NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS

DBE ORIENTATION and ASSESSMENT SERVICES for NYSDOT
Contract #C031182

August 22, 2014

To All Concerned:

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

Please note the following dates and deadlines:

- August 22, 2014: RFP release
- September 4, 2014: Pre-Proposal Webinar @10:30 AM
- September 12, 2014: Deadline for questions about the RFP
- September 22, 2014: Release of answers to RFP questions
- October 23, 2014 @ 2:00 PM ET: Deadline for the submission of proposals
- December 2014: Technical Interviews
- December 2014: Consultant Selection
- March 2015: Approved Contract

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

In Section 4 of the RFP, a “Checklist for Proposal Submission” is included for reference purposes when submitting your proposal to NYSDOT. It also contains instructions for complying with the Procurement Lobbying Law so that your proposal may be considered for contract award. NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.
NYSDOT estimates that the selected Consultant will commence work on April 1, 2013 (new NYS budget permitting) and continue for a period of five years, with an optional five-year extension, depending on performance.

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 11%. Only certified DBE prime Consultants and certified subconsultants listed in the NYSUCP DBE Directory are eligible for credit in this procurement. Please see the RFP for more information.

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

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

We look forward to the receipt of your proposal.

Sincerely,

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

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

___________ WE DO INTEND TO SUBMIT A PROPOSAL

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

_______________________________________________________________________

_______________________________________________________________________

Name and Address of Organization (Include Zip Code):

_______________________________________________________________________

_______________________________________________________________________

Signature: ___________________________ Date: ____________________________

Types of Printed Name and Title: __________________________________________

Telephone: ___________________________ Fax: _____________________________

E-Mail Address: _________________________________________________________

RFP Title: _____________________________________________________________

Please send to:
Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031182
E-Mail: barbara.sonenberg@dot.ny.gov
Fax: 518-457-8475
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

DBE ORIENTATION and ASSESSMENT SERVICES for NYSDOT
Contract #C031182

Proposal Due Date: October 23, 2014

Proposal Delivery Location and Additional Information:

Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031182
E-Mail: barbara.sonenberg@dot.ny.gov
Fax: 518-457-8475

RFP Release Date: August 22, 2014
# REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

DBE ORIENTATION and ASSESSMENT SERVICES for NYSDOT
Contract #C031182

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1.0 Introduction

1.1 Purpose of this RFP

The New York State Department of Transportation (NYSDOT) is releasing this Non-A/E Request for Proposals (RFP) to seek proposals from responsive and responsible consultants and to select qualified vendors to provide DBE Orientation and Assessment Services to NYSDOT’s Civil Rights Office under one resulting contract award. The selected Consultant shall provide services to NYSDOT to:

- Orient new DBEs (or those DBEs requiring orientation services);
- Survey and assess NYSUCP DBEs and identify areas of needed business assistance and opportunities for growth, and
- Determine continued program eligibility.

Mission of New York State Department of Transportation

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

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

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

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

Today, the New York State transportation network includes:

A state and local highway system that annually handles over 100 billion vehicle miles, encompassing over 110,000 highway miles, 17,000 highway bridges, and numerous other assets such as large culverts, retaining walls, tunnels, and sign structures.

An extensive 5,000-mile rail network over which 42 million tons of equipment, raw materials, manufactured goods, and produce are shipped each year.

456 public and private aviation facilities through which more than 84 million people travel each year.
Five major ports, which annually handle 50 million tons of freight.
Over 130 public transit operators, serving more than 5.2 million passengers each day.
12 major public and private ports, which handle more than 110 million tons of freight annually.

1.2 Project Background

The United States Congress established the Disadvantaged Business Enterprise (DBE) Program in 1982 to ensure nondiscrimination in the award and administration of DOT-assisted contracts; help remove barriers to the participation of DBEs in DOT-assisted contracts, and assist the development of firms that can compete successfully in the marketplace outside of the DBE program.

The New York State Department of Transportation (NYSDOT) is committed to a Civil Rights Program which administers and promotes participation of Disadvantaged Business Enterprises (DBEs) in NYSDOT contracting opportunities in accordance with Code of Federal Regulations 49(CFR) Section 26, as currently revised. Within NYSDOT, the DBE Program is administered by the Office of Civil Rights.

It is the policy of NYSDOT to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of the U.S. Department of Transportation (USDOT) assisted contracts. It is the intention of NYSDOT to create an equitable environment in which DBEs can compete fairly for contracts and subcontracts relating to the procurement, contracting and professional service activities of USDOT-assisted work.

