REQUEST FOR PROPOSALS:
Karp Fixture Auctioneer Services
Contract #X031234

January 24, 2014

To All Concerned:

NYSDOT is releasing the above referenced Non-Engineering Request for Proposals (RFP) to seek a responsive and responsible Auctioneer Contractor to enter into a contract with NYSDOT to advertise and sell the contents contained within a facility acquired via eminent domain based upon the requirements contained in this RFP. All information necessary for the submission of your proposal is contained in this Request for Proposals.

Any questions regarding this project or proposal should be directed to Al Hasenkopf, the designated NYSDOT Contract Management Bureau contact for this solicitation, via e-mail at: alfred.hasenkopf@dot.ny.gov.

Please note the following Tentative Dates and Deadlines:

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If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form. Instructions for complying with the Procurement Lobbying Law are also included.

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. 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.

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.

We look forward to the receipt of your proposal.

Sincerely,
WILLIAM A. HOWE
Director
NYSDOT Contract Management Bureau

Enclosure
RFP RESPONSE FORM: Karp Fixture Auctioneer Services RFP

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 4.) before questions or other communications with the Department 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:

* E-Mail: alfred.hasenkopf@dot.ny.gov RE: #X031234

* Regular Mail:
  New York State Department of Transportation
  Contract Management Bureau, 6th Floor
  50 Wolf Road
  Albany, New York 12232
  ATTN: Contract #X031234

* Fax: 518-457-2875
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
KARP FIXTURE AUCTIONEER SERVICES
CONTRACT #X031234

RFP Release Date: January 24, 2014

Proposal Delivery Information:

   Al Hasenkopf, Contract Management Bureau, X031234
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232

Proposal Due Date: February 18, 2014
REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
KARP FIXTURE AUCTIONEER SERVICES

CONTRACT #X031234

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NOTE: To access and download the Online files, go to: https://www.dot.ny.gov/business and click on ‘Consultant Service Opportunities’, then click on the ‘Opportunities’ tab.
1. INTRODUCTION

1.1 Purpose of this RFP

The New York State Department of Transportation (NYSDOT) is releasing this Request for Proposals (RFP) to seek proposals from responsive and responsible Auctioneer Contractors to enter into a contract with NYSDOT to advertise and sell the contents contained within a facility acquired via eminent domain based upon the requirements contained in this RFP. NYSDOT intends to select and enter into contract #X031234 with a responsible and responsive consultant that provides best value to the State based on this solicitation.

1.2 General Background

1.2.1 NYSDOT Mission

It is the mission of NYSDOT to ensure that our customers — those who live, work, or 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 coordinating and developing a 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. This mission also includes 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 more than 100 billion vehicle miles, encompassing more than 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 31 million people travel each year
- 5 major ports, which annually handle 50 million tons of freight
- More than 130 public transit operators, serving more than 5.2 million passengers each day
- 12 major public and private ports, which handle more than 110 million tons of freight annually
This auctioneer services request supports a larger NYSDOT bridge infrastructure project in the immediate vicinity of the Karp location. The contents of the building are to be auctioned off before the building gets demolished to make room for a new bridge.

2. **PROJECT AND CONTRACT OBJECTIVES**

2.1 **Project Objectives**

The goal of this Project is to acquire the professional services from a responsive and responsible Auctioneer Contractor under revenue contract #X031234 to advertise, sell and remove as many fixtures and reusable parts of the building as possible from the previous Karp Associates-owned building located at 54-54 43rd Street, Maspeth, New York, 11378 by March 31, 2014.

The objectives of this Project are:

1. To inventory and catalog the building contents and reusable parts of the building once NYSDOT has obtained access to the property
2. To widely advertise the auction
3. To responsibly and professionally conduct the auction
4. To responsibly collect the sales proceeds
5. To arrange for the fixture auction within a five business day period (Monday – Friday) after the conclusion of the day of auction
6. To accomplish the removal of all sold items within a second five business day period (Monday – Friday) after the conclusion of the day of action.

2.2 **Contract Objectives**

The Contract Objective for this solicitation is to select a responsive and responsible consultant via a fair and equitable Best Value Request for Proposal process, and provide fair and equitable treatment of all firms participating in the competitive consultant selection process.

**CONTRACT TERM:** The base term of this contract will be for six (6) months commencing from the effective contract start date, with one (1) optional 6-month contract term extension, depending on performance, project need and funding availability.

**CONSULTANT ARRANGEMENTS:** The resulting contract shall be between NYSDOT and the selected Prime Consultant. The Prime Consultant shall be responsible for completion of all agreed-upon services. NYSDOT will only contract with one (1) responsive and responsible Prime Consultant, who will be the sole contact with regard to all provisions of the Karp Fixture Auction project and Contract #X031234. If the Consultant’s selected solution includes subconsultants, the Consultant under contract will be the Prime Consultant who must assume full responsibility for all aspects of the project, including performance and completion of all subconsultant work. All necessary communications will be directed from NYSDOT to the Prime Consultant (Project Manager). The Prime Consultant is responsible for offering qualified subconsultants with competitive rates/costs. If the proposal includes products or services from any other participating vendors, it is understood that those vendors will serve as subconsultants to the Prime Consultant. **Joint ventures are not allowed.** For the purpose of evaluating proposals and developing the resulting agreement between NYSDOT and the Prime Consultant, all
contributions to the project by the Prime Consultant and subconsultants, including skills, attributes, and products, will be considered as a total offer put forth by a single proposer.

3. **MINIMUM RFP RESPONSIVENESS REQUIREMENTS**

3.1 Any Firm that does not provide a complete proposal (complete Technical and Management submission and complete Cost submissions per RFP Section 4) may be determined to be non-responsive.

3.2 Any proposal received after the submittal due date/time shall be deemed to be non-responsive. Late proposals will not be considered for contract award. Proposers that plan to hand deliver their proposals should ensure receipt, in NYSDOT Contract Management’s Bureau’s office, by the proposal due date/time. Note that the deadline is for receipt of the proposal at NYSDOT’s office located at 50 Wolf Road, Albany, New York, not for the mailing or entrusting of the proposal to a delivery service.

3.3 NYSDOT will not accept facsimile or e-mailed proposals in response to this RFP.

3.4 The Auctioneer Contractor shall furnish and show evidence of bonding.

3.5 The Auctioneer Contractor shall furnish and show evidence of licensure by New York State.

3.6 The Auctioneer Contractor must show evidence and comply with all license requirements by the City of New York City ([http://www.nyc.gov/html/dca/html/licenses/036-071.shtml](http://www.nyc.gov/html/dca/html/licenses/036-071.shtml)).

3.7 Proposer has actively and normally been engaged, for at least the past three (3) years, in conducting auctions similar in scope to the services described herein or Proposer is to supply information confirming that senior management personnel of Proposer has been actively and normally engaged cumulatively for the Proposer and another firm or firms in which they also served as senior management personnel, for at least the past three (3) years in conducting auctions similar in scope to the services described herein. NYSDOT’s determination as to whether subject personnel serve or served in senior management positions shall be final.

3.8 Past experience must include no fewer than (3) auctions each valued in excess of $100,000 dollars, within the last (2) years.

4. **SCOPE OF SERVICES**

4.1 Overview
The New York State Department of Transportation (NYSDOT) has acquired via eminent domain an Access Door Manufacturing and Distribution company as part of an upcoming transportation project in New York City. NYSDOT is soliciting proposals from responsive and responsible auction companies to advertise and sell the contents contained within the facility based upon specific minimum conditions and requirements as outlined below. Located within the facility is approximately $2.5 million (depreciated value in place) worth of manufacturing equipment and potentially $2 million (depreciated value in place) worth of tool and die equipment. Reusable parts of the building itself are also for sale (only if safely removed).
Submission of a proposal is an affirmation by the Auctioneer Consultant that its organization complies with all requirements and specifications set forth in this RFP and that its organization is capable of delivering and performing the requested services required in a manner consistent with the requirements and terms of this RFP and under the resulting contract.

Upon award of the contract and prior to the start of any work, the Contractor shall be available for a face to face initial job meeting with NYSDOT’s Project Manager (any any other NYSDOT representatives). This meeting shall include:

1. The Contractor's submission of a schedule of work to be reviewed and approved by NYSDOT’s Project Manager.
2. An Introduction for each respective organization within the Contractor and NYSDOT, chain of command, etc.
3. Discussion of the day of auction logistics, including plans for safety, equipment processing and moving.
4. Discussion of the content and format of both electronic and written reports required by NYSDOT.

4.2 Property Description

The contents being advanced towards auction previously belonged to Karp Associates located at 54-54 43rd Street, Maspeth, New York, 11378. The auction would be held at that address at a date to be determined (anticipated in early to Mid-March of 2014).

The property contains one and two story detached masonry over slab industrial buildings with a single freight elevator. The total square foot area of the building is 29,568± square feet. The warehouse space makes up 26,262± square feet of the total space. There are two overhead doors and 12-15 foot ceiling heights.

Utilities to the structure may be turned off at the time NYSDOT takes possession of the building. Should NYSDOT not be able to supply, provisions for electricity during the auction and during removal of items sold shall be the responsibility of the Auctioneer Contractor. The NYSDOT will authorize the Auctioneer Contractor to open an account with the utility provider to turn on electric at the building upon request. The Auctioneer Contractor can either put the power in their name or bring their own generators to the site to supply power.

Refer to the Attachment 11 for an inventory of available items for sale (minus tool and die), items not for sale and items correlated by floor plan.

Refer to the Attachment 12 for a map of the property location.

Refer to Attachment 13 for a floor plan sketch of the Karp property.

4.3 Payment Terms

Compensation to be paid to the Auctioneer Contractor shall be based upon a percentage of gross sales, or a buyer’s premium fee percentage or a combination of the two. Additional charges, if any, for any other services provided shall be based upon a percentage of gross sales. No advance payment of compensation will be made by NYSDOT and no minimum payment of compensation is allowable.

