3. **Selection of Labor.** No procedures or requirement shall be imposed by any state which will operate to discriminate against the employment of labor from any other state, possession or territory of the United States, in the construction of a federal-aid project. The selection of labor to be employed by the Contractor on any federal-aid project shall be of his/her own choosing.

4. **Non-Discrimination.** Employment shall be provided without regard to race, color, religion, sex, or national origin.

**102-11 FORMS.** The form of contract and bond, if given, shall be that provided by the State Department of Transportation.

**102-12 (VACANT)**

**102-13 SAMPLE FORM OF PROPOSAL TITLE SHEET**

STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF ENGINEERING

<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>F.A. PROJECT NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>COUNTY</td>
</tr>
</tbody>
</table>

ITEMIZED PROPOSAL FOR RECONSTRUCTING  
(Title of Project)

A TOTAL CONTRACT LENGTH OF KILOMETERS ROUTE NO.

TYPE OF CONSTRUCTION  
(Description of Work)

CAPITAL PROJECT IDENTIFICATION NUMBER 1234.56.789

DEPOSIT REQUIRED $6,000.00

COMPLETION DATE November 15, 1979

NOTE: The bidder is asked to use either black ink or typewriter (black ribbon) in completing the proposal form. Your cooperation is appreciated.

**102-14 SAMPLE FORM OF PROPOSAL**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Estimate Quantities</th>
<th>Items with unit bid price written in words</th>
<th>Unit bid price</th>
<th>Amount bid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Clearing and Grubbing For..................lump sum</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>201.0601 M</th>
<th>Necessary</th>
</tr>
</thead>
</table>

Total or gross sum bid written in words  

Dollars Cts.

S............. $.............
ITEMIZED PROPOSAL

To the State Department of Transportation:

In submitting this bid the undersigned declares to be the only person or persons interested in the said bid; that it is made without any connection with any person making another bid for the same contract; that the bid is in all respects fair and without collusion, fraud or mental reservation; and that no official of the State, or any person in the employ of the State is directly or indirectly interested in said bid or in the supplies or work to which it relates, or in any portion of the profits thereof.

The undersigned also hereby declares to have carefully examined the plans, specifications and form of contract, and to have personally inspected the actual location of the work together with the local sources of supply, to be satisfied as to all the quantities and conditions, and understands that in signing this proposal waives all right to plead any misunderstanding regarding the same.

The undersigned further understands and agrees to furnish and provide for the respective item price bid all the necessary material, machinery, implements, tools, labor services and other items of whatever nature, and to do and perform all the work necessary under the aforesaid conditions, to complete the improvement of the aforementioned project in accordance with the plans and specifications for said improvement, which plans and specifications it is agreed are a part of this proposal, and to accept in full compensation therefore the amount of the summation of the products of the approximate quantities multiplied by the unit prices bid. This summation will hereinafter be referred to as the gross sum bid.

The undersigned further agrees to accept the aforesaid unit bid prices as compensations for any additions or deductions caused by variation in quantities due to more accurate measurement, and for use in the computation of the value of the work performed for monthly estimates.

The undersigned further agrees that at any time during the progress of work the State adds, alters or omits portions of the work it shall so perform such work and accept compensation in accordance with the Standard Specifications.

The undersigned further understands and agrees not to start any work until the contract agreement is signed by the Commissioner or the Commissioner's duly authorized representative. In case the undersigned voluntarily undertakes to start work, other than that expressly prohibited in this Subsection, after the contract agreement is signed by the Commissioner but prior to approval by the State Comptroller, the undersigned does so entirely at its own risk and without obligation or responsibility on the part of the State unless and until the awarded contract becomes effective pursuant to Section 112 of the State Finance Law by approval of the State Comptroller and filing in the office of the State Comptroller; and hereby agrees and warrants that, as a prerequisite to the start of any such voluntary work, accepts, assumes and undertakes all of the provisions of this proposal and of the plans and specifications of the proposed contract, including all of the provisions and responsibilities thereof relative to (1) damage, indemnification and holding the State harmless as set forth in said contract documents, and (2) actually furnishing in advance of any contract operations, the required insurance policies of each and every kind and amount as called for in said contract documents, particularly with relation to workers' compensation and liability insurance policies as set forth in the related specifications; and also agrees and warrants that all of such policies will be in force and effect on the date of the start of any such contract operations, whether or not the contract documents have been executed and filed as aforesaid. In no event shall the undersigned start any contract work which involves a disturbance of the contract site prior to execution of the contract by the Comptroller.

