NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS

DBE ASSESSMENT SERVICES FOR NYSDOT
Contract #C031181

November 25, 2013

To All Concerned:

Enclosed is a copy of the Non-Engineering Request for Proposals (RFP) referenced above. All information necessary for the submission of your proposal is contained in the Best Value solicitation. Any questions regarding this project or proposal should be directed to Barbara Sonenberg, the designated contact for this solicitation, of NYSDOT Contract Management Bureau via e-mail at: Barbara.Sonenberg@dot.ny.gov Please note the following dates and deadlines:

- November 25, 2013: RFP release
- December 17, 2013: Pre-Proposal Webinar @ 11:00 AM
- January 7, 2014 @ 2 PM (EST) Deadline for questions about the RFP
- January 16, 2014: Anticipated release of answers to RFP questions
- January 22, 2014 @ 2:00 PM ET: Deadline for the submission of proposals
- March 2014: Consultant Selection
- June 1, 2014: Executed Contract

If you are interested in developing a proposal in response to this solicitation, please complete and submit the attached RFP Response Form to the designated NYSDOT contact person.

In Section 4 of the RFP, a “Checklist for Proposal Submission” is included for reference purposes when submitting your proposal to NYSDOT. It also contains instructions for complying with the Procurement Lobbying Law so that your proposal may be considered for contract award. NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.
NYSDOT estimates that the selected Consultant will commence work in the Spring of 2014 and continue for a period of three years, with two optional one-year extensions, depending on performance and funding availability.

The New York State Department of Transportation (NYSDOT) encourages the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. Please see the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: http://biznet.nysucp.net/. For this solicitation, NYSDOT has set a DBE Participation contract Goal of 20%. Only certified DBE prime Consultants and certified subconsultants listed in the NYSUCP DBE Directory are eligible for credit in this procurement. Please see the RFP for more information.

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL Section 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website. By submitting a proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, the selected Consultant (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, Offerors are advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list. During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any proposal or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

We look forward to the receipt of your proposal.

Sincerely,

original signed by: Barbara Sonenberg, for
WILLIAM A. HOWE
Director
NYSDOT Contract Management Bureau

Enclosure
Please review this RFP. Please complete the following information and mail, e-mail or fax to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see Attachment 3) before questions or other communications with the NYSDOT regarding this solicitation can be initiated.

_________________ WE DO INTEND TO SUBMIT A PROPOSAL

_________________ WE DO NOT INTEND TO SUBMIT A PROPOSAL FOR THE FOLLOWING REASONS:

_______________________________________________________________________

_______________________________________________________________________

Name and Address of Organization (Include Zip Code):
_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

Signature: ____________________________ Date: __________________________

Types of Printed Name and Title: _______________________________________

Telephone: ___________________________ Fax: ___________________________

E-Mail Address: _______________________

RFP Title: ____________________________

Please send to:
Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031181
E-Mail: Barbara.Sonenberg@dot.ny.gov
Fax: 518-457-8475
INFORMATION FOR THE SELECTED CONSULTANT

DBE ASSESSMENT SERVICES FOR NYSDOT
Contract #C031181

Vendor Responsibility
___ The selected firm shall be required to provide vendor responsibility information through the Office of the State Comptroller website via http://www.osc.state.ny.us/vendrep/index.htm before negotiation of a contract. Interested parties are encouraged to become familiar with the state’s vendor responsibility requirements before being notified of selection for contract award. If you are a successful offeror, NYSDOT will not be able to begin negotiations with your firm if this questionnaire is not completed and electronically submitted as required.

Procurement Lobbying Law (*)
___ Visit NYSDOT Web site (see below) to read NYSDOT Policy Summation Compliance Procurement Lobbying Law. Complete and file the two required forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offeror Disclosure of Prior Non-Responsibility Determinations) included in Attachment 3 as instructed when submitting a proposal. This is mandatory in order to be considered for contract award. Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award. The two forms are available from:
https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/consultants-repository/1E100A2B8C0ED03EE0430A3DFC05D03E

Contractor Tax Certification
___ All vendors selected for contracts must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency). These forms are available via:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Insurance Requirements of this Project
___ Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in the draft Contracts. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Consultant Employment Disclosure Requirements of this Project
___ Go to OSC’s Web site (http://www.osc.state.ny.us/agencies/gbull/g-226.htm or http://www.osc.state.ny.us/procurement/consultantdisclosure.doc) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19,
2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 4) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 4) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

It is the Consultant’s responsibility to ensure they propose staff that are eligible to work on the subject Project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York Commission on Public Integrity that approves their participation in the subject Project. For an outline of the procedure that applies to this situation, see Attachment 5.

Registration with NYSDOT

Should this solicitation lead to a designation, it is the Consultant’s responsibility to electronically register their firm, including all subconsultants, using the Consultant Selection System web application (CSSWeb). Non-Architectural/Engineering consultant firms are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to, legal firm name, Federal Identification Number (FEIN), ownership type, D/W/MBE status, firm principals and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement. Section VI of this RFP provides more information.

Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Prime consultant will be required to electronically register with the Statewide Financial System (SFS) - if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

DBE ASSESSMENT SERVICES FOR NYSDOT

November 25, 2013

Proposal Due Date: January 22, 2014

Proposal Delivery Location and Additional Information:

Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031181
E-Mail: barbara.sonenberg@dot.ny.gov
Fax: 518-457-8475

RFP Release Date: November 25, 2013
REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

DBE ASSESSMENT SERVICES FOR NYSDOT

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1.0 Introduction

1.1 Purpose of this RFP

The New York State Department of Transportation (NYSDOT) is releasing this Non-A/E Request for Proposals (RFP) to solicit proposals and award Contract #C031181 for DBE Assessment Services to a responsive and responsible Consultant. The selected Consultant shall provide assessments of firms certified in New York State as DBEs to perform various highway work codes. The selected Consultant shall also identify areas of needed business assistance and opportunities for growth.

1.2 Project Background

1.2.1 Mission of New York State Department of Transportation

It is the mission of NYSDOT to ensure that our customers — those who live, work and travel in New York State — have a safe, efficient, balanced, and environmentally sound transportation system.

To attain its mission, the responsibilities, functions, and duties of NYSDOT include:

1. Coordinating and developing comprehensive transportation policy for the State; coordinating and assisting in the development and operation of transportation facilities and services for highways, railroads, mass transit systems, ports, waterways and aviation facilities; and formulating and keeping current a long-range, comprehensive statewide master plan for the balanced development of public and private commuter and general transportation facilities; and

2. Administering a public safety program for railroads and motor carriers engaged in intrastate commerce; directing state regulation of such carriers in matters of rates and service; and providing oversight in matters relative to the safe operation of bus lines, commuter railroads, and subway systems that are publicly subsidized through the Public Transportation Safety Board.

Today, the New York State transportation network includes: A state and local highway system that annually handles over 100 billion vehicle miles, encompassing over 110,000 highway miles, 17,000 highway bridges, and numerous other assets such as large culverts, retaining walls, tunnels, and sign structures; an extensive 5,000-mile rail network over which 42 million tons of equipment, raw materials, manufactured goods, and produce are shipped each year; 456 public and private aviation facilities through which more than 84 million people travel each year; Five major ports, which annually handle 50 million tons of freight; Over 130 public transit operators, serving more than 5.2 million passengers each day; and 12 major public and private ports, which handle more than 110 million tons of freight annually.

1.2.2 Project Background

The United States Congress established the DBE Program in 1982 to ensure nondiscrimination in the award and administration of DOT-assisted contracts; help remove barriers to the participation of DBEs in DOT-assisted contracts, and assist the development of firms that can compete successfully in the marketplace outside of the DBE program.
The primary purpose of DBE Support Services (DBE/SS) is to provide training, assistance, and services to DBE firms certified in the DBE program so as to increase their activity in the program, and to facilitate the firms' development into viable, self-sufficient organizations capable of competing for, and performing on federally assisted highway projects.

Given the significant number of new transportation projects occurring throughout the State, it is important that Disadvantaged Business Enterprises are able to effectively compete for opportunities to subcontract on these projects. An outside entity that can provide training and assess the capabilities of DBE firms will enable these firms to make connections, make proper bids and win contracts.

2. **PROJECT AND CONTRACT OBJECTIVES**

2.1 **Project Objectives**
Under the direction of NYSDOT’s Office of Civil Rights, the selected Consultant will perform assessments of firms that have been certified in New York State as DBEs to perform various highway work codes. The selected consultant shall also identify areas of needed business assistance and opportunities for growth.

The specific project objectives of this contract are:
- 1. Develop and execute assessment questionnaire.
- 2. Economic and efficient site visits.
- 3. Initiate and complete assessments of at least five DBEs a month.
- 4. Maximize the number of assessments based on the proposing firm’s approach.
- 5. Prepare and submit monthly, quarterly and final progress reports.
- 6. Participate in up to three NYSDOT sponsored DBE symposiums each year.

2.2 **Contract Objectives including DBE Participation**
NOTE: A subconsultant who is proposed for more than 20% of the proposed total dollar value for labor of this contract may not propose as a Prime Consultant or be included as a Subconsultant for more than 10% of the proposed total dollar value for labor of the upcoming RFP for #C031192 DBE Business Development Services. Any proposal received for #C031192 that does not follow this guideline will be disqualified.

1. Contract Award: A single contract award shall be made under this RFP solicitation. Contract # C031181 is being used to record this procurement.
2. Contract Term: The base term of the resultant agreement from this solicitation will be three (3) years, with two optional one-year extensions to be exercised at the Department’s sole discretion.
3. Method Of Payment: Fully-loaded specific hourly rates plus reimbursement for reasonable, acceptable expenses. The Department has a limited budget for this solicitation. Consultant will be paid monthly based on submitted, acceptable monthly reports.
4. Only one (1) responsive and responsible Prime Consultant (or team of consultants wherein the contract will be with the Prime Consultant) will be retained. Subconsulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.
5. **Best Value Selection:** To select the Best Value offered to NYSDOT from the responsive and responsible firms which respond to this RFP.

6. **Fair and Equitable treatment of all firms participating in the competitive consultant selection process.**

7. **Disadvantaged Business Enterprise DBE Goals:** Via this solicitation, to provide a participation opportunity for certified Disadvantaged Business Enterprises (DBEs) to meet/exceed the 20% DBE participation goal.

8. **Title VI Assurance:** The New York State Department of Transportation (NYSDOT), responsive and responsible firms which respond to this RFP in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written NYSDOT solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

9. **Equal Opportunity:** The New York State Department of Transportation, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written Department solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (DBE) will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

2.3 **Prime and Subconsultant Contracting Rule**

A subconsultant who is proposed for more than 20% of the proposed total dollar value for labor of this contract may not propose as a Prime Consultant or be included as a subconsultant for more than 10% of the proposed total dollar value for labor of the upcoming RFP for #C031192 DBE Business Development Services. Any proposal received for #C031192 that does not follow this guideline will be disqualified.

Examples:

1) If “Subconsultant A” is proposed for C031181 for 20.1% or more of the proposed total dollar value for labor and is also proposed on #C031192 for 10.1% or more of the proposed total dollar value of labor, then the entire proposal will be disqualified from competing for #C031192.
2) If “Subconsultant A” is proposed for C031181 for 20.1% or more of the proposed total dollar value for labor and is also proposed on #C031192 for 10.1% or more of the proposed total dollar value of labor: then whether or not Subconsultant A is on the designated Prime Consultant’s team for C031181, the entire proposal for #C031192 will be disqualified: A subconsultant who is proposed for more than 20% of the proposed total dollar value of labor of #C031181 may not be proposed for more than 10% of the proposed total dollar value of labor of #C031192.

3) For #C031192: If the Prime Consultant proposes “ Subconsultant A” for more than 10% of the proposed total dollar value for labor and was not aware that “Subconsultant A” was also proposed on #C031181 for more than 20.0% of the proposed total dollar value for labor, the proposal for #C031192 will be disqualified. It is the Prime Consultant’s responsibility to ensure that their proposed subconsultant(s) is eligible to be included in their proposal according to the RFP rules.

4) For #C031192: If “Subconsultant A” is proposed for 10.5% or less of the proposed total dollar value for labor of #C031192 and was also proposed for 19.5% of the proposed total dollar value for labor of #C031181, then the proposal will be eligible to compete for #C031192.

5) For #C031192: If “Subconsultant A” is proposed for 9.5% or less of the proposed total dollar value for labor of #C031192 and was also proposed for 21.5% of the proposed total dollar value for labor of #C031181, then the proposal will be eligible to compete for #C031192.

2.4 Minimum RFP Responsiveness Requirements:

2. Separate and complete Part II Proposal ‘Cost and Contract’ submission submitted on time. (3 Hard Copies in a three-ring binder with labeled section tabs, and 2 CD/DVD soft copies in a format compatible with MS Office 2007).
3. Acceptance of the RFP’s Draft Contract’s Terms and Conditions (see Attachment 2).
4. Receipt of Valid Procurement Lobbying Law Compliance Forms (see Attachment 3).
5. If the proposing entity is a corporation doing business in New York State, it shall certify that it is registered with the Department of State (see RFP Section 4). In your Part II Cost Proposal, provide a copy of the New York State Department of State registration (web site printout).
6. Meeting/exceeding the 20% Disadvantaged Business Enterprise participation or providing acceptable Good Faith Efforts (Attachment 9) should this goal not be met.