The primary purpose of NYSDOT’s Disadvantaged Business Enterprises Supportive Services Program (DBE/SS) is to provide training, assistance, and services to DBE firms certified in the DBE program so as to increase their activity in the program, and to facilitate the DBE firms' development into viable, self-sufficient organizations capable of competing for, and performing on federally assisted highway projects.

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

2. PROJECT AND CONTRACT OBJECTIVES

2.1 Project Objectives

Program Objectives: To provide guidance to DBEs so that they are better prepared to participate on NYSDOT construction contracts and bid on other procurement opportunities.

2.1.1 Orientation Services: The overall goal is to provide newly certified DBEs important information about the advantages of being certified. The Orientation Services project objectives are:

1. To select a Consultant who has a general working familiarity with current federal regulations namely 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
2. To develop, pilot and set NYSDOT’s new DBE Orientation curriculum.
3. To successfully deliver NYSDOT’s new DBE Orientation Program in an efficient and economical manner statewide.
4. To provide a feedback questionnaire/mechanism to assess the effectiveness of NYSDOT’s new DBE Orientation Program.
5. To provide the requested services within the limited resources NYSDOT has available. NYSDOT expects the level of effort to deliver the requested services to be modest. Proposals with proposed total costs above NYSDOT’s available $914,000 budget will not be considered. Any firm whose cost proposal exceeds this amount will be deemed non-responsive and shall have its proposal removed from further consideration (prior to the technical evaluation of proposals).

2.1.2 Assessment Services: The overall goal is to help DBEs identify the strengths and weaknesses in their business management and operations practices, and provide them with the tools to improve and grow their businesses so that they are better prepared to participate on NYSDOT construction contracts and other procurement opportunities. The selected consultant will perform assessments via questionnaires and on-site assessments. The specific project objectives are:
1. Develop and execute assessment questionnaire.
2. Cost-effective and efficient on-site assessments.
3. Initiate and complete on-site assessments of at least five DBEs a month.
4. Maximize the number of on-site assessments based on the proposing firm’s cost effective and sensible approach.
5. Prepare and submit monthly, quarterly and final progress reports.

2.2 Mandatory Requirement
The total proposed cost for Contract #C031182 base term (contract years one and two) must not exceed $914,000. Any proposal whose cost proposal exceeds $914,000 will be deemed non-responsive and the submitting firm shall have its proposal removed from further consideration (prior to the technical evaluation of proposals).

The reason for this mandatory requirement is due to the limited amount of federal funds available to NYSDOT for the requested services. Please note during the term of C031182, that should additional federal funds become available during the life of the contract or prior to contract execution, then NYSDOT may amend C031182 to have the selected Consultant provide more of the same services as advertised in this RFP.

2.3 Contract Objectives
1. Contract Award: A single contract award shall be made under this RFP solicitation. Contract #C031182 is being used to record this procurement and shall be the contract number of any resulting contract.

2. To have a resulting contract with a total contract value no greater than $914,000.

3. Disadvantaged Business Enterprise DBE Goals: Via this solicitation, to provide a participation opportunity for certified Disadvantaged Business Enterprises (DBEs) to meet/exceed the 11% DBE participation goal.
4. Contract Term: The base term of the resultant agreement from this solicitation will be two (2) years, with one optional one-year extension to be exercised at the Department’s sole discretion. Attachment 1, contains the RFP’s Draft Contract’s Terms and Conditions for C031182.

5. Method Of Payment: Fully-loaded specific hourly rate reimbursement method plus reimbursement for pre-approved reasonable, acceptable expenses. All travel requires pre-approval by the NYSDOT Project Manager in order to receive reimbursement. Consultant will be paid monthly based on submitted, acceptable monthly reports.

6. Consulting Arrangements: Only one (1) responsive and responsible Prime Consultant (or team of consultants wherein the contract will be with the Prime Consultant) will be retained for contract C031182. Subconsulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.

7. Best Value Selection: To select the Best Value offered to NYSDOT from the responsive and responsible firms which respond to this RFP.

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

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

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

2.4 Minimum RFP Responsiveness Requirements: Any firm that does not provide all components of Part I and Part II by the RFP deadline may be determined to be non-responsive. Any firm deemed non-responsive shall have its proposal removed from further consideration (prior to the technical evaluation of proposals). It is recommended that each offeror also utilize the checklists provided (RFP Section 4) to ensure all necessary documentation and attachments are provided as requested/indicated in this RFP for their Part I and Part II submissions.