Accompanying this proposal is a certified check, bank cashier's check, or Bid Bond on prescribed form, for the specified amount of Deposit Required in case this proposal shall be accepted by the State Department of Transportation, and the undersigned shall fail to execute the contract and in all respects comply with the provisions of 38 of the Highway Law, as amended, the moneys represented by such certified check, bank cashier's check, or Bid Bond shall be regarded as liquidated damages and shall be forfeited and become the property of the State of New York; otherwise to be returned to the depositor in accordance with the provisions of said 38 of the Highway Law, as amended.
On acceptance of this proposal for said work the undersigned is hereby bound to enter into written contract, within ten days of date of notice of award with the said State Department of Transportation, and to comply in all respects with subdivision 6 of 38 of the Highway Law, as amended, in relation to security for the faithful performance of the terms of said contract.

NON-COLLUSIVE BIDDING CERTIFICATION  
(Required by Section 139-d of the State Finance Law)

Section 139-d Statement of non-collusion of bids to the state.

1. Every bid hereafter made to the State or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purposes of restricting competition;

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with, provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his/her designee determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

REQUIRED FOR ALL FEDERAL-AID PROJECTS PURSUANT TO SECTION 112(c) OF TITLE 23 U.S. CODE. HIGHWAYS. That the Contractor to whom the above identified contract is to be awarded does hereby tender to the New York State Department of Transportation this sworn
§102-14

statement pursuant to Section 112(c) of Title 23 U.S. Code, Highways and does hereby certify, in conformance with said Section 112(c) of Title 23 U.S. Code, Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above identified contract.

BY EXECUTING THIS PROPOSAL, THE CONTRACTOR AGREES TO:
1) perform all work listed in accordance with the Contract Documents at the unit prices bid; subject to the provisions of §109-16, if applicable.
2) all the terms and conditions of the non-collusive bidding certifications required by Section 139D of the State Finance Law;
3) certification of Specialty Items category selected, if contained in this proposal
4) certification of any other clauses required by this proposal and contained herein.
5) certification, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by 49 Code of Federal Regulations, Part 29.

Date ....................... 19........

Legal name of individual, partnership or corporation

By ........................................
Signature (Title)

Please Complete Information Requested Below:

The P.O. address of the bidder is:
........................................ Street
........................................ City and State

Federal Identification No. ......................

If a Corporation

Name ........................................ Address
 ........................................ President
 ........................................ Secretary
 ........................................ Treasurer

If a Partnership

Name ........................................ Address
 ........................................
 ........................................
 ........................................
§102-16

102-15 (VACANT)

102-16 SAMPLE FORM OF LABOR RATES

STATE OF NEW YORK
DEPARTMENT OF LABOR
BUREAU OF PUBLIC WORK
STATE OFFICE BUILDING CAMPUS
ALBANY, NY 12240

Schedule Type - Complete 6B
Date: 04/04/89
Refer to:
PREVAILING RATE CASE NO.

NYSDOT
PRC 8902505 NASSAU

COUNTY

to:

NYSDOT-Bldg. 5
State Campus
Albany

Location and Type of Project
D252911 05138.00
Telemetry Traffic Monitor
Rts. 25; 27, 112 & 110
Nassau/Suffolk Cos.

In response to your request, enclosed are schedules of the prevailing hourly wage rates and the prevailiing hourly supplements for the above project, together with copies of the Notice of Contract Let IPW-16) for your use. The schedules must be annexed to and form a part of the specifications for this project when it is advertised for bids. These schedules have been prepared and forwarded in accordance with Section 220 of the Labor Law, which provides that it shall be the duty of the fiscal officer to ascertain and determine the schedules of supplements to be provided and wages to be paid to workers, laborers and mechanics employed on public work projects, and to file such schedules with the department having jurisdiction.

The attached rates are based on the latest information available to the Department of Labor, Bureau of Public Work. Care should be taken to review the rates for obvious errors. It is the responsibility of the Public Work contractor to use the proper rate. Any corrections should be brought to the Department's attention immediately.

This schedule is applicable only from July 1, 1988, through June 30, 1989, unless otherwise noted. If your project goes beyond the period covered by this determination, a new determination should be requested when this schedule expires. Note: A 1983 AMENDMENT TO SECTION 220 OF THE LABOR LAW REQUIRES THE PRESERVATION OF ORIGINAL OR TRANSCRIPTS OF PAYROLL RECORDS FOR THREE YEARS FROM THE DATE OF COMPLETION OF THE WORK IN THE AWARDED CONTRACT.