Any firm that does not provide/meet all of the RFP’s minimum proposal responsiveness requirements may be determined to be non-responsive. Any firm deemed non-responsive shall have its proposal removed from further consideration (prior to the technical evaluation of proposals). NYSDOT will not accept facsimile or e-mailed proposals in response to this RFP.
Consultants that plan to hand deliver their proposals should contact the designated NYSDOT contract person 48 hours ahead of time to arrange for delivery and a receipt. Late and incomplete proposals will not be considered. Note that the deadline is for receipt of the proposal at the New York State Department of Transportation at 50 Wolf Road, Albany, New York; not for the mailing or entrusting the proposal to a delivery service. Complete instructions on the preparation of the proposal can be found in RFP Section 4, and it is recommended that each offeror utilize these checklists to ensure all necessary documentation and attachments are provided as requested/indicated in this RFP for their Part I and Part II submissions.

3. Scope of Services

3.1 General

NYSDOT seeks a qualified, responsive and responsible Consultant to perform assessments of firms that have been certified in Highway Work Codes as DBEs in New York State to identify areas of needed business assistance and opportunities for growth. Assessments are expected to be made via review of information submitted by these DBE firms in connection with NYSDOT’s annual DBE certification affidavit process, supplemental inquiry (to be developed by the consultant and approved by NYSDOT) with representatives of the firms, and via on-site visits to the DBEs offices as directed by NYSDOT.

The Consultant may be directed to travel to DBE firms that have been selected for assessment. Expenses incurred in connection with said directed travel will be eligible for reimbursement to the extent that they are consistent with the rates and travel policies for the State of New York, as detailed in http://www.osc.state.ny.us/agencies/travel/manual.pdf or superseding guidance. The selected Consultant will be paid a fully-loaded hourly rate for work and travel time plus reasonable reimbursement for acceptable expenses (such as gas, tolls, and meals, subject to New York State reimbursement limits). Travel requests must be approved in advance of the actual travel in writing by NYSDOT’s Director of Civil Rights or his designee. NYSDOT is highly interested in maximizing the efficiency and economy of site visits. NYSDOT is seeking most cost efficient mode of travel and may also direct some visits to occur via phone/webinar/Skype. NYSDOT is highly interested in the number of assessments the proposing firm can accomplish. If multiple teams are conducting assessments, the members of the teams need to be equally qualified.

Firms are instructed to provide a copy of their assessment questionnaire in their Technical proposal submission. NYSDOT is aware of several DBE assessment questionnaires out in the market place.

The selected Consultant shall provide a written assessment for each firm evaluated. The format of these assessments must be approved by NYSDOT. The selected Consultant will be required to prepare a monthly progress report for NYSDOT and prepare a quarterly report on behalf of NYSDOT for the Federal Highway Administration. Progress reports must include the number of firms assessed, results of these assessments, identification of areas where DBE firms typically need assistance and recommendations to increase their business opportunities. Progress reports should also assess any other areas that are in need of improvement and provide recommendations for such.
Proposals must include hourly rate(s), title(s), and resumes of those individuals who will perform work for this contract; a DBE firm assessment schedule including the estimated number of DBE firms that the consultant expects to be able to assess; the Consultant’s proposed methodology and approach to conducting the assessments; and a description of the Consultant’s familiarity and experience with the United States Department of Transportation’s (USDOT) DBE Program including certification requirements as well as their business assessment/development experience.

Proposals will be evaluated based on technical and cost considerations including the number of DBEs to be assessed with assessment schedule, the submitted assessment questionnaire and the extent and overall quality of the consultant’s experience/expertise and proposed approach.

Qualifications:
1. Familiarity with 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, particularly certification regulations and requirements.
2. Small to medium business assessment and/or business development experience.

3.2 Tasks: The following specific services are requested:

1. Provide assessment questionnaire to assess strengths and weaknesses of each DBE identified. This questionnaire will be pre-approved by NYSDOT. Questions will include but should not be limited to: how many times in the past 12 months a DBE participated on a NYSDOT contract as a prime or subcontractor; was solicited by a prime to work on a project and how many times it submitted quotes; how many times a firm submitted a quote to work as a prime contractor on NYSDOT projects; what NYSDOT could do to help a firm obtain more business; a description of barriers to working with NYSDOT (including hurdles and issues with NYSDOT’s prime contractors); lack of bonding/lack of technological resources, capacity and size of NYSDOT projects/contracts. Questions should also relate to administration, management and planning ability, marketing, bidding and estimating, scheduling and project control, bonding levels, business development plans including record keeping. In addition, the questionnaire will discern whether or not the firm is interested in further participation in the assessment process.

2. Send the assessment questionnaire to DBE firms (approximately 700) as directed by NYSDOT. A 70% response/completion rate shall be achieved. The Consultant shall recontact firms that do not respond to the questionnaire, utilizing both phone and e-mail. Consultant will maintain a record of all communication/contact efforts which will be made available to the NYSDOT Project Manager upon request. NYSDOT will contact each DBE firm to introduce the consulting firm and convey the expectation that each DBE firm will respond to the questionnaire even if they do not wish to have assessment services. It is expected that the assessment questionnaire will be sent electronically to contain costs.
3. Utilizing the results of the questionnaire, the NYSDOT Project Manager will select DBE firms to be assessed. The Consultant will complete at least five assessments every month.

4. Develop/initiate assessment services using NYSDOT-approved methodology after receiving authorization to contact DBEs from the NYSDOT Project Manager.

5. Perform on-site visit to each DBE as directed by NYSDOT. Travel requests must be approved in advance of the actual travel in writing by NYSDOT’s Director of Civil Rights or designee. Reimbursement will be consistent with the rates and travel policies for the State of New York as detailed in http://www.osc.state.ny.us/agencies/travel/manual.pdf or superseding guidance. No more than two people will be permitted to attend each assessment site visit. NYSDOT may direct some site visits to be accomplished electronically, via phone or Skype.

6. Contact the NYSDOT Project Manager if any additional information regarding the DBE client is required from NYSDOT; the consultant shall arrange for the transmittal of such information.

7. Examine each DBE’s current work codes and determine its ability to perform work in the stated codes. Consultant will use a NYSDOT approved formula to determine which codes are no longer applicable to the DBE (for example, a DBE is certified for a code but had not performed any work in the said code in several years).

8. Examine the status of the DBE business operations in the following areas: Administration and Management; Planning and Marketing; Bidding and Estimating and Scheduling and Project Control.

9. Determine each DBE’s single and aggregate bonding levels, and the frequency by which primes require the DBE in a sub-contractor role to bond a portion of its work.

10. Review each DBE’s current business development plan and identify opportunities for improvement.

11. Develop and complete a draft and final evaluation/assessment/development plan report for each DBE assessed. The report must diagnose deficiencies, identify strengths and opportunities for improvement, with development plan recommendations regarding the assessed DBE. (The development plan recommendations may be utilized in the anticipated Business Services Contract.)

12. Forward each draft plan to the NYSDOT Project Manager for review and comment. The NYSDOT Project Manager will advise the consultant in writing of its approval or need for revision/clarification.

13. Make any necessary revisions to the plan and re-submit final assessment report to the NYSDOT Project Manager and DBE client firm. The plan will also contain a completion certificate signed by a principal of the DBE client firm. It will attest to
the administration of the needs assessment questionnaire document, receipt and acknowledgement of the results of the assessment questionnaire, including the development plan and the date and times of the site visit or any telephone/Skype interview.

14. Provide monthly reports to NYSDOT describing the number of firms assessed, results of the assessments, identification of areas where DBE firms need assistance and recommendations to increase their business opportunities. Monthly reports should include number of assessment questionnaires sent, number of site visits completed, number of draft development plans. These monthly reports will be submitted electronically and in the form of two hard copies sent to NYSDOT. A completed and acceptable monthly report is a required component of the billing process.

15. Provide quarterly reports to NYSDOT and the Federal Highway Administration summarizing the quarterly activity, noting successes and deficiencies, providing specific recommendations and ways to improve areas where the program may be deficient.

16. Provide final report to NYSDOT no later than 60 days after the conclusion of the program with summary of the work accomplished and an update on the status of each business evaluated.

All reports shall be submitted both as bound hard copy and in MS Word 2007 compatible electronic copy.

17. The Consultant will participate in up to three DBE symposiums, sponsored by NYSDOT, during each year of the contract. It is anticipated that each symposium will last from a half day to a full day. Two representatives from the Consultant Team will set up a booth at each symposium. It is envisioned that one member of the Consultant team will occupy the booth while another member will be available for one-on-one assistance. The Consultant will have handouts available describing the DBE Assessment program. The Symposia may occur in New York City, Capital Region, and Western Region (Rochester or Buffalo). Estimated number of expected attendees for each symposium is approximately 100 people.

NOTE: A subconsultant who is proposed for more than 20% of the proposed total dollar value for labor of this contract may not propose as a Prime Consultant or be included as a subconsultant for more than 10% of the proposed total dollar value for labor of the upcoming RFP for #C031192 DBE Business Development Services. Any proposal received for #C031192 that does not follow this guideline will be disqualified.

4. PROPOSAL FORMAT AND CONTENT REQUIREMENTS

4.1 General Procedures
Part I and Part II submissions must be received before the proposal due date/time. Proposals must be delivered in two separate, sealed labeled packages and labeled: DBE Assessment
Services for NYSDOT, Contract #C031181. One package shall contain the technical proposals and one package shall contain the cost proposals.

For the purposes of evaluation, Part I (Technical and Management Submission) and Part II (Cost and Contract Submission) must be separately submitted in two (2) parts. A responsive proposal shall consist of a complete Part I Technical and Management Proposal, and a complete Part II Cost and Contract Proposal. Each part of the proposal must be **bound and complete in itself** in order that the evaluation of both parts can be accomplished independently and concurrently: the Technical and Management submittal can be evaluated strictly on the basis of its merits, and the Part II evaluated, in part, on the basis of competitive proposed costs. Cost information is **not** to be included in the Part I submittal. Technical information is **not** to be included in the Part II submittal. The cover of each submittal must be clearly labeled as Part I Technical Management Submittal and Part II Cost Submittal.

Consultants must submit each proposal in response to this RFP, using the format and forms provided in this RFP and attachments, responding to all RFP requirements. In addition to Attachment 2’s certifications, submission of the consultant’s proposal shall be construed by NYSDOT as the consultant’s acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP.

**NYSDOT may deem a proposal non-responsive and remove that consultant and its proposal from further consideration for failure to provide the information required or for failure to submit a proposal in the required format.** Consultants must deliver proposals to the NYSDOT Contract Management Bureau no later than 2:00 PM ET on the specified proposal due date. Consultants mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposal. NYSDOT will not accept faxed or e-mailed proposals. The consultant’s proposal must meet the response requirements listed in this Section.

A Table of Contents shall be presented for both Part I and Part II. Part I and Part II submissions must be bound in separate 3-ring binders. Sections within Part I and Part II shall be divided by labeled tabs. Do not submit proposals bound any other way (e.g., stapled, spiral- or cloth-bound). Clearly identify any attachment with the consultant’s and the RFP’s name on a cover sheet that is firmly attached to the document. Clearly identify any unattached documents with the consultant’s and the RFP’s name on each page of the document.

In order to promote uniformity of preparation and to facilitate review, proposals should be printed on standard 8½ by 11-inch white paper and be organized in accordance with the format set forth in this RFP. **Proposal text should be 11 point font or larger,** except where necessitated for readability of tables, figures, schedules, or special graphics. 12 point fonts are preferred. Please avoid printing schedules using fonts smaller that 8 point. Illustrations that support the text must be simple and direct and be either sized to fit on 8 ½ by 11-inch paper or printed on 11 inch by 17 inch paper as long as the pages are folded to the 8 ½ by 11-inch size. Illustrations and photographs must be reproducible in black and white without obscuring their distinctive information. Double sided printing is allowed. Color printing is allowed.

**NOTE:** NYSDOT may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers
Law, provided that NYSDOT agrees beforehand to shield the release of proposed information. If an offeror believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Labeling all pages as “confidential and proprietary” is unacceptable – such proposals will not be accepted unless the proposer relabels their proposal to only identify what specific material to shield from public scrutiny. All offerors shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal. NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm.

Your proposal must follow the format listed below.

4.2 Part I: Technical and Management Proposal Submittal

The Part I proposal response requirements are listed below. Please be sure that these instructions are followed to ensure that your proposal is considered responsive to be eligible for contract award.