2. Separate and complete Part II Proposal ‘Cost and Contract’ submission submitted on time. (3) Hard Copies in a three-ring binder with labeled section tabs, and 2 CD/thumb drives, etc. in a format compatible with MS Office 2007).
3. Acceptance of the RFP’s Draft Contract’s Terms and Conditions (see Attachment 2).
4. Receipt of Valid Procurement Lobbying Law Compliance Forms (see Attachment 3).
5. Meeting/exceeding the 11% Disadvantaged Business Enterprise participation or providing acceptable Good Faith Efforts (Attachment 11) should this goal not be met.

2.5 Prime and Subconsultant Contracting Rule
To eliminate a potential or real conflict of interest between the services advertised under this RFP and the future RFP for #C031192 DBE Business Development Services (since the consultant who makes recommendations may not be the one who delivers the services), this RFP has a rule governing who can be a prime consultant under C031182 and C031192 as follows: A subconsultant who is proposed for more than 20% of the proposed total dollar value for labor of this contract may not propose as a Prime Consultant or be included as a Subconsultant for more than 10% of the proposed total dollar value for labor of the upcoming future RFP for #C031192 DBE Business Development Services. Any proposal received for #C031192 that does not follow this guideline will be disqualified

Examples:
1) If “Subconsultant A” is proposed for C031182 for 20.1% or more of the proposed total dollar value for labor and is also proposed on #C031192 for 10.1% or more of the proposed total dollar value of labor, then the entire proposal will be disqualified from competing for #C031192.

2) If “Subconsultant A” is proposed for C031182 for 20.1% or more of the proposed total dollar value for labor and is also proposed on #C031192 for 10.1% or more of the proposed total dollar value of labor: then whether or not Subconsultant A is on the designated Prime Consultant’s team for C031182, the entire proposal for #C031192 will be disqualified: A subconsultant who is proposed for more than 20% of the proposed total dollar value of labor of #C031182 may not be proposed for more than 10% of the proposed total dollar value of labor of #C031192.
3) For #C031192: If the Prime Consultant proposes “Subconsultant A” for more than 10% of the proposed total dollar value for labor and was not aware that “Subconsultant A” was also proposed on #C031182 for more than 20.0% of the proposed total dollar value for labor, the proposal for #C031192 will be disqualified. **It is the Prime Consultant’s responsibility to ensure that their proposed subconsultant(s) is eligible to be included in their proposal according to the RFP rules.**

4) For #C031192: If “Subconsultant A” is proposed for 10.5% or less of the proposed total dollar value for labor of #C031192 and was also proposed for 19.5% of the proposed total dollar value for labor of #C031182, the proposal will be eligible to compete for #C031192.

5) For #C031192: If “Subconsultant A” is proposed for 9.5% or less of the proposed total dollar value for labor of #C031192 and was also proposed for 21.5% of the proposed total dollar value for labor of #C031182, the proposal will be eligible to compete for #C031192.

2.6 Definition of On-Site Assessment

*On-site assessment* as used herein shall mean a visit to actual business address to observe, review and evaluate processes, software, and services used in daily business management operating practices.

3. **SCOPE OF SERVICES**

What follows are two separately described scopes of services, one for NYSDOT’s DBE Orientation services and the other for NYSDOT’s DBE Assessment Services which will both lie between the covers of one contract. NYSDOT is seeking innovative, effective and efficient approaches toward accomplishing all of this RFP’s objectives, including consideration of proposals which combine aspects of each scope’s requirements.

NOTE: Total cost for this contract shall be governed by the total amount of available funds in this NYSDOT program. Funds are presently limited. NYSDOT expects to be able to pay for the provision of the requested services via its available budget for this project. However, it cannot afford to pay for premium services and expects a modest level of effort from a skilled, efficient and effective Consultant. **An approximate amount of $914,000 is envisioned for this two year contract. Proposals with varying contract costs will be considered, but the scope of services may need to be negotiated with the selected consultant to fit the developed budget.** Payment shall be made via submission of monthly vouchers with invoices. All monthly invoices shall be accompanied by receipts for all C031182 project related expenses.

**Consultant Project Management Requirements and Protocols**
The Agreement with the selected consultant will be administered by the Director of the Office of Civil Rights, and the NYSDOT Project Manager. The Consultant’s Project
Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant’s Project Manager is responsible for the performance of all key Consultant personnel, production staff, and support staff assigned to this Agreement. The Consultant’s Project Manager shall make all required submittals and receive all transmittals from the Department.