Payment will be based on acceptance of all required, completed deliverables as identified in RFP Section 4, Scope of Service. Payment can only be rendered after completion of the auction,
receipt and acceptance of all day-of reports, receipt of full payment to NYSDOT, and receipt and acceptance of all post-auction reports.

The auction company shall to pay all collected sales tax for the items sold (before requesting payment from NYSDOT). Payment shall be rendered to the NYS Department of Taxation and Finance. Payment from NYSDOT shall include taxes paid.

Requests for payments shall be made by the Consultant based on standard NYSDOT consultant reimbursement request form FIN 421 ‘Request for Consultant Reimbursement’ forms prepared and submitted, together with the deliverable item for which the payment request is being made. Advance submission of electronic, draft requests for payment is encouraged, using the following sample: 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. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy.

All vendors are directed to register with the New York State Office of the State Comptroller to receive electronic payments per the Governor’s Directive.

4.4 Operational Standards

All auctioneer services under any contract resulting from this RFP shall be of the highest quality and standards; and must conform in all respects to Federal, State and municipal laws, ordinances, rules and regulations. The Contractor shall continuously maintain all required licenses and permits and shall provide for the inspection and review of such licenses and permits by NYSDOT and any other persons authorized by law.

The service shall at all times be prompt, accurate, courteous and efficient. Service shall be provided to all patrons without discrimination. The quality of service shall be subject to inspection by the State of New York at any time.

This contract only gives the Contractor the exclusive right to sell any or all of the building contents located at the action address via a one-time auction.

The Auctioneer Contractor shall, at the Auctioneer Contractor’s expense and for the term of initial entry until final removal of all sold items, furnish and show evidence of workers compensation insurance and General Liability Insurance coverage. Such general liability insurance shall be issued by an insurance carrier licensed to do business in the State of New York for the protection of the State of New York and the Auctioneer Contractor against any claims, suits, demands or judgments by reason of bodily injury, including death, and for any claims resulting in property damage occurring on or in proximity to the permit area. Such General Liability Insurance shall be in the amount no less than $2,000,000 (combined property damage and/or bodily injury, including death) single limit per occurrence, and shall name the People of the State of New York as an additional insured. The Permittee will furnish the State with a certificate of insurance, with a (30) thirty day(s) prior written notice of any cancellation or major change in the policy conditions.

The Contractor, the Contractor’s family and employees are prohibited from purchasing any items during the auction bidding process, and no sale shall result in a benefit to the Contractor or to any of the Contractor’s family or employees outside of the terms and conditions of this contract. Violation is immediate cause for termination of contract.
Each item sold by the Contractor pursuant to this contract shall be as is and at the buyer’s risk from the fall of the hammer. No warranty from NYS is given with any item, and no sale shall be invalidated by reason of any fault in any item or by reason of any item being incorrectly described, in the catalog or otherwise, and no compensation shall be paid by NYS for any such fault or error in description.

The Contractor will be responsible for the completion of a variety of physical handling, and administrative and reporting requirements, and the cost of same shall be included in the base bid price as described throughout this RFP.

4.5 Scope of Services

The selected Auctioneer Contractor shall be responsible for providing all of the following within industry standards:

1. NYSDOT anticipates but does not guarantee having possession of the subject property on February 15, 2014. No inspection of the building interior or the building contents will be allowed until NYSDOT has possession of the subject property. Prospective Auctioneer Contractors shall not contact the building occupant or otherwise attempt to gain access to the building without the express written permission of NYSDOT. NYSDOT does not anticipate prospective bidders will be able to inspect the building interior or contents prior to bid submission, but will release via this RFP the best available information to inform potential Auctioneer Contractors regarding the building and its contents.

2. The auction must be completed and all sold items removed no later than March 31, 2014. In the event NYSDOT cannot secure possession of the building in time to hold the auction and remove all sold items by March 31, 2014, the contract shall be canceled without cost or penalty to either party.

3. All surplus personal property shall be sold “as is”. Potential buyers may observe and inspect property on the day of sale. Known defects of surplus personal property offered for sale will be furnished to the Contractor by NYS prior to the auction date.

4. Via release of this RFP, NYSDOT will provide prospective Auctioneer Contractors with a written inventory of contents (Attachment 11). NYSDOT may also provide building sketches, video of building and contents, and photo inventory of contents for use in developing their bid and for use in marketing and advertising the auction.

5. The Auctioneer Contractor shall inventory/catalog the building contents, appropriately and widely advertise the auction within a five business day period (Monday – Friday).

6. The Contractor’s best efforts shall be used to plan and promote the auction within a second five business day period (Monday – Friday). The Auctioneer Contractor shall be responsible for advertising, marketing and conducting the auction. The auction shall be open and advertised to the general public. Advertising and marketing shall be completed at least one week prior to the auction date and shall at a minimum consist of:

- Posting on the Auctioneer Contractor web site
- A one day print notice and one day on-line notice in a local major newspaper
- Advance and one-day e-mail notice to the Auctioneer Contractors client or contact list (this list must include a minimum of 10 contacts).

The Auctioneer Contractor shall provide NYSDOT with an advertising/marketing report which outlines and documents the advertising campaign. NYSDOT reserves the right to
conduct additional advertising efforts at its own cost and to direct inquiries to the Auctioneer Contractor.

7. The Contractor shall become familiar with the equipment to be sold in order to obtain the highest possible revenue for the State.

8. During the advertisement period and prior to the day of action, the Auctioneer Contractor shall provide sufficient experienced personnel to be on hand prior to the auction to reasonably clear/clean (insofar as is practical) each item for sale, group items to be sold in lots, number and/or tag each item or lot, arrange for sale. During this five-day time period, the Auctioneer Contractor shall be responsible for preparing the site for auction day per its NYSDOT-accepted Scope of Services.

9. The Auctioneer Contractor shall prepare a written inventory and video of all items that are present in the building at the time of first entry. The inventory shall be provided to the NYSDOT for review and approval to sell the inventoried items. NYSDOT shall be provided with a copy of the video.

10. Provide a portable public address system, a tape recorder for recording the auction process, and a clean and environmentally accommodating office trailer on the day of the auction. Office space shall be sufficient to allow the NYS representative a functional working area including seating.

11. Sign each workstation used for auction clerical duties to identify the activities to be performed at that workstation (e.g., “register here” and “pay here”); the sign at the registration location shall include the terms of payment.

12. Contractor shall supply and erect signs imprinted with “State of New York Karp Fixture Auction” at locations so as to identify the sale location.

13. Provide safety equipment necessary to prepare and demonstrate equipment, to the extent possible and feasible. This equipment shall include, but not be limited to a dry chemical fire extinguisher at least five (5) pounds in size, a portable eyewash station, and first aid kits. This equipment shall be kept accessible during the preparation and execution of the auction sale.

14. Staffing levels must be adequate to enable timely project completion even in the event of illness or other causes preventing completion by initially assigned staff.

15. All items on the written inventory included in the bid package are to be offered for sale by public auction to the highest bidder(s) individually or grouped into lots. No items can be sold or removed which create a hazardous condition, violate state, federal or local laws/ordinances, leave the building unsecure-able or leave the building interior exposed to the elements. NYSDOT reserves the right to deny the availability for sale any items included in the inventory or any items not included in the inventory.

16. Any individual items not sold are to be offered in bulk, individually, or as lots as scrap to the highest bidder. NYSDOT reserves the right to deny the availability for sale of any potential scrap items.

17. The Auctioneer Contractor shall conduct the auction, collect sales revenue, and arrange/accomplish the removal of all sold items within a third five business day period (Monday – Friday).

18. To maximize sale value, NYSDOT recommends to prospective Auctioneers that they consider providing appropriate, sufficient small tools to allow each item for sale to be freed from its fixed location.

19. To maximize sale value, NYSDOT recommends to prospective Auctioneers that during the inspection period, the Auctioneer Contractor consider providing personnel to briefly
demonstrate any operating equipment to the extent possible and feasible, given the condition and location of the item. Operating shall include turning on and off any machine in normal operating condition. It does not include operating the machine to perform its designed function(s).

20. At the time of the auction, the Contractor shall require each successful buyer to make full payment in cash, credit card, certified check, bank check or business check, as approved by the Contractor. All checks accepted are to be made payable to Auctioneer Contractor. Any returned checks will be the responsibility of the Contractor. Determination of the validity of the documents presented by the buyers for payment shall be the sole responsibility of the Contractor.

21. NYSDOT does not guarantee the existence or availability of any item listed in the written inventory. Additional items not included in the written inventory may be present and may be available for inspection and sale by public auction upon approval of NYSDOT. Additional building components not listed in the inventory may be available for scrap or sale upon approval of NYSDOT. No building components may be sold or removed which create a hazardous condition, violate state, federal or local laws/ordinances, leave the building unsecure-able or leave the building interior exposed to the elements. There is no limit or minimum regarding this requirement.

22. **Day of Auction Procedures**: The Contractor shall provide on the day of each auction:

1. An adequate supply of professional auctioneers and supporting staff to be at the site of the auction from at least 90 minutes prior to the advertised and scheduled time of the auction sale. Personnel to be identifiable as auction staff (e.g., name tags, caps, shirts, jackets, etc.).

2. If heavy machinery is to be auctioned and to maximize sale value, NYSDOT recommends to prospective Auctioneers that they consider providing sufficient personnel (two or more people) to ensure safe and effective movement of heavy equipment from the sale location to the buyer’s vehicles (may require fork lift and or loader, etc.).

3. To maximize sale value, NYSDOT recommends to prospective Auctioneers that they consider providing at least one competent mechanical assistant to demonstrate any mechanical equipment prior to sale if feasible.

4. Sufficient number of competent clerical personnel to record all transactions, review valid exemption certificates, complete all required forms and reports, and maintain required sales tax records.

5. A competent cashier to collect the proceeds and sales tax due and produce customer invoices.

6. The Contractor will be responsible for handling, securing, and depositing all funds. It will also be the responsibility of the Contractor for security at the auctions to secure these funds.