<table>
<thead>
<tr>
<th>Part I - Technical and Management Submittal Checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Five (5) printed and bound hard copies, with tabbed sections, of Part I plus two copies of Part I on CD/DVD in MS Word 2007 compatible format</td>
</tr>
<tr>
<td>☐ Securely sealed and clearly labeled with the consultant’s name, address, email address and telephone number and the words “Part I DBE Assessment Services #C031181”</td>
</tr>
<tr>
<td>☐ Name of person(s) who prepared proposal</td>
</tr>
<tr>
<td>☐ Contact person(s), email addresses and telephone numbers</td>
</tr>
<tr>
<td>☐ Signed Cover Letter on official business letterhead</td>
</tr>
<tr>
<td>☐ Table of Contents identifying each major section and initial-page numbers</td>
</tr>
<tr>
<td>☐ Executive Summary of proposed approach</td>
</tr>
<tr>
<td>☐ Technical and management approach for the delivery of services</td>
</tr>
<tr>
<td>☐ Detailed scope of services</td>
</tr>
<tr>
<td>☐ Complete and submit Attachment 6 Company Experience and References</td>
</tr>
<tr>
<td>☐ Complete and submit Attachment 7 Project Manager Experience and References</td>
</tr>
<tr>
<td>☐ Questionnaire Submission in separate tabbed section labeled Assessment Questionnaire</td>
</tr>
</tbody>
</table>

The consultant must submit five (5) paper copies of Part I, and two copies on CD/DVDs (in Microsoft Office 2007 compatible format) — each clearly identified on the cover or label with the consultant’s name and the words: “Part I DBE Assessment Services C031181”. Proposals must be securely sealed and clearly labeled. Any outside packaging containing Part I copies must be clearly marked with the words “Part I DBE Assessment Services C031181”.

Note: Cost information is not to be included in the Part I submittal, and Technical and Management information is not to be included in Part II submittal.

NYSDOT reserves the right to make clarifications to the scope of services to be performed under this Agreement, via RFP Attachment 1, Exhibit A, Scope of Service Clarifications, during contract negotiations with the selected Consultant.
4.2.1 Cover Letter
The consultant must submit one signed Cover Letter on official business letterhead. The Cover Letter must accompany each volume and include the following:

1. The signature of an official authorized to bind the consultant to all of its provisions.

2. A statement that, if awarded the contract, the consultant will comply with all the requirements set forth in the RFP.

3. A statement that the offered named key personnel will be provided once NYSDOT issues a notice to proceed. The NYSDOT does not allow unapproved substitutes.

4. Any claims of confidential and proprietary information should also be identified and addressed in this section. NYSDOT may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law, provided that NYSDOT agrees beforehand to shield the release of proposed information. If a proposer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. **Labeling all pages as “confidential” or “proprietary” is unacceptable – such proposals will not be accepted** unless the proposer re-labels their proposal to only identify what specific material to shield from public scrutiny. All proposers shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal. NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm. The State will only consider those items confidential and proprietary which it agrees are confidential and proprietary based on the proof provided by the consultant and responses to the State’s questions regarding any such claims.

5. The following information regarding the consultant’s official representative for its proposal:
   a. Name of consultant’s official representative
   b. Title
   c. Name of company
   d. Address
   e. Telephone number
   f. FAX number
   g. E-mail address of the consultant’s representative
   (If there are multiple offices of the consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.)

6. The full, legal names of all Subconsultants involved in the consultant’s response.

7. A brief description of how attainment of the 20% DBE goal for contract #C031181 shall be managed and met over the life of the contracts.
4.2.2 Table of Contents

Submit one Table of Contents which should identify each major section of the consultant’s proposal, along with its initial-page number. Any offered attachments or addendums shall be cited here.

4.2.3 Executive Summary and Narrative Description

Provide a brief and concise description of the proposed approach and work effort.

Highlight the strengths and capabilities of your firm and how they can be used to assist NYSDOT in this contract. Provide a discussion on the important issues involved with delivering the requested services. Identify potential complications or difficulties that might be encountered in the implementation of required services along with suggested resolutions for each. Include enough substantive discussion to demonstrate an understanding of NYSDOT’s project objectives and familiarity with applicable State and Federal laws, rules, practices, procedural requirements, risks, etc. Highlight how the DBE goals will be met.

4.2.4 Organization, Project Management and Staffing

Provide a one-page Organizational Chart showing the names of the proposed Project Manager and key personnel including any subconsultants. Include the resumes of the Project Manager and key personnel as well as the resumes of subconsultants.

Discuss management plan to ensure effective and efficient delivery of services (including managing subconsultants) while meeting the project’s objectives. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Some travel is required under C031181 and shall be directed. The selected Consultant is required to provide its own vehicle. Any requests for Car Rentals or Lodging must be pre-approved by NYSDOT in writing.

Present a DBE management plan, one which ensures that delivery of the contract’s 20% percent DBE goals are managed and met over the term of the contract. Discuss the role any DBE subconsultant would have in the delivery of the RFP’s Scope of Services.

The Consultant’s Project Manager shall serve as the primary contact for the NYSDOT Project Manager. The Consultant’s Project Manager is responsible for the performance of all key personnel, production staff, and support staff assigned to this Agreement by the Consultant as well as all contractual matters on the Consultant’s side. The Consultant’s Project Manager shall make all required submittals and receive all transmittals from the Department.

4.2.5 Consultant Firm and Key Personnel Experience

The qualifications and prior experience of the selected Consultant and proposed key personnel are of great importance to NYSDOT. Direct, prior and relevant experience in the provision of DBE assessment services (or comparable services) is required. NYSDOT requires substantial relevant experience and expertise, and consultants must demonstrate that experience through past and current project attestations and must provide reachable, verifiable references. Experience
information should be provided for all proposed firm(s) and for all proposed key consultant management staff.

Provide a list of prior or current projects which are relevant to this effort, and explain how these are applicable to this Request. Include reference or contact information for verification purposes. NYSDOT reserves the right to request information from any source so named. NYSDOT also reserves the right to contact additional references should those provided fail to adequately confirm a firm’s offered experience.

Experience not directly related or comparable to the RFP’s Scope of Services will not be evaluated.

4.2.6 Approach, Scope of Services and Schedule

Describe your understanding of project requirements contained in the Scope of Services. Describe your approach for preparing for and implementing NYSDOT’s Scope of Services as outlined in Section 3 of this RFP. Provide a detailed Scope of Services which describes by task what will be done, by whom (detailing hours) and schedule. Identify specific methods to be used to complete each project requirement.

Firm’s approach to the scope items must reflect acceptance of the Scope of Services tasks of this RFP.

Discuss the proposed consultant staffing plan. Note: All consultant replacements are subject to NYSDOT’s prior review and approval. Discuss the role any other subconsultant (if any) would have in the delivery of the RFP’s Scope of Services.

Describe the level of interaction contemplated between the Consultant’s management team and NYSDOT management, as well as between the Consultant personnel, DBEs and other subconsultants.

In your proposed Scope of Services, you may suggest enhancements or innovations to tasks which could improve the ability of the program to meet FHWA’s DBE Program objectives. NYSDOT wants to allow maximum flexibility for the ideas, initiative and creativity of the proposer.

4.3 Part II – Cost and Contract Proposal Submittal

*The Part II proposal response requirements are listed below. Please be sure that these instructions are followed to ensure that your proposal is considered responsive to be eligible for contract award:*

<table>
<thead>
<tr>
<th>Part II - Cost and Contract Submittal Checklist</th>
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<tr>
<td>☐ Three (3) Printed and bound hard copies of Part II plus Part II on two CD/DVDs, in MS Excel compatible format. Identify the name, title, address, email, and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation</td>
</tr>
<tr>
<td>☐ Submit one cover letter (can be same as Part I’s)</td>
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<tr>
<td>☐ Securely sealed and clearly labeled with the words “DBE Support Cost Proposal”</td>
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<tr>
<td>☐ Required Salary Cost information - complete and submit Attachment 10A</td>
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Part II of the proposal consists of two sections: (1) a Cost Section, which sets forth the proposed fully loaded labor rates for performing the work as well as all travel and direct non-salary expenses supporting this work as required to deliver the scope of services under contract #C031181; and (2) the Contract Section, which provides the required State certification and RFP administrative forms. At least one copy must contain original signatures. **Cost information is not to be included in the Part I submittal, and Technical and Management information is not to be included in Part II submittal.**

The consultant must submit three (3) paper copies of Part II, and two copies on a CD/thumb drive, etc. (in Microsoft Office 2007 compatible format) — each clearly identified on the cover or label with the consultant’s name, the contract #C031181 and the words “DBE Assessment Services For NYSDOT” All copies of Part II must be packaged separately from Part I. Proposals shall be securely sealed and clearly labeled. Any outside packaging containing Part II copies must be clearly marked with the words “DBE Assessment Services For NYSDOT” and the Contract #C031181.

4.3.1 Cost Section

4.3.1.1 Proposed Specific Hourly Rate Schedule

Present a Salary Schedule using Attachment 10A which will list fully-loaded, not-to-exceed rates for each proposed Consultant person (named title) for each contract. Present one table for all proposed staff (prime consultant) and a separate table on a separate page for each subconsultant. Present by title fully loaded rates for a contract year; these rates are broken-down into base salary, overhead additive and fixed labor fee additive. **Note: All rates may remain the same throughout the term of the contract as well as any optional years exercised.** Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm’s proposed overhead. A firm’s labor fee may not exceed 10 percent. If additional titles are used but are not
assigned, they should be listed with rates applied. All responding firms must use the Specific Hourly Rate Schedule (Attachment 10A).

4.3.1.2 Proposed Travel Costs
Present Travel Costs expense schedules using Attachment 10B and Attachment 10C. Estimates of travel costs shall be added to the selected consultant’s proposal to generate the total budget for the contract. Travel and meal reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available via http://www.gsa.gov/. However, for the purposes of the cost evaluation, the reimbursable rates are provided in the cost attachment.

4.3.1.3 Direct Non-Salary Costs
Present a Direct Non-Salary Cost expense schedules using Attachment 10D. Estimates of direct non-salary expenses shall be added to the selected consultant’s proposal to generate the total budget for the contract.

4.3.1.4 Payment Method
Payment for labor services provided under the project shall be by fully loaded, specific hourly rates reimbursement and compensation for actual, approved direct non-salary costs incurred in the performance of the scope of services. Reasonable reimbursement for expenses is allowed; all travel shall be directed and reimbursed at the current mileage reimbursement rate. All vehicle costs shall be borne by the selected Consultant. Rental expenses are not encouraged but may in some instances be allowed with pre-approval by the NYSDOT Project Manager. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS voucher. Requests for progress and final payments shall be made by the designated Consultant on standard NYS vouchers.

4.3.1.5 Contract Section
The Consultant shall specifically state its acceptance of all Terms and Conditions of draft Contract #C031181 contained in Attachment 1 of this Request for Proposals by completing and submitting the Consultant Information and Certifications Form (Attachment 2), to indicate a firm’s acceptance of all of the terms and conditions contained in the RFP’s Draft Contract. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and will lead to the proposal being deemed non-responsive and subsequently dismissed.

4.3.1.6 Disadvantaged Business Enterprise (DBE) Participation
NOTE: A subconsultant who is proposed for more than 20% of the proposed total dollar value for labor of this contract may not propose as a Prime Consultant or be included as a subconsultant for more than 10% of the proposed total dollar value for labor of the upcoming RFP for #C031192 DBE Business Development Services. Any proposal received for #C031192 that does not follow this guideline will be disqualified.

While not indicative of a proposer’s individual merit (technical excellence, proposer’s ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBE) in this solicitation. The level of DBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. Please
visit the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: http://biznet.nysucp.net/

The New York State Department of Transportation has established a DBE contract participation goal of 20 percent for this solicitation. The goal relates to the overall contract value of the resulting contract. Meaningful participation by either a Prime consultant who is certified as a NYSUCP DBE or inclusion of certified DBE subconsultant(s) who is/are certified as a NYSUCP DBE will count toward the DBE contract participation goal. Meaningful participation by a certified subconsultant is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant’s product or service,
- Be for scope of service elements which can be and are completely performed, supervised and managed by the DBE consultant, and/or
- Perform significant tasks which can be considered commercially marketable.

Interested proposers should verify their attainment of the above established DBE participation goal by completing Attachment 8 DBE Participation Information. To count towards the Department’s DBE goal, a firm offering DBE participation must be currently certified per the NYSUCP DBE Directory. If the proposal does not meet the 20 percent DBE participation goal, the firm must provide evidence of a good faith effort by completing Attachment 9 DBE Participation Solicitation Log. Additionally, if the firm does not meet the specified goal, the firm must include in its submission a DBE Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or if partially), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a Prime consultant or via subcontract.

Additionally, Prime consultants certified as a DBE who propose to meet the Department’s DBE contract participation goal via their own meaningful participation are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that unless DBE outreach efforts by the Prime result in proposed DBE subconsultants, that the Prime consultant provide evidence of a good faith effort by completing Attachment 9 DBE Participation Solicitation Log and submitting the DBE Goal Attainment Explanation Letter.

The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section V. B for the procedure the Department will follow in evaluating a firm’s proposed DBE participation.

NYSDOT has posted its DBE Program Plan to its website (subject to change). The plan provides background information regarding how the Department conducts its Federally-required DBE program, covering such subjects as contract-level goals, good faith efforts by consultants, DBE certifications, etc:
4.4 Other Proposal Considerations

4.4.1 Document Preparation
In order to promote uniformity of preparation and to facilitate review, Proposals must adhere to the following criteria:

Proposals must be printed on standard 8½ by 11-inch white paper. Pages can be printed double-sided.

