REQUEST FOR PROPOSALS:
New York State Freight Transportation Plan
Contract #C031232

March 28, 2014

To All Concerned:

The New York State Department of Transportation (NYSDOT) is releasing the Non-Engineering Request for Proposals (RFP) referenced above. NYSDOT is seeking to competitively select a responsive and responsible Consultant to provide professional services to develop a Statewide Freight Plan. 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 RFP Schedule, Dates and Deadlines:

<table>
<thead>
<tr>
<th>Event</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYS Contract Reporter Announcement</td>
<td>March 18, 2014</td>
</tr>
<tr>
<td>RFP Release Date</td>
<td>March 28, 2014</td>
</tr>
<tr>
<td>Pre-Proposal Webinar</td>
<td>April 2, 2014 @ 1:30 PM</td>
</tr>
<tr>
<td>Question Submittal Deadline ¹</td>
<td>April 11, 2014 COB</td>
</tr>
<tr>
<td>Answers to Question Due</td>
<td>April 18, 2014</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>May 9, 2014 @ 2:00 PM</td>
</tr>
<tr>
<td>Proposal Evaluation Begins</td>
<td>May 2014</td>
</tr>
<tr>
<td>Technical Presentations</td>
<td>May/June 2014</td>
</tr>
<tr>
<td>Recommendation &amp; Designation</td>
<td>June 2014</td>
</tr>
<tr>
<td>Negotiation</td>
<td>June/July 2014</td>
</tr>
<tr>
<td>Contract Execution</td>
<td>August 2014</td>
</tr>
<tr>
<td>Work Begins</td>
<td>September 2014</td>
</tr>
</tbody>
</table>

¹: A second Q&A round is possible

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.
The New York State Department of Transportation (NYSDOT) encourages the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. Please see the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: http://biznet.nysucp.net/

**For this solicitation, NYSDOT has set a DBE Participation contract Goal of 18%. Only certified DBE prime Consultants and certified subconsultants listed in the NYSUCP DBE Directory are eligible for credit in this procurement.** Please see the RFP for more information.

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL) Section 165-a, effective April 12, 2012. 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: NYS Freight Transportation Plan

Please review this RFP. Please complete the following information and mail, e-mail, or fax to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (See Attachment 3.) before questions or other communications with the 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: #C031232

* Regular Mail:
  New York State Department of Transportation
  Contract Management Bureau, 6th Floor
  50 Wolf Road
  Albany, New York 12232
  ATTN: Contract #C031232

* Fax:  518-457-2875
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

NEW YORK STATE FREIGHT TRANSPORTATION PLAN

CONTRACT #C031232

RFP Release Date: March 28, 2014

Proposal Delivery Information:

    Al Hasenkopf, Contract Management Bureau, C031232
    New York State Department of Transportation
    50 Wolf Road, 6th Floor
    Albany, New York 12232

Proposal Due Date: May 9, 2014
# REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
NEW YORK STATE FREIGHT TRANSPORTATION PLAN

CONTRACT #C031232

Table of Contents

Table of Contents

<table>
<thead>
<tr>
<th>Table of Contents</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>1.1 Purpose of this RFP</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Background</td>
<td>1</td>
</tr>
<tr>
<td>2.0 PROJECT AND CONTRACT OBJECTIVES</td>
<td>1</td>
</tr>
<tr>
<td>2.1 Project Objectives</td>
<td>1</td>
</tr>
<tr>
<td>2.2 Contract Objectives</td>
<td>2</td>
</tr>
<tr>
<td>2.3 Minimum RFP Responsiveness Requirements</td>
<td>3</td>
</tr>
<tr>
<td>3.0 SCOPE OF SERVICES</td>
<td>3</td>
</tr>
<tr>
<td>3.1 Overview</td>
<td>3</td>
</tr>
<tr>
<td>3.2 Schedule</td>
<td>3</td>
</tr>
<tr>
<td>3.3 Tasks</td>
<td>3</td>
</tr>
<tr>
<td>3.4 NYSDOT Responsibilities</td>
<td>8</td>
</tr>
<tr>
<td>3.5 Consultant Responsibilities</td>
<td>9</td>
</tr>
<tr>
<td>4.0 PROPOSAL FORMAT AND CONTENT REQUIREMENTS</td>
<td>9</td>
</tr>
<tr>
<td>4.1 General</td>
<td>9</td>
</tr>
<tr>
<td>4.2 Proposal Formatting</td>
<td>10</td>
</tr>
<tr>
<td>4.3 PreScreening Proposal Submission Requirements</td>
<td>11</td>
</tr>
<tr>
<td>4.4 Company Background and Experience</td>
<td>13</td>
</tr>
<tr>
<td>4.5 Project Management and Project Approach</td>
<td>14</td>
</tr>
<tr>
<td>4.6 Scope of Services</td>
<td>15</td>
</tr>
<tr>
<td>4.7 Cost Proposal Preparation</td>
<td>16</td>
</tr>
<tr>
<td>5.0 PROPOSAL EVALUATION PROCESS</td>
<td>18</td>
</tr>
<tr>
<td>5.1 Pre-Screening of Proposals</td>
<td>18</td>
</tr>
<tr>
<td>5.2 Evaluation Category Weight Distribution</td>
<td>19</td>
</tr>
<tr>
<td>5.3 Technical and Management Proposal Evaluation</td>
<td>20</td>
</tr>
<tr>
<td>5.4 Cost Proposal Evaluation</td>
<td>21</td>
</tr>
<tr>
<td>5.5 Initial Best Value Determination</td>
<td>21</td>
</tr>
<tr>
<td>5.6 Proposal Shortlisting</td>
<td>22</td>
</tr>
<tr>
<td>5.7 Technical Interview Evaluation</td>
<td>22</td>
</tr>
<tr>
<td>5.8 Final Written Technical Proposal Evaluation (Re-Scoring)</td>
<td>23</td>
</tr>
<tr>
<td>5.9 Best &amp; Final Offer &amp; Proposal Withdrawal</td>
<td>23</td>
</tr>
</tbody>
</table>
5.10 Final Best Value Evaluation
5.11 Consultant Selection Recommendation and Tentative Contract Award
5.12 Consultant Start of Work

6.0 ADMINISTRATIVE SPECIFICATIONS
6.1 Inquiries and Information
6.2 Proposal Submission
6.3 State’s Rights to Proposals
6.4 Tentative Schedule of Key Events
6.5 Pre-Proposal Webinar
6.6 Deliverable Submittal, Review and Acceptance Process
6.7 Protest Procedure
6.8 Information for Selected Consultant

ATTACHMENTS
1. C031232 Draft Contract
2. Consultant Information and Certification Form
3. Procurement Lobbying Law Compliance
5. Use of Former NYSDOT Employee Information
6. Company References
7. Management Staffing Plan, Resumes, Project Experience & References
8. Cost Proposal
9. DBE Participation Information Form
10. DBE Participation Solicitation Log
11. Non-Collusive Bidding Certification
12. NYS Business Reporting
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 consultants to provide professional services to develop a Statewide Freight Plan. NYSDOT intends to competitively select a consultant and enter into contract #C031232 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 130 billion vehicle miles, encompassing more than 113,000 highway miles, 17,400 highway bridges, and numerous other assets such as large culverts, retaining walls, tunnels, and sign structures.
- A state and local highway system that annually handles over 130 billion vehicle miles. This total system encompasses more than 113,000 highway miles and more than 17,400 bridges.
- An extensive 3,500-mile rail network over which 68 million tons of equipment, raw materials, manufactured goods and produce are shipped each year.
- 485 public and private aviation facilities through which more than 80 million people travel each year.
- Over 130 public transit operators, serving more than 8.6 million passengers each day.
- 12 major public and private ports.

Within NYSDOT, the Statewide Policy Bureau will oversee this project. The Statewide Policy Bureau is responsible for:

- Providing policy analysis, development and advocacy and acting as organizational liaison
- Providing strategic statewide planning, policy analysis and economic analysis related to corridors, land use, energy and the environment
- Developing statewide transportation investment programs and monitoring performance
- Coordinating local planning including with Metropolitan Planning Organizations
2. PROJECT AND CONTRACT OBJECTIVES

2.1 Project Objectives

The goal of this procurement is to retain a qualified, responsive and responsible consultant to develop a Statewide Freight Transportation Plan for New York State. The objectives of this Plan are:

a. The Plan shall provide a strategic framework to guide short and long-term freight-related transportation investments and strategies in New York State.

b. The Plan shall be developed with an accelerated time frame (12 to 18 months), using existing freight planning efforts going on throughout and adjacent to New York State.

c. To have effective and adequate stakeholder outreach and involvement.

One of the requirements for this project is that NYSDOT is requiring that, after contract #C031232 has been fully approved and notice to proceed has been given to the selected Consultant, that the team of key personnel proposed by the Consultant be available to start work and that no substitutions are allowed. Substitution is only allowed if absolutely necessary, due to a reasonably unavoidable circumstance (ie, person left employment). All substitutes are subject to NYSDOT review and approval. NYSDOT reserves the right to cancel Contract #C031232 with the selected Consultant should the selected Consultant (after contract #C031232 has been fully approved and notice to proceed has been given) not make available the team of key personnel proposed by the Consultant at the start of work, and that NYSDOT can award Contract #C031232 to the next best value proposal without readvertising. Per Article 1 if C031232’s draft contract:

The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the STATE, and all of the Consultant’s proposed Key Personnel must be working under this Agreement within two weeks after Consultant receipt Of NYSDOT’s notice to proceed. All Key Personnel shall remain available until work under C031232 has been completed.

2.2 Contract Objectives

The Contract Objective for this solicitation is to select a qualified, responsive and responsible consultant (or team of consultants) via a fair and equitable Best Value Request for Proposal process.

CONTRACT PAYMENT: The selected Consultant shall be paid per C031232’s Schedule B’s milestone payment schedule and payment shall be made only after NYSDOT has accepted and approved each deliverables.

CONTRACT TERM: The base term of this contract will be for two (2) contract years commencing from the contract start date, with an optional one (1) year contract term extension. Execution of the extension will depend on performance, project need and funding availability.

OWNERSHIP OF DATA SOURCES: All data provided to and by the selected Consultant shall be the property of NYSDOT (or other Project Stakeholders). All reports or data generated by the selected Consultant shall be NYSDOT property.

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 contained in this RFP and resulting contract #C031232. 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. Consultants are encouraged to partner to

provide the required services and to meet the contract’s 18% DBE participation goal. Proposers must name a lead firm as the Prime Consultant that will serve as the legal contracting entity for the project period. 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.

OTHER CONTRACT OBJECTIVES:

Eighteen 18% percent or more DBE subconsultant participation over the life of the contract by the firm being awarded a contract via this RFP

Fair and equitable treatment of all firms participating in the competitive consultant selection process

2.3 Minimum RFP Responsiveness Requirements

2.3.1 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.

2.3.2 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.

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

2.3.4 Submission of both Procurement Lobbying Law forms (Attachment 3).

3. SCOPE OF SERVICES

3.1 Overview

NYSDOT seeks to develop a New York State Freight Transportation Plan (“Plan”). Section 1118 of MAP-21 directs the U.S. Secretary of Transportation to encourage each state to develop a State Freight Plan that outlines the immediate and long range plans for freight related transportation investments. Projects identified in a State Freight Plan pursuant to Section 1118 may be deemed eligible for an increased Federal funding match up to 95 percent.