To ensure effective Consultant performance and effective communication between NYSDOT and the selected Consultant, the Consultant Project Manager shall communicate weekly directly with the NYSDOT Project Manager or his/her designee.

The Consultant will be directed to travel to NYSDOT Regional Offices that have been selected as DBE Orientation Sessions sites. Expenses incurred in connection with said directed travel will be eligible for reimbursement to the extent that they are consistent with the rates and travel policies for the State of New York, as detailed in http://www.osc.state.ny.us/agencies/travel/manual.pdf or superseding guidance. The selected Consultant will be paid a fully-loaded hourly rate for work and travel time plus reasonable reimbursement for acceptable expenses (such as gas, tolls, and meals, subject to New York State reimbursement limits). Travel requests and travel schedules must be approved in advance of the actual travel in writing by NYSDOT’s Director of Civil Rights or her designee. NYSDOT is highly interested in maximizing the efficiency and economy of the group Orientation Sessions. NYSDOT is highly interested in the number of DBEs the proposing firm can orient with the group Orientation Sessions and one on one follow up consultations. If multiple consultant teams are conducting orientation services, the members of the teams need to be equally qualified.

All pre-approved contract expenses shall be submitted monthly in writing by the Consultant Project Manager to the NYSDOT Project Manager for reimbursement.

Qualifications
1. Familiarity with 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Consultant shall have good working knowledge of E-CFR 49: Transportation, Part 26. FHWA website address to access this 68 page regulatory document, “Participation by Disadvantaged Business Enterprises in the Department of Transportation Financial Assistance Programs” is listed below. (It will be the selected Consultant’s responsibility to contact NYSDOT’s Office of Civil Rights to obtain clarification about the Federal regulations.) http://www.ecfr.gov/cgi-bin/text-idx?SID=bbf7bc9aa48ca1b28a747c6a4ec8abd&tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl
2. Small to medium business development experience.
3. Experience providing business tools and resources to small, minority and women owned businesses, including tools for small business development and financing,
4. Knowledge of how to do business with NYSDOT as a construction contractor, subcontractor, subconsultant, consultant, or supplier including experience as contractor, subcontractor, consultant, or subconsultant on New York State DOT highway and bridge construction contracts is preferred.
5. Training and presentation experience is preferred.
3.1 DBE ORIENTATION SERVICES

3.1.1 Orientation Services General

NYSDOT seeks a qualified Consultant to perform orientation services for newly certified DBEs (or those DBEs requesting orientation services). A primary objective of this RFP is to hire a qualified consultant to orient newly certified DBEs with regards to doing business with NYSDOT. The Consultant will research and review with DBEs, the steps involved in obtaining work on NYSDOT transportation projects, and providing goods and services as a subcontractor or prime contractor.

A newly certified DBE is one that has been recently certified (within approximately the past 24 months) by NYSDOT or its certifying partners to perform various NYSDOT work codes. There are approximately 80 to 100 newly certified DBEs each year.

3.1.2 DBE Orientation Services Tasks

1. Kickoff Meeting and Initial Meetings between NYSDOT and Consultant: Orientation Program Development: The selected Consultant will meet with the NYSDOT Director of Civil Rights, the NYSDOT Project Manager and key NYSDOT Main Office Program Area Managers from Construction, Contract Management, and Purchasing, to learn about the Department’s construction consultant process, other procurement processes, presenting DBE utilization opportunities, and to discuss what information should be included in effective, menu-driven DBE group orientation sessions.

Initial Pilot DBE Orientation Curriculum And Agenda

2. After the initial meetings, the Consultant will develop the initial, pilot DBE Orientation curriculum, Orientation agenda and program, and print all necessary materials prepared by the Consultant or those materials directed to be included by NYSDOT. The Orientation Program curriculum will include, but not be limited to, familiarizing DBEs with the following topics as well as to providing them with resources as to where to obtain this information:

- Understanding the pre-bid and pre-award process
- Understanding NAICS and the NYSDOT Work Codes
- Accessing the NYS Contract Reporter
- Navigating the NYSDOT website
- Preparing a Capabilities Statement
- Identifying resources for financial assistance

3. NYSDOT’s Project Manager will coordinate an internal review of the draft pilot DBE Group Orientation curriculum which may lead to curriculum adjustments. The Consultant shall finalize the curriculum based on NYSDOT’s review and shall obtain written NYSDOT approval prior to its use.
4. The Consultant will develop a draft pilot agenda to lay out and order the group orientation session’s proceedings to deliver the Orientation Scope of Services (RFP Section 3) and will present all of the logistics and operational aspects required to support successful orientation session delivery. NYSDOT will review the draft agenda and provide feedback, and then the Consultant shall develop the final initial orientation agenda. The Consultant shall obtain written NYSDOT approval of the initial orientation agenda.

