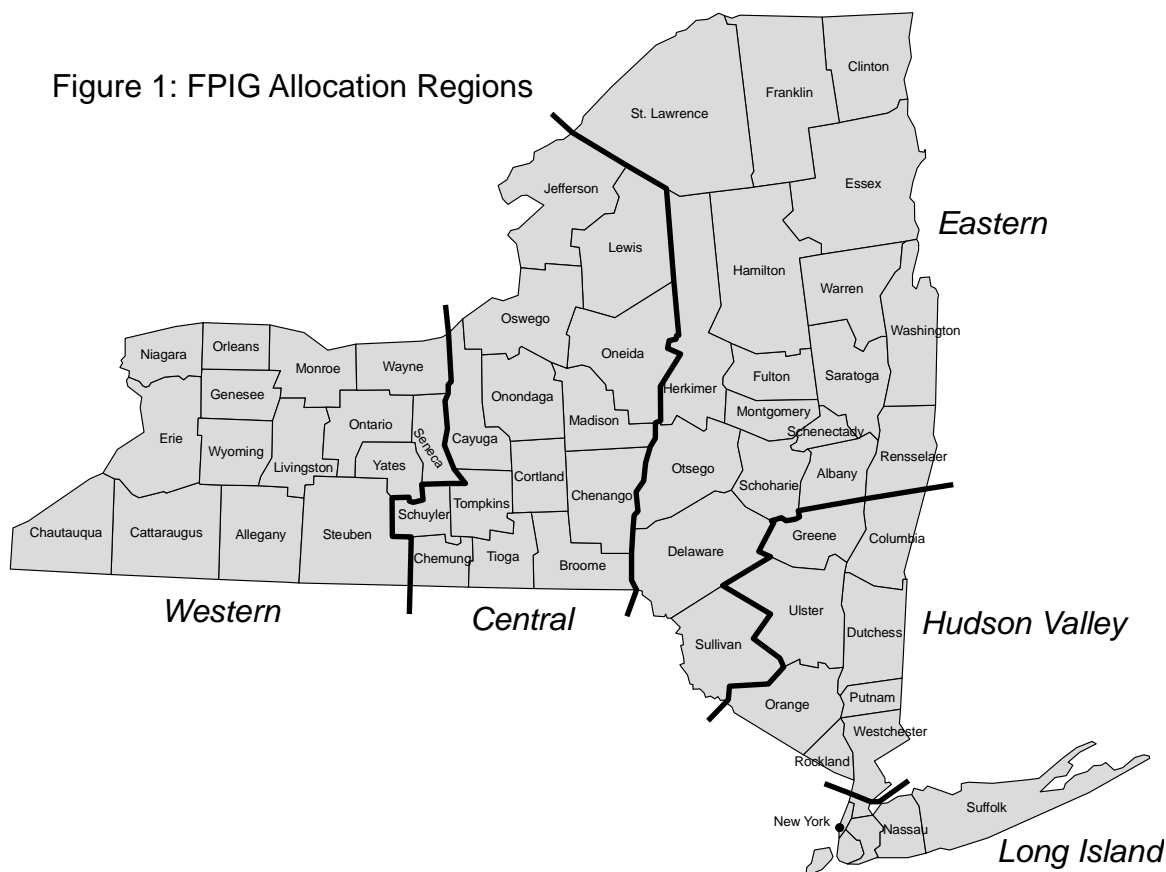
- protected farms or farms which may likely be protected in future, proximity to markets and processors, proximity to vendors providing supplies and services to the subject farm);
- b) the cost of the proposal in relation to the acreage to be protected; and
  - c) the level of commitment for farmland protection demonstrated by the local project partners identified in the proposal.

The Technical Rating Form that will be used to score eligible proposals, which includes the rating criteria and relative weights, is posted in the “Funding Opportunities” section of the Department’s website ([www.agmkt.state.ny.us](http://www.agmkt.state.ny.us)).

### REGIONAL ALLOCATIONS

Five regions (see Figure 1 below) shall each be allocated an equal share of the available funds designated by the Department for farmland protection implementation activities. Eligible proposals shall have a competitive opportunity to be awarded funding within each designated region. Any portion of any regional allocation that is not awarded shall be awarded to other eligible proposals as described below.