7. Two copies of the names and addresses of all buyers and two copies of a listing of all items sold including lot number and price must be furnished at the end of each auction sale to the NYS representative who attended the auction. The names and addresses of the buyers who attended the auction should be verified and recorded by the Contractor’s clerk.
23. A bill of sale will be provided by the Contractor to each buyer and a copy of that bill must also be provided to NYSDOT. The bill of sale must include sales tax, where applicable, for each item purchased. For all equipment (to the degree practical), the bill of sale must include identification information (such as the catalog item number, year, make, serial number, and identification number) for equipment sold.

24. All sold items shall be paid for on the day of sale (no down payments) within one half hour of the end of the auction and taken away by the buyer within four (4) business days from the date of the sale. NYS shall issue any necessary documents to transfer ownership of the items to the purchaser or purchasers (only as needed).

25. Sales tax must be charged and collected on all purchases unless the Auctioneer contractor is furnished with acceptable proof of exemption at the time of sale. Auctioneer contractor shall be responsible to collect and distribute sales tax collected in accordance with New York State and New York City law. Auctioneer contractor shall provide NYSDOT with proof all taxes have been paid to the property taxing authority.

26. Auctioneer Contractor shall be responsible for arranging and supervising the removal of the sold items once the auction is completed.

27. The Auctioneer Contractor shall be responsible to collect all payments for sold items. The Auctioneer Contractor must at a minimum accept cash and certified check but may also accept any other form of payment. Auctioneer Contractor shall be responsible to pay NYSDOT the states full share of the high bid for each item. Losses from bounced checks and credit card transaction fees are the responsibility of the Contractor if they choose to accept these forms of payment. The Auctioneer Contractor shall have five (5) business days for receipts to clear. The Auctioneer Contractor shall send NYSDOT a certified or bank check payable to: ‘New York State Department of Transportation’ for the full amount covering all gross sales receipts collected and sales tax paid.

28. Reporting Requirements:
   a. The Auctioneer Contractor shall, upon the close of the Auction, provide NYSDOT with a log/inventory (hardcopy and electronic) of each sold item, high bid amount, name and address of bidder, sales tax collected, and buyer’s premium charge if any.
   b. Within 3 business days of the final item removal date, the auction contractor shall provide NYSDOT with a completed log/inventory (hardcopy and electronic) of each item sold and removed including high bid amount, name and address of bidder, sales tax collected and buyer’s premium charge if any. The Auctioneer contractor shall also provide a final reconciliation showing buyer’s premium charges collected, gross sales receipts collected sales commission, sales tax collected, and special services charges.
   c. The following information must be reported in electronic Excel format for each auction conducted as soon as practicable but no later than 15 calendar days from the date of the auction:
      1. Bidder list, including but not limited to the following data: bidder id number assigned at auction, first name, last name, middle initial, (same as driver license data), address, city, state, zip, company name, NY County of residence, tax exempt status, telephone number, e-mail address.
      2. Sale recording data: auction catalog number, item identification number, lot number, bidder identification number, sale amount, date/time information collected at site.
3. Sale invoice data: unique invoice number, catalog number, bidder identification number, item number, lot number, sale amount, sales tax amount, tax county identification number, payment type, paid date.

4. Copy of deposit receipt
d. The following information must be reported in hard copy format after completion of the auction as soon as practicable but no later than 15 calendar days from the date of the auction:
   1. Bidder List to include bidder id number assigned at auction, first name, last name, middle initial (same as driver license data), address, city, state, zip, company name and telephone number.
   2. Sale Invoices to include unique invoice number, auction location, bidder id, lot number and description of lot, sale amount, sales tax amount and county of tax and payment type and amount. Copies of any sales tax exemption forms are also to be included. Note: Any such sales tax exemption forms must be updated annually at the beginning of each auction season.

4.6 Bonding Requirements

Acceptable evidence of bondability shall consist of a letter or other written document from a bond company or financial institution confirming their commitment to issue a bond or irrevocable letter of credit for bidder’s performance of a contract resulting from this RFP. Prior to actual performance under this contract, without expense to NYS, the Contractor shall supply a $500,000 surety bond or irrevocable letter of credit to NYSDOT in a form satisfactory to NYSDOT, conditioned upon the faithful performance of this contract in accord with the intent and purpose thereof, and guaranteeing payment to the State of New York by the Contractor of all monies due to NYS pursuant to the terms of this contract. The bond or letter of credit must remain in effect for the duration of the contract term.

4.7 Contract Representatives

During the term of any contract resulting from this RFP, the Contractor shall maintain a designated officer or employee as its representative for contact with the State and for all communication and transactions relating to any contract resulting from this RFP. The Commissioner’s designated representative for all purposes of this contract shall be NYSDOT’s designated Project Manager.

4.8 NYSDOT Responsibilities

NYSDOT will appoint a Project Manager who will serve as the single point of contact for the Consultant. The NYSDOT Project manager will lead and coordinate the effort for NYSDOT and manage the Consultant's service delivery to NYSDOT. The NYSDOT Project Manager will be solely responsible for decisions related to the acceptance and approval of all deliverables provided by the Consultant and for ensuring required NYSDOT resources are available when called for in the Project Plan. NYSDOT will attempt to make its resources available in a timely manner, which is subject to changing priorities.

While NYSDOT, as the new building owner, will be responsible for basic utilities, NYSDOT cannot guarantee that utilities will be available to support the auction project. NYSDOT recommends that interested Auctioneers be prepared to bring their own power supply equipment in case electric service to the building is shut off.
NYSDOT will not know if the building will have heat either until NYSDOT gains possession of the building and has had a chance to examine the building’s heating system. Prospective Auctioneer Contractors are advised to be prepared in case the building has not heat supply. NYSDOT does not expect the selected Auctioneer Contractor to be responsible for providing heat to the building should there be none.

Further, NYSDOT cannot guarantee that internet access is available at the subject property; NYSDOT is not responsible for providing internet access at the subject property. It will be the responsibility of the auction contractor to provide any internet access it requires (during the provision of Auctioneer services for NYSDOT). Any costs associated with providing internet access must be born by the contractor or factored into the bid as a percentage of gross sales.

Should NYSDOT not be able to supply utilities, any costs associated with the selected Auctioneer supplying utilities shall be borne by the selected Auctioneer (and subject to reimbursement by NYSDOT as an additional expense). Such additional expenses shall be discussed with and approved by NYSDOT prior to commencement.

4.9 **Contractor Responsibilities**

The Consultant will provide the requested services to produce all of the deliverables (and meet the requirements) specified in the RFP and all its referenced attachments. The Consultant shall perform all of the activities and tasks required to achieve the objectives, functions, and outputs in a manner that meets all of the project’s and contract’s objectives and performance criteria. All services must be consistent with State and Federal laws and regulations and shall be appropriate and acceptable to NYSDOT’s management.

During the life of the project, NYSDOT management will review deliverables and evaluate them for completeness, clarity, adherence to generally recognized standards, and compliance with NYSDOT’s intent as conveyed in this RFP and contained in the resulting contract. A deliverable, phase, or milestone will not be considered complete until sign-off has been given by NYSDOT. NYSDOT will only render payment for services and deliverables it accepts.

5. **PROPOSAL FORMAT AND CONTENTS**

5.1 **General**

Proposers must submit a complete proposal in response to this RFP, using the format and forms provided in this section and in the RFP’s attachments, responding to all requirements and following all instructions. Submission of a proposal shall be construed by NYSDOT as the proposer’s acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP. Respondents will submit a Technical and Management proposal per the checklist listed below. In completing these sections, respondents must contain a complete description of their approach and scope of work elements to meet the RFP’s requirements. Respondents may include additional documents where necessary.

Questions regarding proposal formatting are encouraged.

For the purposes of evaluation, each proposal must consist of a separate Technical and Management Proposal and a separate Cost Proposal. Each proposal must be complete in itself in order that the evaluation of both Parts can be accomplished independently and concurrently, and the Technical Proposal can be evaluated strictly on the basis of its technical merits. To be deemed
responsive, Cost information shall **not** be included in the Technical Proposal submittal, and Technical and Management information shall **not** be included in Cost Proposal submittal.

**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 must identify those page(s) of their proposal and identify specific proposal information to be treated as “confidential and proprietary”. Labeling all proposal pages as “confidential and 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 offerors shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under New York State’s FOIL law as practiced. The identification of pages and the reasons for exemption must be included in the Executive Summary portion 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.

**Proposers must deliver proposals to NYSDOT Contract Management Bureau no later than 2:00 PM ET on February 18, 2014.** Proposers mailing proposals should allow sufficient delivery time to ensure timely receipt of their proposal in NYSDOT Contract Management Bureau’s offices.

### 5.2 Proposal Formatting

In order to promote uniformity of preparation and review, proposals must adhere to the following requirements:

- Proposals shall be bound (three-ring binders, spiral-bound, securely stapled, etc). No loose pages.
- Clearly label any attachment or unattached documents with the proposer’s name on a cover sheet that is firmly attached to the document. Also add the RFP name and contract number.
- Electronic or fax submission of proposals is not allowed
- Proposals must be printed on standard 8½ by 11-inch white paper. Pages can be printed double-sided. Color printing is allowed. Larger sized 11 by 17-inch ‘fold-outs’ are permitted (provided the binding does not prevent folding out).
- Proposals must be organized in accordance with the format set forth in the RFP document.
- Proposal text should be 11 point font or larger, except where necessitated for readability of tables, figures, schedules, or special graphics. Twelve (12) point font is preferred. Please avoid printing schedules using fonts smaller than 8 point.
- Proposals must be self-contained and not reference web-links. If it is necessary to include web links, it is a response requirement that specific directions be provided regarding how to navigate within the website to access the referenced information. Failure to do this may result in a lowered technical score.
• Illustrations that support the text must be simple and direct and be either sized to fit on 8½ by 11-inch paper or printed on 11 by 17-inch paper as long as the pages are folded to the 8½ by 11-inch size, and can be folded out from the bound spine of the document. Color illustrations and photographs must be reproducible in black and white without obscuring their distinctive information.