Proposals must be organized in accordance with the format set forth in the RFP document. Proposals must be self-contained and should not reference web-links.

Proposals should strive to consistently use 12 point font size and no less than 11 font size. Smaller font sizes are allowed in footnotes or table headers but not the text itself. Illustrations that support the text must be simple and direct and be either sized to fit on 8 ½ by 11-inch paper or printed on 11 inch by 17 inch paper as long as the pages are folded to the 8 ½ by 11-inch size, and fold out from the non-bound edge. Illustrations must be reproducible in black and white without obscuring their distinctive information; photographs must be black and white.

Proposals that make extensive use of color photographs or illustrations, or that include separate brochures and overly elaborate embellishments, are discouraged. NYSDOT may need to reproduce proposals for evaluation purposes and the benefit of color would be lost.

A request for protecting confidential information must be on case-by-case basis (ie, specific information contained in your proposal). Labeling an entire proposal or sections ‘Confidential’ and/or ‘copyright protected’ is not allowed and may lead to early proposal dismissal.

Consultants must submit Part I (including the Cover Letter) and Part II in separate 3-ring binders and in separate, sealed packages. Consultants must deliver hard copy proposals to the NYS Department of Transportation’s Contract Management Bureau no later than 2:00 PM ET on the specified RFP proposal due date. Consultants mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals. NYSDOT will not accept faxed or e-mailed complete proposals. NYSDOT may automatically disqualify any offering that is not in compliance with the submission criteria.

4.4.2 Consultant Identification Number and SFS Vendor ID Number
Each consultant must reference its Consultant Identification Number (CIN) in its Part II proposal. If a consultant does not have a CIN and is selected for contract award, it will be required to obtain one through the following NYSDOT web site prior to negotiation of the contract:


Each consultant must reference its SFS Vendor Identification Number in its Part II proposal. If a consultant does not have an SFS number and is selected for contract award, it will be required to obtain one through NYSDOT sponsorship.
5. PROPOSAL EVALUATION PROCESS

5.1 Overview of the Evaluation of Proposals

Proposals received on or before the RFP’s published proposal due date shall be opened, logged-in, and examined for completeness and adherence to the RFP’s response requirements. Logged in proposals shall be certified as being received. Proposals received late shall not be opened and shall be returned to sender.

Once logged in, proposals shall be pre-screened to determine if they meet the (See Section 2.4). Proposals which meet minimum RFP responsiveness requirements shall be considered further; proposals which do not meet minimum RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration, and the applicable firm(s) notified.

Proposals passing pre-screening shall then be further evaluated by NYSDOT using a Best Value Method evaluation process based on separate technical and cost evaluation criteria described below. Technical considerations are of greater importance than cost considerations; however, the competitiveness of proposed costs is a significant factor in NYSDOT’s evaluation of proposals.

NYSDOT shall establish a Technical Evaluation Committee (TEC), which will evaluate the Part I Technical and Management proposals. Cost proposals shall be evaluated separately by NYSDOT Contract Management Bureau. Relevant NYSDOT subject matter experts (technical, program, and management) will staff the Technical Evaluation Committee. Issues which cross technical and cost separation lines or which may arise during these evaluations will be handled by NYSDOT Contract Management Bureau, with assistance from NYSDOT Executive Management as required. Technical Evaluation Committee members will be given technical proposals with instructions and scoring instruments. Committee members, working by themselves, shall compare each proposal against the RFP, measuring the degree of responsiveness to the RFP’s specifications and requirements. Committee members will document their findings, and assign a numerical score for each of the RFP’s evaluation criteria. Evaluators may identify clarification questions along the way.

Once independent evaluation of proposals is complete, the Committee shall meet as a group to collectively discuss their findings with possible score changes. Reason(s) for score changes shall be documented. Offered experience may be verified by contacting references provided by proposers. Evaluators may revise findings and scores based on consideration of reference checks. Contract Management Bureau shall evaluate cost proposals via the method specified below. Firms may be requested in writing to clarify and/or confirm aspects of their cost proposal. Firms are required to respond to these requests in writing. Any changes or adjustments to a firm’s cost proposal shall be brought to that firm’s attention, in writing.

Proposers responding to this RFP are not allowed to change their technical proposal. However, proposers may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this
additional information. After technical proposal evaluation, cost scores shall be combined to generate an initial best value score. Technical scores may be adjusted via consideration of Best and Final offers.

NYSDOT reserves the right to ask clarifying questions regarding each cost proposal (Part II) and DBE participation as well. Furthermore, NYSDOT reserves the right to request best and final offers from firms that are determined to be susceptible for contract award. NYSDOT also reserves the right to re-score the remaining technical and cost proposals should a firm either withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring. The appropriate NYSDOT executive will approve the results of the proposal evaluation process and designate the selected consultant.

An award shall be made to the offeror whose proposal receives the highest total Best Value score after considering all technical and cost/price evaluation factors.

**Note:** In the event two or more proposals are found to be “substantially equivalent”, NYSDOT reserves the right to award the contract under the terms of State Finance Law Section 163 (10)(a).

A team of NYSDOT subject matter experts, lead by NYSDOT’s Project Manager for Contract #C031181 will negotiate the resulting contract with the selected consultant, with NYSDOT Contract Management Bureau and Legal facilitation. NYSDOT, the Attorney General, and the State Comptroller must approve any final contract.

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation will be posted on the NYSDOT Web site ([https://www.dot.ny.gov/business](https://www.dot.ny.gov/business) select ‘Consulting Service Opportunities’). All firms shall be notified in writing regarding the results from the solicitation. All non-selected firms will be offered an opportunity to hold a debriefing.

It is expressly understood that this Request for Proposals does not commit NYSDOT to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials.

**5.2 Proposal Evaluation Process Steps**

Using the proposal evaluation process described herein, NYSDOT will evaluate proposals that are received prior to the deadline and deemed complete. NYSDOT will not consider proposals that are received late or are deemed to be incomplete.

NYSDOT will first pre-screen each proposal to determine whether it was received on time, is complete, and adheres to the required response formats. Proposals that pass the pre-screening review will continue to the next step — Technical proposal evaluation and Cost proposal evaluation. NYSDOT will review and score each section of the proposals on a scale that is based upon pre-established evaluation criteria (approved before receipt of proposals; to become part of the procurement record). When the Part I and Part II evaluations are complete, the technical and management score will be added to the cost score to develop an initial composite Best Value score.
Written technical proposals will receive a final perfected score that will be weighted such that the highest raw technical score will be assigned a max score of 70 points toward the final best value score. 30 perfected cost score points allocated to the lowest proposed total cost.

5.3 Pre-Screening of Proposals
NYSDOT Contract Management must receive all proposals at the designated address by 2:00 PM ET on the RFP’s proposal due date. **It is the sole responsibility of the consultant to assure that its proposal is received on time.** NYSDOT Contract Management Bureau will pre-screen all proposals received on time. Late submissions shall be dismissed. Proposals must contain all the information requested in this RFP to be considered complete. All proposals must follow the format outlined in RFP Section 4, Proposal Format and Contents. The pre-screening will ensure that the consultant has submitted all required Part I - Technical and Management proposal, and Part II - Cost proposal components. Failure to provide the proposal in this format may result in it being deemed non-responsive. NYSDOT may remove from consideration and not evaluate any proposal deemed non-responsive. Consultants whose proposals are deemed non-responsive will be notified, in writing, of their elimination.

**Review** As part of the pre-screening process, the proposed DBE subconsultant participation percentage offered for C031181 for NYS certified DBE subconsultant participation will be reviewed (Attachment 8, DBE Participation Information). To count towards NYSDOT’s 20% DBE subconsultant participation goal, each offered DBE firm must be currently listed in the NYSUCP DBE Directory for certified Disadvantaged Business Enterprises. If the proposed DBE participation is less than the 20% goal, then the firm’s evidence of a Good Faith Effort (Attachment 9, DBE Subconsultant Participation Solicitation Log) to Achieve the DBE goal will be reviewed, along with the firm’s letter of explanation (DBE Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include examination of the adequacy and the robustness of a firm’s Good Faith Effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable Good Faith Effort then the entire proposal may be deemed non-responsive and may be removed from further consideration. NYSDOT reserves the right to ask clarification questions on a firm’s DBE proposal. Pending DBEs (not NYS certified at the time of proposal submission) are not allowed. Firms are encouraged to ask questions regarding this aspect of the RFP.

5.4 Part I and Part II Proposal Evaluations
Each proposal which clears Pre-Screening will have its Part I proposal and Part II proposal evaluated further. NYSDOT reserves the right to ask for clarifications of either proposal. Other than responses made to requests by NYSDOT for clarification of such contents, no consultant will be permitted to alter its proposal after the final filing date and time. When the Part I and Part II evaluations are complete, the two scores will be added together to develop a composite Best Value score.

**Part I Technical and Management Proposal Evaluation**
Each submitted Technical and Management Part I written proposal will be evaluated and point scored, and, when perfected, will represent up to 70 percent of a total possible Best Value score.

All steps and details governing the proposal evaluation process shall be set forth in a proposal evaluation process document, one to be approved by NYSDOT executive management prior to
the receipt of proposals. The proposal evaluation process document will become part of the State’s official procurement record.

The Technical Evaluation Committee (TEC) will evaluate and point score each section of each Part I Technical and Management proposal on the scale determined by NYSDOT prior to submission of proposals, using the following evaluation criteria:

**Written Technical and Management Proposal** (up to 70 Points): The Technical and Management proposal will be point scored and will represent 70% of the total best value score for the proposal (out of 100 total possible points). The major criteria and the respective sub-criteria are listed in descending order of importance:

1. **Experience** (up to 30 Points)
   a. Quality, extent and relevance of experience, education and training of key personnel. Key personnel have demonstrated ability, competence and experience to properly perform the requested DBE assessment services. (up to 13 points)
   b. Quality, extent and relevance of current and prior experience of the firm in conducting similar projects. (up to 10 points).
   c. Proposed Consultant personnel have demonstrated solid, working knowledge of FHWA’s DBE Program, including its regulations and certification process. (7 points)

2. **Approach and Scope of Services** (Up to 20 Points)
   a. Quality, efficiency and capacity of approach to accomplishing project. (Up to 10 points)
   b. Completeness and reasonableness of scope of services for accomplishing project. (Up to 6 points)
   c. Quality, completeness and relevance of Assessment Questionnaire. (Up to 4 points)

3. **Organization and Management Plan** (Up to 13 Points)
   a. Quality of plan for interacting with NYSDOT, subconsultants/DBEs. (Up to 8 points)
   b. Quality and robustness of project staffing and organization (org chart), including any sub-consultant arrangements. Extent of prior collaborative efforts with sub-consultant. Reasonableness of staff allocations by task and hour estimations for each task and total effort. Ability to manage the Project. Quality of DBE subconsultant participation management plan. (Up to 5 points)

4. **Quality of Proposal** (Up to 7 points)
   a. Quality, organization and clarity of the Proposal including proposed scope of services, completeness of discussions, attention to detail and responsiveness to requirements. (Up to 5 points)
   b. Degree to which proposal reflects understanding, comprehension of, and meets project and contract objectives. (Up to 2 points)

Each TEC member will first independently evaluate each proposal to determine the degree of responsiveness of each area against the requirements and specifications contained in the RFP. Each evaluator shall document their independent findings then determine the appropriate score for each RFP factor using the predefined scale and definitions. Once all independent evaluations are complete, the TEC shall meet and discuss each proposal as a group. Scores may change as a result of group discussions and all reasons for score changes shall be documented. Clarification
questions may be requested during the technical proposal evaluation. Scores and findings may be changed as the result of the consideration of clarified material. Firms shall be given a reasonable amount of time to respond to clarification question requests.

**Part II Cost Proposal Evaluation**

**Cost Proposal Evaluation** (Up to 30 Points): All proposals passing pre-screening shall have their Cost Proposals evaluated. The cost portion of the cost and contract proposal will be point scored and will represent 30% of the total possible best value score for a proposal. Clarification questions may be asked. Evaluation of Cost Proposals shall be based upon an evaluation which compares the proposed rates for one year (2000 hours per FTE per year), plus the cost of all proposed travel/direct non-salary costs (using Attachment 10A, 10B, 10C, 10D and 10E). The firm with the lowest total proposed cost will receive a perfected cost score of 30 points. All other offered total costs will receive a proportionate lower cost score based on the relation to the lowest offered total cost.

Best and Final Offer (Optional) and Proposal Withdrawal/Dismissal
NYSDOT reserves the right to request best and final offers from firms that are determined to be susceptible for contract award. Best and final offers may be requested after Best Value scores are calculated for firms susceptible for contract award. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals while considering any best and final offer information. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm either withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring.

5.3.2.1 Consultant Selection Recommendation
Each consultant’s final Best Value score will be calculated by adding its perfected technical score and its perfected cost score. NYSDOT will then rank consultants in descending order of final Best Value score. The results of the proposal evaluation process shall be documented by NYSDOT Contract Management Bureau. This report along with a consultant selection recommendation shall be forwarded to NYSDOT Executive Management for approval. The designation will be publically announced on NYSDOT’s website.

