

QUESTIONS AND ANSWERS

Round 14 Farmland Protection Implementation Grants Request For Proposals (Funding Opportunity announced March 14, 2016)

PLEASE NOTE: This supplemented version of the final Questions and Answers for Round 14 FPIG-RFP contains two items: (1) errata regarding the Financial Worksheet, which has resulted in a corrected version of the Financial Worksheet for your use in submitting a proposal; and (2) a new question and answer regarding project eligibility when a letter of endorsement is required from a municipality.

Supplemental Item #1: As the first applicants began preparing the Performance Based Budget, two errors were discovered in the Financial Worksheet. You must now download the corrected version from the Department's "Funding Opportunities" web page from [this link](#). (Before doing so, please clear your web browser history on your computer to ensure that you are directed to the corrected file.) We are unable to replace the original version of this document in Grants Gateway. We apologize for any confusion and inconvenience to you.

Errata:

Please note that the new version of the Financial Worksheet contains a correction in cell H81 of the "Instructions for Attachment B-2" tab:

- cell H81 now contains a formula, =Sum(J79:J80)

Please note that the new version of the Financial Worksheet contains a correction in cell H87 of the "Instructions for Attachment B-2" tab:

- cell H87 now contains a formula, =Sum(J85:J86)

Supplemental Item #2: Question #17 –

17.Q: In this excerpt from the RFP (pages 4-5), would a letter of endorsement from the municipality (e.g., a town) in which the proposed project was entirely located be sufficient?

(3) any not-for-profit conservation organization that will assist a county or municipality to implement a county or municipal agricultural and farmland protection plan approved by the commissioner, provided the proposed project is endorsed for funding in a letter provided by the county agricultural and farmland protection board for the county in which the proposed project is located and the proposed project must also be endorsed for funding in a letter provided by the municipality in which the proposed project is located;

A: Yes.

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PLEASE NOTE: During the recent webinars, the following errors were discovered in the webinar presentation (posted on the Department's web site on its "Funding Opportunities" page). We apologize for any confusion and inconvenience to you.

Errata:

- (1) **Webinar presentation page 11** = Unfortunately, the following links do not work:
- Grants Gateway Proposal Submission Instructions; use [this link](#) instead.
 - Sample Proposal (Excerpt 1); use [this link](#) instead.
 - Sample Proposal (Excerpt 2); use [this link](#) instead.
 - Sample Proposal (Excerpt 3); use [this link](#) instead.
- (2) **Request For Proposals (page 11)** = Unfortunately, the following links do not work:
- 2016 Model Agricultural Conservation Easement; use [this link](#) instead.
 - 2016 Required Easement Provisions; use [this link](#) instead.

The following questions were submitted to the Department of Agriculture and Markets regarding this Request For Proposals (RFP) for Round 14 Farmland Protection Implementation Grants. Each question appears as it was submitted in the order each was received.

Each question is answered below.

- 1. Q:** (Program Specific Question #13g) Our farmers market is coordinated by the Chamber of Commerce, however, it is held in a village owned park and the village supports this by not charging a fee for use of the park. Would this count as the municipality "hosting" a farmers market?

A: Yes, provided that you submit documentation obtained from that village that substantiates that the village does indeed own the land on which the farmers' market is conducted.
- 2. Q:** (Program Specific Question #13l) Would Madison County Open Farm Day be considered an agri-business expo? This annual event welcomes the public to visit local farms and 17 of the 32 farms included in the program are in our area.

A: No.
- 3. Q:** (Program Specific Questions 13i and 13k) Regarding attendance at various trainings, would either of the following individuals be considered "an elected or appointed official representing the applicant or a project partner entity" – (a) Town councilmember, or (b) staff of a not-for-profit community based organization?

A: (a) Yes.

(b) No.

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4. **Q:** (Program Specific Question 18) As a member of the County Ag & Farmland Protection Board and also as a staff of the applicant entity, is it a conflict of interest for me to give a presentation and answer questions about the proposed application as long as I leave the room during the Board's discussion and abstain from voting?

A: Yes. Your presentation may influence the vote (whether or not to endorse the application) of the AFPB; thus, it is indeed a conflict of interest and you should recuse yourself from the entire discussion regarding that application. Please be sure to have the minutes of that meeting reflect your recusal.

5. **Q:** (Program Specific Question 1b, part 2) The Town where the farm is located went through their pre-application process in March 2015 and at that time the Town Board voted and passed a resolution supporting the submission of the application by the Land Trust. Therefore, the Board resolution predates the Round 14 FPIG-RFP announcement. Can that resolution be used in the application to demonstrate support from the Town where the farm is located or does the Town Board need to pass another resolution that is dated after Round 14's RFP announcement date?