• Proposals that make extensive use of color illustrations or photographs, or that include separate brochures or overly elaborate embellishments, are discouraged.

• The Technical Proposal shall be delivered to NYSDOT in a securely sealed package, clearly labeled with the proposer’s name, address, telephone number, and the words “Karp Fixture Auction Technical Proposal X031234”.

• The Cost Proposal shall be delivered to NYSDOT in a securely sealed package, clearly labeled with the proposer’s name, address, telephone number, and the words “KARP FIXTURE AUCTION Cost Proposal X031234”.

5.3 Proposal Submission Requirements

Use this table to help ensure that a complete proposal is submitted.

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<tr>
<th>Check Off Box</th>
<th>Proposal Submission Requirements</th>
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<tr>
<td></td>
<td><strong>PART 1 TECHNICAL &amp; MANAGEMENT PROPOSAL</strong></td>
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<tr>
<td>☐</td>
<td>Submit five (5) printed and bound hardpaper <em>Technical &amp; Management Proposal copies</em> (one original) and two (2) electronic copies (CDs, thumb drives, etc.).</td>
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</table>
| ☐             | Cover Letter Requirements:  
|               | • On official business letterhead and signed by an officer or company official who is authorized to bind the consulting firm to the resulting contract, its provisions, terms, and conditions.  
|               | • Full contact information of the person(s) NYSDOT should contact regarding the proposal (including name, title, telephone and fax number, and e-mail address).  
|               | • Confirmation that the Proposer understands and will comply with all the provisions and requirements of this RFP, and are intended to meet the nature of the work and level of effort necessary to successfully provide the services required by such contract.  
|               | • A statement that should the contract be awarded to your company, you would be prepared to begin operations on the date indicated in the RFP.  
<p>|               | • Identify, by proposal page number, line, or other appropriate designation, information it alleges to be a trade secret and shall explain in detail why specifically-identified information is allegedly a trade secret, for the purposes of shielding this information per NYS's Freedom of Information Law (FOIL). |
| ☐             | The Technical Proposal shall include a <em>Table of Contents</em> that reflects the areas identified in Technical Proposal Content. The Table of Contents should identify each major section of the proposal, along with its initial page number. Include/identify any and all external documents or appendices. |</p>
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<th>Check Off Box</th>
<th>Proposal Submission Requirements</th>
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<td></td>
<td><strong>Experience of Firm and Key Personnel:</strong> Provide a detailed description of the firm’s organization, experience and personnel that will substantiate the firm’s qualifications and capabilities to provide the services required by this RFP including but not limited to the following:</td>
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<td></td>
<td>□ Names, titles, and qualifications of key personnel who will be assigned to this contract. Include each individual’s function and role in providing the services required by this contract as well as their qualifications and experience in providing such services. Use <strong>Attachment 2</strong>.</td>
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<td></td>
<td>□ Detailed resume of each proposed auctioneer assigned to this contract.</td>
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<td></td>
<td>□ Comprehensive list of contracts of similar scope that have been successfully undertaken by the firm within the last two years (Company References per <strong>Attachment 3</strong>). Provide the name, address, e-mail address, and telephone number of a reference for each. Note: proposers are solely responsible for availability of the submitted references. The inability to contact a reference provided by the Proposer will be considered as part of the evaluation process. NYSDOT may contact additional references.</td>
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<td></td>
<td>□ Years of experience in auctioneer services for the firm and each auctioneer and key personnel.</td>
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<td>□ Provide the same information for any proposed subconsultants.</td>
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<td>Include <strong>Required Licensing</strong> information.</td>
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<td></td>
<td><strong>Bonding Requirement</strong> Provide valid proof of bonding as required by this RFP. With proposal submission, without expense to NYS, the bidder shall provide evidence of bondability in the sum of $500,000.00. Acceptable evidence of bondability is a writing issued by a bank, bond company, or bond agency guaranteeing issuance of a bond, payable to State of New York, in the amount required and for the term of any contract resulting from this RFP.</td>
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<td></td>
<td><strong>The Technical Proposal shall present your Project Approach, including Project Management and Scope of Services.</strong> Provide a detailed plan outlining your firms approach for providing all services required by this RFP including but not limited to the following:</td>
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<td></td>
<td>□ Staffing Plan - number of employees and their function/duties at each auction.</td>
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<td>□ Location of office responsible for managing this contract.</td>
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<td>□ Tools, resources and technology to be used to facilitate the processing of credit card transactions and electronic record keeping and reporting.</td>
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<td>□ Describe process for advertising and marketing. If available, provide a list of potentially interested buyers.</td>
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<td>□ Describe processes and preparations in advance of auctions</td>
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<td></td>
<td>□ Describe process for site set-up and preparations on day of auction</td>
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<td></td>
<td>□ Tools, resources and safety plan to be used to handle items to be sold, including moving heavier items</td>
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<tr>
<td></td>
<td>□ Describe post auction activities and procedures</td>
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<td>Proposers are encouraged to submit any additional information intended to support and strengthen their proposal.</td>
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**Company and Key Personnel Experience**

Present a narrative which presents your company and key personnel experience. NYSDOT requires relevant experience and expertise, and proposers must demonstrate that experience and
expertise through past and current project attestations and reachable, verifiable references for both the firm and all proposed key personnel. Experience must be relevant and must be for services consistent with what this RFP is requesting. NYSDOT understands that there may be a need for a Consultant to rely on one or more subconsultants to satisfy certain specialty requirements. If subcontracting is proposed, it is critical that the proposer demonstrate subconsultant's experience with such an operation, again of comparable scale and scope (desired), and the proposer must demonstrate a sound management plan to ensure subconsultant’s compliance with all contract and scope of service provisions. The Consultant is expected to provide reachable references (both company and personnel) to verify all offered experience. NYSDOT reserves the right to request information from any source so named and to contact additional references (including appropriate references not specifically named by proposers) to completely verify all offered experience.

The bidder’s qualifications and relevant experience should include examples of previous commercial or industrial auctions completed by the bidder. Provide a brief history of the bidder, including a description of the bidder’s qualifications and past auction experience.

### PART 2 COST PROPOSAL

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<tr>
<td></td>
<td>Submit two (2) printed and bound paper <strong>Cost Proposal copies</strong> (one original) and two (2) electronic copies (CDs, thumb drives, etc.)</td>
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<tr>
<td></td>
<td>The Cost Proposal shall include a copy of the <strong>Cover Letter</strong> (provided in the Technical Proposal).</td>
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<td>The Cost Proposal shall include completed, complete, signed <strong>Attachment 9 Cost Proposal</strong>.</td>
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<td>The Cost Proposal shall include a completed <strong>Attachment 4 Procurement Lobbying Law (PLL) Compliance Forms</strong>.</td>
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<td></td>
<td>The Cost Proposal shall include a completed, signed <strong>Attachment 1 Consultant Information &amp; Certifications</strong>.</td>
</tr>
<tr>
<td></td>
<td>The proposer shall complete and submit <strong>Acknowledgement of all future RFP Modification Acknowledgement Forms</strong> (if any) as instructed.</td>
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### COST PROPOSAL PREPARATION:

One original signed Cost Proposal copy, with other copies identified as copies, must be provided. To be deemed responsive, Cost information shall **not** be included in the Technical Proposal submittal, and Technical and Management information shall **not** be included in Cost Proposal submittal.

The Cost Proposal consists of two sections: (1) a Cost Section, which sets forth all-inclusive retainage percentage of gross auction receipts for providing all of the requested scope of services work; and (2) the Contract Section, which provides the following:

**PLL Forms**

The Cost Proposal shall include a completed **Attachment 4 Procurement Lobbying Law (PLL) Compliance Forms** (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance
Law §139-j (3) and §139-j (6) (b) and offerer disclosure of prior non-responsibility determinations). These forms are required with the RFP response form or if you do not submit an RFP response form then the PLL forms are required with the proposal. These forms are also available at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions

(Compliance Procurement Lobbying Law). Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award.

Consultant Information and Certifications
Submit a completed and signed Attachment 1 Consultant Information and Certifications. All proposing consultant must indicate their acceptance of all of X031234 draft contract’s terms and conditions.

Via submission of a completed and signed Attachment 1, the consultant shall specifically state its acceptance of all terms and conditions, appendices and exhibits contained in Attachment 6 Draft Contract. NYSDOT shall not consider requests to change the draft contract prior to and after consultant selection (except for a few items left blank; to be filled in later). Firms that are considering tendering a competitive proposal are encouraged to ask questions regarding the RFP’s draft contract during the question and answer phase of the solicitation process (before proposals are due). The Q&A period opens with the RFP’s release and closes with the submissions of proposals. Taking exception to the RFP’s draft contract is not allowed. NYSDOT will not entertain questions regarding the RFP’s draft contract brought to its attention after the close of the question-and-answer period. NYSDOT will not entertain exceptions during contract negotiations.

The consultant’s proposal and/or proposed cost must not be contingent upon any draft contract exceptions or project assumptions. During negotiations with the selected vendor, NYSDOT reserves the right to make minor clarifications to the scope of services to be performed under contract #X031234 via Attachment 6, Exhibit A Scope of Work Clarifications, prior to contract execution.

Altering Attachment 1 without the prior express, written approval of NYSDOT is prohibited and will lead to the proposal being deemed non-responsive and subsequently dismissed. Be sure to include the full, legal name of all proposed firms.

RFP Modification Acknowledgements
The proposer shall complete and submit all future RFP Modification Acknowledgement Forms (if any) as instructed. Receiving an acknowledgement that you’ve read and understood the changes the RFP Modification have are important to receiving a fair and competitive proposal. Missing or not following changes to the RFP could lead to lowering of a proposal responsiveness score or at worst proposal dismissal.

Registrations
Each proposer must reference its NYS Statewide Financial System (SFS) Vendor Identification Number and NYSDOT-issued Consultant Identification Number (CIN) in its Cost Proposal’s Contract section (Attachment 1). A vendor cannot do business in New York State unless it has registered in NYS’s Statewide Financial System. Please contact NYSDOT if your firm does not yet have its New York State SFS vendor ID number.