5. The Consultant will develop and print all handout materials for group orientation sessions. All materials must receive prior written approval by NYSDOT Project Manager.

6. The Consultant will be required to create a sufficient number of binders to provide one binder for each new DBE that attends an orientation session and 3 additional binders for the Office of Civil Rights (OCR), over the base term of the contract. The binders will be standard three ring binders with 8.5 x 11 white paper, with the exceptions of illustrations requiring larger paper size. Those may be placed on 11 x 17 paper, which is to be folded in half. Minimum font size, except for graphs is 11.

Each binder should at least contain the following sections providing procedures and references for the DBEs:

- How to do business with NYSDOT
- How to bid on the projects
- How to select appropriate contract opportunities

The Consultant will obtain written approval of binder content from the NYSDOT Project Manager prior to distribution.

7. The Consultant shall coordinate the schedule of the initial, pilot orientation session with the NYSDOT Project Manager so that there will be appropriate NYSDOT Program Area representatives present at the initial orientation presentation.

8. The Consultant shall obtain a list of newly certified DBEs from NYSDOT and work with NYSDOT to determine which DBEs shall attend the initial pilot group orientation session. The initial session will be presented at a location directed by NYSDOT, in one of the specified geographic areas of New York State as shown in 12 Map of NYSDOT Regions. The Consultant shall invite the selected DBEs to attend the initial orientation session. The Consultant will make at least three efforts to contact each DBE to maximize DBE participation. The Consultant will document these efforts.

9. The Consultant shall conduct the initial, pilot DBE group orientation presentation. The selected Consultant shall arrange the set up, provision of and set down of the session. The Consultant shall design and administer a feedback survey to each DBE that attends the pilot group orientation session and compile the results. The Consultant shall also gather feedback from participating NYSDOT personnel and DBEs and shall make recommendations to NYSDOT regarding adjustments to make to finalize the group orientation sessions.

**DBE Orientation Sessions**
10. The Consultant shall develop the final DBE Orientation Session curriculum, subject to NYSDOT review and written approval.

11. Based on the approved curriculum, the selected Consultant will provide a minimum of eleven DBE group orientation presentation/consulting sessions at specified NYSDOT Regional Office locations across the entire state as shown in Attachment 12 – Map of NYSDOT Regions. Six group orientation sessions will be conducted in the first year and five will be conducted in the second year. The Consultant shall arrange the set up, provision of, and set down of each additional orientation session.

12. The Consultant shall obtain a list of newly certified DBEs from NYSDOT for each Region and contact each one through e-mail and U.S. mail to invite and encourage them to attend the DBE orientation sessions, as directed by NYSDOT. Consultant will make at least three efforts to contact each DBE to maximize DBE participation.

13. The Consultant shall coordinate the schedule of each group orientation session with the NYSDOT Project Manager so that there will be appropriate NYSDOT Program Area representatives present at each orientation presentation.

14. The selected Consultant shall design and administer a feedback survey to each DBE that attends a group orientation session. The Consultant shall compile the results and provide them to NYSDOT in a report summarizing the DBE feedback (see task 19). The Consultant shall produce one report for each session held during a month.

15. The Consultant will develop, record and produce an audio-video orientation tool for newly certified DBEs, of at least 45 minutes but not more than an hour in length, which will include how the Department operates with respect to construction, other consultant contracts and purchasing opportunities involving DBE utilization. The audio-visual tool is to be delivered by the Consultant by the end of the first six months of the contract. After NYSDOT’s written approval, the audio-visual tool shall be posted on the Office of Civil Rights External Website and can be used by DBEs as reference. NYSDOT may review and direct revisions to the audio-visual tool.

**DBE Orientation Services Reporting Requirements**

16. NYSDOT and its certifying partners are continually certifying DBE firms. The Consultant will be required to prepare a monthly progress report, a quarterly report, and an annual report for the NYSDOT Office of Civil Rights. The reports will be submitted to the OCR Director no later than 15 business days after the end of the month. Reporting will include the number of firms oriented in the previous month, quarter, or year, the program’s accomplishments, including issues and recommended actions and the dollar amount spent by line item.