The New York State Freight Plan will build on and incorporate ongoing and recently completed Regional freight planning efforts, and will recommended strategies and projects within a more comprehensive statewide framework that is consistent with the MAP-21 State Freight Planning provisions. Building on existing and ongoing regional efforts, the Plan will:

- Identify gaps and opportunities to improve New York State’s multi-modal freight network and competitive position relative to goods movement and global trade;
- Provide a strategic framework to progress high priority freight strategies and projects in partnership with the Federal government, regional partners, Regional Economic Development Councils, the private sector and national and international trade partners; and
- Guide freight-related transportation investments and strategies in a way that supports NYSDOT’s Mission to have a safe, efficient, balanced, and environmentally sound transportation system.

3.2 Schedule

NYSDOT seeks to progress this effort in an accelerated time frame. The Consultant should have extensive expertise in all modes of freight transportation, and is expected to utilize existing efforts that have been completed throughout the state in order to complete the Plan within a 12 to 18 month time frame.
3.3 Tasks

**TASK 1: Framework Development**

The purpose of this task is to develop the framework necessary to complete the Plan. It is expected that prospective consultants will bring a thorough understanding of freight planning and goods movement to their approach to the study, with the recognition that the effort will incorporate and build on existing and ongoing regional efforts with additional analysis to provide an overall context and framework for State freight efforts. The Consultant shall demonstrate clear understanding of this context and a sound approach to quickly develop an integrated statewide framework.

**Subtask 1.1 Study Background**

The framework should provide a high level overview of freight transportation in New York State, as well as an overview of the economic context within which freight transportation operates. Many freight plans and planning strategies have been initiated or completed throughout the State. The consultant shall build upon these existing efforts by reviewing each, evaluating and incorporating existing analyses and recommendations into a coherent Statewide framework, that also identifies any gaps, needs, or significant opportunities to be assessed in a statewide Plan. Existing known efforts include:

- NYMTC Regional Freight Plan Update 2015 – 2040 ([http://www.nymtc.org/project/freight_planning/freight_index.html#Freight_Plan](http://www.nymtc.org/project/freight_planning/freight_index.html#Freight_Plan))
- PANYNJ Goods Movement Plan ([http://www.panynj.gov/about/studies-reports.html](http://www.panynj.gov/about/studies-reports.html))
- GTC Transportation Strategies for Freight and Goods Movement in the Genesee-Finger Lakes Region ([http://www.gtcmpo.org/regional_freight_plan.htm](http://www.gtcmpo.org/regional_freight_plan.htm))
- GBNRTC Niagara Frontier Urban Area Freight Transportation Study ([http://www.gbnrtc.org/planning/freight-planning/](http://www.gbnrtc.org/planning/freight-planning/))

The selected Consultant shall, as part of this task, or additionally during the proposed stakeholder involvement subtask below, identify any additional regional plans or efforts that may provide insights into State freight needs, opportunities, strategies or priority projects.

**Subtask 1.2 Freight Plan Strategic Goals and Objectives**

Pursuant to Section 1118 of MAP-21, state freight plans must include a description of how the Plan will improve the ability of the state to meet the national freight goals established under section 167 of title 23 USC, which are as follows:

- Improving the contribution of the freight transportation system to the State’s economic efficiency, productivity, and competitiveness;
- Reducing congestion on the freight transportation system;
- Improving the safety, security, and resilience of the freight transportation system;
- Improving the state of good repair of the freight transportation system;
Using advanced technology, performance management, innovation, competition, and accountability in operating and maintaining the freight transportation system; and

Reducing adverse environmental and community impacts of the freight transportation system.

The consultant will work with NYSDOT and the Stakeholder Working Group to develop state-specific goals and objectives that will guide the Plan. These goals and objectives should address the specific issues of New York State’s freight transportation system, including all freight modes, intermodal facilities, and freight issues, as well as the manner in which these goals and objectives will help New York State achieve the national goals outlined above.

Subtask 1.3 Stakeholder Involvement Process

Consultant shall develop a Stakeholder Participation Plan detailing how key stakeholders will be engaged, how to sustain such involvement throughout the development of the Plan, and how information received from these stakeholders will be documented, compiled and incorporated into the Plan. This subtask shall involve such activities including but not limited to meeting coordination, execution, presentation of information either electronically or in person, and preparation of summary materials.

The Department envisions a Stakeholder Working Group consisting of key NYSDOT staff, Metropolitan Planning Organization (MPO) representatives, partner agency representatives and private freight sector stakeholders. This Working Group will provide input throughout Plan development. Additionally, the public and elected officials should be engaged at critical milestones during this effort.

The Stakeholder Participation Plan shall consider and build on the approaches that have guided the regional freight planning efforts noted above. Coordination and consultation with the State’s MPOs and Regional Economic Development Councils will also provide a foundation for effectively engaging freight industry stakeholders. The Consultant’s approach should build on previous efforts, as well as ensure balanced representation and input from across the State, including areas of the state not yet fully engaged in formal freight planning efforts.

At the conclusion of the Plan development, based upon the role and functions served by the Stakeholder Working Group, the consultant shall recommend an approach to sustaining freight industry stakeholder involvement via the Section 1117 State Freight Advisory Committee (FAC) mechanism recommended in MAP-21. This may include recommendations with regard to Committee procedures, membership and roles.

Task 1 Deliverables:

These deliverables, and other task deliverables, should reflect the results of all tasks, and should be prepared in such a way that they can be easily incorporated into a final report for the Plan.

- Technical memorandum containing a compilation of background research, applicable elements of other studies/efforts, gaps/needs, and other pertinent information
- Technical memorandum summarizing the Plan’s goals and objectives and how these will help achieve national goals
- Stakeholder Participation Plan
- Contacts database of Stakeholders
- At the conclusion of Plan: Freight Advisory Committee procedural and membership recommendations

Task 2: THE NYS FREIGHT TRANSPORTATION SYSTEM

The purpose of this task is to provide a comprehensive overview of New York’s existing infrastructure that is currently used for freight movement, as well as the current state of freight operations for all freight transportation modes.

Subtask 2.1 Inventory of Existing Freight Transportation Assets
The consultant will provide an overview of the existing infrastructure in New York that is critical to freight movement and transfer, and the condition and performance of the system. The consultant shall utilize where available existing regional freight planning asset inventories and priority networks identified in Task 1 as the foundational inputs to this task. This subtask encompasses both publicly-owned and privately-owned infrastructure, as appropriate in each major freight transport mode – trucking, rail, water, and air – as well as intermodal facilities. For the critical assets identified in each mode, attributes including but not limited to ownership, regulatory jurisdiction, current usage/operations, major connections, and physical condition (if applicable and readily available) shall be defined. The Consultant shall also identify and describe the critical attributes of all major connections, freight terminals, significant corridors and gateways in the state, including, but not limited to seaports, airports, rail and truck terminals, intermodal terminals, border crossings, canals, and major warehousing and distribution centers that generate significant freight on a statewide level. This overview shall also identify system bottlenecks, critical elements in poor state of good repair, or other performance issues.

**Subtask 2.2  Freight Policies, Strategies, and Institutions**

The Consultant shall identify and discuss how the state’s freight policies will guide freight-related transportation investment decisions for the state. The discussion should highlight the State’s governance processes that have the most impact on freight investment including:

1. The State’s grant and loan programs available to pay for freight-related transportation improvements and also the Statewide Transportation Improvement Program;
2. Freight-related institutions, including infrastructure owners and regulatory authorities (State DOT, port authorities, bridge and tunnel authorities, universities, etc.);
3. The governance and funding mechanisms for such authorities;
4. Private infrastructure owners, such as railroads, terminals, pipelines or other;
5. Statutory and constitutional constraints on freight-related investments, such as prohibitions on spending certain funds on freight infrastructure;
6. National and international freight policies; and
7. Regional freight planning activities.

The analysis conducted as part of this Subtask should identify any needs or opportunities within existing policies, institutions and governance. For example, any multi-jurisdictional or public-private partnerships that could improve project, strategy or financial efficiencies.

**Subtask 2.3  Freight Operations, Economic Context and Future Forecasts**

The purpose of this subtask is to analyze the current state of the freight network, existing economic context, and projected trends in goods movement and trade.

The Consultant will identify the existing major freight movements and operations in all modes – including volumes of goods movement by directional flow (i.e., inbound, outbound, and through) and commodity. These estimated current flows by commodity will be assigned to modes, vehicle types, and associated key travel routes (i.e., corridors, facilities, and intermodal connectors). The Consultant will utilize available datasets on goods movement, leverage any private sector available datasets, and/or propose acquisition of appropriate and applicable datasets if necessary, to present existing demand, capacity, and transportation system operating characteristics. If applicable, the price of acquiring any needed datasets should be included in consultant’s proposal.

The Consultant shall identify and describe the role of New York’s freight transportation system in regional, multi-state economic corridor, national and global economic contexts; and identify what industries and supply chains are critical to the State’s economy including both the role of freight movement to the economy in general (e.g. the importance of freight to the manufacturing, retail, and service economies), and the economic contribution of the freight industry itself (e.g. freight shippers, carriers, logistics providers).
The Consultant shall identify and describe current and projected trends in the freight sector, and also project future demand, capacity, and operating characteristics by directional flow (i.e., inbound, outbound, and through) and commodity in five-year increments from the present to 2035. These projected future flows by commodity will be assigned to modes, vehicle types, and associated key travel routes (i.e., corridors, facilities, and intermodal connectors). Consultant shall incorporate and/or utilize existing efforts where applicable. Proposing firms will fully describe the means (i.e., economic models and forecasting tools) for projecting and assigning future goods movement.

At the conclusion of this Task, the consultant shall identify a core network of multimodal assets critical to freight movement in New York State.

**Task 2 Deliverables:**

- Technical memorandum summarizing and identifying the core/critical components of the New York freight system in all modes, description of freight movement and operations (international, national, regional and local), summary of the major economic context and industry trends and anticipated impacts to New York State, and a projection of future trends and relevant impacts to New York State. The memorandum should include any detailed maps and/or tables, as appropriate for communicating the content of the information. The memorandum should be developed in such a way that the information contained within, with any appropriate revisions, can be included in the final Plan.

- Technical memorandum presenting the available funding and existing governance structure for freight movement and services within New York State. The memorandum should be developed in such a way that the information contained within, with any appropriate revisions, can be included in the final Plan.

- A multi-modal freight transportation system core network in GIS format

- Inventory/matrix for all data gathered in this Task (All data procured to perform this task will be transmitted to NYSDOT along with the Final Plan.)

**TASK 3: FREIGHT TRANSPORTATION SYSTEM NEEDS**

Based on the inventory and analysis of New York’s existing freight transportation system, operating environment, and industry trends and future forecasts identified in Task 2, the Consultant will identify and evaluate current key travel routes (i.e., corridors, facilities, and intermodal connectors) by mode with respect to their capacity and corresponding ability to accommodate projected freight volumes by origin, destination, and commodity. This assessment will identify significant freight system gaps, issues (such as land use conflicts, truck parking, last mile access, etc.), needs, strengths and opportunities, and also include a discussion on how the trends identified in Task 2 will impact these and how these trends can be leveraged or addressed. The Consultant should use the national goals, identified in Subtask 1.2, as a framework for assessing significance of system needs.