If a proposer is selected for contract award and does not have a NYSDOT Consultant Identification Number (CIN), it will be required to obtain one through the following NYSDOT website prior to negotiation of the contract:
Selected vendors are also required to register with the Office of the State Comptroller’s Vendor Responsibility System.

6. PROPOSAL EVALUATION PROCESS

6.1 Pre-Screening of Proposals

It is NYSDOT’s sole discretionary determination as to whether a proposal is complete. Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section may be deemed incomplete and non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

Proposal Due Date. All proposals must be delivered to NYSDOT Contract Management in hard copy by 2:00 PM on February 18, 2014. Any proposals received after that time/date shall not be evaluated further.

Proposal Opening, Log-in and Certification. Proposals received on or prior to the due date and time will be opened, inventoried for completeness, certified, and logged-in (per criteria listed in RFP Section 5). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT by COB that same day.

Minimum Proposal Requirements. Per RFP Section 3, any proposal which does not meet all of the RFP’s minimum responsiveness requirements may be determined to be non-responsive. Any proposals deemed non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals).

6.2 Evaluation Category Weight Distribution

Proposals will be evaluated using the NYSDOT’s Best Value method based upon a 100 total point scale. The Technical and Management portion will be point scored and will represent 70 points of the total Best Value score. The cost portion of the Cost and Contract portion will be point scored and will represent 30 points of the total Best Value score for the proposal. A more detailed breakdown of the RFP’s proposal evaluation category weights is as follows.

6.3 Technical & Management Proposal Evaluation (Up to 70 Points)

6.3.1 General

Technical evaluation of proposals will be accomplished by the members of the Technical Evaluation Committee (TEC) comprised, as appropriate, of technical, program and management subject matter experts. An evaluator package shall be prepared and submitted to members of the TEC; this package shall contain evaluator instructions and evaluation instruments, and shall become part of the procurement record. The TEC shall be briefed on the proposal evaluation process prior to distribution of proposals.

Members of the Committee will evaluate and score each proposal individually (may ask initial clarification questions). Each evaluator shall measure the degree of responsiveness of each proposal’s responses to the specifications and requirements contained in the RFP against the
RFP’s evaluation factors (RFP section 5), looking for quality, reasonableness and professionalism. The quality of a firm’s approach shall be evaluated as an integral part of each functional and non-functional requirement response (as applicable). Members of the TEC shall document their responsiveness findings (using the scoring instrument provided in Eval-Pak; separate document, which is part of the proposal evaluation process), and record a whole number numerical score (using the zero-to-ten scoring instrument with grade definitions). The TEC shall convene as a group to discuss the proposals, firm by firm, factor by factor. Evaluators will be allowed to revise scores on the basis of the committee discussions. Reasons for score changes will be documented on the TEC member’s scoresheet as well as electronically by Contract Management. Clarification questions may be formulated during group discussion, and forwarded to firms for responding (either for further TEC group discussion or for technical interviews). Clarification responses shall be forwarded to the TEC for additional consideration. Scoring of written proposals shall remain open until after conclusion of evaluating and scoring the Technical Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier scores/findings based upon the additional clarification information garnered from the Technical Interviews.

As the TEC evaluates and scores each technical and management proposal, the resulting raw average written technical score by firm are kept by each TEC member (on their respective scoresheets) as well as by Contract Management on an electronic composite best value spreadsheet. Contract Management may initially list firms in alphabetic order and later on by initial and final best value rank order.

6.3.2 Technical and Management Written Proposal Evaluation (up to 70 Points)

The technical evaluation criteria listed below, per the RFP, shall be used by the TEC. Each factor’s respective weight is identified in parenthesis. The major evaluation categories are divided into subcategories with no assigned subweights, as the one higher-level category weight covers all subcategories.

A. Proposer’s Experience -- 35 percent

Each Proposer will be evaluated as to its experience, pursuant to this RFP, demonstrating its level of experience and qualifications in operating an organization capable of performing the services sought by this RFP. Entities with experience in commercial or industrial auctions will be given greater consideration.

B. Plan of Operation -- 30 percent

Each proposal will be evaluated for the completeness of, and the extent to which, the operational information and specific action plans meet the goals, objectives, and requirements of the RFP.

C. Quality and Completeness of Proposal -- 5 percent

Each proposal will be evaluated for the extent to which the proposal satisfies and addresses each requirement of the RFP. Consideration also will be given to the overall organization of, and ease of navigation of the submitted proposal.

6.3.3 Reference Checks

Reference checks (to verify offered experience) may be required to complete the evaluation of technical proposals. In cases where TEC members are unfamiliar with a firm’s work or NYSDOT does not have prior consultant performance documentation, the TEC may request verification of a firm’s offered references. Subject references shall be contacted by Contract Management using its standard reference check questionnaire, adjusting that per the RFP.
Reference check feedback will be forwarded to the TEC for their considerations during the after-group discussion phase. The TEC may meet to consider reference check information. Evaluators will be allowed to revise their technical scores based on consideration of this additional information and their follow-up discussions. Changes to scores and their reasons shall be recorded on written scoresheets as well in electronic form.

6.3.4 Written Technical Proposal Clarifications

NYSDOT reserves the right to seek written clarifications from firms submitting proposals in order to assure a full understanding of their responsiveness to the solicitation’s technical requirements. If written clarifications, based upon proposal review, are requested by the Technical Evaluation Committee, a firm which is the target of the clarifications may be asked to provide written clarifications at any time during the proposal evaluation process. Evaluators will be allowed to revise their technical scores based on receipt and consideration of this additional clarifying information and follow-up TEC discussions. Reasons for any score changes shall be documented.

6.4 Cost Proposal Evaluation (Up to 30 Points)

Cost proposals shall be reviewed, evaluated and scored for all proposals once they have cleared RFP responsiveness requirements checks. Cost proposals shall be point scored with the cost proposal with the lowest total fee percentage receiving 30 best value points. [Note: Compensation to be paid to the selected Auctioneer Contractor shall be based upon a percentage of gross sales, or a buyer’s premium fee percentage, or a combination of the two (if latter method is proposed, gross sale fee percentage shall be added to the buyers premium fee percentage to determine total fee percentage). Proposals with higher total fees shall receive proportionately lower cost proposal scores. Cost proposal clarification questions may be asked at this time.

Cost scores (which are relative to the field of consultants competing for contract award) are subject to change depending upon whether or not cost proposal clarifications responses (or Best and Final Offer responses or proposal withdrawals or pass/fail dismissals) lead to proposed cost changes. A final cost score shall be calculated once all cost proposal evaluation has been completed.

6.5 Best & Final Offers (BAFO; Optional) & Proposal Withdrawal

The Department reserves the right to request Best and Final Offers from firms which make the shortlist. Any Best and Final Offer request may ask additional further clarifying technical and/or cost proposal questions of firms to further clarify their submitted proposals. NYSDOT also may request a cost only BAFO. Should NYSDOT opt to request BAFOs, all shortlisted firms will receive a BAFO request. Responding firms will be allowed to submit a Best and Final Offer (technical and/or cost); firms may opt to not submit a BAFO. Evaluators will be allowed to revise their technical scores for the written proposal based on their consideration of any new or changed Technical Proposal information contained in any Best and Final Offer (will re-sign/re-date the applicable hardcopy scoresheets). If changes to a firm’s Technical Proposal lead to corresponding, necessary revisions to their Cost Proposal (or should a firm opt to clarify their cost proposal) or should the Department opt to request cost-only BAFOs, the Department’s Contract Management representative shall make the necessary, appropriate adjustments to that firm’s cost evaluation.

Should any firm withdraw their proposal after a possible BAFO request, NYSDOT will remove that firm’s technical and cost information from the Best Value evaluation documentation and shall
recalculate the remaining field’s technical and cost scores (without the withdrawn firm’s information).

6.6 Final Best Value Evaluation

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), NYSDOT will perfect (curve) the technical scores so that the highest-rated raw written technical proposal score gets changed and assigned a perfect score of 70 points for this solicitation with the other technical scores adjusted proportionately downward. Cost proposals have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule. Perfected cost scoring results will be added to the perfected written technical proposal score plus the perfected Technical Interview score to generate a tentative final best value score. Firms shall be ranked in Final Best Value score order (highest to lowest).

Tie-Breaking Rule: Should any of the tentative final Best Value Scores of one or more proposals competing for the contract award lie within one and one-half points of each other, then State Finance Law Section 163(10)(a) shall be used to settle any ties.

Once all possible score ties have cleared, NYSDOT will determine the Final Best Value Score, where after the proposal with the highest Final Best Value score shall be recommended to NYSDOT Executive Management for contract award for contract #X031234.

6.7 Consultant Selection Recommendation & Tentative Contract Award

A consultant selection and designation memo shall be prepared and forwarded to the applicable NYSDOT Executive Manager(s) with an accompanying proposal evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award of X031234 to NYSDOT Executive Management. The Executive Manager will be asked to concur with the final conclusion of the proposal evaluation process - a recommendation for the tentative contract awards for the Department - and designate the top-Best Value rated consultant based upon the above results.

Should negotiations with the top-ranked Best Value Consultant fail to produce agreed-upon contracts, then NYSDOT Executive Management will designate and award contract #X031234 to the next highest-ranked Best Value Consultant. The Department will then enter into negotiations with the second-highest rated Consultant. This process may repeat itself until acceptable contracts are consummated. The consultant designation becomes final after the NYS Office of the State Comptroller approves Contract #X031234.

The designation shall be publically posted. Once the public has been notified of the solicitation’s results, negotiations with the selected Consultant can commence. The final contract is subject to approval by NYSDOT, the Attorney General, and the Office of the State Comptroller, and is not binding until such approval is received.

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation(s) will be posted the ‘Consulting Services’ listing on NYSDOT’s website via: https://www.dot.ny.gov/business. All proposers will be notified in writing regarding the results from the solicitation. All non-designated firms will be offered an opportunity to request a debriefing.
It is expressly understood that this RFP does not commit NYSDOT to award a contract, to 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.