Very truly yours,

DIRECTOR

NOTICE TO CONTRACTING AGENCIES:
Upon cancellation or completion of
this project, enter the necessary
information and return this page to
§102-16

the ALBANY OFFICE of the BUREAU at
the address listed below:

PROJECT HAS BEEN:

Date Completed__________
Date Canceled__________
Date Postponed Until__________
Signature____________________
Title____________________
Contracting Agency____________________

For Additional Information, contact the following District Offices:

State Office Bldg. #12 Campus, Albany N.Y. 12240 65 Court St., Buffalo, N.Y. 14202
155 Main Street West Rochester, N.Y. ;4614 221 Washington St., Binghamton, N.Y. 13901
175 Fulton Ave., Hempstead, N.Y. 11550 333 East Washington St., Syracuse, N.Y.13202
207 Genesee St., Utica. N.Y. 13501 30 Glenn St., White Plains, N.Y. 10603
PW-200 (6/85) docm: letteria

SPECIAL NOTE: Labor classifications not appearing on this rate sheet can be used only with the consent of the Commissioner of Transportation and then the rate to be paid will be given by the Commissioner of Transportation after advising with the State Department of Labor.

WAGE SCHEDULE INSTRUCTION SHEET

This Schedule is to be attached to the Contract. It is hereby agreed by the parties to the contract to which this Schedule is attached that all laborers, workmen and mechanics employed on the work done in performance of said contract shall be paid not less than the rate of wages listed hereon for the trade or occupation of such laborer, workmen or mechanic, and also provided with each supplement list on this Schedule for such trade or occupation at not less than the amount so listed.

Section 220-b of the New York State Labor Law disqualifies a Contractor from being awarded a contract on any State or municipal contract for 5 years after a determination of willful failure to pay prevailing wages or supplements on two occasions within any six year period.

Applicability of Schedule: The attached Schedule is to be used on the public work project whose PRC number appears on the Schedule, and supersedes any Schedule of rates previously issued for this project. These wage rates and supplemental benefits are subject to change, and you will be periodically notified of all such changes. The wage rates and supplement benefits to be paid should always be those prevailing at the time the work is being performed.

Locations Where Applicable: Contractors should read down the list of locations for a relevant occupation until they reach a geographical area (whether a village, town, county or group of counties) which includes the area where the work is being performed. The rates appearing on that line will be the rates that apply to the project.
Supplemental Benefits Legend:

A. Health & Welfare (includes hospital, surgical or medical insurance or benefits, life insurance or death benefits, accidental death or dismemberment insurance).
B. Pension
C. Supplemental Unemployment Benefit
D. Scholarship Fund
E. Paid Holidays
F. Education
G. Vacation
H. Apprentice Training
I. Annuity Fund
J. Benefit Fund
K. Security Savings Fund
L. Holiday Pay
M. Other (See below)

102-17 SAMPLE FORM OF AGREEMENT

STATE OF NEW YORK

DEPARTMENT OF TRANSPORTATION

AGREEMENT

Contract No.

County

THIS AGREEMENT, entered into this ___ day of _______________ 19 ___, by THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as “STATE”, acting by and through the Department of Transportation, pursuant to the Highway Law, and

☐ a corporation organized and existing under the laws of the State of

☐ a partnership, consisting of

☐ an individual conducting business as

the location of whose principal office is

hereinafter called the “CONTRACTOR”.

WITNESSETH: That the State and the Contractor, for the consideration hereinafter named agree as follows:

ARTICLE 1. WORK TO BE DONE. The Contractor shall (a) furnish all the materials, appliances, tools and labor of every kind required, and construct and complete in the most substantial and skillful manner, the construction, improvement or reconstruction of the project on or before the completion date of the ___ day of ________, 19 ___ as further described in Article 4, and as generally identified and shown on the plans entitled:

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
STANDARD SPECIFICATIONS of January 2, 2002

1-25
in accordance with the "Standard Specifications" of the New York State Department of Transportation, which contain the information for bidders; form of proposal, agreement, and bonds; general specifications and conditions or contract; materials of construction; and payment Items; and (b) do everything required by the Contract (Contract Documents) as defined herein.

The Contractor further agrees their bid proposal is not based upon the assumption that any specifications, traffic restrictions, scheduling or phasing/staging requirements will be waived; an extension of Contract Completion Date will be granted; a labor dispensation will be granted; substitution of non-approved products, alternatives or claimed functional equivalents for Specified Construction Materials and Methods will be allowed; or any Value Engineering Proposals will be approved by the New York State Department of Transportation.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT. The Contract (and Contract Documents) shall be deemed to include the advertisement for proposals; the contractor’s proposal; the Schedule for Participation By Disadvantaged Business Enterprise Participation goals; the agreement; the "Standard Specifications" including all addenda thereto referred to above; the plans; any addenda and/or amendments to specifications if the same are issued prior to the date of receipt of proposal, and all provisions required by law to be inserted in the contract whether actually inserted or not. Appendix A, standard clauses for all N.Y. State contracts, is attached hereto and is hereby made a part of this agreement as if set forth fully herein.