A tentative contract award shall be made to the consultant whose proposal receives the highest total final Best Value score after considering all technical and cost evaluation factors. Note: In the event two or more proposals competing for either contract award are found to be “substantially equivalent”, NYSDOT reserves the right to award the contract under the terms of State Finance Law Section 163 (10)(a). Any ‘ties’ shall be decided by the substantially equivalent rule contained in the approved evaluation process document.

A team of NYSDOT subject matter experts will negotiate the resulting contracts with the selected consultant, with NYSDOT Contract Management Bureau and Legal facilitation. The final contract is subject to approval by the Attorney General and the Office of the State Comptroller and is not binding until such approval is received.

At the conclusion of the evaluation period, an announcement of NYSDOT’s designation(s) will be posted on the ‘Consulting Services’ listing on the NYSDOT’s Web site via: [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business). All consultants will be notified in writing regarding the results.
from the solicitation, pending completion of the evaluation process. All non-designated firms will be offered an opportunity to attend a debriefing.

It is expressly understood that this Request for Proposals does not commit NYSDOT to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials.

5.5 Protest Procedure
The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/misrep_protest.pdf.

6. ADMINISTRATIVE SPECIFICATIONS

6.1 Tentative Schedule of Key Events
NYSDOT will attempt to adhere to the following schedule with regard to this solicitation:

<table>
<thead>
<tr>
<th>Event</th>
<th>Timeline</th>
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<tbody>
<tr>
<td>RFP Release Date</td>
<td>November 25, 2013</td>
</tr>
<tr>
<td>Pre-Proposal Webinar</td>
<td>December 17, 2013</td>
</tr>
<tr>
<td>Question Submittal Deadline</td>
<td>January 7, 2013</td>
</tr>
<tr>
<td>Responses to Questions Published</td>
<td>Mid-January 2014</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>January 22, 2014</td>
</tr>
<tr>
<td>Proposal Evaluation</td>
<td>January-February 2014</td>
</tr>
<tr>
<td>Consultant Selection</td>
<td>March 2014</td>
</tr>
<tr>
<td>Contract Executed</td>
<td>June 1, 2014</td>
</tr>
</tbody>
</table>

6.2 Pre-Proposal Webinar
To assist firms in preparing proposals in response to this solicitation, an optional Pre-Proposal Webinar shall be held on December 17, 2013. An overview of the RFP shall be given, with opportunities for vendors to pose questions. NYSDOT will either respond to questions or document questions for later response. Please note that Procurement Lobbying Law (PLL) forms (Attachment 3) must be completed, scanned and e-mailed along with your registration request.

Questions submitted in advance of the conference may be answered during the conference. An opportunity will be afforded for questions and answers during the conference. Interested DBE subconsultants are also encouraged to participate.

6.3 Proposal Submission
The proposal must be submitted and shipped to:
6.4 State’s Rights to Proposals
All proposals, upon submission to NYSDOT, shall become its property for use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. With regard to proposal submitted, NYSDOT asserts the prerogative with regard to proposals submitted:

1. To accept or reject any or all proposals;
2. To correct any arithmetic errors in any or all proposals;
3. To change the proposal’s due date upon appropriate notification to interested firms;
4. To eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
5. To adopt any or all of a successful offeror’s proposal;
6. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
7. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
8. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
9. To eliminate any requirement that is found to be unmet by all offerors;
10. To make inquiries, by means it may choose, into the offeror’s background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
11. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
12. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;
13. If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and

Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

6.5 Affirmative Action Goals
NYSDOT desires to foster and promote the participation of disadvantaged, minority and women-owned business enterprises in its contracting program. Accordingly, such enterprises are encouraged to consider submitting proposals in response to this solicitation and should be
encouraged by other consultants to submit subcontract proposals for those portions which may be performed by subcontract (see Attachment 1, Draft Contracts).

6.6 Inquiries and Information
All questions concerning this solicitation must be directed only to Ms. Barbara Sonenberg. The last date to submit questions for this solicitation is indicated in Section 6.1, Schedule of Key Events (above). All inquiries should be addressed to:

Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
E-Mail: Barbara.Sonenberg@dot.ny.gov  Subject: C031181
Fax: 518-457-8475

Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to NYSDOT’s website under this solicitation.

6.7 Information Items for Selected Consultant
The following items are presented for consultant information; to make interested parties aware of contract-related items which selected consultant(s) need to pay attention to.

Vendor Responsibility
- The selected consultant will need to go to the following NYSDOT Web site (https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions) to review the vendor responsibility questionnaire. The selected consultant will be required to submit a completed questionnaire within 10 days of being notified of selection for contract award. If you are a successful consultant, NYSDOT will not be able to begin negotiations with your firm if this questionnaire is not completed and electronically submitted as required.

Contractor Tax Certification
- All vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency) during negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites:

Insurance Requirements of this Project
- Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in the respective draft Contracts (C031181 – Ops; C031121 – Cap). These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Consultant Employment Disclosure Requirements of this Project
- The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” (Attachment 4, Consultant Disclosure Legislation Form A) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services
Contractor’s Annual Employment Report” (Attachment 4, Consultant Disclosure Legislation Form B) and submit copies to the Office of the State Comptroller, NYSDOT of Civil Service, and NYSDOT of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

- It is the Consultant’s responsibility to ensure they propose staff that is eligible to work on the subject project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York State Ethics Commission that approves their participation in the subject project. For an outline of the procedure that applies to this situation, see Attachment 5.

Registration with NYSDOT

- All consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) whether as prime consultants, joint venture partners or subconsultants, are required to electronically register their firm using NYSDOT’s Consultant Selection System web application (CSSWeb). All consultant firms entering into NYSDOT agreements are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to: legal firm name; Federal Identification Number (FEIN); ownership type; DBE, MBE and/or WBE status; firm principals; and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement.


Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb Administrator by email at css@dot.state.ny.us or by telephone at 518-457-2600.

Consultant Billing/Reimbursement Request Information

- NYSDOT use a two-step consultant reimbursement/billing procedure (pursuant to the payment method in the resulting contract). Submit draft electronic billings to the NYSDOT Project Manager via: https://www.nysdot.gov/main/business-center/consultants/consultants-repository/Consultant%20Billing%20Spreadsheets.xls. The spreadsheet contains all of the proper, required billing forms, as well as a sample billing information. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy.
SFS Registration

The Prime consultant will be required to electronically register with the Statewide Financial System (SFS) - if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.

7.0 ATTACHMENTS

1. Draft Contract
2. Consultant Information and Certification Form
3. Procurement Lobbying Law Compliance
5. Use of Former NYSDOT Employee Information
6. Company References
7. Project Manager References
8. DBE Participation Information
9. DBE Solicitation Log
10. Cost Proposal Instructions
   Attachment 10A Instructions
   Attachment 10B Instructions
   Attachment 10C Instructions
   Attachment 10D Instructions
   Attachment 10E Instructions
11. Non-Collusive Bidding Certification
ATTACHMENT 1

Draft Contract

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. NO.: ____________  P.I.N.:_______________

COMPTROLLER'S CONTRACT NO. C031181

PROJECT:  DBE ASSESSMENT SERVICES FOR NYSDOT

This Agreement made this ___________ day of ____________________, 2014 pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the New York State Department of Transportation (hereinafter referred to as "STATE" or “DEPARTMENT”) whose Main Office is located at 50 Wolf Road in the County of Albany, State of New York 12232, and

CONSULTANT FIRM NAME
CONSULTANT FIRM ADDRESS
(hereinafter referred to as "CONSULTANT")

WITNESSETH:

WHEREAS, the STATE desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE 1. PERFORMANCE OF WORK.

Subject to the provision of ARTICLE 14 hereof, the CONSULTANT shall perform all of the work described in SCHEDULE A generally in accordance with the CONSULTANT’S PROPOSAL and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this AGREEMENT. It is understood and agreed that _______________________ shall serve as the CONSULTANT's Project Manager and as such shall have the responsibility for the overall supervision and conduct of the work on behalf of the
CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described therein. Any change of key project personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval, of all necessary state officials.

The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the STATE.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

The contract documents shall be deemed to include this AGREEMENT (including EXHIBITS), the provisions required by state and federal law to be inserted in the AGREEMENT as set forth in Appendix A, APPENDIX A-1, APPENDIX B and APPENDIX C, EXHIBIT A, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the STATE’s Request for Proposals (RFP; dated ____ ) incorporated by reference, and the CONSULTANT’s Proposal (dated ____ ) incorporated by reference.

ARTICLE 3. INSPECTION.

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees that the base term of the AGREEMENT shall be 36 months from ___________ to _______________. Additionally, this AGREEMENT may be extended for up to two one-year periods based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT.

Item I The maximum aggregate amount payable by the State to the CONSULTANT hereunder for the performance and completion of the work is $____ as per EXHIBIT __ unless increased by a supplemental agreement. It is understood and agreed that the STATE is under no obligation to make a minimum number of work assignments and will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project assignments.

Item II The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.

ARTICLE 6. PROVISION FOR PAYMENT.

The STATE shall pay to the CONSULTANT, and the CONSULTANT agrees to accept as full compensation for services provided under this agreement:
Item I  Specific Hourly rates of pay shown in SCHEDULE B (EXHIBIT __) for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged is subject to audit.

Item II  Actual Direct Non-Salary Costs incurred in fulfilling the terms of this AGREEMENT are subject to audit. Such costs may include, but are not necessarily limited to those shown in EXHIBIT ___. All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller.

Items purchased under this PROJECT shall become the property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE.

Item III  The number of months of training provided under Special Provision 11 in Appendix C is ________.

ARTICLE 7. CONTRACT PAYMENT.

The CONSULTANT shall provide complete and accurate billing invoices to the STATE in order to receive payment. Billing invoices submitted to the STATE must contain all information and supporting documentation required by the Contract, the STATE and the State Comptroller. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONSULTANT shall comply with the State Comptroller’s procedures to authorize electronic payments. Authorization forms are available at the State Comptroller’s website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. CONSULTANT acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller’s electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

ARTICLE 8. PARTIAL PAYMENTS.

The CONSULTANT shall be paid in monthly progress payments based on actual allowable costs incurred during the period in accordance with ARTICLE 6 of this AGREEMENT and acceptable, submitted monthly reports. Bills are subject to the approval of the State’s Project Director, or their successor as identified by the STATE. Payments shall not be withheld unreasonably.

The CONSULTANT shall inform the STATE and all Subcontractors and Subconsultants of the Consultants schedule for submitting monthly vouchers to the STATE, said schedule shall be strictly adhered to by the CONSULTANT.
All Subcontractor and Subconsultant vouchers received by the CONSULTANT at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the CONSULTANT does not have other costs to be billed for that period. The CONSULTANT shall inform the Subcontractor or Subconsultant of the date the voucher was submitted to the STATE and the amount included for the Subcontractor or Subconsultant.

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to all Subcontractors and Subconsultants within ten (10) calendar days of receipt of payment from the STATE.

Accounts of the CONSULTANT shall clearly identify the costs of the work performed under this AGREEMENT and shall be subject to periodic and final audit by the STATE and, on Federally aided Projects, by the Federal Highway Administration. Such audit shall not be a condition of partial payment.

ARTICLE 9. FINAL PAYMENT.

a) Section 179 of the State Finance Law requires the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of the State Finance Law has determined that the STATE will require a 60 calendar day audit period for final payments at which time the 30 calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all Subcontractors and Subconsultants within ten (10) calendar days of receipt of final payment from the STATE.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in ARTICLE 9(b).

b) The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at all reasonable times during the period of this Agreement and for the period of time specified in Clause No. 10, “Records” of APPENDIX A, for inspection by the STATE, Federal Highway Administration, or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

ARTICLE 10. EXTRA WORK.

a) If the CONSULTANT believes that any work is or may be beyond the scope of the Agreement (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing, of this fact prior to beginning any of the work. The notification shall include all information required by the Department. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any
extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approvals have been obtained from necessary State officials and if required, from the Federal Highway Administration.

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE’s directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 11. CONSULTANT LIABILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the consultant inspecting engineer or inspector working for the State relative to the project from suits, claims, actions, damages and costs involving personal injury and property damage arising from the CONSULTANT’s work under the contract during its prosecution and until the final acceptance thereof. The State may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The CONSULTANT’s obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, SubCONSULTANT or the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or any consultants working for the State.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorneys’ fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, any municipality in which the work is being performed, and/or any public benefit corporation,
railroad or public utility whose property or facilities are affected by the contract work, or any consultants working for the State, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway or structure and appurtenances and appliances thereof including moving, demolition and excavating connected therewith.

ARTICLE 12. INSURANCE.

The CONSULTANT shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of A minus or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §27.0 et seq.; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect.

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the CONSULTANT are specified in subsection “B,” below. Insurance shall apply separately on a per-job or per-project basis.