7. ADMINISTRATIVE SPECIFICATIONS

7.1 Inquiries and Information

All questions concerning this solicitation must be directed only to Al Hasenkopf, NYSDOT Contract Management Bureau. The last date to submit questions for this solicitation is indicated in Section 6.4, Tentative Schedule of Key Events. All inquiries should be addressed to:

Al Hasenkopf, NYSDOT Contract Management Bureau
E-Mail: alfred.hasenkopf@dot.ny.gov
Fax: 518-457-8475

NYSDOT will do its collective best to respond to all questions of a substantive nature, answers to which shall be posted to NYSDOT’s website under this solicitation. NYSDOT will also send out informal ‘Announcements’ to all vendors who register their potential interest with the designated NYSDOT contact person. A list of parties expressing potential interest shall also be posted onto NYSDOT’s website shortly after the Pre-Proposal Conference is held.

7.2 Proposal Submission

The proposal shall be signed by an official of the firm who is duly authorized by the responding firm to bind the proposer to its offer (as clarified by the proposal evaluation process and by the negotiation process). One proposal shall be an original (and identified as such); all others are to be copies.

Your proposal must be received by NYSDOT by 2:00 PM ET on the day indicated in Section 6.4, Schedule of Key Events (below). The proposal must be addressed to:

William A. Howe, Director, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: KARP FIXTURE AUCTION RFP (X031234)

7.3 State’s Rights to Proposals

All proposals, upon submission to NYSDOT, shall become NYSDOT property for use as deemed appropriate. By submitting a proposal, the proposer 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 following rights and prerogatives (the RFP expressed others elsewhere):

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

14) 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.

### 7.4 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>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Release Date</td>
<td>January 24, 2014</td>
</tr>
<tr>
<td>Pre-Proposal Webinar</td>
<td>January 30, 2014 @ 10:00 AM</td>
</tr>
<tr>
<td>Question Submittal Deadline</td>
<td>February 7 2014 COB</td>
</tr>
<tr>
<td>Answers to Question Due</td>
<td>February 11, 2014</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>February 18, 2014 @ 2:00 PM ET</td>
</tr>
<tr>
<td>Proposal Evaluation Begins</td>
<td>February 2014</td>
</tr>
<tr>
<td>Recommendation &amp; Designation</td>
<td>February 2014</td>
</tr>
<tr>
<td>Contract Execution</td>
<td>February/March 2014</td>
</tr>
<tr>
<td>Work Begins</td>
<td>March 2014</td>
</tr>
</tbody>
</table>
7.5 Pre-Proposal Webinar

NYSDOT will hold a Pre-Proposal Webinar, where remote participation is optional yet recommended. The agenda shall be going over the RFP and its attachments, and highlighting what’s changes since the RFP was first issued. Questions can be submitted in advance as well as electronically via the webinar. The Pre-Proposal Webinar shall be held on January 30, 2014 at 10:00 AM. To register for the webinar, please contact: alfred.hasenkopf@dot.ny.gov.

NYSDOT will record the webinar. Answers provided at the webinar shall be recorded; some questions may have to be deferred. Answers to all substantive questions shall be publically posted onto NYSDOT’s website under this solicitation, and all parties notified via announcement. E-mail notices shall be sent to the e-mail addresses of all parties who officially register their interest in NYSDOT’s X031234 RFP. Only written answers posted on the NYSDOT website will be official. Questions that address possible conflicting information in this RFP will be resolved via formal Modification to this RFP and posted on the NYSDOT website, with all firms expressing interest being notified via e-mail. To be deemed responsive, all firms offering proposals are required to acknowledged receipt of any and all RFP Modifications in writing (by submitting the one-page acknowledgement response form included in the RFP Modification document).

7.6 Protest Procedure

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. The protest procedure addresses the FHWA’s DBE Administrative Reconsideration per 49 CFR Part 26.53(d).

7.7 Information for the Selected Consultant

The following items are presented for proposer information, to make interested parties aware of contract-related items to which selected Consultant(s) need to pay attention.

Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All Prime Consultants with NYSDOT contracts (as well as all subconsultants with contract contributions greater than $100,000) will be required to provide vendor responsibility information through the Office of the State Comptroller (OSC) website, via http://www.osc.state.ny.us/vendrep/index.htm, before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. The date your firm certifies your OSC vendor responsibility filing will appear on the contract signature page.

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 websites:
Insurance Requirements of this Project

Please carefully read the terms and conditions of the draft Contract appended as Attachment 6 to this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Attachment 6 Article 9. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived. Proof of Workers' Compensation and Disability Benefits Insurance are required before the amendment can be approved. The following are acceptable proofs:

1. **Workers’ Compensation Coverage:**
   - Form C-105.2 Certificate of Workers’ Compensation Insurance issued by private insurance carriers
   - Form U-26.3 Certificate of Workers’ Compensation Insurance issued by the State Insurance Fund
   - Form SI-12 Certificate of Workers’ Compensation Self-Insurance
   - Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self Insurance

2. **Disability Benefits Coverage:**
   - Form DB-120.1 Certificate of Disability Benefits Insurance
   - Form DB-155 Certificate of Disability Benefits Self-Insurance

3. **WC/DB Exemption:**
   - CE-200 Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage For more information see GFO Chapter XI Section 18G

**Please Note:**
- The name and FEIN of the contracting entity must match the name and FEIN identified on the proof of coverage or exemption.
- An ACORD form is not an acceptable proof of workers' compensation coverage or disability benefits insurance.
- In the instance of exemption, please be advised that the WCB does not verify Attestations for Exemption. As the State contracting entity, you must verify the acceptability of the entity's reason for exemption and communicate that reason to the OSC auditor requesting proof of compliance; please verify and provide a copy of the signed and dated exemption certificate.
- To assist you and your vendor to resolve this matter, the following links to information regarding acceptable proofs of coverage are provided:
  - Workers' Compensation: [http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp](http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp)
  - Disability Benefits: [http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp](http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp)
  - Exemption: [http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
- Please find a link to the attached WCB publication Prove it to Move it Program 2010, which outlines current guidelines for WCB compliance: [http://www.wcb.ny.gov/content/main/Employers/ProveItToMoveIt.pdf](http://www.wcb.ny.gov/content/main/Employers/ProveItToMoveIt.pdf)
Questions regarding coverage requirements may be directed to the WCB compliance division, Walter Peretti, 518-402-8330, walter.peretti@wcb.ny.gov.

4. **Other NYSDOT Insurance:**

The Agreement requires the Consultant to PROCURE AND MAINTAIN UNTIL FINAL ACCEPTANCE OF THE WORK in the amount specified in Article 11. Only Certificate of Insurance Form C218m is accepted by the Department. The C218m form to be completed by your broker is downloadable via: [https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions)

**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 7, Consultant Employment Disclosure Legislation Form A](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions)) 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 7, Consultant Employment Disclosure Legislation Form B](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions)) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15 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 that they propose staff 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 8](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions).

**Registration with NYSDOT**

Should this solicitation lead to a designation, it is the Consultant team’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 OSC for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement. Section 6 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 register electronically with New York State’s SFS. If a firm is 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, usable for all NYS-related transactions. 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 but is instructed to enter its SFS number in Attachment 1. However, an SFS vendor number is specific to the legal name of a firm. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity with which NYSDOT is doing business.
ATTACHMENT 1

CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with your Cost Proposal)

CONTRACT NUMBER: X031234
PROJECT TITLE: KARP FIXTURE AUCTIONEER SERVICES

I. CONSULTANT INFORMATION

FIRM NAME: ____________________________________________________________
ADDRESS: ____________________________________________________________
CITY: ___________________________ STATE: ______________________________
ZIP CODE: ___________ - ___________ FAX#: (_____) ____ - _________
TELEPHONE #: (_____) ____ - _________ FAX#: (_____) ____ - _________
E-MAIL ADDRESS: _____________________________________________________
CONTACT PERSON: _____________________________________________________

Consultant's Federal Identification Number (FIN): ____________________________
Consultant's Consultant Identification Number (CIN): ____________________________
Consultant’s 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 #: ___________ E-Mail ___________
Other Authorized Individual(s):
Name/Title: _____________________________________________________________
Address: __________________________________________________________________
Telephone #: ___________ FAX #: ___________ E-Mail ___________

Add additional pages if necessary.
II. OFFEROR CERTIFICATIONS

By signing below, I, _________________________________, authorized individual (NAME)
of _________________________________, make the following certifications (FIRM) regarding the subject proposal:

- 120-Day Offer: This proposal is a firm offer for a 120-day (or more) period from the date of submission.
- The firm has read and will follow the procedure outlined in Attachment 8 if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: In accordance with New York State law, if selected for contract award, the firm will complete and submit the required Vendor Responsibility questionnaire through the Office of the State Comptroller VendRep system, which is accessible via: http://www.osc.state.ny.us/vendrep/index.htm. Vendors must certify the accuracy of the information they provide in the questionnaire and must file their VRQ within 10 days of notification of designation. NYSDOT cannot sign a contract if a firm’s vendor responsibility certification is more than 12 months old.
- ST-220: If selected for contract award greater that $100,000, the firm will complete and submit the required Forms ST-220-TD and ST-220-CA during negotiations with NYSDOT. The ST-220 forms with instructions are downloadable from the following websites:

Signature: ________________________________

III. ACCEPTANCE OF AGREEMENT*

By signing below, I, _________________________________, authorized individual (NAME)
of _________________________________ hereby ACCEPT all terms and conditions (FIRM) contained in the Draft Contract (including Appendix A), which is included as Attachment 6 to this Request for Proposals.

Signature: ________________________________ (NAME OF ACCEPTOR)
ATTACHMENT 2

KEY PERSONNEL EXPERIENCE, RESUMES AND REFERENCES

INSTRUCTIONS:

Offerors are required to complete one resume form for each proposed key personnel, including any subcontracted staff, who are proposed for this project under resulting Contract #X031234. Complete and submit resumes for all other proposed staff (non-key personnel). Resume summary information includes name, proposed role on this project, years of relevant experience, description of relevant experience and expertise, and two successfully reachable references. Complete one resume per proposed person. For the number of years of experience, while inclusion of partial years is allowed, please indicate start/end months (complete months only).