Figure 1: FPIG Allocation Regions



## **AWARDS**

All eligible proposals will be scored according to the stated criteria and funding priorities, and ranked in order of overall score from highest to lowest. For each region, awards will be made to those proposals receiving the highest numerical scores above the threshold score and continuing until available funds for that region are exhausted, or until all such proposals for that region are funded, whichever occurs first. However, no single county (except Suffolk County) as a geographic portion of any region (i.e., any county plus all towns within said county) shall receive more than 10% of the total statewide amount of funding available for awards. A list of all remaining unfunded eligible proposals from all regions that have scored above the threshold score shall then be compiled, except for all of those proposals within any county where 10% of the total statewide amount of available funding has already been awarded. Any portion of any regional allocation that has not been awarded shall then be used to award each successive eligible proposal from the compiled list beginning with the highest numerical score and continuing until remaining available funds are exhausted or until all such proposals are funded, whichever occurs first. In the event that two or more proposals have the same score and there are not enough available funds remaining to fully fund all of those proposals, the remaining funds shall be divided equally among the proposals provided that the amount awarded shall not exceed the amount requested in any given proposal. If any of those awardees decline to accept the award amount offered, those funds shall be allocated to the contingency fund described on page 9 of this RFP.

## **CONTRACT TERMS**

A contract defining all terms and conditions and responsibilities of the municipality will be developed by the Department subsequent to the awarding of funds. The contract duration will be approximately two years. The contract will incorporate portions of the municipality's final proposal among its provisions. Upon agreement by the municipality 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.

### **APPENDIX A (Standard Clauses for All State Contracts)**

Appendix A, which is posted on the Department's website at [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us), contains standard clauses that are required in all State contracts. Appendix A will be a part of any contract awarded under the Agricultural and Farmland Protection Program, and successful applicants will be responsible for complying with the terms and conditions contained therein.

### **APPENDIX D (General Conditions)**

Appendix D, which is included in the Contract Template posted on the Department's website at [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us), contains general conditions for all contracts awarded under this grant program. Appendix D will be a part of any contract awarded under the Agricultural and Farmland Protection Program, and successful applicants will be responsible for complying with the terms and conditions contained therein.

### **Partial Payments**

*Advance Payment.* Upon approval of a contract associated with an award for projects involving conservation easements, the municipality may request an advance payment on each project funded under that contract. Such request may equal up to twenty-five percent (25%) of

the total amount of the following transactional costs, as set forth in a project budget for each such project:

- title search (*i.e.* title report);
- legal survey;
- appraisal;
- environmental assessment of the subject property(ies), if deemed necessary;
- outside easement expertise; and/or
- outside legal expertise.

*Partial Disbursement.* In lieu of receiving an advance payment as set forth above, the municipality may request a partial disbursement of any or all of the transactional costs identified above that have been incurred by any project partner, other than the participating landowner(s), during the course of completion of the project(s) funded under such a contract.

Any partial disbursement request must be accompanied by the following supporting documents:

1. a Standard Voucher requesting payment for up to 75% of the allowable costs incurred;
2. a project budget identifying the transactional costs identified above that have been incurred; and
3. invoice(s) or paid receipt(s) for services that have been received.

No municipality shall receive an advance payment as well as a partial disbursement of costs incurred for the same project. The Department will only allow one partial payment per project.

### **Documents Required Prior to Final Disbursement of Funds**

For projects involving conservation easements, the contract also will specify information acceptable to the Department which must be provided by the municipality in order to obtain final payment, including but not necessarily limited to:

1. a fully executed purchase agreement (even if development rights will be fully donated);
2. a project budget to represent the actual total costs of the farmland protection implementation project as well as the local matching contribution and the state funding requested;
3. a title insurance commitment for a policy to insure the conservation easement interest indicating an amount of coverage at least equal to the State's financial contribution toward the total project costs of the conservation easement transaction for the subject farm – provided that all title curatives required by the Department have been previously approved by the Department prior to disbursement of the State's financial contribution;
4. an appraisal by a New York State Certified General Real Estate Appraiser;
5. a legal survey and corresponding legal description, which have been prepared by a licensed surveyor, of the proposed conservation easement area for the subject farm and which delineates each farmstead area;
6. an approved conservation easement or deed of development rights;
7. a draft baseline documentation report of the proposed conservation easement area for the subject farm, which describes the condition of the property at the time when the conservation easement is conveyed;



8. a monitoring plan;
9. any agreement between the municipality and another to hold or maintain the interest in the real property, if applicable; and
10. a signed waiver, if applicable, pursuant to Section 305(4)\* of the Agriculture and Markets Law.