The Consultant shall utilize existing regional freight plans and planning efforts, combined with any additional identified needs, to create an inventory of significant freight transportation projects and/or strategies to be addressed throughout the state. These improvements will range from specific capital and operational projects to broader-based programmatic initiatives and policies.

**Task 3 Deliverable:**

- Technical memorandum summarizing the analysis and resulting significant freight system gaps, needs, strengths and opportunities. The memorandum should be developed in such a way that the information contained within, with any appropriate revisions, can be included in the final Plan.

- Inventory/matrix of Projects and Policy Recommendations

**TASK 4: NYS FREIGHT IMPROVEMENT STRATEGY**
Utilizing the Consultant’s extensive freight transportation system knowledge and experience, the Consultant shall propose a methodology for evaluating the projects and strategies compiled in Task 3. This methodology shall incorporate and/or align with the national freight performance measures established under MAP-21 (http://www.fhwa.dot.gov/map21/factsheets/pm.cfm). This methodology will assess how the projects and strategies will address the gaps, needs and opportunities developed in Task 3 and achieve the national freight goals outlined in Subtask 1.2, in order, to generate Recommendations in Task 5.

**Task 4 Deliverable:**
- Technical memorandum of methodology to assess projects/strategies

**TASK 5: RECOMMENDATIONS**

Utilizing the filtering methodology developed in Task 4, the Consultant will select those projects and policies that will have the greatest impact in meeting the State’s freight transportation goals and objectives, as well as the national freight goals. These projects and policies will be further refined, again using the Consultant’s freight transportation system knowledge and experience and in consideration of stakeholder input, into, at a minimum, immediate action items and longer term implementation actions.

**Task 5 Deliverable:**
- Technical memorandum discussing the selection process employed and presenting a set of recommended projects and strategies as a consolidated set of near- and long-term improvements and strategies to be advanced through 2035, and detailing justifications for recommending those projects and strategies. The memorandum should be developed in such a way that the information contained within, with any appropriate revisions, can be included in the final Plan.

**TASK 6: STATEWIDE FREIGHT IMPLEMENTATION PLAN**

Building upon existing statewide freight planning efforts and incorporating the deliverables from the previous Tasks, the Consultant shall develop a New York State Freight Transportation Plan. This Plan shall provide a strategic framework to progress high priority freight projects and strategies throughout the state and provide a methodology for ongoing project and strategy selection into the future. The Plan shall be a cohesive and understandable document with appropriate appendices. The following is a suggested structure of the document:

- Plan Goals & Objectives
- Existing NYS Freight Transportation System
- Economic Context & Future Forecasts
- Overview of Gaps, Needs, and Opportunities
- Recommended Projects and Strategies

The Consultant will provide the Draft Plan to NYSDOT for review and comment. The Plan should be presented to the Stakeholder Working Group and then to the public. After all reviews have been completed, the Consultant shall produce and deliver the Final New York State Freight Transportation Plan.

The resulting Statewide Freight Implementation Plan will support the recommendations of MAP-21 legislation by including both immediate and long-term freight planning activities and investments that will guide future related investment decision in New York State.

**Task 6 Deliverables:**
- Draft New York State Freight Transportation Plan
- Final New York State Freight Transportation Plan, including an Executive Summary
Electronic versions of all Task Deliverables delivered via CD
- Any additional relevant Plan materials, such as presentations, data collected, etc.
- Recommended list of Freight Advisory Committee Members and Action Plan

3.4 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 review, 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.

3.5 Consultant Responsibilities
The Consultant will provide the requested services to produce all requested services and deliverables per the RFP’s requirements. The Consultant shall perform all of the activities and tasks required to achieve the project goals, objectives and outputs. 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.

To the best of its ability and after contract approval/notice to proceed, the selected Consultant shall be required to provide all proposed key personnel for the duration of the project. After work begins, all changes in key Consultant personnel shall be subject to NYSDOT review and approval, shall have equal or greater qualifications and shall be at same or lessor rates of pay.

4. PROPOSAL FORMAT AND CONTENT REQUIREMENTS

4.1 General
Respondents will complete a Technical and Management proposal per the checklist listed below. In completing these sections, respondents must contain a complete description of the approach and technical responses indicating how the RFPs requirements have optimally been met. Respondents may include additional documents where necessary.

Questions regarding proposal formatting are encouraged.

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.

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 submissions 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 May 9, 2014. Proposers mailing proposals should allow sufficient delivery time to ensure timely receipt of their proposal in NYSDOT Contract Management Bureau’s offices.

4.2 Proposal Formatting

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

- Proposals shall be bound. Proposals can be submitted in three-ring binders or securely bound in another way (e.g., stapled, spiral, etc.
- Clearly label any attachment with the proposer’s name on a cover sheet that is firmly attached to the document. Also add the RFP name and contract number.
- Clearly label any unattached documents with the proposer’s name on the cover page of the document. Also add the RFP name and contract number. It is preferred that that each response section be separated by a labeled tab page.
- 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 proposer shall submit six (6) printed and bound paper copies of its Technical Proposal, and one (1) electronic copy of its Technical Proposal on CD/DVD in a Microsoft Office compatible format (Adobe PDF format is not acceptable).

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 “NYS Freight Plan Technical Proposal C031232”.

The proposer shall submit two (2) printed and bound paper copies of its Cost Proposal, and one (1) electronic copy of its Cost Proposal on CD/DVD in a Microsoft Office compatible format (Adobe PDF format is not acceptable).

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 “NYS Freight Plan Cost Proposal C031232”.

4.3 Prescreening Proposal Submission Requirements

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

<table>
<thead>
<tr>
<th>Check Off Box</th>
<th>NYS FREIGHT PLAN Prescreening Requirements</th>
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<tr>
<td></td>
<td>PART 1 TECHNICAL &amp; MANAGEMENT PROPOSAL</td>
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<tr>
<td>☐</td>
<td>Submit six (6) printed and bound hardpaper Technical &amp; Management Proposal copies (one original) and one (1) electronic copy (CD, thumb drive, etc.).</td>
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<td>☐</td>
<td>The proposer shall submit a signed Cover Letter on official business letterhead as part of its Technical Proposal submission. The Cover Letter shall contain the signature of an officer or company official who can be contacted during the proposal evaluation and who is authorized to bind the consulting firm to the resulting contract, its provisions, terms, and conditions. The proposer's Cover Letter shall contain the following information regarding the proposer’s official representative for its proposal (multiple officials are allowed):</td>
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<tr>
<td></td>
<td>• Name(s) of proposer's official representative</td>
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<td>• Title</td>
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<td>• Full legal name of company</td>
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<td>• Address (address from which the firm shall primarily provide NYS FREIGHT PLAN services. If multiple offices are involved, include all, identify which one is primary, and describe in summary their respective roles, percentages, etc.)</td>
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<td>• Telephone number</td>
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<td>• FAX number</td>
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<td>• E-mail address(es) of the proposer's representative(s)</td>
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<td>The proposer’s Cover Letter shall contain the full, legal names of all Subconsultants involved in the proposer’s response (if applicable). The proposer’s Cover Letter shall specifically 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).</td>
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**NYS Freight Transportation Plan Prescreening Requirements**

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<td>The Technical Proposal shall include a <strong>Title Page</strong> identifying the RFP for which the proposal is being submitted and the name, location, and contact person(s) for the proposer's firm.</td>
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<td></td>
<td>The Technical Proposal shall include a <strong>Table of Contents</strong> 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.</td>
</tr>
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<td></td>
<td>The Technical Proposal shall include a <strong>Statement of Company Background and Experience Section</strong> describing the proposer’s firm. The Technical Proposal shall include completed <strong>Attachment 6</strong>, to include company reference information per the format specified. If subconsultants are part of the proposer's proposal, the Technical Proposal shall include a <strong>Statement of Company Background</strong> describing each subconsultant, providing the same information as required for the prime Consultant.</td>
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<td>The Technical Proposal shall include completed <strong>Attachment 7</strong>, to include a Management Staffing Plan, and Key Personnel Resumes and References per the format specified. Identify the names of proposed certified DBE subconsultants and describe their contributions (commercial useful functions) for the project.</td>
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<td>The Technical Proposal shall present your proposed <strong>Project Management Approach and Project Approach</strong>, including <strong>Exhibit 3: Hours by Task By Person</strong> (with NO Rates/Cost).</td>
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<td>The Technical Proposal shall present your proposed, detailed <strong>Scope of Services</strong>.</td>
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<td>The Technical Proposal may include a relevant previous work sample (encouraged).</td>
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**PART 2 COST PROPOSAL**

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<th>Check Off Box</th>
<th>NYS FREIGHT PLAN Prescreening Requirements</th>
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<tr>
<td></td>
<td>Submit two (2) printed and bound paper <strong>Cost Proposal copies</strong> (one original) and one (1) electronic copy (CD, thumb drive, etc.)</td>
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<td>The Cost Proposal shall include a copy of the <strong>Cover Letter</strong> (provided in the Technical Proposal).</td>
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</table>
|              | The Cost Proposal shall include a completed, complete, signed **Attachment 8 Cost Proposal**, including:  
  - Exhibit 1: Rate Schedule  
  - Exhibit 3: Hours by Task By Person with Rates/Cost  
  - Exhibit 4: Direct Non-Salary Cost Schedule  
  - Exhibit 5: Total Proposed Budget/Cost  
  - Exhibit 6: Milestone Payment Schedule |
|              | The Cost Proposal shall include a completed **Attachment 3 Procurement Lobbying Law (PLL) Compliance Forms** |
|              | The Cost Proposal shall include a completed, signed **Attachment 2 Consultant Information & Certifications**. |
|              | The Cost Proposal shall include a completed **Attachment 9 DBE Participation Information Form**. |
The Cost Proposal shall include a completed (if applicable) Attachment 10 DBE Subconsultant Participation Solicitation Log AND Letter of Explanation of Non or Partial DBE Goal Attainment.

The proposer shall complete and submit Acknowledgement of all future RFP Modification Acknowledgement Forms (if any) as instructed.

### 4.4 Company Background and 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. Company references shall be provided by completing Attachment 6. Key personnel references shall be provided by completing Attachment 7. The 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.