Include Attachment 2 in your Technical and Management Proposal submission.
## ATTACHMENT 2

### KEY PERSONNEL EXPERIENCE, RESUMES AND REFERENCES

**Offeror’s legal company name:**

Company Mailing Address:

Company Phone:

Company Fax:

### Section 1: Personnel Information

<table>
<thead>
<tr>
<th>Proposed Project Role</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name:</strong> Last</td>
</tr>
<tr>
<td><strong>Mailing Address Line 1</strong></td>
</tr>
<tr>
<td><strong>Mailing Address Line 2</strong></td>
</tr>
<tr>
<td><strong>Mailing Address Line 3</strong></td>
</tr>
<tr>
<td><strong>City</strong></td>
</tr>
<tr>
<td><strong>Country/Province</strong></td>
</tr>
<tr>
<td><strong>Daytime Phone</strong></td>
</tr>
<tr>
<td><strong>E-Mail Address</strong></td>
</tr>
</tbody>
</table>

### Section 2: Past/Current Employer

<table>
<thead>
<tr>
<th>Employer Name</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employer Address</strong></td>
</tr>
<tr>
<td><strong>Beginning date of service</strong> (when the key staff person provided services to the client/firm)</td>
</tr>
<tr>
<td><strong>Ending date of service</strong> (when the key staff person provided services to the client/firm)</td>
</tr>
<tr>
<td><strong>Total time claimed</strong></td>
</tr>
<tr>
<td><strong>Employment Status</strong></td>
</tr>
<tr>
<td><strong>Primary contact person at the firm</strong></td>
</tr>
<tr>
<td>• name and title</td>
</tr>
<tr>
<td>• e-mail address</td>
</tr>
<tr>
<td>• telephone number</td>
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</tbody>
</table>

### Section 3: Work Description

Describe the general engineering duties during the employment with this firm for the time period identified above.

Describe briefly the personal level of responsibility or authority for the work described for this employer. Explain here any changes in title resulting from promotions or other job changes during this period of employment.
<table>
<thead>
<tr>
<th><strong>Describe in detail the specific work that was performed on projects or job assignments that are representative of the work relevant to the identified role</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For the work performed, indicate the time that was spent on these projects or assignments. The total time claimed cannot exceed actual calendar time.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Professional associations and certifications</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
</tbody>
</table>

----- Please add additional pages as appropriate -----
ATTACHMENT 3
COMPANY REFERENCES

INSTRUCTIONS
In response to this RFP, proposers are required to submit relevant project and contact information for reachable references for up to two past relevant company projects. It is preferred that each cited project experience be of similar scale and scope to this RFP. All cited company references must be reachable (i.e., willing to provide a reference on behalf of the proposer to NYSDOT upon request). The references should be willing to provide information via an e-mailed reference response form and possibly follow that up with a conference call to speak further on the proposer's behalf.

Fill out the requested information using the provided form. Use one form for each company reference provided, for up to two past project references. Be sure to cover the proposed Prime Consultant and each proposed Subconsultant (circle accordingly) when filling Attachment 11 out. Fill out all boxes which are applicable per each reference response – fill in any not applicable box with ‘N/A’.

Include Attachment 3 in your Technical and Management Proposal submission.
ATTACHMENT 3

COMPANY REFERENCES

<table>
<thead>
<tr>
<th>Reference Company Name:</th>
<th>Prime or Sub</th>
</tr>
</thead>
</table>

Reference Main Line of Business:

Reference Contact Information

<table>
<thead>
<tr>
<th>Primary Contact Person’s Name:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Title:</td>
<td></td>
</tr>
<tr>
<td>Affiliation/Company Employed By:</td>
<td></td>
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<tr>
<td>Phone:</td>
<td></td>
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<tr>
<td>E-mail:</td>
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</tbody>
</table>

Project Information

<table>
<thead>
<tr>
<th>Project Name:</th>
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<tbody>
<tr>
<td>Project Start Date:</td>
<td></td>
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<tr>
<td>Project End Date:</td>
<td></td>
</tr>
<tr>
<td>Project Budget:</td>
<td></td>
</tr>
<tr>
<td>Number of Staff Involved:</td>
<td></td>
</tr>
<tr>
<td>Types of Staff Involved:</td>
<td></td>
</tr>
</tbody>
</table>

Degree to which offered key personnel were primarily responsible for project delivery:

Description of all services provided and how they were/are comparable to the size and scope of the services specified in this RFP:

An explanation of the size and complexity of the project, including how it compares in size to this project:

A list of all subconsultants and the duties they performed (if applicable):

Project results and benefits delivered to the client

----- Please add pages as appropriate -----
Attachment 4

Procurement Lobbying Law Forms

REQUIRED FORMS

The consultant shall complete and sign the forms below. These forms are part of and due with the consultant’s proposal.

- Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j (3) and Section 139-j (6) (b)
- Offerer Disclosure of Prior Non-Responsibility Determinations

NYSDOT GUIDELINES AND PROCEDURES

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through NYSDOT Contract Management Bureau’s Designated Contacts (listed below). 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.


SUMMARY OF THE POLICY AND PROHIBITIONS REGARDING PERMISSIBLE CONTACTS

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 Bureau designation analyst
- The Contract Management Bureau designation analyst supervisor
- The Contract Management Bureau Assistant Directors
- The Contract Management Bureau 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 the Department determines an impermissible contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offerer.
Contacts After Designation

NYSDOT identifies its primary negotiation contacts. The designated contacts include:

- The Contract Management Bureau negotiation analyst
- The Contract Management Bureau negotiation analyst 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.

Information Required from Offerers 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.

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 offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

RULES, REGULATIONS AND MORE INFORMATION ON THIS LAW

For rules, regulations and more information on this law, please visit:

- The Joint Commission on Public Ethics at: http://www.jcope.ny.gov/

For more information, go to NYSDOT’s World Wide Web Site at http://www.dot.ny.gov or contact:

Al Hasenkopf, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: X031234
E-Mail: alfred.hasenkopf@dot.ny.gov
Fax: 518-457-8475
Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

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

Contract No.  X031234

By: ___________________________ Date: ___________________________

Name: ___________________________

Title: ___________________________

Contractor Name: ___________________________

Contractor Address: ___________________________

______________________________

______________________________

______________________________
## Attachment 4

### Offerer 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:** X031234

**Date:** ________________________________________________________________________________

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<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>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</td>
</tr>
<tr>
<td>If yes, please answer the next questions:</td>
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<td>2.</td>
<td>Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle): No Yes</td>
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<td>3.</td>
<td>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</td>
</tr>
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<td>4.</td>
<td>If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.</td>
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<tr>
<td>Governmental Entity:</td>
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<tr>
<td>Date of Finding of Non-responsibility:</td>
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<td>Basis of Finding of Non-responsibility:</td>
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(Add additional pages as necessary.)

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<td>5.</td>
<td>as 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</td>
</tr>
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<td>6.</td>
<td>If yes, please provide details below.</td>
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<td>Governmental Entity:</td>
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<td>Date of Finding of Non-responsibility:</td>
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<td>Basis of Finding of Non-responsibility:</td>
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(Add additional pages as necessary.)

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

**By:** ____________________________ **Date:** ____________________________

**Signature** ____________________________
ATTACHMENT 5

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 5

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

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

<table>
<thead>
<tr>
<th>NAMES OF PARTNERS OR PRINCIPALS</th>
<th>LEGAL RESIDENCE</th>
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IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

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<th>NAME</th>
<th>LEGAL RESIDENCE</th>
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President:

Secretary:

Treasurer:

President:

Secretary:

Treasurer:
ATTACHMENT 5

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

Address: ______________________________ Street

City State

City State
ATTACHMENT 6
DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

This Agreement made this __________ day of ______________, 201___ 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
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 6 months from ___________ to ______________. Additionally, this AGREEMENT may be extended for one additional 6 month period based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

ARTICLE 5. PROVISION FOR PAYMENT TO NYSDOT.

Item 1. The Consultant shall be responsible to collect all payments for all items sold at auction. The Consultant shall be responsible to pay NYSDOT the State’s full share of the high bid for each item. Losses from bounced checks and credit card transaction fees are the responsibility of the Consultant if they choose to accept these forms of payment. The Consultant shall send NYSDOT a certified or bank check payable to: ‘New York State Department of Transportation’ for the full amount covering all gross sales receipts collected.

Item 2. The CONSULTANT shall 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 subcontractors and subconsultants within ten (10) days after receipt of payment from the STATE.

ARTICLE 6. PROVISION FOR PAYMENT TO CONSULTANT.

The STATE shall pay to the CONSULTANT, and the CONSULTANT agrees to accept as full compensation for his services under this agreement compensation based upon a percentage of gross sales, or a buyer’s premium or a combination of the two (subject to the State’s approval). Additional charges, if any, for any other services provided shall be based upon a percentage of gross sales. No advance payment of compensation will be made by NYSDOT and no minimum payment of compensation is allowable. Payment will be based on acceptance of all required, completed deliverables as identified in RFP Section 4, Scope of Service. Payment can only be rendered after completion of the auction, receipt and acceptance of all day-of reports, receipt of full payment to NYSDOT, and receipt and acceptance of all post-auction reports.

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. RESERVED.

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 of New York/New York State requirements:

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 NYSDOT Contract Number X031234. 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 State.** 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.

5. **Professional Liability/Errors and Omissions.** The CONSULTANT shall maintain at their own expense or shall require to be maintained, such insurance as is customary to compensate Department for any claims or losses that occur because of CONSULTANT’s errors, omissions malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than $250,000 subject to approval by Department, such approval not to be unreasonably withheld, except that it is also agreed that Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on an ISO claims made basis (or a policy form providing equivalent coverage) in an amount of no less than $1,000,000.00 per claim and not less than $1,000,000.00 in the aggregate.