*\*Section 305(4) of the Agriculture and Markets Law requires any state agency, public benefit corporation or local government which intends to acquire land or any interest therein within a state certified agricultural district in excess of one acre on an actively operated farm or in excess of ten acres within an agricultural district to file a Preliminary and Final Notice of Intent with the Commissioner of Agriculture and Markets and with the County Agricultural and Farmland Protection Board. However, Section 305(4)(d) of the Law allows a project sponsor to file an executed waiver in lieu of a Preliminary and Final Notice of Intent.*

### **Contingency Fund**

In addition to the funds that are initially awarded under this RFP, the Department will set aside five percent (5%) of the state appropriation for a contingency fund to allow up to twenty percent (20%) in additional funding for unanticipated project cost increases. Subject to the 20% cap on additional funding, the applicant must provide a match for the total unanticipated project cost increases that is at least equal to the same percentage of match that was committed in the contract budget. Contingency funds will be made available to successful applicants on a first come, first served basis based on the following criteria: justification of need for supplemental funding; likely adverse consequences to project if supplemental funding is not provided; documentation of additional costs supporting a request for funding; and likelihood that the project will be successfully completed if funding is provided. There will be no additional state monies available for cost increases once the contingency funds are exhausted. *Requests for contingency funds should not be included in the initial proposal; successful applicants may only apply for these funds after a contract is in place.*

### **Closing Requirements**

Final payment of grant funds will be disbursed only after all necessary documentation is provided to and approved by the Department and the Comptroller. **Consequently, the award recipient should make sure that all documentation is submitted to and accepted by the Department prior to scheduling a closing.** Further, award recipients should be aware that the contract stipulates the following regarding "Payment" –

"Payment to the **Contractor** under this Agreement shall not be made unless the Contractor shall have submitted to the **Department** a written payment request together with such information as required by the Agreement. Payment shall not be due until the 60th calendar day after receipt of the payment request, where contract funds have been appropriated and made available to the **Department.**"

**Under no circumstances, without the Department's prior written approval, shall any applicant request a disbursement for a project whose associated conservation easement has already been conveyed (i.e., the easement document has been fully executed, whether or not it has been recorded).**

**Any award recipient whose proposal includes (as part of its local match contribution) the full donation of the value of development rights on one or more properties comprising the farm operation must close on each such donated conservation**

**easement transaction *BEFORE* submitting any request for final disbursement to the Department.**

### **Reporting Requirements**

The Department of Agriculture and Markets will monitor contract performance. The Department reserves the right to determine the extent of reporting requirements.

A final report (i.e., a **post-closing project file**) will be required within ninety (90) days following completion of the project.

The award recipient shall provide to the Department a copy of each of the following documents:

1. closing statement for each conservation easement transaction;
2. all closing checks associated with each conservation easement transaction;
3. final title insurance policy issued for each conservation easement;
4. any subordination agreements and any mortgage discharge statements that were required by the Department for each conservation easement;
5. fully executed stewardship agreement and any other agreement between applicant and easement holder if not the same entity (if applicable);
6. recorded conservation easement (or deed of development rights, or equivalent document);
7. final baseline documentation report (including all attachments thereto and as signed by landowner) for each conservation easement;
8. Combined Real Estate Transfer Tax Return (form TP-584) as filed for each conservation easement;
9. easement holder's letter as submitted to the NYS Department of Environmental Conservation so as to file each conservation easement pursuant to Section 49-0305(4) of the Environmental Conservation Law;
10. statement of any problems encountered during the contract period which may have affected the completion of the plan of work; and
11. letter from easement holder to the Department indicating the approximate date(s) of the first monitoring site visit for each conservation easement.

For the duration of the term of each conservation easement receiving State funding under this RFP, the applicant shall provide a copy of the easement holder's annual monitoring report.

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.

### **LIABILITY**

The Department shall not be held liable for any costs incurred by any entity 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.

### **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;
- 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;
- negotiate the terms of any easement proposed by the applicant so as to ensure that each easement contains key provisions that are consistent with and relevant to the agricultural and farmland protection policies of the State; and
- make all final decisions with respect to the amount of State funding and the timing of payments to be provided to an applicant.

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

### **FREEDOM OF INFORMATION**

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