2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

3. Certificates of Insurance/Notices. CONSULTANT shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference Contract Number C031181. Certificates shall be mailed to the:

New York State Department of Transportation
Contract Management Bureau, 6th Floor
50 Wolf Rd.
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon thirty (30) days’ prior written notice to the Department by
Certified Mail, return receipt requested at the stated address. In addition, if required by the Department, the CONSULTANT shall deliver to the Department within Forty-Five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

a. Be in the form provided by the Department (C218 or successor) unless the Department specifically approves a different form. The ACORD forms of Certificate of Insurance are not acceptable.
b. Be signed by an authorized representative of the insurance carrier or producer and be acknowledged before a notary public.
c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
d. Specify the Additional Insureds and Named Insureds as required herein.
e. Refer to this Contract by number on the face of the certificate, and
f. Expressly reference the inclusion of all required endorsements.
g. If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:
   (1) Direct the CONSULTANT to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
   (2) May withhold further contract payments in accordance with Article 8, or
   (3) Treat such failure as a breach or default of the contract.

4. Additional Insureds. All insurance policies required, by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to “The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees” with respect to any claim arising from the CONSULTANT’s Work under this contract or as a result of the CONSULTANT’s activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form (or forms) that provides equivalent coverage.

5. Primary Coverage. All insurance policies, excepting workers’ compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available to the Department for any claim arising from the CONSULTANT’s Work under this contract or as a result of the CONSULTANT’s activities.

6. Waiver of Subrogation. As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of CONSULTANT’s policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
7. Policy Renewal/Expiration. At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in subdivision (A)(3) above.

8. Self-Insured Retention/Deductibles. Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, CONSULTANT-administered insurance deductible shall be limited to the amount of the bid deposit or $100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT’s deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of “A minus” or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

9. Waiver of Indemnities. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

B. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:

1. Workers’ Compensation and Disability Insurance. As required by State Finance Law §142, CONSULTANT shall maintain in force workers’ compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of CONSULTANT’s employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

2. Commercial General Liability Insurance. CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against
liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than $1,000,000.00 per occurrence and not less than $2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

(1) Coverage for liability contractually assumed by the CONSULTANT.
(2) All insurance policies required by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to “the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work,” using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.

3. Commercial Automobile Insurance including liability and required coverage for New York In the event that automobiles are used in connection with CONSULTANT’s business or operations with the Department, CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT’s automobiles (including owned, hired and non-owned vehicles) on and around the project. This should be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than $1,000,000.00 each accident.

4. Consultant’s Risks The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

ARTICLE 13. INTERCHANGE OF DATA.

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 14. DISPOSITION OF DATA.
At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

ARTICLE 15. DAMAGES AND DELAYS.

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 9 of this AGREEMENT.

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this contract shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and subject to assumption or rejection by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to Contract Management of the New York State Department of Transportation at its main office in Albany and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the State by final audit or otherwise.

The determination of any rights under this contract shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, New York.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this contract.

ARTICLE 17. TERMINATION.

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be
made based on the actual work performed by the CONSULTANT prior to termination including, but not limited to, the number of hours and other authorized costs audited in accordance with the terms of the AGREEMENT.

(b) If the termination is brought about as a result of the unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.

c) The STATE reserves the right to terminate this contract in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the contract.

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of them, who shall be obligated to perform the services required under this AGREEMENT, and the STATE shall make all payments due to them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within (60) days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT'S successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the STATE for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 19. CODE OF ETHICS.

The CONSULTANT specifically agrees that this AGREEMENT may be canceled or terminated if any work under this AGREEMENT is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for State officers and employees.

The CONSULTANT shall not engage, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this AGREEMENT in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

ARTICLE 20. INDEPENDENT CONTRACTOR.

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason
hereof, and that they will not, be reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

**ARTICLE 21. COVENANT AGAINST CONTINGENT FEES.**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to annul this AGREEMENT without liability, or, in its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**ARTICLE 22. TRANSFER OF AGREEMENT.**

The CONSULTANT specifically agrees, as required by the State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the AGREEMENT or of their right, title or interest therein, or their power to execute such AGREEMENT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the AGREEMENT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the AGREEMENT, and such transferee shall forfeit and lose all moneys therefore assigned under said AGREEMENT, except so much as may be required to pay his employees.

**ARTICLE 23. PROPRIETARY RIGHTS.**

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable, paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

**ARTICLE 24. SUBCONTRACTORS/SUBCONSULTANTS.**

All subcontractors and subconsultants performing work on this project shall be bound by the same required contract provisions as the prime consultant. All agreements between the prime
consultant and a subcontractor or subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the State.

**ARTICLE 25. ORDER OF PRECEDENCE.**

In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A,
2. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, APPENDIX B, and APPENDIX C;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’s Request for Proposals; and
7. The CONSULTANT’s Proposal.

**ARTICLE 26. CERTIFICATION REQUIRED BY 49CFR, PART 29.**

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

**EXCEPTIONS -**

**ARTICLE 27. CERTIFICATION FOR FEDERAL-AID CONTRACTS.**

The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative
agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 28. RESPONSIBILITY OF THE CONSULTANT.

(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

(b) Neither the STATE'S review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.

(c) The rights and remedies of the STATE provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder; and as such, each acts both as principal and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this agreement shall be jointly and severally liable to third parties, including but not limited to the STATE, for the acts or omissions of the CONSULTANT or any other entity, partner or joint venturer hereunder.
(e) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

ARTICLE 29. SECURITY AND CONFIDENTIALITY OF INFORMATION.

Information received as part of this contract shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers and any SUBCONTRACTOR/SUBCONSULTANTS regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this contract. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the States designee. Neither shall the CONSULTANT disclose information deemed confidential by the State nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this Contract.

CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §889-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, CONSULTANT shall be liable for the costs associated with such breach if caused by CONSULTANT’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT’s agents, officers, employees or SUBCONSULTANTS.

ARTICLE 30. VENDOR RESPONSIBILITY.

“The Department of Transportation has undertaken an affirmative review of the proposed consultant’s responsibility in accordance with the applicable standards outlined in Comptroller’s ‘Guide to Financial Operations’, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

“(a) General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

“(b) Suspension or Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be
given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

“(c) Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant’s expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.”

The Department of Transportation has undertaken an affirmative review of the proposed consultant’s responsibility in accordance with the applicable standards outlined in Comptroller’s Bulletin No. G-221, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

ARTICLE 31. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit ___) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:
NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, N. Y. 12236
Attn: Consultant Reporting

NYS Department of Civil Service
Alfred E. Smith Building
Albany, N. Y. 12239
Attn: Chapter 10 Counsel’s Office

NYS Department of Transportation:
 Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or pdf file via email to: Timothy.Ameche@dot.ny.gov or his successor.
ARTICLE 32. NOTICES.

Item 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
(a) via certified or registered United States mail, return receipt requested;
(b) by facsimile transmission;
(c) by personal delivery;
(d) by expedited delivery service; or
(e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Department of Transportation:
Contact Person’s Name: William A. Howe, Contract #C031181
Title: Director
Address: NYS DOT Contract Management Bur., 50 Wolf Rd., 6th Fl, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2875
E-Mail Address: bill.howe@dot.ny.gov

Consultant’s Name: ________________
Contact Person’s Name: ________________
Title: ________________
Address: ________________
Telephone Number: ________________
Facsimile Number: ________________
E-Mail Address: ________________

Item 2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

Item 3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 33. TITLE VI ASSURANCE.

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
(1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT’s Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
(b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the
contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**ARTICLE 34. IRAN DIVESTMENT ACT.**

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL) Section 165-a, effective April 12, 2012. This act may be viewed in its entirety at [http://www.ogs.ny.gov/about/regs/docs/ida2012.pdf](http://www.ogs.ny.gov/about/regs/docs/ida2012.pdf). Pursuant to SFL Section 165-a(3)(b), the Commissioner of the Office of General Services (OGS) has developed and maintains a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). The list may be found on the OGS website at: [http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf](http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf)

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that, it will not utilize, on such Contract, any subcontractor that is identified on the prohibited entities list.

Additionally, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should the New York State Department of Transportation (NYSDOT) receive information that a Bidder/Contractor (or any assignee) is in violation of the above-referenced certification, NYSDOT will offer the Bidder/Contractor (or any assignee) an opportunity to respond. If the Bidder/Contractor (or any assignee) fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

**ARTICLE 35. RESPONSIBILITY PROVISIONS.**

**General Responsibility.** The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

**Suspension or Work (for Non-Responsibility).** The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be
given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant’s expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
IN WITNESS WHEREOF, this Contract No. C031181 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

In addition to the acceptance of this Agreement, the Department certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK

_________________________________________ By____________________________________

CONTRACT MANAGEMENT BUREAU DEPARTMENT OF TRANSPORTATION

DATE: __________________________ DATE: __________________________

Consultant Certifications: I certify that all the information with respect to the “Vendor Responsibility Questionnaire” submitted by (CONSULTANT FIRM NAME) __________________________ on the ___ day of __________________, 20___ pursuant to the requirements set forth in OSC’s Guide to Financial Operations is complete, true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the “Vendor Responsibility Questionnaire” submitted that date.

I certify that all information provided to the STATE with respect to the requirements contained in State Finance Law Sections 139j & 139k is complete, true and accurate.

By __________________________ Date: __________________________

______________ FIRM

DBE Assessment Services For NYSDOT

APPROVALS

ATTORNEY GENERAL THOMAS P. DiNAPOLI

STATE COMPTROLLER

By __________________________

By __________________________

Date __________________________ Date __________________________
Acknowledgement for Contract #C031181

For contracts signed in New York State

State of New York )
County of ) ss.:

On the________ day of ____________ in the year 201___, before me the undersigned, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

____________________________________
NOTARY PUBLIC

My Commission Expires: ____________________________

For contracts signed outside New York State

State of )
County of ) ss.:

On the _______ day of ______________ in the year 201___ before me, the undersigned, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in ________________________________ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

____________________________________
NOTARY PUBLIC

(Signature and office of individual taking acknowledgement.)

My Commission Expires: ____________________________
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6.a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor
understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3- a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee’s Federal employer identification number, (ii) the payee’s Federal social security number, and/or (iii) the payee’s Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessee of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or
furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of “a”, “b”, and “c” above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development’s Division of Minority and Women’s Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been
informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
http://esd.ny.gov/MWBE/directorySearch.html

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming,
engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

Updated December 2012
APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
   (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
   (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
APPENDIX B

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, NYSDOT is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration undertakes to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT has, in cooperation with FHWA, assembled the body of Federal-aid requirements, together with information, NYSDOT procedures and practices in its “Procedures for Locally Administered Federal-Aid Projects” (available through NYSDOT’s web site at: https://www.dot.ny.gov/portal/page/portal/divisions/operating/opdm/community-assistance-delivery-bureau/locally-administered-federal-aid-projects). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration that enters Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: http://www.fhwa.dot.gov/programadmin/contracts/1273.htm).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and Department of Transportation regulations (49CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.

2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsor’s contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex, national origin or age. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49CFR Part 26.

FEDERAL SINGLE AUDIT REQUIREMENTS
Non-Federal entities that expend $500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations”. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than $500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. _____. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency\(^1\) the New York State Department of Transportation, the New York State Comptroller’s Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity’s fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation’s Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of federal award payments.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA), is an on-line database of all Federally-aided programs available to State, and local governments (including the District of Columbia); federally -recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals. The database is accessible at http://www.cfda.gov/.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal-aid Highway Planning and Construction program is 20.205. Additional CFDA numbers for other transportation and non-transportation related programs are:
20.215, Highway Training and Education
20.219, Recreational Trails Program
20.XXX, Highway Planning and Construction - Highways for LIFE;
20.XXX, Surface Transportation Research and Development;
20.500, Federal Transit-Capital Investment Grants
20.505, Federal Transit-Metropolitan Planning Grants
20.507, Federal Transit-Formula Grants
20.509, Formula Grants for Other Than Urbanized Areas
20.600, State and Community Highway Safety
23.003, Appalachian Development Highway System
23.008, Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

\(^1\) The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.
(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

1. You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

2. You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

3. You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

1. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

3. Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

Updated January 2009
APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of $10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program. "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

   (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

   (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.

   (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official.

   (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)
(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

1. Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

2. The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the
geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT’s compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.
(c) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

(1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
(2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS  This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in this Agreement.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.
Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated December 2012
CONSULTANT INFORMATION AND CERTIFICATIONS
(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBER:  C031181
PROJECT TITLE:  DBE Assessment Services for NYSDOT

I.  CONSULTANT INFORMATION

FIRM NAME: ______________________________________________________________
ADDRESS:___________________________________________
CITY:_________________________________________ STATE: __________
ZIP CODE:  __ __ __ __ - __ __ __ __
TELEPHONE : (____) _____ - __________ FAX: (____) _____ - __________
E-MAIL ADDRESS: __________________________________________
CONTACT PERSON: ____________________________________________

Consultant’s Federal Identification Number (FIN):______________
Consultant’s NYSDOT Consultant Identification Number (CIN): __________
Consultant’s New York State SFS Vendor Identification Number: ___________

Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of proposal evaluation:

Preparer’s Name/Title: _____________________________________________
Address: _________________________________________________________
Telephone: (____) _____ - __________ FAX: (____) _____ - __________

Other Authorized Individual(s):
Name/Title:________________________________________________________
Address:_________________________________________________________
Telephone: (____) _____ - __________ FAX: (____) _____ - _______
II. PROPOSER CERTIFICATIONS

By signing below, I, _____________________________, authorized individual
(Name)
of ______________________________________ make the following
(Firm)
certifications regarding the subject proposal:

• 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
• The firm has read and will follow the procedure outlined in Attachment 5 if it proposes the services of a former NYSDOT employee(s).
• Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility forms to NYSDOT within 10 days of notification of designation both electronically and in hard copy per the NYSDOT Web site. (https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions)
• ST-220: If selected for contract award greater that $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
  http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
  http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
• The firm is in compliance with the requirements of the Omnibus Procurement Act as described in APPENDIX A which is found in the Draft Contracts attached to this RFP.