Present, as the first part of your technical proposal, a separate narrative section in your proposal which discuses the following requirements:

<table>
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<tr>
<th>Company &amp; Key Personnel Experience</th>
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<tbody>
<tr>
<td>The Technical Proposal shall include a description of the proposer team’s experience with relevant freight transportation plan services (or similar, relevant services) to clients of similar size and scope (ideally) to the project described in this RFP. It is important to note if this team has stayed together during these engagements and how/if different personnel have been utilized.</td>
</tr>
<tr>
<td>NYSDOT desires to receive a prior relevant work sample, to be included in your technical proposal. The Consultant should relate this work sample to this RFP’s requirements, explaining why they consider that experience to be relevant.</td>
</tr>
<tr>
<td>If subconsultants are part of the proposal, the proposer shall submit at least one company reference for each of the subconsultants for similar services performed. If subconsultants are part of the proposer’s proposal, the description may include projects conducted by the subconsultant(s).</td>
</tr>
<tr>
<td>The proposer’s experience description shall include information about its history working with the proposed subconsultants (e.g., nature of relationship, number of engagements worked together, duration of engagements, budget of engagements, percent split between firms), including past experience with meeting contractual DBE or similar goals.</td>
</tr>
<tr>
<td>The proposal shall include all relevant information regarding the number, qualifications, experience, and expertise of all key Consultant staff proposed for this engagement.</td>
</tr>
<tr>
<td>The proposal shall include personnel resumes and references (as set forth in Attachment 7 of this RFP) for all proposed key personnel (including any subconsultants) that are assigned to this account.</td>
</tr>
</tbody>
</table>
Company & Key Personnel Experience

The proposal shall include two reachable references for each proposed key personnel. Key personnel references identified in the proposer's proposal shall be English-speaking and available for contact between 9:00 am and 4:00 pm EST. Information for each reference shall include:

- Client name and main line of business
- Name, title, mailing address, e-mail address, and telephone number of primary contact person at the firm
- Dates of service (when the key staff person provided services to the firm or agency)

The Technical Proposal may include any additional reference information submitted to further support a firm’s technical submission. Provide details regarding how additional references or work sample are relevant to the services being requested via this RFP.

4.5 Project Management and Project Approach

The proposer shall describe its approach for managing the work, meeting all of the RFP, project and contract goals and objectives, and accomplishing the scope of services as specified in the RFP or as proposed. Specifically, the response shall include detailed project plans, staffing plans, detailed project schedule, outreach, stakeholder outreach and involvement, data collection (if any), data analysis, approach to managing subconsultants (including DBEs), and public involvement.

Present, as the first part of your technical proposal, a separate narrative section in your proposal which describes your proposed Project and Project Management approaches.

4.6 Scope of Services

Provide a detailed scope of services which describes all of your proposed tasks, activities, schedule and deliverables. A general scope of services is outlined in RFP Section 3. You may base your scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives according to the skills, experience and expertise of proposed key Consultant personnel. NYSDOT wants to allow maximum flexibility for the ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated goals, objectives and scope of the project. Fully explain and justify your approach, however, if significant departures from the RFP's general scope are recommended.

Describe the level of interaction contemplated with NYSDOT, with stakeholders, with the public, as well as the incorporation of necessary recommended activities NYSDOT staff must accomplish to complete all activities.

Include a schedule for completion of the project showing the duration and interaction of each task and all major milestones. Include another project schedule detailing hours by key personnel by task in this schedule. Do not present any cost, salary or rate information in this schedule.

Include explanations of any key project assumptions NYSDOT needs to know about when you prepared your proposed scope of services. Provide an explanation of risks involved to make project delivery successful and how such risks are to be distributed to and handled by responsible parties.

4.7 COST PROPOSAL PREPARATION:

The Cost Proposal consists of two sections: (1) a Cost Section, which sets forth all-inclusive lump-sum cost schedule by task for performing scope of services work, and shall set forth a schedule of proposed not-too-exceed fully loaded rates for all proposed key Personnel; and (2) a Contract Section, which provides the required State certifications and other RFP administrative and response forms. 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. **Further, the full cost of a firm’s proposed NYS Freight Transportation Plan delivery must be proposed. Failure to offer costs for all proposed to deliver the requested services may result in proposal dismissal.**

4.7.1 **Cost Section**

NYSDOT requires that cost information be presented using **Attachment 8 Cost Proposal**. Payment for service delivery shall be based on accepted milestone progress payments and/or deliverables. Should some activities take a significant amount of time to mature, consider proposing discrete interim deliverables or meaningful subtask segmentation. Payment shall be made only after NYSDOT has accepted and approved each deliverables.

Proposers must provide both a hard copy for recordation purposes and an electronic copy of each of the worksheets within this spreadsheet as part of their response. PDF format is not acceptable. The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the proposer.

The proposer shall include all costs for all labor, overhead and fees as well as all costs of anticipated direct, out of pocket project-related expenses (travel, document preparation, etc.) to support its proposed NYS Freight Transportation Plan delivery approach and scope of services.

Your Cost Proposal shall:

1. Include an explanation of the pricing structure and assumptions used in determining all proposed costs included in **Attachment 8**. The assumptions and the cost basis of estimate must be included in the Cost Proposal. Costs must be specified for all services.

2. Include an explanation of the pricing structure and the assumptions used in determining its costs, as well as how those assumptions relate to the project staffing plan and schedule. Year 1 rates are required for all proposed Consultant Key Personnel.

3. Affirm that the proposed cost for all scope of services delivery will remain fixed over the life of the contract.

4. Enter the Year 1 not-too-exceed, fully loaded billing rates for each proposed Key Personnel. All proposed Rates shall remain fixed for the entire length of each contract year. Rates for additional contract years are not to be proposed, and can only be adjusted via Article 6.3 Specific Hourly Rates of the draft Contract (RFP **Attachment 1**). Any rate adjustments are subject to NYSDOT approval.

5. Provide the number of labor hours per labor category by task and total project cost that form the basis for its proposed cost to deliver NYSDOT Freight Transportation Plan.

6. Travel costs, parking fees, tolls, cost of document production/reproduction, and any other ancillary fees and costs directly necessary to support delivery of all project/contract services must be itemized and summarized. Reasonable reimbursement for all travel and travel-related expenses shall be limited to current NYSDOT allowances or reimbursement limitations. (Travel necessary to deliver proposed scope of service items must be clearly described in the Technical proposal.)

7. If a proposer indicates delivery of services in its Technical Proposal, the associated delivery costs must be included and explained in the Cost Proposal.

8. Terminology used in the cost spreadsheets for products and services must be consistent with the terminology used in the technical portion of the response.
9. Changes should not be made to Attachment 8’s spreadsheet format or formulas, but the proposer may attach additional worksheets or pages to explain and detail its pricing (including any assumptions).

The Cost Proposal shall be presented as one total fixed cost, with a separate year 1 rate table, and shall include, at a minimum, detailed information defining and explaining the elements and metrics of the Cost Proposal by phase/activity or by task/subtask and by labor. NYSDOT may request a “Best and Final Offer” from any or all proposers during the final stages of proposal evaluation, after conclusion of Technical Presentations.

Method of Payment:

Payment will be based on the acceptance of completed deliverables by task or subtask as identified in RFP Section 3/Contract Schedule A, Scope of Service and Contract Schedule B, Exhibit 6 Milestone Payment Schedule. 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.

4.7.2 Contract Section

1. PLL Forms

The Cost Proposal shall include a completed Attachment 3 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.

The Cost Proposal shall include a completed and signed Attachment 2 Consultant Information and Certifications. All proposing Consultant must indicate their acceptance of all of C031232 Draft Contract’s terms and conditions.

Via submission of a completed and signed Attachment 2, the Consultant shall specifically state its acceptance of all Terms and Conditions, appendices and exhibits contained in Attachment 1 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 #C031232 via Attachment 1, Schedule A, Scope of Services, prior to contract execution.

Altering Attachment 2 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.

2. **Disadvantaged Business Enterprise Participation**

The Cost Proposal shall include a completed Attachment 9 DBE Participation Information Form. Provide the full legal names of all certified DBE consultants (prime and/or subconsultant).

While not indicative of a proposer’s individual merit (technical excellence, ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBE) in its federally-funded solicitations. The level of DBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of NYSDOT. Please visit the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: http://biznet.nysucp.net/. Further, NYSDOT has posted its final draft DBE Program Plan to its website (subject to change). The draft plan provides background information regarding how NYSDOT conducts its Federally required DBE program, covering such subjects as contract-level goals, good-faith efforts by consultants, and DBE certifications, and is available via: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/2010_dbe_draft_plan.pdf.

NYSDOT has established a **DBE participation goal of Eighteen (18%) percent** for this solicitation. The goal relates to the total contract dollar amount (total cost/total project budget).

A subconsultant **who is certified (at the time of proposal submission)** as an NYSUCP DBE must provide meaningful participation (commercial useful function) in the execution of NYS FREIGHT PLAN services in order to count toward the DBE subconsultant participation contract goal. Participation by DBE prime Consultants is encouraged but will not count toward meeting the 18% contract goal (will count towards meeting NYSDOT’s corporate DBE goal). Meaningful participation is defined as providing commercially useful functions or services, either as delegated tasks or as a part of the services being provided by the prime. These services should result in significant tasks that can be considered commercially marketable.

Firms that offer a proposal under this solicitation may meet or exceed the 18% DBE contract goal. To count toward C031232’s 18% DBE contract goal, any offered DBE firm must be currently NYSUCP DBE Directory certified. Out-of-state DBEs are not automatically acceptable and must be acceptable to NYSDOT before proposal submittal (successfully go through New York State’s DBE certification process). Do not propose a DBE which is pending certification at the time of proposal submission.

If the proposal does not meet the **18% percent DBE participation contract goal**, the firm must provide acceptable evidence of a good-faith effort by completing Attachment 10 DBE Subconsultant Participation Solicitation Log. Additionally, if the **firm does not meet the 18% DBE contract goal**, the firm must include in its submission a DBE Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or in part), which serves to substantiate the firm’s good-faith effort. The letter should include sufficient justification as to why the goal was not met or was met only partially. It should also, at a minimum, address the following factors: the potential firm’s method of accomplishing the work; the reason(s) why part of the prime Consultant’s work cannot be provided by a DBE; the subcontracting opportunities associated with the proposed approach and scope of services; and the availability of certified firms for the work to be performed either by a Prime Consultant or via subcontract. Prime consulting firms are reminded that DBE participation can be via delegation of discrete commercial useful functions and via provision of part of the work being provided by the Prime Consultant.
Additionally, any Prime Consultant certified as a DBE who submits a proposal is not relieved from seeking participation of certified DBEs for sub-contractible services in this solicitation (failure to acceptably comply with the RFP’s DBE requirements could lead to proposal dismissal). In these situations, it is a proposal requirement that unless DBE outreach efforts by the Prime result in proposed DBE subconsultants, the Prime Consultant must provide acceptable evidence of a good-faith effort by completing Attachment 10 DBE Subconsultant Participation Solicitation Log to be deemed responsive.

Firms are advised to refer to RFP Section 5 for the procedure NYSDOT will follow in evaluating a firm’s proposed DBE participation. During the review process, which will include examination of the adequacy and the robustness of a firm’s Good Faith Effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive and may be removed from further consideration. NYSDOT reserves the right to ask clarification questions on a firm’s DBE proposal. DBEs certified out of New York State are not automatically eligible for consideration (required to go through New York State’s DBE certification process). NYSDOT may apply FHWA’s ‘administrative reconsideration’ process, depending upon circumstances. Pending DBEs (at the time of proposal submission) are not allowed.

Proposers are encouraged to ask questions regarding this aspect of the solicitation.