**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.


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 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 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.

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” (RFP Attachment 7) 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 #X031234

**Title:** Director

**Address:** NYSDOT 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

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. 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. 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.
IN WITNESS WHEREOF, this **Contract No. C031103** 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

__________________________________________
CONTRACT MANAGEMENT
DATE: ____________________                     DEPARTMENT OF TRANSPORTATION
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.

__________________________________________                      Date: ____________________________
FIRM

--------- CENTRAL PERMITS OFFICE STAFF AUGMENTATION -------

APPROVALS

ATTORNEY GENERAL                           THOMAS P. DI\NAPOLI
STATE COMPTROLLER                           STATE COMPTROLLER

By __________________________                      By __________________________

Date __________________________                      Date __________________________
Acknowledgement for Contract #X031234

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 1636.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 monies 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 lessor 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
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 or national origin. 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 agency1 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 ASSITANCE

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 CONSULTANTs 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 assure 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.
(e) 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.
## FORM A

**State Consultant Services – Contractor’s Planned Employment**

**From Contract Start Date Through The End Of The Contract Term**

<table>
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<tr>
<th>ONET Employment Category Code</th>
<th>ONET Employment Category Name</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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Grand Total

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Name of person who prepared this report: 
Preparer’s Signature: 
Title: 
Phone #: 
Date Prepared:
## State Consultant Services - Contractor’s Annual Employment Report

**Report Period:** April 1, to March 31,

### Contracting State Agency Name:
NYSDOT

### Contract Number:
X031234

### Contract Term:

### Contractor Name:

### Contractor Address:

### Description of Services Being Provided:
Karp Fixture Auctioneer Services for NYSDOT

### Scope of Contract (Choose one that best fits):

- [ ] Analysis
- [ ] Data Processing
- [x] Architect Services
- [ ] Mental Health Services
- [ ] Paralegal

- [ ] Evaluation
- [ ] Computer Programming
- [ ] Surveying
- [ ] Accounting
- [ ] Legal

- [ ] Research
- [ ] Other IT Consulting
- [ ] Environmental Services
- [ ] Auditing
- [ ] Other Consulting

- [ ] Training
- [ ] Engineering
- [ ] Health Services

### O*NET Employment Category Number and O*NET Employment Title

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**Total this page**

**Grand Total**

### Name of person who prepared this report:

**Preparer's Signature:**

**Title:**

**Phone #:**

**Date Prepared:**

(Use additional pages if necessary.)
ATTACHMENT 8

USE OF FORMER NYSDOT EMPLOYEES

It is the Consultant’s responsibility to ensure they propose staff that are eligible to work on the proposed project. It is an individual’s responsibility to comply with the NYS 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 the New York State Joint Commission on Public Ethics (http://www.jcope.ny.gov/) approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
ATTACHMENT 9

COST PROPOSAL

Karp Fixture Auctioneer Services for NYSDOT

Contract #X031234

Compensation to be paid to the selected Auctioneer Contractor shall be based upon a percentage of gross sales, or a buyer’s premium fee percentage, or a combination of the two. Indicate your method:

**Gross Receipt Fee Percentage Method:** For the purpose of providing all of the requested services per Karp Fixture Auctioneer Services for NYSDOT Request for Proposals and under Contract #X031234, each firm may propose a fixed, all inclusive percentage fee of total gross auction receipts:

<table>
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<tr>
<th>Gross Receipt Fee Percentage</th>
<th>__________ %</th>
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**Buyers Premium Percentage Method:** For the purpose of providing all of the requested services per Karp Fixture Auctioneer Services for NYSDOT Request for Proposals and under Contract #X031234, each firm may propose a fixed, all inclusive buyer’s premium percentage fee added to the cost of each auctioned item:

<table>
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<tr>
<th>Buyer’s Premium Percentage Fee</th>
<th>__________ %</th>
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**Combination of the Two Method:** For the purpose of providing all of the requested services per Karp Fixture Auctioneer Services for NYSDOT Request for Proposals and under Contract #X031234, each firm may propose a fixed, all inclusive percentage fee of total gross auction receipts a fixed, buyer’s premium percentage fee added to the cost of each auctioned item:

<table>
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<tr>
<th>Gross Receipt Fee Percentage</th>
<th>__________ %</th>
<th>Buyers Premium Percentage Fee</th>
<th>__________ %</th>
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Additional charges, if any, for any other services provided shall be based upon a percentage of gross sales. List all additional charges in your Attachment 9 response.

**CERTIFICATION:** Any proposed X031234 fee covers all of the costs associated with of my proposed Scope of Service activities in response to NYSDOT RFP X031234.

Signature: _____________________________

Name (spell out): _____________________________

Date: _____________________________
Firm Name: ________________________________
ATTACHMENT 10

Request for Karp Fixture Auctioneer Services
REQUEST FOR COMMENTS
Questions and Answers; Comments

Q&A:

Q1. A) Is the time frame written in stone? Given doing a sale with as many items as you seem to have, more time would increase potential sale value.  B) If the start date gets delayed, can the same number of days to run the project be kept?

A1. A) The earliest NYSDOT anticipates getting access to the building is February 15th. One objective of the auction is to maximize item sale value potential. All sold items must clear the building by COB March 31th. B) While the Feb 15th date may slip, the Mar 31st date cannot.

Q2. A) Will utilities be the responsibility of the auction company?  B) Paragraph 14: It will take time and cost money (deposit) to turn on utilities. It's highly unlikely a contractor would make this endeavor prior to formal retention, again extending necessary timeframe. Will contractor be permitted for reimbursement of utilities expense as part of auction expenses?

A2. A) Whose responsibility utilities will be shall be determined after NYSDOT gains legal access to the building. While NYSDOT, as the new building owner, will be responsible for basic utilities, NYSDOT cannot guarantee that utilities will be available to support the auction project. NYSDOT recommends that interested Auctioneers be prepared to bring their own power supply equipment in case electric service to the building is shut off. NYSDOT will not know if the building will have heat either until NYSDOT gains possession of the building and has had a chance to examine the building’s heating system. Prospective Auctioneer Contractors are advised to be prepared in case the building has not heat supply. B) Should NYSDOT not be able to supply utilities, any costs associated with the selected Auctioneer supplying utilities shall be borne by the selected Auctioneer (and subject to reimbursement by NYSDOT as an additional expense). Such additional expenses shall be discussed with and approved by NYSDOT prior to commencement.

Q3. Will internet access be available? Will high speed internet access be available?

A3. NYSDOT cannot guarantee that internet access is available at the subject property; NYSDOT is not responsible for providing internet access at the subject property. It will be the responsibility of the auction contractor to provide any internet access it requires (during the provision of Auctioneer services for NYSDOT). Any costs associated with providing internet access must be born by the contractor or factored into the bid as a percentage of gross sales.

Q4. RFC Paragraph 4. Is everything expected to be completed within 5 days or just removal? Very unrealistic expectation. If everything this contradicts paragraph 10 (marketing to be
completed at least 1 week prior to the auction) and is additionally not viable to obtain any remotely reasonable selling price.

A4. The RFP will allow time periods for: 1) inventorying, 2) advertising and site prep, and 3) conducting the action with subsequent removal of sold items.

Q5. Are items sold without reserve?

A5. Yes, there will be no reserve and all items should be sold at the highest bid received. No down payments are allowed. Anything not sold will be demolished.

COMMENTS:

Comment 1: RFC Condition #1 is not standard procedure and will not be cost-effective.

Ans. The earliest NYSDOT anticipates getting legal possession of and access to the building is February 15th. NYSDOT does not have legal possession of the building. NYSDOT gaining legal possession of the building is tied up in a court case and NYSDOT cannot guarantee February 15th access. One objective of the auction is to maximize item sale value potential. All sold items must clear the building by COB March 31st. B) While the Feb 15th date may slip, the Mar 31st date cannot be changed.

RFC Condition #1: NYSDOT anticipates but does not guarantee having possession of the subject property on February 15, 2014. No inspection of the building interior or the building contents will be allowed until NYSDOT has possession. Prospective auction contractors shall not contact the building occupant or otherwise attempt to gain access to the building without the express written permission of NYSDOT. NYSDOT does not anticipate prospective bidders will be able to inspect the building interior or contents prior to bid submission.

Comment 2: RFC Condition #10 is impossible due to time constraints.

Ans. NYSDOT cannot extend the completion date of March 31, 2014. NYSDOT will provide the contractor with a written and photographic inventory of the building contents to facilitate advertising and marketing.

RFC Condition #10: The auction contractor shall be responsible for advertising, marketing and conducting the auction. The auction shall be open and advertised to the general public. Advertising/marketing shall be completed at least one week prior to the auction date and shall at a minimum consist of: posting on the auction contractor web site, a one day print notice and one day on-line notice in a local major newspaper, notice to the auction contractors client or contact list (this list must include a minimum of 10 contacts). The auction contractor shall provide NYSDOT with a advertising/marketing report which outlines and documents the advertising campaign. NYSDOT reserves the right to conduct additional advertising efforts at its own cost and to direct inquires to the auction contractor.

Comment 3: RFC Condition #14: Not standard procedure. This is not reasonable and is not usually the auctioneer’s responsibility. Enforcement of this will increase the cost to the State.

Ans. See Answer to RFC Question #2.

RFC Condition #14: Utilities to the structure will be turned off at the time NYSDOT takes possession of the building. Provisions for electricity during the auction and during removal of items sold shall be the responsibility of the auction contractor. The NYSDOT will authorize the auction contractor to open an account with the utility provider to turn on electric at the building upon request.
Online Attachments

Attachment 11. Karp Property Inventory List (Excel file)  Online
Attachment 12. Karp Property Map (PDF)  Online
Attachment 13. Karp Property Floor Plan (PDF)  Online

NOTE: To access and download the Online files, go to: https://www.dot.ny.gov/business and click on ‘Consultant Service Opportunities’, then click on the ‘Opportunities’ tab.