Signature: __________________________________________

III. ACCEPTANCE OF CONTRACT

By signing below, I, _____________________________, authorized individual
(Name)
of ______________________________________ hereby certify that I have read and
(Firm)
accept all terms and conditions contained in the draft Contract for C031181 including Appendix A which is included as Attachment 1 to this Request for Proposals.

Signature: __________________________________________
(Name of Acceptor)
Attachment 3

Procurement Lobbying Law Compliance

1. Required Forms: The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant’s proposal.
   a) “Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)”
   b) “Offeror Disclosure of Prior Non-Responsibility Determinations”.

2. NYSDOT Guidelines and Procedures
   Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through the Office of Contract Management (*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.


3. Summary of the policy and prohibitions regarding permissible contacts
   a) Contacts prior to designation:
      Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:
      The Contract Management Designation Contract Analyst
      The Contract Management Designation Analyst Supervisor
      The Contract Management Civil Rights Unit Supervisor
      The Contract Management Assistant Directors
      The Contract Management Director

      These are some communications exempted from this restriction:
      Participation in a pre-proposal conference.
      Protests, complaints of improper conduct or misrepresentation

      If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If NYSDOT determines an impermissible contact was made, that offeror cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offeror.

   b) Contacts after designation
      NYSDOT identifies its primary negotiation contacts. The designated contacts include:
      The Contract Management Bureau Designation Contract Analyst
      The Contract Management Bureau Designation Analyst Supervisor
      The Contract Management Bureau Civil Rights Unit Supervisor
      The Contract Management Bureau Assistant Directors
      The Contract Management Bureau Director
      The Consultant Management Bureau consultant job manager
The Consultant Management Bureau consultant job manager’s immediate supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

c) Information Required from Offerors that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:
The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:
   Person’s name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

d) Applicability to an executed contract:
Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offeror. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. NYSDOT may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:
   http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm (Advisory Council FAQs)
   http://www.nylobby.state.ny.us/ (New York State Lobbying Act)
   http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

For more information, go to NYSDOT’s World Wide Web Site at http://www.dot.ny.gov or contact: Barbara Sonenberg of NYSDOT Contract Management Bureau, 50 Wolf Rd, 6th Fl., Albany, New York 12232
E-mail: Barbara.Sonenberg@dot.ny.gov
Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Offeror affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Contract Procurement No.  C031181

By: ____________________________  Date:____________________

Name: ____________________________

Title: ____________________________

Contractor Name: _______________________________________________________

Contractor Address: _____________________________________________________

______________________________________________________________________

______________________________________________________________________
Offeror Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: ________________________________________________________________

Address: ________________________________________________________________

Name and Title of Person Submitting this Form: ________________________________________________________________

Contract Procurement Number: _______C031181

Date: ________________________

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): No Yes

If yes, please answer the next three questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle): No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

   Governmental Entity: ________________________________________________________________

   Date of Finding of Non-responsibility: ______________________________________________

   Basis of Finding of Non-Responsibility: ______________________________________________

   (Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.

   Governmental Entity: ________________________________________________________________

   Date of Termination or Withholding of Contract: ____________________________________________

   Basis of Termination or Withholding: ____________________________________________

   (Add additional pages as necessary)

   Offeror certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

   By: ___________________________ Signature

   Date: ___________________________
### FORM A

**State Consultant Services – Contractor’s Planned Employment**  
**From Contract Start Date Through The End Of The Contract Term**

<table>
<thead>
<tr>
<th>O<em>Net Employment Category And O</em>NET Employment Title</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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<th>Total this page</th>
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<tr>
<th>Grand Total</th>
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Name of person who prepared this report:

Title:  
Preparer's Signature:  
Date Prepared: / /  
(Use additional pages, if necessary)
State Consultant Services  
Contractor's Annual Employment Report  
Report Period: April 1, 2023 to March 31, 2023

Contracting State Agency Name: DOT  
Agency Code: 3900283  
Contract Number: C031181  
Contract Term: / / to / /  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided: DBE Assessment Services

Scope of Contract (Choose one that best fits):  
- Analysis  
- Evaluation  
- Research  
- Training  
- Data Processing  
- Computer Programming  
- Other IT consulting  
- Engineering  
- Architect Services  
- Surveying  
- Environmental Services  
- Health Services  
- Mental Health Services  
- Accounting  
- Auditing  
- Paralegal  
- Legal  
- Other Consulting

<table>
<thead>
<tr>
<th>O<em>Net Employment Number and O</em>NET Employment Category</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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<td>Grand Total</td>
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</tbody>
</table>

Name of person who prepared this report:  
Preparer's Signature:___________________________________________________  
Title:_____________________________  
Phone #:___________________________  
Date Prepared: / /  
Use additional pages if necessary)
Attachment 5

Consultant’s Responsibility When Proposing Former NYSDOT Employees

It is the consultant’s responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual’s responsibility to comply with the Public Officer’s Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual’s date of separation from the State.

- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

Procedure

- Before the consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (http://www.jcope.ny.gov/) that approves their participation in the project as they are proposed.

- A copy of this opinion must be on file in the consultant’s office and available for review by NYSDOT if requested.

- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
## Company References

**COMPANY (Firm) REFERENCES:**
- Provide at least three Firm references.
- Use below form. Fill one out for each Firm reference (fill in number blank – ie, ‘Firm Reference #1; Firm Reference #2, etc.)
- Form is expandable –.
- Reference check evaluation criteria provided below

<table>
<thead>
<tr>
<th>Firm Reference Number:</th>
<th>#_____</th>
</tr>
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<tbody>
<tr>
<td>Client/Firm Name:</td>
<td></td>
</tr>
<tr>
<td>Project Name:</td>
<td></td>
</tr>
<tr>
<td>Project Cost (total $):</td>
<td></td>
</tr>
<tr>
<td>Name &amp; Title of Contact:</td>
<td></td>
</tr>
<tr>
<td>E-Mail Address &amp; Telephone Number:</td>
<td></td>
</tr>
</tbody>
</table>

*Provide a brief description of a recent relevant project for which they served or are serving to reference:

## Reference Evaluation Criteria:

- Describe the nature of the project and the work that this vendor performed for you.
- What was the size of the effort (budget, duration, etc)?
- Was the work completed within budget?
- Did the vendor meet expected timeframes and deliverable deadlines?
- Was the vendor able to adapt to obstacles on the project?
- How pleased are you with the work the vendor has performed/is performing for you?
- Would you contract with this vendor again?

- \
**Attachment 7**

**Project Manager References:**
- Provide two references for proposed Project Manager.
- Can cite more than one project – work needs to be relevant to this RFP.
- Use form below, one form for each reference. Form is expandable.
- Reference check evaluation criteria provided below.

<table>
<thead>
<tr>
<th>Staff Title:</th>
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<tbody>
<tr>
<td>Client Name (Reference Company):</td>
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<tr>
<td>Reference Main Line of Business:</td>
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<tr>
<td>Project Name:</td>
</tr>
<tr>
<td>Name &amp; Title of Contact:</td>
</tr>
<tr>
<td>E-Mail Address &amp; Telephone Number:</td>
</tr>
<tr>
<td>Provide a Brief Description of Recent, Relevant Project for which they are Serving to Reference</td>
</tr>
</tbody>
</table>

**Reference Check Criteria:**
- Describe the nature of the project and the work that this staff member performed for you.

<table>
<thead>
<tr>
<th>How would you rate the staff member's experience and qualifications?</th>
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<tbody>
<tr>
<td>How well did the staff member respond to your needs?</td>
</tr>
<tr>
<td>How pleased are you with the work the staff member has performed/is performing for you?</td>
</tr>
<tr>
<td>Would you contract with this staff member again?</td>
</tr>
</tbody>
</table>
Attachment 8

DBE Participation Information

DBE ASSESSMENT SERVICES for NYSDOT
Contract # C031181

Please complete the following table for the prime firm and all proposed subconsultants (consultant team composition). All DBEs must be certified at the time of proposal submission and must be listed on New York State’s NYSUCP DBE Directory (http://biznet.nysucp.net/). Only certified DBEs are eligible to count towards contract’s 20% DBE goal. Using the tables provided below, please identify each firm’s full legal name and indicate each firm’s percentage of the total dollar amount for the each contract.

<table>
<thead>
<tr>
<th>For Contract #C031181</th>
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<tbody>
<tr>
<td>Firm Legal Name</td>
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<tr>
<td>A. Prime Consultant</td>
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<tr>
<td>B. Sub-Consultants</td>
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<tr>
<td>Total</td>
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**ADDITIONAL ATTACHMENT 8 INSTRUCTIONS:**

If the percentage of total dollar contributions for all proposed, certified DBEs is less than the 20% DBE Participation Goal set for each contract, then the proposing prime firm is required to fill out and submit the DBE Subconsultant Participation Solicitation Log (Attachment 9; submit one for each contract where goal not met, as applicable), and provide a DBE Goal Attainment Explanation Letter (submit one for each contract where goal not met, as applicable). Further, prime consultants certified as a DBE are not relieved of meeting the DBE contract goal solely via their participation, as this is a subconsultant program opportunity. DBE primes need to either meet the DBE subconsultant participation goal, or submit the DBE Subconsultant Participation Solicitation Log (Attachment 9) and the DBE Goal Attainment Explanation Letter.
## Attachment 9

**DBE Participation Solicitation Log**
(Good Faith Effort Documentation)

<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
<th>E-MAIL</th>
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<tr>
<td><strong>C031181</strong></td>
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<table>
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<tr>
<th>SOLICITED COMPANY NAME AND CONTACT PERSON</th>
<th>TELEPHONE (WITH AREA CODE)</th>
<th>FEDERAL EMPLOYER ID #</th>
<th>WORK TYPES BEING SOLICITED</th>
<th>TYPES AND DATES OF CONTACTS</th>
<th>CONTACT RESULT(S)</th>
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76
INSTRUCTIONS FOR COMPLETING ATTACHMENT 9

INSTRUCTIONS FOR COMPLETING
DBE Participation Solicitation Log
(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, CONSULTANTS whose proposed DBE participation does not meet the established Disadvantaged Business Enterprises (DBE) participation goal must document and report their efforts to solicit participation by certified DBE in this Non-Architecture/Non-Engineering contract. The DBE Participation Solicitation Log is used for this purpose.

PLEASE NOTE: Only participation by NYSUCP certified DBE Prime CONSULTANTS as well as NYSUCP certified DBE SUBCONSULTANTS may count toward goal attainment.

Guidance concerning Good Faith Efforts in meeting DBE participation goals in Federally-funded contracts is located at the end of this section.

The log is to be filled out and submitted with the proposing firm’s Cost and Contract Proposal. In order for a proposal to be determined as responsive when the DBE participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a DBE Participation Solicitation Log, along with a DBE Goal Attainment Explanation Letter, documenting the firm’s Good Faith Effort.

*** DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION. ***
IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE PROGRAM. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS.

CONTRACT NO: Enter NY State DOT contract number (Example: C031181).

DBE PARTICIPATION GOAL: Enter applicable DBE participation goal percentage as stated in the proposal.

PAGE NO.: Enter 1 of 1; or 1 of 2 and 2 of 2; etc. Use additional forms as needed.

PRIME NAME/ADDRESS/ZIP CODE: Enter name of the Prime CONSULTANT, its address and zip code.

CONTACT PERSON: Enter the name of the person your firm has designated as the authorized contact person for this solicitation.

CONTACT PERSON TELEPHONE AND E-MAIL: Enter area code, phone number and e-mail address for the person your firm has designated as the authorized contact person for this solicitation.

DBE CONSULTANTS SOLICITED:

SOLICITED COMPANY NAME AND CONTACT PERSON: Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.
**TELEPHONE (With Area Code):** Enter TELEPHONE number of the solicited firm.

**FEDERAL EMPLOYER ID #:** Enter the Federal Employer Identification Number of the solicited firm.

**WORK TYPE(S) BEING SOLICITED:** Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. (NOTE: Work type codes are provided for every certified firm listed in the DBE Registry (see RFP cover letter).

**TYPES AND DATES OF CONTACT:** Enter dates on which your firm contacted the solicited firm, either by mail (date solicitation sent), telephone (including date and time of call) or other person-to-person contacts. Identify the type of contact by prefacing each date with ‘M’ if a mail contact; “T” if a telephone call; and “D” if a direct meeting with the firm.