ARTICLE 3. EXAMINATION OF DOCUMENTS AND SITE. The Contractor agrees that before making its proposal it carefully examined the contract documents, together with the site of the proposed work, as well as its surrounding territory, and is informed regarding all of the conditions affecting the work to be done and labor and materials to be furnished for the completion of this contract, including the existence of poles, wires, pipes and other facilities and structures of municipal and other public service corporations on, over or under the site, except latent conditions that meet the requirements of §109-16, and that its information was secured by personal and other investigation and research.

ARTICLE 4. DATE OF COMPLETION. The Contractor further agrees that it will begin the work herein embraced within ten days of the effective date hereof, unless the consent of the State, in writing, is given to begin at a later date, and that it will prosecute the same so that it shall be entirely completed and performed on or before the completion date shown in Article 1.

No extension beyond the date of completion fixed by the terms of this contract shall be effective unless in writing signed by the State. Such extension shall be for such time and upon such terms and conditions as shall be fixed by the State, which may include the assessment of liquidated damages and a charge for engineering and inspection expenses actually incurred upon the work, including engineering and inspection expenses incurred upon the work by railroad companies on contracts for grade crossing elimination. Notice of application for such extension shall be filed with the Regional Director of the Region within which the highway under construction is located at least fifteen days prior to the date of completion fixed by the terms of this agreement.

ARTICLE 5. ALTERATIONS AND OMISSIONS. The said work shall be performed in accordance with the true intent and meaning of the contract documents without any further expense of any nature whatsoever to the State other than the consideration named in this agreement.

The State reserves the right, at any time during the progress of the work, to alter the plans or omit any portion of the work as it may deem reasonably necessary for the public interest-making allowances for additions and deductions with compensation made in accordance with the Standard Specifications, for this work without constituting grounds for any claim by the contractor for allowance for damages or for loss of anticipated profits, or for any variations between the approximate quantities and the quantities of the work as done.
ARTICLE 6. NO COLLUSION OR FRAUD. The Contractor hereby agrees that the only person or persons interested as principal or principals in the bid or proposal submitted by the Contractor for this contract are named therein, and that no person other than those mentioned therein has any interest in the above mentioned proposal or in securing of the award, and that this contract has been secured without any connection with any person or persons other than those named, and that the proposal is in all respects fair and was prepared and the contract was secured without collusion or fraud and that neither any officer nor employee of the State Department of Transportation has or shall have a financial interest in the performance of the contract or in the supplies, work or business to which it relates, or in any portion of the profits thereof. (See also Section 139-a and 139-b of the State Finance Law referred to in the Standard Specifications which are made a part of this contract.)

ARTICLE 7. PAYMENTS OF ESTIMATES. As the work progresses in accordance with the contract and in a manner that is satisfactory to the State, the State hereby agrees to make payments to the Contractor therefor, based upon the proposal attached hereto and made a part hereof, as follows: The State shall once in each month and on such days as it may fix, make an estimate of the quantity of work done and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Contractor the moneys due as provided in subdivision 7 of §38 of the Highway Law. No monthly estimate shall be rendered unless the value of the work done equals 5% of the contract amount or $1,000, whichever is the lesser. Semi-monthly estimates may be rendered provided (a) the value of the work performed in two successive weeks is more than $50,000 or (b) the Commissioner of Transportation deems it to be for the best interests of the State to do so. When a performance bond is approved, 5% shall be retained from each progress payment or estimate until final acceptance of the work.

ARTICLE 8. NO ESTIMATE ON CONTRACTOR’S NON-COMPLIANCE. It is further agreed that so long as any lawful or proper direction concerning the work or material given by the Commissioner of Transportation, or his/her representative, shall remain uncomplied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment, nor shall any estimate be rendered on account of work done or material furnished until such lawful or proper direction aforesaid has been fully and satisfactorily complied with.

ARTICLE 9. FINAL ACCEPTANCE OF WORK. When in the opinion of the Regional Director a Contractor has fully performed the work under the contract, the Regional Director shall recommend to the Commissioner of Transportation the acceptance of the work so completed. If the Commissioner accepts the recommendation of the Regional Director, he/she shall thereupon by letter notify the Contractor of such acceptance, and in accordance with Subdivision 7, Section 38 of the Highway Law, release up to 70% of the money held as retainage. Copies of such acceptance shall be sent to other interested parties. Prior to the final acceptance of the work by the Commissioner or his/her designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance.

Prior to the final acceptance of the work by the Commissioner or his designee, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance.