A: The letter dated March 2015 is unacceptable for use to document that Town Board's endorsement of that application in response to the Round 14 FPIG-RFP. If the land trust intends to submit a proposal regarding that same farm, the land trust must obtain a current letter of endorsement from that Town Board (i.e., a letter dated after the announcement of the availability of the Round 14 FPIG-RFP).

6. **Q:** (Program Specific Question f) The current landowner is a Church. The property is farmed and the Church is presently in the process of selling the property. I have reviewed the RFP and do not find anything regarding whether or not the Church ownership impacts the landowner eligibility.

A: The only stipulation regarding "ownership eligibility" pertinent to the Round 14 FPIG-RFP pertains to publicly owned land; such land is not eligible (refer to the last sentence at the bottom of page 5 of the RFP). Since a church is not a public body, its ownership of the subject property for your proposal is acceptable provided that the subject property is not already encumbered by a conservation easement.

7. **Q:** I am aware that in the past substitution of parcels after grant award were not allowed. Please confirm that this is the same for Round 14.

A: Confirmed. The Department awards the property described in the awarded proposal; no substitution of subject property(ies) or other "change in scope" of the project is ever deemed acceptable.

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8. **Q:** Some transaction costs (for example appraisal) have already been expended and additional expenditures (for example survey) may be expended prior to the State grant award notification. (a) If costs have already been incurred, and we do not intend to request State contribution for this cost, should we show the actual cost under "Estimated Costs" and show the Town paying all with a \$0 under the State Contribution applicable line? (b) If we expect to proceed with a line item (for example survey) prior to any State grant award in order to expedite the project, with no expectation of State contribution, should we show the estimated cost under "Estimated Costs" and show the Town paying all with a \$0 under the State Contribution applicable line? (c) If we do not ask for State Contribution toward these and similar transaction costs, do we lose points or are there any negative consequences for not requesting State contribution for transaction costs?

A: (a) No. Any costs incurred prior to the date of award notification for Round 14 FPIG-RFP, which is anticipated by mid-September 2016, shall be deemed ineligible. No such costs should be reflected on the Financial Worksheet and, therefore, no such costs shall be reflected on the Performance Based Budget (Attachment B-2 to the Master Contract). Please refer to "Ineligible Project Costs" at the top of page 8 of the RFP.

(b) No. See (a) immediately above.

(c) The answer to your question will be individually determined by the score that each reviewer assigns to your proposal.

9. **Q:** On page 27 of the RFP (Section 5) concerning land trusts that have a single fund for legal defense and easement stewardship, is it permissible to submit (a) a copy of an organization's Terrafirma conservation defense insurance policy along with the most recent audited financial statement for Terrafirma as supporting documentation for bonus question #17a and (b) the dated financial statement of the joint legal defense and easement stewardship fund as supporting documentation for bonus question #17b?

A: (a) No. If you were to submit the documents you describe in (a) above, you would receive no bonus points for Program Specific Question 17a because none of those documents are being requested for #17a.

(b) Yes. However, if you were to submit the dated financial statement of a joint fund in response to both #17a and #17b, you would receive points for only one response, not both, since it is a joint account and not separate accounts.

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10.Q: Under Section V: Detailed Specifications and Deliverables of the Funding Agreement, Subsection C: Project Costs, if a land trust is a co-applicant, but not the lead applicant, is the conservation easement legal defense liability insurance premium an eligible cost?

A: Yes. However, you have referenced pages 7-8 of the RFP. The RFP makes no reference to any particular type of applicant entity – land trust or otherwise. Accordingly, if your project will obtain conservation easement legal defense liability insurance, then that is an eligible cost for your proposed project. However, to obtain a reimbursement of any such expense, you will need to provide a copy of said policy for each conservation easement comprising your project and include that documentation as part of your final report as described on pages 16-17 of Attachment A-1 to the Master Contract (which is illustrated by a SAMPLE in Appendix F of the RFP).

11.Q: We are working with a landowner whose fields and farm structures are rented by an adjacent farm operation. If the landowner decides to not include his house and yard in the conservation easement, does the house and yard need to be subdivided prior to the conservation easement being put in place? The thought is that not now, but in the future, the fields would be sold to the adjacent farm operation or another nearby farm operation.