3. **RFP Modification Acknowledgements (Mandatory Requirement)**

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 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. **Failure to acknowledge receipt of any RFP Modifications may be grounds for proposal dismissal.**

4. **Registrations**

Each proposer must reference via completed (Attachment 2) its NYS Statewide Financial System (SFS) Vendor Identification Number and NYSDOT-issued Consultant Identification Number (CIN) in the Contract Section of its Cost Proposal. 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.

5. **PROPOSAL EVALUATION PROCESS**

5.1 **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 May 9, 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 the tables 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 in the most timely manner possible.

**Minimum Proposal Requirements.** Per RFP Section 4, any proposal which does not include all of the following by the RFP deadline 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):

1. Complete Technical and Management proposal submission.
2. Complete Cost and Contract proposal submission.
3. A proposal which either meets/exceeds the 18% DBE contract goal for C031232 or offers acceptable Good Faith Effort documentation and Letter of Explanation.
4. Acknowledged receipt of any RFP Modifications.

**DBE Goal Attainment/GFE Acceptance Review.** The proposed DBE participation percentages offered for NYSUCP certified subconsultants will be reviewed (RFP Attachment 9). Each offered DBE must be currently listed in the NYSUCP Directory to count towards the Department’s 18% DBE participation goal. If the proposed DBE participation is less than the established 18 percent goal, the firm’s evidence of a Good Faith Effort (RFP Attachment 10) to achieve the goal will be reviewed along with the firm’s letter of explanation as to why it was unable to meet the goal. If a proposer submits a proposal which meets or exceeds the 18% DBE goal, then the certification registration status of all offered DBE subconsultants will be verified by Contract Management, and if certified, the proposed DBE goal accepted.

Proposers with non-certified DBEs will receive a clarification response and be given one opportunity to clarify their proposal (per USDOT/FHWA's Administrative reconsideration’ process). Offered clarifications will be considered by Contract Management. Offerors with non-certified DBEs will receive a clarification request to submit a good faith effort log. Offerors with acceptable DBE subconsultant participation goal attainment plans will receive a recommendation to have their full proposals proceed further in the evaluation process.

If a proposer submits a proposal which does not meets the 18% DBE goal for C031232, then the submitted good faith log will be reviewed for acceptability and verification of the robustness of effort. Blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and have their proposal removed from further consideration. Such proposers will be contacted to request clarification of their submitted good faith effort log. Offered clarifications will be considered by the Contract Management. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

**5.2 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 75 points of the total Best Value score for the proposal (up to 65 points for written technical proposal review; up to 10 points for technical interview). The cost portion of the Cost and Contract portion will be point scored and will represent 25 points of the total Best Value score for the proposal. A more detailed breakdown of the RFP’s proposal evaluation factors and weights is as follows:
5.3 **Technical & Management Proposal Evaluation (Up to 75 Points)**

5.3.1 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.

5.3.2 **Technical and Management Written Proposal Evaluation** (up to 65 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. These are detailed below:

1. Experience (up to 30 points)
   a. Quality, extent and relevance of experience, education and training of key personnel.
   b. Quality, extent and relevance of current and prior experience of the firm.

2. Approach, Scope of Services and Schedule (up to 20 points)
   a. Quality and acceptability of approach and scope of services for accomplishing project objectives; initiative and creativity of proposer.
   b. Completeness and reasonableness of schedule; ability of proposed schedule to meet project’s completion time frame objective. The schedule shall be prepared in a font that is reasonably legible. Please avoid print smaller than an 8 point font. You may assume an estimated start date 10 days after contract award.
3. Organization and Staffing (up to 10 points)
   a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort, including quality of plan for phasing key personnel into project.
   b. Extent and quality of interaction with key participants and stakeholders.

4. Quality of Proposal; degree to which proposal reflects understanding and comprehension of project scope and objectives (up to 5 points)

5.3.3 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.

5.3.4 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.

5.4 Cost Proposal Evaluation (Up to 25 Points)
Cost proposals shall be reviewed, evaluated and scored for all proposals once they have cleared meeting the RFP’s minimum response requirements checks. Cost proposals shall be point scored with up to 25 best value points available. Initial cost scores shall be developed and used to identify initial Best Value scores. Cost proposal clarification questions may be asked at this time.

The cost proposal with the lowest total fixed cost to deliver your proposed New York State Freight Transportation Plan shall receive a perfected cost score of 25 points. Proposals with higher total fixed cost shall receive proportionately lower cost proposal scores.

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. Cost scoring results shall be used to determine which proposals are to be shortlisted/which firms are susceptible to contract award (a best value determination). A final cost score shall be calculated once all cost proposal evaluation has been completed.

5.5 Initial Best Value Determination
Perfected cost scoring results will be added to the initial, average raw technical scores, generating an initial best value score by firm. Firms shall be ranked in initial best value score order (highest to lowest).

Should any firm withdraw their proposal during the proposal evaluation process, 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).

5.6 **Proposal Shortlisting**

The shortlisting rule for this solicitation shall be: Any proposal within 10 points of the top initial Best Value ranked proposal (plus any ‘cluster’ of initial best value proposal scores surrounding the cut-off line). Cost evaluation results shall be considered along with the initial raw after-group discussion written technical proposal score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined shortlisting of firms (determined to be mathematically susceptible for contract award).

Firms submitting proposals which do not make the shortlist shall not be included in the remaining best value evaluation process steps (not included in subsequent proposal scoring process). Such a firm’s proposal shall be classified as ‘Did Not Finish’ in the procurement record.

5.7 **Technical Interview Evaluation (10 points)**

The Technical Interview portion (only available for firms mathematically subject to contract award; ie, shortlisted) of the Technical and Management proposal will be technically evaluated and point scored for firms which have made the RFP’s short-list after completion of initial Best Value considerations. Technical Interview evaluation shall account for a separate block of up to 10 points of the total best value score for a proposal.

Short-listed firms shall receive a Technical Interview invitation package, which shall include instructions, RFP requirements which NYSDOT is seeking further clarifications (without changing your original proposal), and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend Technical Interviews shall present a brief overview of key personnel present, make brief opening presentation (limited to 10 minutes), and respond to TEC member questions.

TEC members will evaluate Technical Interviews using the RFP’s evaluation criteria and weights listed below. A separate score sheet shall be used to record TEC Technical Interview findings and scores. TEC members shall score the technical interview independently first, then meet as a group to discuss their findings and scores. Members of the TEC may revise their technical interview scores as a result of group discussions. Reasons for score changes shall be recorded on the applicable TEC member’s hardcopy scoresheet as well as in Contract Management’s electronic composite scoresheet. Once scoring of each Technical Interview has concluded, TEC members shall sign/date and surrender their scoresheets to Contract Management.

Technical Interview Evaluation  (up to 10 points; for shortlisted firms only).

1. Further insight and understanding of the consultant’s proposed experience (firm and all key personnel); Clarity and quality of presentation; team chemistry.  (up to 7 points)

2. Further insight and understanding of the consultant’s proposed approach and scope of services; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver contract; were all Key Personnel in attendance with an adequate short introductions and discussion of their capabilities, experience/expertise and proposed project roles and articulated and demonstrated knowledge of the proposal;  (up to 2 points)

3. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarification questions;  (up to 1 point)
5.8 Final Written Technical Proposal Evaluation (Re-Scoring)

Scoring of written technical 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. TEC members shall revisit their original hardcopy scoresheets and should any after-Technical Interview changes be in order, may revise their after-group discussion, written technical proposal scores as a result of further group discussions. Reasons for any and all score changes shall be recorded on the applicable TEC member’s hardcopy scoresheet as well as in Contract Management’s electronic composite scoresheet. Once the re-scoring of written technical proposals has concluded, TEC members shall sign/date and surrender their scoresheets to Contract Management.

5.9 Best & Final Offer (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 proposal 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).

5.10 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 written technical proposal scores so that the highest-rated, average raw written technical proposal score gets changed and assigned a perfect score of 60 points for this solicitation with the other technical scores adjusted proportionately upward. NYSDOT will also perfect (curve) the Technical Interview scores so that the highest-rated, average raw Technical Interview score gets changed and assigned a perfect score of 10 points for this solicitation with the other Technical Interview scores adjusted proportionately upward. 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 #C031232.
5.11 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 C031232 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 #C031232 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 #C031232.

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.

5.12 Consultant Start of Work

NYSDOT is requiring that, after contract #C031232 has been fully approved and notice to proceed has been given to the selected Consultant, that the team of key personnel proposed by the Consultant shall be available to start work within two weeks after receipt of NYSDOT’s notice to proceed, and that no substitutions are allowed. Substitution is only allowed if absolutely necessary, due to a reasonable, unavoidable circumstance (i.e., person left employment). All substitutes are subject to NYSDOT review and approval.

The Consultant shall commence work no later than ten (10) days after receiving notice to proceed from the STATE, and all of the Consultant’s proposed Key Personnel must be working under this Agreement within two weeks after Consultant receipt Of NYSDOT’s notice to proceed. All Key Personnel shall remain available until work under C031232 has been completed.

6. Administrative Specifications

6.1 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:
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 Webinar is held.

6.2 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: NYS FREIGHT PLAN RFP (C031232)

6.3 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) To cancel the contract should the selected Consultant (after contract #C031232 has been fully approved and notice to proceed has been given) not make available the team of key personnel proposed by the Consultant at the start of work, and that NYSDOT can award Contract #C031232 to the next best value proposal without readvertising.

13) 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;

14) If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and

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

6.4 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>
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<tbody>
<tr>
<td>RFP Release Date</td>
<td>March 28, 2014</td>
</tr>
<tr>
<td>Pre-Proposal Webinar</td>
<td>April 2, 2014 @ 1:30 PM</td>
</tr>
<tr>
<td>Question Submittal Deadline ¹</td>
<td>April 11, 2014 COB</td>
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<tr>
<td>Answers to Question Due</td>
<td>April 18, 2014</td>
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<tr>
<td>Proposals Due</td>
<td>May 9, 2014 @ 2:00 PM</td>
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<tr>
<td>Proposal Evaluation Begins</td>
<td>May 2014</td>
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<tr>
<td>Technical Presentations</td>
<td>May/June 2014</td>
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<tr>
<td>Recommendation &amp; Designation</td>
<td>June 2014</td>
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<tr>
<td>Negotiation</td>
<td>June/July 2014</td>
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<tr>
<td>Contract Execution</td>
<td>August 2014</td>
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<tr>
<td>Work Begins</td>
<td>September 2014</td>
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¹: A second Q&A round is possible

6.5 Pre-Proposal Webinar

NYSDOT will hold a NYS FREIGHT PLAN 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 April 2, 2014 at 1:30 PM (scheduled to end at 3:30 PM or earlier). 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 NYS FREIGHT PLAN C031232 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).

6.6 Deliverable Submittal, Review and Acceptance Process

The selected Consultant and NYSDOT will follow the following deliverable submittal, review and acceptance process for all deliverables.

Submittal Process

- The Consultant shall submit an advance deliverable to the assigned NYSDOT Project Manager (PM). An electronic copy is preferred. A final hardcopy may be requested.