**CONTACT RESULT(S):** Enter the code(s) which indicates the result(s) of your solicitation.

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

1. This firm is unavailable to participate in the contract for the reason(s) stated on the DBE Solicitation Response. (Attach explanation to the Log.)

2. This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.

3. The soliciting Prime CONSULTANT was unable to reach this firm after having a telephone conversation to follow-up on the DBE participation solicitation inquiry. (NOTE: Indicate In the Types and Dates of Contact column the dates and times at which follow-up was attempted.)

4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left.)
Guidance Concerning Good Faith Efforts
In Meeting DBE Participation Goals In Federally-Funded Contracts

The following is a list of types of actions that demonstrate good faith efforts in obtaining DBE participation for federally-funded contracts. This list is not exclusive or exhaustive. The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – http://biznt.nysucp.net ) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.

- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- Negotiating in good faith with interested DBEs – it is the bidder’s responsibility to make a portion of the work available to DBE SUBCONTRACTORS and suppliers and to select those portions of the work or material needs consistent with the available DBE SUBCONTRACTORS and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

- A bidder using good business judgment should consider a number of factors in negotiating with SUBCONTRACTORS, including DBE SUBCONTRACTORS, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding DBEs is not in itself sufficient reason for failure to meet the contract DBE goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.

- Do not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal.

- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
ATTACHMENT 10

Cost Proposal Spreadsheet Instructions

Proposing Prime/offering firms must complete the EXCEL Cost Proposal spreadsheet available on NYSDOT’s website under Contract #C031181. Do not use any alternate spreadsheet. This spreadsheet contains five (5) individual worksheets (SALARY SCHEDULES, TRAVEL COSTS FOR ASSESSMENTS, TRAVEL COSTS FOR SYMPOSIUMS, ESTIMATE OF DIRECT NON-SALARY COSTS, and COST PROPOSAL TOTAL) that are identified on the tabs at the bottom of the spreadsheet. Only one Cost Proposal Spreadsheet is to be submitted with each Cost Proposal. The Prime consultant is responsible for the completion and submission of the spreadsheet. The spreadsheet shall reflect the participation of all members of the proposed Consultant team. Subconsultants should not submit their own separate Cost Proposal Spreadsheets. The information provided in the Offeror’s Cost Proposal Spreadsheet will provide the basis for evaluation of the Cost Proposal and contract negotiations between NYSDOT and the consultant team designated for contract award.

The information provided in the submitted Cost Proposal Spreadsheet will be used to calculate the Total Estimated Cost of the offering firm’s proposal. The resulting Total Estimated Cost for each responsive Offeror will be used in evaluating the Offeror’s Cost Proposal and will provide the basis for negotiation between NYSDOT and the firm awarded the contract.

To assist firms in the completion of the various worksheets, the information required to be completed by the firms has been highlighted in yellow. Firms are cautioned from making entries to other areas of the worksheets. To reiterate, the Prime Consultant/offering firm is responsible for the integrity of the Cost Proposal Spreadsheet (five worksheets) and shall accept responsibility for maintaining the structure and formulas used in the completion of the spreadsheet including the structure and formulas created by NYSDOT and that of any changes made by the Prime Consultant in its proposal for items including but not limited to increasing the number of firms in the team.

Cost proposals found to be inaccurate or containing flawed or incorrect information and/or formulas may be corrected by NYSDOT or may be evaluated as received (at NYSDOT’s discretion). Questions regarding preparation of the required spreadsheet are encouraged and are due by the question submittal due date.

Two CDs/thumb drives, etc., with the Excel file of the Cost Proposal Spreadsheet are to be submitted with the completed Cost Proposal. The file is not to be locked.
Attachment 10A
PROPOSED SPECIFIC HOURLY RATE SCHEDULE INSTRUCTIONS

Present a salary table for all proposed staff (prime consultant and all subconsultants). List each subconsultant firm on a separate page. For cost proposal purposes, rates remain the same for all base term contract years. During the contract term, rates may or may not be revised during the base term or optional years.

Instructions: Submit one completed Attachment 10A.

- Present person-specific fully loaded rates. Present each person’s title. Rates are to be broken-down into base hourly salary, overhead additive and fixed firm fee additive.
- NYSDOT’s overtime and holiday payment policies apply (straight pay; not subject to change).
- Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm’s proposed overhead.
- A firm’s labor fee may not exceed 10 percent.
- List all titles to be used during the term of the resulting agreement.
- For titles with multiple positions, you must propose one rate per person.
- Cost evaluation shall be based on 2000 FTE hours per contract year.
- Offerors must use one table per firm in its team (prime consultant plus any subconsultants that are being proposed), making multiple copies of the table as needed.
- Firms must provide **total** labor cost including subconsultants

Payment for services provided under the project shall be by fully loaded, specific hourly rates reimbursement and compensation for actual, approved direct non-salary costs incurred in the performance of the scope of services. Payment is based on receipt of acceptable monthly reports. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS voucher. Requests for progress and final payments shall be made by the designated Consultant on standard NYS vouchers.
COST PROPOSAL

Attachment 10B

PROPOSED TRAVEL EXPENSES FOR ASSESSMENT SITE VISITS INSTRUCTIONS

COLUMN A: The address of each NYSDOT Regional Office is listed below.
Region 4 (Genesee Valley) 1530 Jefferson Road Rochester, NY 14623
Region 5 (Western NY) 100 Seneca Street Buffalo, NY 14203
Region 8 (Hudson Valley) Eleanor Roosevelt State Office Building, 4 Burnett Boulevard Poughkeepsie, NY 12603
Region 10 (Long Island) State Office Building, 250 Veterans Memorial Highway Hauppauge, NY 11788
Region 11 (New York City) Hunters Point Plaza, 47-40 21st Street Long Island City, NY 11101

COLUMN B: The address of the firm’s office location from where they will be travelling to perform the work for this contract.

Add one line for the second person who will travel for each assessment, if applicable.

COLUMN C: Using Google Maps or MapQuest, indicate mileage from Column A location to Column B location.

COLUMN D: the formula multiplies COLUMN C X 2 to arrive at the round trip figure (rounded to nearest whole number).

COLUMN E: The Cost per Mile is 0.55.

COLUMN F: Cost Per Trip = COLUMN D X COLUMN E (round trip X cost per mile).

COLUMNS G, H, I for Air Travel ONLY: If using air travel, enter “0” in COLUMN C so car miles do not calculate.

COLUMNS J, K & L contain the State Reimbursement rate utilized for this cost evaluation. Enter eligible reimbursements below which are based on GSA Table (www.gsa.gov/perdiem)

<table>
<thead>
<tr>
<th></th>
<th>Region 4</th>
<th>Region 5</th>
<th>Region 8</th>
<th>Region 10</th>
<th>Region 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$8</td>
<td>$9</td>
<td>$10</td>
<td>$11</td>
<td>$12</td>
</tr>
<tr>
<td>Dinner</td>
<td>$26</td>
<td>$29</td>
<td>$31</td>
<td>$34</td>
<td>$36</td>
</tr>
<tr>
<td>Lodging</td>
<td>$101</td>
<td>$107</td>
<td>$102</td>
<td>$119</td>
<td>$260</td>
</tr>
</tbody>
</table>

Trips of less than 40 miles one way are not eligible for meals/lodging reimbursables.
Trips between 40 and 150 miles one way are eligible for: breakfast.
Trips greater than 150 miles one way are eligible for: breakfast, dinner and lodging.

Example: If your office is located in Region 1 and you are travelling to Region 11; and one-way trip is 152 miles, enter $12 for breakfast, $36 for dinner and $260 for lodging.

COLUMN M: Toll values have been entered by NYSDOT.

COLUMN N: Total per Trip (COLUMNS F+G+H+I+J+K+L+M)

COLUMN O: For cost evaluation purposes only, a multiplier is being used to represent the density of DBE firms in the regions of NYS where DBE firms are most numerous. A region with mode DBEs located in it shall be assigned a higher density multiplier.

COLUMN P: The formula calculates the total cost of trips per region for the three year contract.

Note: The actual travel schedule for site visits may include all regions of NYS. The reimbursements for breakfast, dinner, and lodging are for cost evaluation purposes only.
Attachment 10C INSTRUCTIONS

PROPOSED TRAVEL EXPENSES FOR SYMPOSIUMS

COLUMN A: The address of each NYSDOT Regional Office is listed below.
Region 1 (Capital District) 50 Wolf Road Albany, NY 12232
Region 5 (Western NY) 100 Seneca Street Buffalo, NY 14203
Region 11 (New York City) Hunters Point Plaza, 47-40 21st Street Long Island City, NY 11101

COLUMN B: The address of the firm’s office location from where they will be travelling to perform the work for this contract. One line is provided for each of the two consultants who will participate in the symposium.

COLUMN C: Using Google Maps or MapQuest, indicate mileage from NYSDOT Regional Office Address listed in Column A to firm’s location listed in Column B.

COLUMN D: The formula multiplies Column C X 2 to arrive at the round trip figure (rounded to nearest whole number).

COLUMN E: The Cost per Mile is 0.55.

COLUMN F: Cost Per Trip = COLUMN D X COLUMN E (round trip X cost per mile).

COLUMNS G, H, and I are for Air Travel Only. If filling in G,H, and I, PLACE “0” in COLUMN D so that car miles will not calculate.

COLUMNS J, K, and L: state reimbursement rate utilized for this cost evaluation.

<table>
<thead>
<tr>
<th>Location</th>
<th>Breakfast</th>
<th>Dinner</th>
<th>Lodging</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYC</td>
<td>$12</td>
<td>$36</td>
<td>$260</td>
</tr>
<tr>
<td>Albany</td>
<td>$10</td>
<td>$31</td>
<td>$111</td>
</tr>
<tr>
<td>Buffalo</td>
<td>$9</td>
<td>$29</td>
<td>$107</td>
</tr>
</tbody>
</table>

Trips of less than 40 miles one way are not eligible for meals/lodging reimbursables. Trips between 40 and 150 miles one way are eligible for: breakfast. Trips greater than 150 miles one way are eligible for: breakfast, dinner and lodging. The reimbursements for breakfast, dinner, and lodging are for cost evaluation purposes only.

COLUMN M: Toll values have been entered by NYSDOT.

COLUMN N: The formula totals all annual costs.

COLUMN O: The formula totals all Costs for the three year contract (= Column M X 3). Note: The actual symposium site may change during the contract.
Attachment 10D INSTRUCTIONS
PROPOSED DIRECT NONSALARY COSTS

List all anticipated direct non-salary items (non-travel related) necessary to provide the requested services. Provide the cost per item, number of items and total cost for each line. Provide a comprehensive total.

The following is the process by which the Consultant will purchase any commodities, equipment rental, and third party services to support the delivery of services under Contract #C031181. The selected Consultant will refer to available OGS contracts for the purchase of commodities and services (http://www.ogs.ny.gov/BU/PC/default.asp). If the item or service is listed in an OGS contract, then the Consultant will contact at least three of the contractors listed in the OGS contract to obtain quotes. If the item is not listed, then the Consultant shall obtain three price quotes from the open market to be submitted with the bill to the NYSDOT Project Manager. The Consultant is expected to select the lowest price item meeting the requested form, function and utility unless there are extenuating circumstances in which a higher priced item should be purchased. All purchases shall be performed in accordance with New York state purchase requirements. Note: Cell phones are not eligible for direct non-salary reimbursement.

Attachment 10E INSTRUCTIONS
COST PROPOSAL TOTAL

All total costs shall be derived based upon your inputs in the four preceding spreadsheets.
ATTACHMENT 11

NON-COLLUSIVE BIDDING CERTIFICATION
REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF 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 of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes 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 purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this ______ day of __________, 20____ as the act and deed of said corporation of partnership.
ATTACHMENT 11

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:
NAMES OF PARTNERS OR PRINCIPALS | LEGAL RESIDENCE
-----------------------------------|------------------
__________________________________|__________________
__________________________________|__________________
__________________________________|__________________
__________________________________|__________________

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME | LEGAL RESIDENCE
------------------|------------------
President:         |__________________
Secretary:         |__________________
Treasurer:         |__________________
President:         |__________________
Secretary:         |__________________
Treasurer:         |__________________
ATTACHMENT 11

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

Identifying Data

Potential Contractor: ______________________________________________________

Address:  _____________________________________________________________
              Street

                                                           City, Town, etc.

Telephone: ___________________________ Title__________________________

If applicable, Responsible Corporate Officer

Name: _______________________________ Title__________________________

Signature: ___________________________________________________________

Joint or combined bids by companies or firms must be certified on behalf of each participant.

___________________________________________________________  _____________________________________________________________
Legal name of person, firm or corporation                      Legal name of person, firm or corporation

By  ___________________________________________________________  ___________________________________________________________
    Name                                                                 Name
          ___________________________________________________________  ___________________________________________________________
    Title                                                                 Title

Address:  ___________________________________________________________
            Street

___________________________________________________________  ___________________________________________________________
City State                                                                          City State