A: If the landowner of the subject property (the portion offered as the easement area) also owns the house and yard (the portion to be excluded from the project) at the time that the proposal is submitted, the house and yard must be identified as an exclusion on the site plan, and, each exclusion is expected to be buffered from the easement area by landscape feature(s). If your project is awarded and its site plan is deemed unacceptable as a result of the preliminary review of this project, the Department may terminate the funding agreement and withdraw the State award (please refer to page 12 of the RFP).

12.Q: On page 7, the RFP lists “easement stewardship fee; and conservation easement defense liability insurance.” Can you please clarify how a land trust can allot its legal liability defense insurance costs (i.e. can a land trust place those costs into its legal defense endowment, or shared stewardship and legal defense fund)?

A: Easement stewardship fee is typically a fee collected by the grantee that is managed in a financial account such that the interest earned is used by the grantee to offset its annual monitoring expenses. The fee collected for deposit into that account is an “eligible cost” under this RFP. If the grantee will obtain a conservation easement defense liability insurance policy for each conservation easement comprising the proposed project, the insurance policy premium paid per conservation easement is an “eligible cost” under this RFP. Each of these

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eligible costs are separate and apart from the other. Thus, it is possible that a proposed project could reflect both as eligible costs.

13.Q: On page 8, the RFP describes ineligible costs to include “Option to Purchase at Agricultural Value (OPAV) or Preemptive Purchase Right (PPR) or Right of First Refusal (RFR) or similar provision contained in any document (e.g., purchase agreement, conservation easement, etc.) associated with any project awarded through this RFP.” Can you please clarify if these additional measures must be recorded in a separate document, or if they can be placed within a project’s conservation easement?

A: You are allowed to integrate this type of arrangement into any document involved with your project, EXCEPT that you are prohibited from incorporating a provision into the Department’s Agricultural Conservation Easement if you request the 87.5% State cost-share option for your project.

14.Q: We are getting questions about whether solar “farms” are allowed by agricultural conservation easements. (a) Are solar arrays considered impervious surfacing? (b) Would large-scale solar arrays (i.e. 20 acres or more) be permitted on farmland conserved by a state funded easement? (c) Would pasturing for sheep be considered a compatible agricultural use?

A: (a) If the resulting installation of a solar array meets the definition of “impervious surface” as that term is defined in the conservation easement that will encumber the subject property on which the solar array will be installed, then the answer is “yes.” The Department’s Agricultural Conservation Easement would consider any concrete footing or slab foundation as “impervious surface” upon which the framing that supports the individual solar panels was affixed. However, it is also important to determine if this situation applies to any local laws, and, if so, how those local laws may ultimately determine what, if anything, is allowed regarding the installation of a solar array.

(b) Possibly, depending upon the content of the conservation easement that will encumber the subject property on which the solar array will be installed. The Department’s Agricultural Conservation Easement (which would be required for any project requesting an 87.5% cost-share from the State) will allow up to 2% of the Farm Area to be associated with such non-agricultural use; this areal limitation must account for any activity / use / structure directly associated with the solar array (e.g., access road, pad site on which the solar array or individual solar panels are installed, electrical meters, cross-connection(s) to the grid, etc.). However, the Department’s Agricultural Conservation Easement would accommodate the use of all or any portion of either a Farmstead Area or a Rural Enterprise Area for such an installation. Therefore, if the 2% portion of the Farm Area were to adjoin a designated Farmstead Area or designated Rural Enterprise Area, then the sum acreage of those use areas would likely accommodate the

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installation of a 20-acre solar array. However, it is also important to determine if this situation applies to any local laws, and, if so, how those local laws may ultimately determine what, if anything, is allowed regarding the installation of a solar array.

(c) The pasturing of any livestock is obviously an agricultural use and, therefore, should be allowed on the easement area, unless such pasturing were prohibited within a designated Resource Protection Area on the easement area. Whether or not any activities, including the pasturing of livestock, were allowed within the boundaries of the solar array would be determined by the company installing the solar array and the agreement it had reached with that landowner.

15.Q: In order to simplify applications and acknowledge real-world scenarios on farms, will NYSDAM reconsider how applications are submitted, allowing some flexibility to so that they can be submitted as either: a) owner-operator, b) operator lessee, c) operator of multiple properties, or d) single owner with multiple operators?

A: Thank you for your suggestion; the Department will consider your request in future grant opportunities.

However, the Request For Proposals for Round 14 FPIG has been published and, therefore, its stipulation that each proposal shall have no more than one Farm Operation associated with it will remain unchanged.

16.Q: Regarding Program Specific Question #13 (pages 25-27 of RFP), if we have less than 6 items, is there any utility to submit fewer than six in the Grants Gateway?

A: No, because you would earn no bonus points for what you had submitted.

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