Review Process

- NYSDOT’s PM consults with involved NYSDOT Program Area(s) or other involved Project Stakeholder to develop lists of reviewers and approvers.
- Electronic copies of the deliverable are distributed to reviewers and approvers.
- If requested, the Consultant will schedule a meeting with designated reviewers and approvers to provide a high-level walkthrough of the document to facilitate review.
- The PM may schedule a review meeting with reviewers and approvers. They are notified of the importance of reviewing the deliverable and that it is essential for them to have read and developed comments before the meeting.
- The Review Meeting may be held. At the meeting, the document is reviewed page-by-page. Minor in-line changes will be made using Word’s ‘Track Changes’ feature. Comments will be inserted into the document where appropriate. The originator of each comment will be noted. (This may be done on a Pilot basis, with the effectiveness of the process evaluated and a decision made regarding process refinement.)
- NYSDOT will make every reasonable effort to provide the review comments to the Consultant within 10 business days from submittal. It should be noted that all submittals not received before noon will be considered to have been submitted the following day.
- It is expected that NYSDOT will receive the revised documents addressing all comments within 5 business days of the return of the original submittal to the Consultant.
- NYSDOT may review the revised submittal and return comments to the Consultant within 5 business days. No new comments will be made unless either the original comments have not been adequately addressed or modifications made in response to the original comments have raised new issues or concerns.
- The Consultant will address all comments and resubmit within 3 business days.
- NYSDOT may complete the “Final Review” within 2 business days. If there are outstanding issues that remain, resolution of such may involve higher levels of NYSDOT management.

Acceptance Process

- When the deliverable has been accepted, the Consultant will be so notified by NYSDOT’s PM. The Consultant shall submit an invoice via email to NYSDOT’s PM. Signed hardcopy invoice to follow in regular mail.
- NYSDOT PM will forward the invoice to designated NYSDOT payment person along with a statement indicating that the deliverable fulfills contract requirements and has been accepted.
• Designated NYSDOT payment person will then forward the invoice to NYSDOT Accounting for payment.
• Questions regarding all consultant-provided services and deliverables will be governed by the Contract (which includes the RFP and the selected Consultant’s proposal).

6.7 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).

6.8 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.

6.8.1 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.

6.8.2 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:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

6.8.3 Insurance Requirements of this Project
Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 to this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Attachment 1, Article 11. 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
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](mailto:walter.peretti@wcb.ny.gov).

4. **Other NYSDOT Insurance:**

6.8.4 **Consultant Employment Disclosure Requirements of this Project**

The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” ([Attachment 4, Consultant Employment Disclosure Legislation Form A](#)) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” ([Attachment 4, Consultant Employment Disclosure Legislation Form B](#)) 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.

6.8.5 **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 5](#).

6.8.6 **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.

6.8.7 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 2. 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

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 Department of Transportation (hereinafter referred to as "STATE") whose office is at 50 Wolf Road, in the County of Albany, State of New York 12232, and

CONSULTANT FIRM NAME
CONSULTANT FIRM ADDRESS

(herinafter 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.

The CONSULTANT shall perform all of the work described in SCHEDULE A 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 AGREEMENT. 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 personnel and shall procure 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 AGREEMENT 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, and all of the Consultant’s proposed Key Personnel must be working under this Agreement within two weeks after Consultant receipt Of NYSDOT’s notice to proceed. All Key Personnel shall remain available until work under C031232 has been completed.

ARTICLE 2. DOCUMENTS FORMING THE AGREEMENT.

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, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the STATE’s Request for Proposals (RFP; dated ____ ) incorporated by reference, and the CONSULTANT’s Proposal (dated ____ ) incorporated by reference.

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

31
The CONSULTANT agrees to complete all the work of this AGREEMENT as required by this AGREEMENT within a 24-month base term for this AGREEMENT, which shall commence on _____________ __, _______ and end on _____________ __, _______. The AGREEMENT may be extended for up to one (1) twelve month period as may be agreed upon by the parties to the AGREEMENT and as approved by the Office of the State Comptroller.

ARTICLE 5. PROVISION FOR PAYMENT.

Item I The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a price of _________ unless there is a substantial change in the scope, complexity or character of the work to be performed.

Item II The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose. In no event, however, will monies be deleted from this Agreement except pursuant to ARTICLE 16 hereof, entitled Termination.

Item III If the AGREEMENT is extended beyond 24 months then any and all salary rates shown in SCHEDULE B, EXHIBIT __ may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, all depending upon current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

ARTICLE 6. MILESTONE PAYMENTS.

The CONSULTANT shall be paid in milestone progress payments based on Schedule B’s payment schedule established by NYSDOT’s Project Manager and the CONSULTANT.

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of the STATE’s Project Manager, ______________ or their successor as identified by the STATE. Payments shall not be withheld unreasonably.

As applicable, the CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A hereto.

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

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. 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 Sub Contractors and Sub Consultants 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 8 (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 9. 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. Work which the CONSULTANT is obligated to perform in accordance with Article 9 hereof shall be performed without cost to the STATE. Compensation for other 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 10. 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 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.

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 11. WORKER’S COMPENSATION AND LIABILITY INSURANCE.

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

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:
1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONSULTANT are specified in subsection “B,” below. Insurance shall apply separately on a per-job or per-project basis.

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

3. **Certificates of Insurance/Notices.** CONSULTANT shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract #C031232. Certificates shall be mailed to:

   New York State Department of Transportation  
   Contract Management, 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 expenses and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT’s deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of “A minus” or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

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

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

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

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

(1) Coverage for liability contractually assumed by the CONSULTANT.

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

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

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

**ARTICLE 12. 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 13. 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 14. 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 8 of this AGREEMENT.

**ARTICLE 15. 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 AGREEMENT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and be 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 AGREEMENT 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 AGREEMENT.

**ARTICLE 16. 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 percentage of work satisfactorily completed by the CONSULTANT, as determined by the STATE, times the Lump Sum amount.

(b) If the termination is brought about as a result of 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 AGREEMENT 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 AGREEMENT.

**ARTICLE 17. 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 its 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 18. 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 19. 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, by 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 20. 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 21. 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 22. 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 23. 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 24. ORDER OF PRECEDENCE.**
In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

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

ARTICLE 25. CERTIFICATION REQUIRED BY 49CFR, PART 29.

The signatory 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 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.

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

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

(2) If any funds other than Federal appropriate 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 27. RESPONSIBILITY OF THE CONSULTANT.

(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this AGREEMENT. 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 or, nor payment for, the services required under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause action arising our of the performance of this AGREEMENT, 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 AGREEMENT.

(c) The rights and remedies of the STATE provided for under this AGREEMENT 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 28. SECURITY AND CONFIDENTIALITY OF INFORMATION.

Information received as part of this AGREEMENT 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 AGREEMENT. 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 AGREEMENT.

The 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 29. 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) The CONSULTANT shall at all times during the Contract term remain responsible. The CONSULTANT agrees, if requested by the Commissioner of Transportation 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) The Commissioner of Transportation or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, 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 must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

c) Upon written notice to the CONSULTANT and a reasonable opportunity to be heard with appropriate NYSDOT officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the CONSULTANT’S expense where the CONSULTANT is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation 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 30. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, RFP Attachment 4) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subcontractor or subconsultant. 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.
ARTICLE 31. 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:

5.12.1.1.1 New York State Department of Transportation:
Contact Person’s Name: William A. Howe, Contract #C031232
Title: Director
Address: NYSDOT Contract Management Bur., 6th Fl., 50 Wolf Road, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2874
E-Mail Address: bill.howe@dot.ny.gov

5.12.1.1.2 Consultant’s Name:

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

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

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

ARTICLE 32. 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 ascertaining 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 33. 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), § 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 § 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. C031232 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 also 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  DEPARTMENT OF TRANSPORTATION
DATE: ___________________________  DATE: ___________________________

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

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

By _____________________________  Date: ___________________________
FIRM NAME

-----New York State Freight Transportation Plan -----

APPROVALS

ATTORNEY GENERAL  THOMAS P. DiNAPOLI

STATE COMPTROLLER

By _____________________________

Date ___________________________
Acknowledgement for Contract #C031232

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

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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-COLLABORATIVE 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 affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a 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 Section 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. MACBRIEDE 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
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law Section 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.
During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law Section 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension 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.

Updated February 2014
APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

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

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

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

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

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

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (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 agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its “Procedures for Locally Administered Federal-Aid Projects” (available through NYSDOT’s web site at: www.dot.ny.gov/plafap). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into 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: 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 United States Department of Transportation (USDOT) regulations (49 CFR 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 Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation’s DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA\(^2\)), 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 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:

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\begin{align*}
20.215 & \quad \text{Highway Training and Education} \\
20.219 & \quad \text{Recreational Trails Program} \\
20.XXX & \quad \text{Highway Planning and Construction - Highways for LIFE;} \\
20.XXX & \quad \text{Surface Transportation Research and Development;} \\
20.500 & \quad \text{Federal Transit-Capital Investment Grants} \\
20.505 & \quad \text{Federal Transit-Metropolitan Planning Grants} \\
20.507 & \quad \text{Federal Transit-Formula Grants} \\
20.509 & \quad \text{Formula Grants for Other Than Urbanized Areas} \\
20.600 & \quad \text{State and Community Highway Safety} \\
23.003 & \quad \text{Appalachian Development Highway System} \\
23.008 & \quad \text{Appalachian Local Access Roads}
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PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(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.

(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.

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\(^1\) 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.

\(^2\) www.cfda.gov.
(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.

March 2013
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, Parts 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

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

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

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

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

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

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

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

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

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

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT’s obligations under this agreement and the Regulations relative to non-discrimination.

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

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

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

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

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

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

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

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

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

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

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

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

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT’s compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT’s association acting as agent, will include the procedures set forth below:
(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

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

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

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

9. AFFIRMATIVE ACTION IN SUBCONTRACTING

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

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

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

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

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

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

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

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

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved. The number of months of training to be provided under these special provisions is previously stated in this Agreement.

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

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less that 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

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

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

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

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

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated December 2012
ATTACHMENT 2

CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with your Cost Proposal)

CONTRACT NUMBER:  C031232
PROJECT TITLE:  NEW YORK STATE FREIGHT TRANSPORTATION PLAN

I. CONSULTANT INFORMATION

FIRM NAME:  ________________________________
ADDRESS:  __________________________________
CITY:  __________________________ STATE:  ___________
ZIP CODE:  __ __ __ __ - __ __ __
TELEPHONE #: (_____) _____ - _______  FAX#: (_____) _____ - _______
E-MAIL ADDRESS:  _______________________________________
CONTACT PERSON:  _______________________________________
  Consultant's Federal Identification Number (FIN):  _______________________
  Consultant's 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:

- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.

- The firm has read and will follow the procedure outlined in Attachment 5 if it proposes the services of a former NYSDOT employee(s).

- Vendor Responsibility: 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:
  http://www.tax.ny.gov/pdf/current_forms/st220ca_fill_in.pdf (Form ST-220-CA)
  http://www.tax.ny.gov/pdf/current_forms/st220td_fill_in.pdf (Form ST-220-TD)

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 1 to this Request for Proposals.