Final acceptance shall be final and conclusive except for defects not readily ascertainable by the Department, actual or constructive, fraud, gross mistakes amounting to fraud or other errors which the Contractor knew or should have known about as well as the Department’s rights under any warranty or guarantee. Final acceptance may be revoked by the Department at any time prior to the issuance of the final check by the Comptroller upon the Department’s discovery of such defects, mistakes, fraud or errors in the work.

ARTICLE 10. FINAL PAYMENT. After the final acceptance of the work, the Engineer shall prepare a final agreement of the work performed and the materials placed and shall compute the value of such work and materials under and according to the terms of the contract. This agreement shall be
§102-17

certified, as to its correctness, by the Engineer. Upon approval of such final agreement by the Regional Director, it shall be submitted to the Commissioner for final approval. The right, however, is hereby reserved to the Commissioner to reject the whole or any portion of the final agreement, should the said certificate of the Engineer be found or known to be inconsistent with the terms of the agreement or otherwise improperly given. All certificates upon which partial payments may have been made being merely estimates, shall be subject to correction in the final certificate or final agreement.

ARTICLE 11. RIGHT TO SUSPEND WORK AND CANCEL CONTRACT. It is further mutually agreed that if at any time during the prosecution of the work the Commissioner of Transportation shall determine that the work upon the contract is not being performed according to the contract or for the best interest of the State, the execution of the work by the Contractor may be temporarily suspended by the Commissioner of Transportation, who may then proceed with the work under his/her own direction in such manner as will accord with the contract specifications and be for the best interests of the State; or he/she may terminate the Contractor’s employment under the contract while it is in progress, and thereupon proceed with the work, in affirmanse of the contract, by contract negotiated or publicly let, by the use of his/her own forces, by calling upon the surety to complete the work in accordance with the plans and specifications or by a combination of any such methods; or he/she may cancel the contract and either readvertise or relet as provided in Section 38 of the Highway Law, or complete the work under its own direction in such a manner as will accord with the contract specifications and be for the interests of the State; any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the work or its surety; all in pursuance of the provisions of §40 of the Highway Law.

Whenever the State determines to suspend or stop work under the contract, a written notice sent by mail to the Contractor at its address and to the sureties at their respective addresses, shall be sufficient notice of its action in the premises.

ARTICLE 12. DETERMINATION AS TO VARIANCES. In any case of any ambiguity in the plans, specifications or maps, or between any of them, the matter must be immediately submitted to the Commissioner, who shall adjust the same, and his/her decision in relation thereto shall be final and conclusive upon the parties.

ARTICLE 13. SUCCESSORS AND ASSIGNS. This agreement shall bind the successors, assigns and representatives of the parties hereto.

ARTICLE 14. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Chapter 406 of the Laws of 1981, the Contractor hereby promises, asserts and represents that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

It is understood further that the State in awarding a contract does so in material reliance upon the promise and representation made by the Contractor in the forgoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the bid execution date, the Contractor or such owned or affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated such Acts or Regulations.

The Contractor agrees to and shall notify the Commissioner of Transportation and the Director of the Contract Management Bureau and State Expenditures in the Office of the State Comptroller of any such conviction or final determination of violation within five (5) days thereof.

IN WITNESS WHEREOF, this agreement has been executed by the State, acting by and through the
§102-17

Commissioner of Transportation, and the Contractor or its appointed representative, who has executed this agreement on the day and year first written above.

Recommended by

......................................................

Department of Transportation

......................................................

Attorney General

......................................................

(L.S.)

By......................................................

President

Approved .............................................

......................................................

For State Comptroller

THIS CONTRACT IS NOT TO BE EXECUTED OR BECOME EFFECTIVE UNTIL IT SHALL FIRST BE APPROVED BY THE STATE COMPTROLLER AND FILED IN HIS/HER OFFICE--

Section 112, State Finance Law.

(Acknowledgment by individual contractor)

STATE OF NEW YORK

ss. :

COUNTY OF.............

On this.............................................day of.............................................19....., before me personally came.............................................to me known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same.

......................................................

Notary Public

County

(Acknowledgment by co-partnership contractor)

STATE OF NEW YORK

ss. :

COUNTY OF.............

On this.............................................day of.............................................19....., before me personally came and appeared.............................................to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of............................................., consisting of himself/herself and............................................. and that he/she executed the foregoing instrument in the firm name of.............................................and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act
§102-18
and deed of said firm of................................., for the uses and purposes mentioned therein.

........................................
Notary Public

(Acknowledgment by contractor, if a corporation)
STATE OF NEW YORK

ss.:
COUNTY OF.........

On this ..................... day of .............. 19...., before me personally came
.................................................. to me known, who being duly sworn, did depose and say that he/she resides in ................................... that he/she is the .................................. of the .................................. the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

........................................
Notary Public

102-18 SAMPLE FORM OF FAITHFUL PERFORMANCE BOND
1. Know all by these presents, that we (hereinafter called the “Principal”)

................................................
of..................................................
................................................
of..................................................
................................................
of..................................................

and

................................................
of..................................................

(hereinafter called the “Surety”) are held and firmly bound unto the People of the State of New York in the full and just sum of ............. Dollars ($.............) good and lawful money of the United States of America, to the payment of which said sum of money, well and truly to be made and done the said Principal binds itself, its heirs, executors, administrators or assigns and the said SURETY binds itself, its successors or assigns, jointly and severally, firmly by these presents.

2. Signed and dated this ............. day of ............., 19....

3. Whereas, said Principal has entered into a certain written contract bearing date on the ............. day of ............., 19...., with the People of the State of New York for the construction or improvement of Public Highway

maintenance or repair

County

State Highway No. .............in the counties

county of .............

Federal Aid

New York

Now, therefore, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal shall well, truly and faithfully perform the work in accordance with the terms of the contract and said contract may be modified or amended, and with the plans and specifications, and will commence and
complete the work within the time prescribed in the contract, and shall protect the said State of
New York against, and pay any excess of cost as provided in said contract, and all amounts, damages,
costs and judgments which may be recovered against said State or its officers or agents of which the
said State of New York may be called upon to pay to any person or corporation by reason of any
damages, direct or indirect, arising or growing out of the doing of said work, or from the negligence,
nonfeasance, misfeasance or malfeasance of any officer, agent or employee of the State or Department
thereof, or suffered or claimed on account of said public works project during the time thereof or the
manner of doing the same, or the neglect of the said Principal, or its agents, or servants, or the improper
performance of the said work by the said Principal, or its agents, or servants, or from any other cause,
then this obligation shall be null and void, otherwise to remain in full force and virtue.

In the event of a failure of performance of the contract by the Principal, which shall include, but
not be limited to, any breach or default of the contract by the Principal, or in case said contract is
forfeited by the Principal in the manner provided for in the contract and the said SURETY, for value
received, hereby stipulates and agrees, if requested to do so by the State, has the option to either remedy
the default, or breach or forfeiture of the Principal or take charge and fully perform and complete the
work, mentioned and described in said contract and specifications, pursuant to the terms, conditions and
covenants thereof and as may be amended, at its own expense. The procedure by which the Surety
undertakes to discharge its obligations under the bond shall be subject to the advance written approval
of the Department. If the Surety completes the contract, it shall be paid for the actual items of work
performed in accordance with the Principal's contract terms and prices. In this event the Surety assumes
the rights and obligations of the Principal.

It shall be the duty of the SURETY to give unequivocal notice in writing to the Department, within
forty-five (45) days after receipt of written notice from the Department to the SURETY, of the
SURETY’s election to remedy default(s) or breach(es) or forfeiture(s) promptly or to perform and fully
complete the contract promptly as provided herein, time being of the essence of this bond. In said
notice of election, the Surety shall state the date on which the remedy or performance shall commence.
During the period between the Department's notice and Surety's performance of the contract or remedy
of the default, breach or forfeiture, the SURETY shall be liable for and agrees to pay any and all
reasonable and necessary costs as determined by the Department to maintain the project site safe and
convenient to the public.

It shall also be the duty of the Surety to give prompt notice in writing to the State Department of
Transportation upon the completion of the remedy and/or correction of each breach or default or
completion of the contract. The Surety shall not assert solvency of its Principal or its Principal’s denial
of default as justification for its failure to give notice of election or for its failure to promptly remedy
the breach or default or to complete the contract.

In the event the Surety shall fail to exercise either option or to act promptly then the State
Department of Transportation shall give ten (10) days notice of such failure, both to Principal and
Surety, and after the expiration of the 10 days the Department may cause the work to be completed
pursuant to §40 of the Highway Law, and the Surety and the Principal shall be jointly and severally
liable for the amount of excess cost of completing the contract work beyond the amounts remaining for
this contract adjusted for the work actually performed. When the cost of completion of performance
by the Obligee is estimated, the Principal and Surety shall pay, free from all liens and incumbrances,
the State determined estimated completion costs above the funds remaining for this contract, to the State
Department of Transportation within 30 days of receipt of the estimate. Adjustment of the Department's
estimated completion cost will be made upon the Department’s final acceptance of the work and
appropriate refunds, if any, will be promptly made to the Surety. Any actual costs in excess of the
estimated price shall be paid to State Department of Transportation promptly on demand. Additionally,
Principal and Surety shall be liable for any applicable liquidated and/or engineering costs or damages.