Signature: ______________________________
(NAME OF ACCEPTOR)
Attachment 3

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: NYS FREIGHT PLAN RFP (Contract #C031232)
E-Mail: alfred.hasenkopf@dot.ny.gov
Fax: 518-457-8475
Attachment 3
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.  C031232

By: _______________________________  Date: _______________________________

Name: _______________________________

Title: _______________________________

Contractor Name: _______________________________

Contractor Address: _______________________________

________________________________________

________________________________________
Attachment 3

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: C031232

Date: ______________________________________________________________________________________

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

   If yes, please answer the next questions:

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

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

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

   Governmental Entity: _______________________________________________________________________
   Date of Finding of Non-responsibility: ___________________________________________________________
   Basis of Finding of Non-responsibility: __________________________________________________________
   (Add additional pages as necessary.)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

   (Please circle): No Yes

6. If yes, please provide details below.

   Governmental Entity: _______________________________________________________________________
   Date of Finding of Non-responsibility: ___________________________________________________________
   Basis of Finding of Non-responsibility: __________________________________________________________
   (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: _______________________________________________________________________________________
   Signature: _______________________________________________________________________________
   Date: ____________________________________________________________________________________

Name: ______________________________________________________________________________________

Title: ______________________________________________________________________________________
# ATTACHMENT 4

## CONSULTANT EMPLOYMENT DISCLOSURE LEGISLATION FORMS A AND B

### FORM A

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**Total this page**: 0 0 $ 0.00

**Grand Total**

Name of person who prepared this report:
Preparer's Signature: __________________________
Title: __________________________
Date Prepared: __________________________

Phone #: __________________________
### State Consultant Services - Contractor’s Annual Employment Report

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

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

- [ ] Analysis  [ ] Evaluation  [ ] Research  [ ] Training
- [ ] Data Processing  [ ] Computer Programming  [x] Other IT Consulting  [ ] Engineering
- [ ] Architect Services  [ ] Surveying  [ ] Environmental Services  [ ] Health Services
- [ ] Mental Health Services  [ ] Accounting  [ ] Auditing  [ ] Other Consulting
- [ ] Paralegal  [ ] Legal  [ ] Other Consulting

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</tbody>
</table>

**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 5

USE OF FORMER NYSDOT EMPLOYEES

It is the Consultant’s responsibility to ensure they propose staff who 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 6

COMPANY REFERENCES

INSTRUCTIONS

In response to NYSDOT’s New York State Freight Transportation Plan 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 6 out. Fill out all boxes which are applicable per each reference response – fill in any not applicable box with ‘N/A’.

Include Attachment 6 in your Technical and Management Proposal submission.
### ATTACHMENT 6

#### COMPANY REFERENCES

<table>
<thead>
<tr>
<th>Reference Company Name:</th>
<th>Prime or Sub</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference Main Line of Business:</td>
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</tbody>
</table>

**Reference Contact Information**

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

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<tbody>
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</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 7
Management Staffing Plan, Resumes, Project Experience and References

Instructions

Present a complete staffing plan that provides the following:

1. Identifies key consultant personnel assigned to each proposed Consultant Performance Requirement.

2. Key Personnel Experience and Qualifications:

   The Consultant must provide the necessary staff to conduct all phases of the project as defined in the RFP, to perform all of the required tasks, and to produce all required deliverables. NYSDOT requires that the proposer provide a Project Staffing Plan that includes, at a minimum, filling the following key staff roles with Consultant-provided positions and fill any other roles/titles with Consultant personnel that the Consultant considers instrumental to project delivery over the life of resulting Contract #C031232. The Staffing Plan will also identify the timeframe each role will be involved, the level at which they will participate over that timeframe, and the timeframe the role will be located at NYSDOT versus located remotely. The RFP defines the following key Consultant personnel:

   **Project Manager**: Responsible for execution and coordination of all aspects of Consultant’s project plan and schedule; serves as primary point of contact for NYSDOT; has authority to act on behalf of Consultant; and is responsible for initially handling all contractual matters.

   For requirements where a number of years of experience is specified, that experience can be accumulated over a wider range of years. For requirements where a certification is required, or desirable, the certification should be verifiable in the appropriate certification database.

   Your cost proposal shall contain fully-loaded, not-to-exceed rates for the above title.

3. Present an estimate of labor (proposed hours) by key personnel as well as for any supporting personnel to present a detailed staffing plan for each Consultant Performance Requirement. NYSDOT is seeking a staffing schedule to identify consultant personnel commitments (ie, full time versus part time) to this project. DO NOT include any cost information.

4. Describes the strategy that will be used to acquire human resources with the appropriate skills to initially staff the project as well as maintain consultant-provided resources over the life of the project/contract.

5. Provides a description of how the offeror proposes to utilize the proposed key staff members and additional staffing to meet the obligations of this engagement as described in this RFP.

6. Includes an estimate of total effort hours contributed by each of the key personnel to each Scope of Service Task and an estimate of total effort hours for each Task.

7. If sub-consultants are to be used, the staffing plan shall describe the specific need for the expertise and describe the arrangements, including maintenance of meeting the contract’s 18% DBE goal over the life of the contract.

8. Describes the offeror’s plan for phasing project personnel into the effort and the level of interaction contemplated with NYSDOT and other involved stakeholders.
9. Indicates the degree to which it is anticipated that staff will be located on site at the NYSDOT offices. Any work to be conducted off site must be so indicated. The staffing plan should include a staffing schedule for each Consultant Performance Requirement of the project using this Attachment.
ATTACHMENT 7 (CONTINUED)

KEY PERSONNEL RESUMES AND REFERENCES

INSTRUCTIONS:

Offerors are required to complete one resume form for each proposed key personnel, including subcontracted staff, who are proposed for this project under resulting Contract #C031232. 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 this Attachment in your Technical and Management Proposal submission.
## ATTACHMENT 7

### KEY PERSONNEL RESUMES AND REFERENCES

**Offeror's legal company name:**

**Company Mailing Address:**

**Company Phone:**

**Company Fax:**

### Section 1: Personnel Information

**Proposed Project Role**

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<th>Last</th>
<th>First</th>
<th>Middle</th>
</tr>
</thead>
<tbody>
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</tr>
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<td>City</td>
<td>State</td>
<td>Zip Code</td>
<td></td>
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<tr>
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<td></td>
</tr>
<tr>
<td>Daytime Phone</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>E-Mail Address</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 5.13 Section 2: Past/Current Employer

**Employer Name**

**Employer Address**

**Beginning date of service** *(when the key staff person provided services to the client/firm)*

**Ending date of service** *(when the key staff person provided services to the client/firm)*

**Total time claimed**

<table>
<thead>
<tr>
<th>____ Years</th>
<th>____ Months</th>
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**Employment Status**

<table>
<thead>
<tr>
<th>____ Full Time</th>
<th>____ Part Time</th>
<th>____ hrs/week</th>
</tr>
</thead>
</table>

**Primary contact person at the firm**

- name and title
- e-mail address
- telephone number

### 5.14 Section 3: Work Description

**Describe the relevant 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.**

**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.**

**For the work performed, indicate the**
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>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>
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</tr>
</tbody>
</table>

----- Please add additional pages as appropriate -----

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ATTACHMENT 8

COST PROPOSAL

Instructions
The Cost Section of your Cost Proposal shall set forth the lump sum, milestone payment schedule total cost for performing all of the work in your proposed technical scope of services. Your Cost Proposal shall contain the following elements, which will be converted into Exhibits (to be labeled during contract negotiations) in the final contract:

1. **Proposed Staffing/Fully Loaded Rate Schedule (Exhibit 1).** Present a billing rate for each proposed Key Personnel (one rate for each person) and for all generic job titles requiring a billing rate for employees not named in your proposal. Rates shall be for Year 1 of the contract only. If additional titles are used but are not assigned, they must be listed. Offerors must present one Rate Schedule per firm in its team (prime consultant plus any sub-consultants that are being proposed), making multiple copies of the exhibit, as needed. Fully loaded hourly rates for all sub-consultants must also be included. Rates shall be broken down into salary, overhead additive and fee additive components. Overhead shall be an additive based on a fixed percentage of salary. Fee shall be an additive based on a fixed percentage of salary (not to exceed 10%). The RFP's Exhibit 1 presents fictitious titles.

2. **Staffing Table by Task Without Rates/Costs (Exhibit 2).** Present a schedule which shall list all descriptive job titles for the staff to be assigned to this project and to which tasks they are assigned to, depicting the proposed number of hours to accomplish each task. No rate or cost information is to be presented in this schedule. The schedule shall be prepared to distinguish anticipated assignment by project section/task. A sample without rate schedule is included in the RFP for illustration purposes. **THIS SCHEDULE MUST BE INCLUDED IN YOUR PART I TECHNICAL SUBMISSION – DO NOT INCLUDE THIS SCHEDULE IN YOUR PART II COST SUBMISSION.**

3. **Staffing Table by Task With Rates/Costs (Exhibit 3).** Present a schedule which shall list all descriptive job titles for the staff to be assigned to this project and to which tasks they are assigned to, depicting the proposed number of hours, their corresponding fully-loaded rates, and the resulting labor costs to accomplish each task. The schedule shall be prepared to distinguish anticipated assignment by project section/task. A fictitious example with rate schedule is included in the RFP for illustration purposes.

4. **Direct Non-Salary Costs (Exhibit 4).** Present a direct non-salary cost schedule shall list by task number the items of direct non-salary costs (out-of-pocket expenses) expected to be incurred in the performance of the project. It’s ideal to relate these costs by their corresponding tasks, as applicable. A fictitious example of a direct non-salary cost schedule is included in the RFP for illustration purposes. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the NY State Comptroller. The latest state and nationwide maximum reimbursement rates are available at the following Web site: [http://www.gsa.gov/](http://www.gsa.gov/). Subconsultant costs (if any) shall be shown in the schedule. On separate sheets, explain each item with all factors leading to the derivations of the costs attributable to subconsultants.

5. **Total Proposed Project Budget/Cost (Exhibit 5).** Present a summary of itemized total labor and total direct non-salary costs by prime consultant and for each involved subconsultant.
6. **Milestone Payment Schedule (Summary) (Exhibit 6).** Present a final milestone payment schedule, which will summarize the direct labor; direct non-salary applied overhead costs, other direct non-personal costs and project-related fees for the Project in accordance with the technical schedule of service delivery. This RFP does not present a sample milestone payment schedule. Based on the lump sum costs and milestone payment schedule offered, present a proposed percentage of the lump sum for each key deliverable for which payment would be requested. It is suggested that, were commensurate with the proposed scope of services, that the offered milestone payment schedule be sub-divided to consider a firm’s cash flow requirements (especially for longer duration tasks or to divide deliverables into draft and final). The RFP does not present a specified milestone payment format – it is up to each proposer to present a milestone payment format.
Attachment 8

(Fictitious Example of Exhibit 1)
Proposed Staffing/Fully Loaded Rate Schedule (by Title)

New York State Freight Transportation Plan
Contract #C031232

Consultant Name:_________________________

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<tr>
<th>EXAMPLE TITLE</th>
<th>NAME</th>
<th>% of Labor</th>
<th>(a) YEAR ONE DIRECT LABOR</th>
<th>(b) OVER HEAD (___%)</th>
<th>(c) FEE (___%) Not to exceed 10%</th>
<th>(a)+(b)+(c) YEAR ONE BILLING RATE</th>
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<tr>
<td>Technical Analyst</td>
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<tr>
<td>Administrative Analyst</td>
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<tr>
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<tr>
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<tr>
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</tr>
</tbody>
</table>
Attachment 8

(Fictitious Example of Exhibit 2)

New York State Freight Transportation Plan
Contract #C031232

Consultant Name:_________________________

<table>
<thead>
<tr>
<th>TASK ASSIGNMENT JOB TITLE</th>
<th>TASK 1.0</th>
<th>TASK 2.0</th>
<th>TASK 3.0</th>
<th>TASK 4.0</th>
<th>TASK 5.0</th>
<th>TASK 6.0</th>
<th>TASK 7.00</th>
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</tr>
</tbody>
</table>

1: Suggested Titles: Not representative of titles to be proposed. When filling out this table, you must present one row for each proposed person (present an hour estimate for each person). Present an hour estimate for each generic job title (requiring a billing rate for employees not named in your proposal).