In addition, the said Principal and Surety further agree, as part of this obligation, to pay all damages
of any kind to person or property that may result from a failure in any respect to perform and complete

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said contract including, but not limited to costs necessary to protect the traveling public or to avoid inconvenience to the traveling public, (liquidated damages as provided above) all repair and replacement costs necessary to rectify construction errors, architectural and engineering costs and fees, all consultant fees, all testing and laboratory fees, and all interest, legal fees and litigation costs incurred by the Department.

And the said Surety thereby stipulates and agrees that no change, extension, alteration, deduction or addition in or to the terms of the said contract or the plans or specifications accompanying the same, shall in any way affect the obligations of said Surety of its bond.

Principal

Surety

By: __________________________

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

I hereby approve the foregoing contract and bond as to form and manner of execution.

Dated __________________________

Attorney General

(Acknowledgment by principal, unless it be a corporation)

STATE OF NEW YORK

ss. :

COUNTY OF ____________

On this __________________________ day of __________________________ 19__, before me personally came __________________________ to me known to be the person described in and who executed the foregoing instrument and he/she acknowledged that he/she executed the same.

Notary Public County

(Acknowledgment by principal, if a corporation)

STATE OF NEW YORK

ss. :

COUNTY OF ____________

On this __________________________ day of __________________________ 19__, before me personally came __________________________ to me known, who being by me duly sworn, did depose and say that he/she resides in __________ that he/she is the __________________________ of the __________________________ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public County
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(Acknowledgment by Surety Company)
STATE OF NEW YORK
COUNTY OF ............... ss. :

On this .................... day of .................... 19......, before me personally came
........................................... to me known, who being by me duly sworn, did depose and say that he/she resides
in ................................ that he/she is the .................... of the .................... the corporation described in and
which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the
Board of Directors of said Corporation.

...........................................
Notary Public County

(The Surety Company must append statement of its financial condition and a copy of the resolution
authorizing the execution of Bonds by officers of the Company.)

102-19 SAMPLE FORM OF LABOR AND MATERIAL BOND

Know all by these presents, that ......................... of ......................... (hereinafter called the
“Principal”) and the ........................................, a corporation created and existing under the laws of
the State of ......................... having its principal office in the City of ......................... (hereinafter called
the “SURETY”), are held and firmly bound unto the people of the State of New York (hereinafter called
the “STATE”), in the full and just sum of ......good and lawful money of the United States of America, for
payment of which said sum of money, well and truly to be made and done, the said Principal binds
itself, its heirs, executors and administrators, successors and assigns, and the said Surety binds itself,
its successors and assigns jointly and severally, firmly by these presents:

Signed and dated this ......................... 19......A.D.

WHEREAS, said PRINCIPAL has entered into a certain written contract, bearing date with the
Department of Transportation, 1220 Washington Avenue, Albany, New York 12232.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal
shall promptly pay all moneys due to all persons furnishing labor or materials to it or its subcontractors
in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise
to remain in full force and effect;

Provided, however, that the Comptroller of the State of New York having required the said
Principal to furnish this bond in order to comply with the provisions of 137 of the State Finance Law,
all rights and remedies on this bond shall inure solely to such persons and shall be determined in
accordance with the provisions, conditions and limitations of said Section to the same extent as if they
were copied at length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county in which
the said contract was to be performed, or if said contract was to be performed in more than one county
then in any such county, and not elsewhere.

IN TESTIMONY WHEREOF, the said PRINCIPAL has hereunto set his/her (their, its) hand and the
said Surety has caused this instrument to be signed by its ........................................... President
and its ........................................... Secretary, the day and year first above written.

Signed and delivered

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in the presence of

............................................
............................................
Principal
............................................
Company
Of............................................
By............................................
>Title of Officer

Attest...........................................
>Title of Officer
Surety

(Acknowledgment by principal, unless it be a corporation)
STATE OF NEW YORK
ss. :
COUNTY OF ...............  
On this ......................................... day of .................................. 19....., before me personally came ............................................. to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

............................................
Notary Public  County

(Acknowledgment by principal, if a corporation)
STATE OF NEW YORK
ss. :
COUNTY ...............  
On this ......................................... day of .................................. 19....., before me personally came ............................................. to me known, who being by me duly sworn, did depose and say that he/she resides in ............................................. that he/she is the ............................................. of the ............................................. the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

............................................
Notary Public  County

(Acknowledgment by Surety Company)
STATE OF NEW YORK
ss. :
COUNTY OF .........
On this ......................................... day of .................................. 19....., before me personally came ............................................. to me known, who being by me duly sworn, did depose and say that he/she resides....
in .........., that he/she is the ............... of the ............... the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

Notary Public      County

STATE OF NEW YORK

I hereby approve the foregoing contract and bond as to form and manner of execution.
Dated ..................................................

Attorney General

STATE OF NEW YORK

I hereby approve the foregoing contract and bond.
Dated .....................

Comptroller

102-20 SAMPLE FORM OF BID BOND

KNOW ALL BY THESE PRESENTS, That .................................................................
.........................................................................................................................
(Name of Contractor)
.........................................................................................................................
(Address)

(hereinafter called the "Principal") and the...........................

a corporation created and existing under the laws of the State of ................., having its principal office in the City of ................. (hereinafter called the "Surety"), are held and firmly bound unto
The People of the State of New York (hereinafter called the "State"), in the full just sum of Twenty-Five Percent (25%) of Attached Bid, good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said Principal binds themselves (himself/herself, itself), their (his/her, its) heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:
Signed, sealed and dated this ................................................................. 19..... A.D.

WHEREAS, the said Principal has submitted to the Commissioner of Transportation of the State of New York, a proposal for .........................................................

(Description of Project)

.........................................................................................................................

AND

WHEREAS, under the terms of the Laws of the State of New York as above indicated, the said Principal has filed or intends to file this bond to guarantee that the Principal will execute all required contract proposal documents and furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the Principal's said proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the said Principal shall promptly execute and submit, and the Commissioner of Transportation shall accept, all required
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contract proposal documents including such faithful performance bond or other bonds as may be required by law in accordance with the terms of the Principal’s said proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and seal and the said Surety has caused this instrument to be signed by its ......................... President and its ......................... Secretary, and its corporate seal to be hereunto affixed, the day and year first above written.

Signed, sealed and delivered in the presence of:

(Corporate seal of Principal if a corporation) ...........................................(L.S.)
...................................................................................(L.S.)
...................................................................................(L.S.)

Principal

(Corporate seal of Surety Co.) ...........................................Company

of ......................................................

By ......................................................

(Title of Officer)
Attest ......................................................

(Title of Officer)

(Acknowledgment by principal, unless it be a corporation)
STATE OF NEW YORK

ss:
COUNTY OF ..........................................................

On this ........ day of ........................................... 19....., before me personally came ..........................................., to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same.

.................................................................................. Notary Public

County

(Acknowledgment by principal, if a corporation)
STATE OF NEW YORK

ss:
COUNTY OF ..........................................................

On this ...... day of ...................................................19...., before me personally came ..........................................., to me known who being by me duly sworn, did depose and say that he/she resides in ..............................................; that he/she is the .................................................. of the ..............................; the corporation described in and which executed the foregoing instrument; that he/she knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.
STATE OF NEW YORK

COUNTY OF ____________________________

On this ______ day of ________________________, 19____, before me personally came ________________________, to me known, who being by me duly sworn, did depose and say that he/she resides in ____________________________; that he/she is the ____________________________ of the ____________________________; the corporation described in and which executed the within instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereeto by like order.

102-21 MINORITY / WOMEN'S BUSINESS ENTERPRISE UTILIZATION FOR NON - F.A. CONTRACTS. It is the policy of the United States and of the State of New York that Minority and Women's Business Enterprises (M/WBEs) shall have the maximum opportunity to participate in the performance of State contracts for construction. The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules and regulations cited in this section to ensure that M/WBEs have the maximum opportunity to compete for and perform contracts. The Department and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of NYSDOT contracts. This policy shall be made a part of all subcontracts and agreements entered into as a result of this contract.

New York State, to this end, has enacted Article 15-A of the Executive Law, Part 540, Subtitle N of Title 9 of the NYCRR, and Chapter 2, Title 17 of the Official Compilation of Codes, Rules, and Regulations. The parties to this contract are required to comply with these laws, rules and regulations and the following M/WBE Program requirements.

A. Eligibility of M/WBEs - Only those M/WBE firms that are certified by the New York State Department of Economic Development (NYSDED) are eligible to be used for goal attainment on this contract. M/WBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a M/WBE.

In the event that the apparent low Bidder, in good faith, proposes to use a firm that is listed as a certified M/WBE in the project proposal, and that firm is later found by the Department to be ineligible or unable to perform, then the apparent low Bidder will be required to substitute another certified firm of the kind needed to meet the goal, before award, at no additional cost to the Department.

B. Goal - The Department has established utilization goals for M/WBEs which are expressed as a percentage of the total contract price. These goals are stated in the proposal and remain in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that he/she subscribes to the utilization goals and must meet or exceed the goals or demonstrate that he/she could not meet them despite his/her best efforts. The contract goals are then considered to be a target or a minimum figure to which the Contractor commits as part of his/her bidding for a 100% State funded project. When the contract is awarded with M/WBE participation that is less than the contract goals, the Prime Contractor is required to continue good faith efforts, as defined in Section F, throughout the life of the contract in order to increase the M/WBE participation to

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