THIS SCHEDULE MUST BE INCLUDED IN YOUR TECHNICAL PROPOSAL SUBMISSION.
DO NOT INCLUDE THIS SCHEDULE IN YOUR COST PROPOSAL SUBMISSION.
### Staffing Table by Task With Rates/Costs Schedule

**New York State Freight Transportation Plan**  
**Contract #C031232**

**Consultant Name: ____________________________**

<table>
<thead>
<tr>
<th>TASK ASSIGNMENT JOB TITLE</th>
<th>TASK 1.0</th>
<th>TASK 2.0</th>
<th>TASK 3.0</th>
<th>TASK 4.0</th>
<th>TASK 5.0</th>
<th>TASK 6.0</th>
<th>TASK 7.0</th>
<th>TOTAL HOURS</th>
<th>HOURLY RATE</th>
<th>DIRECT TECHNICAL LABOR</th>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>$0</td>
</tr>
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<td>Demographer</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>$0</td>
</tr>
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<td>Statistician</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>$0</td>
</tr>
<tr>
<td>Specialty Planner</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>$0</td>
</tr>
<tr>
<td>IT Specialist</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
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</tr>
<tr>
<td>Transportation Modeler</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
<td>$0.00</td>
<td>$0</td>
</tr>
<tr>
<td>GIS Specialist</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>$0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>284</td>
<td>161</td>
<td>229</td>
<td>224</td>
<td>307</td>
<td>306</td>
<td>185</td>
<td>1696</td>
<td>$52,467</td>
<td></td>
</tr>
</tbody>
</table>

1: Suggested Titles: Not representative of titles to be proposed.  
When filling out this table, you must present one row for each proposed person (present an hour estimate for each person). Present an hour estimate for each generic job title (requiring a billing rate for employees not named in your proposal.)
ATTACHMENT 8

Direct Non-Salary Costs Schedule

New York State Freight Transportation Plan
Contract #C031232

(Fictitious Example of Exhibit 4)

DIRECT NON-SALARY EXPENSE TABLE (sample)

Consultant: ________________________

Study: ________________________

<table>
<thead>
<tr>
<th>1. Travel, Lodging, Sustenance</th>
<th>Subtotal</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trips</td>
<td></td>
<td></td>
</tr>
<tr>
<td># of trips</td>
<td></td>
<td></td>
</tr>
<tr>
<td>miles/trip</td>
<td></td>
<td></td>
</tr>
<tr>
<td>tolls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>rate/mile</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Town</td>
<td>4</td>
<td>120</td>
</tr>
<tr>
<td>Overnight Hotel: 2 rooms @150 per night for 1 night</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL TRAVEL, LODGING, SUBSISTENCE</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Printing and Copying</th>
<th>Subtotal</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Copies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 1/2&quot; x11&quot; 500@0.11 per page</td>
<td>$55.00</td>
<td></td>
</tr>
<tr>
<td>b. Advertising in local media</td>
<td>$1,800.00</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL PRINTING &amp; COPYING</strong></td>
<td>$2,355</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Telephone and Mail</th>
<th>Subtotal</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Express mail/Overnight delivery</td>
<td>$170.00</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL TELEPHONE &amp; MAIL</strong></td>
<td>$170</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Food</th>
<th>Subtotal</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meals (TMP)</td>
<td></td>
<td>$50.00</td>
</tr>
<tr>
<td><strong>TOTAL FOOD</strong></td>
<td></td>
<td>50</td>
</tr>
</tbody>
</table>

**TOTAL DIRECT NON-SALARY COST** 2,576
ATTACHMENT 8

New York State Freight Transportation Plan
Contract #C031232

FIRM NAME: ________________

SUMMARY ESTIMATED TOTAL PROJECT BUDGET

(Fictitious Example of Exhibit 5)

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost (estimated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Direct Technical Labor</td>
<td>$52,467</td>
</tr>
<tr>
<td>2. Direct Non-Salary</td>
<td>$3,500</td>
</tr>
</tbody>
</table>

Prime Consultant: ________________

Subconsultant: ________________(as more as needed)

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost (estimated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Direct Technical Labor</td>
<td>$51,932</td>
</tr>
<tr>
<td>4. Direct Non-Salary</td>
<td>$0</td>
</tr>
</tbody>
</table>

Total Estimated Cost $199,974
ATTACHMENT 8

New York State Freight Transportation Plan
Contract #C031232

FIRM NAME: ________________

MILESTONE PAYMENT SCHEDULE

(Fictitious Example of Exhibit 6)

[TO BE PROVIDED IN YOUR COST PROPOSAL]
ATTACHMENT 9

DBE PARTICIPATION INFORMATION

Please complete the following table for the prime firm and all proposed subconsultants (consultant team composition). All DBEs must be certified and posted on New York State’s NYSUCP DBE Directory (http://www.nysucp.net/). Please keep in mind that only NYSUCP-certified DBEs are eligible to count toward attainment of this federally funded contract with an 18% DBE participation goal.

Please identify each full firm’s legal name and indicate each firm’s percentage of the total cost/total budget for the contract.

If the combined percentage of total cost/budget for all proposed, certified DBEs is less than the 18% DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the **DBE Subconsultant Participation Solicitation Log (Attachment 10)**, and the **DBE Goal Attainment Explanation Letter**. Further, Prime Consultants certified as a DBE are not relieved of meeting the DBE contract goal solely via their participation, as this is a subconsultant program opportunity. DBE primes need to either meet the DBE subconsultant participation goal, or submit the **DBE Subconsultant Participation Solicitation Log (Attachment 10)** and the **DBE Goal Attainment Explanation Letter**.

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>% of Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DBE</td>
<td>None</td>
</tr>
<tr>
<td>A. Prime Consultant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Sub-Consultants</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>
**ATTACHMENT 10**

**DBE SUBCONSULTANT PARTICIPATION SOLICITATION LOG**  
(Good Faith Effort Documentation)

<table>
<thead>
<tr>
<th>CONTRACT NO. C031232</th>
<th>DBE PARTICIPATION GOAL</th>
<th>PAGE NUMBER ___ OF ___</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIME FIRM NAME/ADDRESS/ZIP CODE</td>
<td>CONTACT PERSON</td>
<td>TELEPHONE NUMBER:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>E-MAIL:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOLICITED COMPANY NAME AND CONTACT PERSON</th>
<th>TELEPHONE (WITH AREA CODE)</th>
<th>FEDERAL EMPLOYER ID #</th>
<th>WORK TYPES BEING SOLICITED</th>
<th>TYPES AND DATES OF CONTACTS</th>
<th>CONTACT RESULT(S)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

Please use additional pages as necessary
**INSTRUCTIONS FOR COMPLETING ATTACHMENT 10**

**DBE SUBCONSULTANT PARTICIPATION SOLICITATION LOG (GOOD FAITH EFFORT DOCUMENTATION)**

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

PLEASE NOTE: **Only participation by NYSUCP certified DBE subconsultants count toward the Contract’s DBE goal attainment.** Participation by DBE prime consultants does NOT count toward the Contract’s DBE goal - participation by DBE prime consultants only counts towards NYSDOT corporate DBE goal. **Also, please note that once a proposal has been submitted, a firm’s cost proposal CAN NOT BE changed,** so responding firms only have one opportunity to get their DBE submission correct. Substitutes can only be allowed if the technical qualifications are similar to what was originally proposed with no change in cost. FHWA’s administrative reconsideration process can be followed provided that the validity of the consultant selection process is preserved.

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

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

*** DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION. ***

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

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

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

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

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

**DBE CONSULTANTS SOLICITED:**

**SOLICITED COMPANY NAME AND CONTACT PERSON:** Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

**TELEPHONE (With Area Code):** Enter telephone number (including area code) of the solicited firm.
FEDERAL EMPLOYER ID #: Enter the Federal Employer Identification Number of the solicited firm.

WORK TYPE(S) BEING SOLICITED: Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. (NOTE: Work type codes are provided for every certified firm listed in the Biznet DBE Registry: http://www.nysucp.net/.)

TYPES AND DATES OF CONTACT: Enter dates on which your firm contacted the solicited firm, either by mail (date solicitation sent), telephone (including date and time of call) or other person-to-person contact. Identify the type of contact by prefacing each date with “M” if a mail contact; “T” if a telephone call; and “D” if a direct meeting with the firm.

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

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

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

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

4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left.)
GUIDANCE CONCERNING GOOD FAITH EFFORTS
IN MEETING DBE PARTICIPATION GOALS IN FEDERALLY-FUNDED CONTRACTS

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

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

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

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

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

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

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

Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
ATTACHMENT 11

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

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

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

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

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

____________________________________________

____________________________________________

____________________________________________

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME  LEGAL RESIDENCE
___________________________________________

President:
___________________________________________

Secretary:
___________________________________________

Treasurer:
___________________________________________

President:
___________________________________________

Secretary:
___________________________________________

Treasurer:
ATTACHMENT 11

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

Identifying Data

Potential Contractor: _____________________________________________________________

Address: ________________________________________________________________

Street

______________________________________________________________

City, Town, etc.

Telephone:__________________________ Title_________________________

If applicable, Responsible Corporate Officer

Name:______________________________ Title_________________________

Signature: ________________________________________________________________

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

________________________________________________________

Legal name of person, firm or corporation

________________________________________________________

Legal name of person, firm or corporation

By

Name

Title

________________________________________________________

Address: ____________________________

Street

________________________________________________________

City State

Address: ____________________________

Street

________________________________________________________

City State
ATTACHMENT 12

NYS Business Reporting

Fill out this attachment to record the proposed use of any New York State businesses. The definition of ‘NYS Business’ is: ‘Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this contract’. Indicate whether each proposed firm is classified as a NYS Business, the total dollar amount attributable to each firm, the total proposed contract cost, and the NYS business address of each applicable NYS business firm. Use more pages as need be.

Contract Number C031232: NYS Freight Transportation Plan RFP

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYS Business? (Y or N)</th>
<th>% of Total Proposed Contract Cost</th>
<th>NYS Business Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Prime Consultant</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>B. Sub-Consultants</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Total Proposed Contract Cost: $