17. The Consultant shall prepare and submit a monthly report consolidating all activities for the period, outlining accomplishments, program deficiencies and proposed corrective actions. The report shall summarize the DBE feedback to inform NYSDOT in evaluating the effectiveness of the DBE Orientation Program, and report shall contain recommendations regarding how to more effectively orient DBE firms. The report will be submitted to NYSDOT no later than the 15th of the following month.
The Consultant shall also develop an Excel spreadsheet to capture client contact information and the status of progressing the contract’s Orientation scope of services. This spreadsheet will be included in the monthly report to NYSDOT.

18. Submit an annual report no later than 15 days after the end of each program year, summarizing the program’s accomplishments, recommendations for improvement, and the names and contact information of the DBEs served in the program year.

19. Submit a final report no later than 30 days after the end of the second program year, summarizing the two year program’s accomplishments, recommendations for improvement, and the names and contact information of all the new DBEs served in the two year contract.

ALL REPORTS SHALL BE SUBMITTED BOTH AS BOUND HARD COPY AND IN MS WORD 2007 COMPATABLE ELECTRONIC COPY.

20. After the pilot group orientation session has been completed, the selected Consultant shall attend Quarterly Progress Review meetings with the NYSDOT Project Manager at the NYSDOT Main Office in Albany, New York for the duration of the contract. These meetings will range from 1 to 3 hours in length.

21. Attend quarterly progress meetings of which two will be in person (and two meetings may be held remotely) with the NYSDOT Project Manager and other staff as necessary, to review performance, identify problems and recommend corrective actions. NYSDOT will establish the agenda with the consultant. The consultant will take meeting minutes and send draft and final meeting minutes to the NYSDOT Project Manager (draft meeting minutes are subject to NYSDOT review and approval).

3.2 DBE ASSESSMENT SERVICES

3.2.1 DBE Assessment Services General

NYSDOT seeks a qualified, responsive and responsible Consultant to perform assessments of firms that have been certified in Highway Work Codes as DBEs in New York State to identify areas of needed business assistance and opportunities for growth.

Assessments will be made via review of information submitted by these DBE firms in connection with NYSDOT’s annual DBE certification affidavit process, an initial assessment questionnaire (to be developed by the consultant and approved by NYSDOT) sent to representatives of the firms, and via on-site assessments to a number of DBEs offices as directed by NYSDOT.

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

NYSDOT is seeking the most cost efficient mode of travel and may also direct some on-site
assessments to occur via phone/webinar/Skype. NYSDOT may direct some gathering of
follow-up information to be accomplished electronically, via phone or Skype. **Most initial
on-site assessments will occur in person. All follow-up on-site assessments will be
conducted electronically. For proposal purposes, firms should assume all initial on-site
assessments will occur in person and on-site at the DBE firm**

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

3.2.2 **DBE Assessment Tasks:** The following specific services are requested:

**Initial Assessment Questionnaire**

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

2. Send the initial assessment questionnaire to DBE firms that have been determined to
   be underutilized on NYSDOT contracts as directed by NYSDOT. A response rate of
   at least 70% shall be the goal. The Consultant shall recontact firms that do not
   respond to the questionnaire, utilizing both phone and e-mail to obtain as close to a
   100% response rate. The selected Consultant will ask if the non-responding DBE has
   any questions or problems with regard to responding. The selected Consultant will
   maintain a record of all communication/contact efforts which will be made available
   to the NYSDOT Project Manager upon request. NYSDOT will contact each DBE
   firm to introduce the consulting firm and convey the expectation that each DBE firm
   will respond to the questionnaire even if they do not wish to have assessment
   services. It is expected that the assessment questionnaire will be sent electronically to
   contain costs.
The Consultant shall compile an assessment report of the initial questionnaire responses. The initial questionnaire results will be compiled by individual DBE firm, by question and by geographic location (based on NYSDOT region).

**On-Site Assessments**

3. Utilizing the results of the initial assessment questionnaire, the NYSDOT Project Manager will develop an initial list of DBE firms for on-site assessments and will seek Consultant’s input regarding which firms shall be assessed. The Consultant will complete at least five on-site assessments, in-person, every month.

4. The Consultant shall develop/initiate on-site assessment services using NYSDOT-approved methodology after receiving authorization to contact DBEs from the NYSDOT Project Manager.

5. Consultant will prepare and send an on-site assessment agenda to each DBE firm prior to meeting so that salient information/documents are available to help increase the efficiency of the meeting. The Consultant will confirm each on-site assessment prior to travelling.

6. The Consultant will advise the DBE firm to prepare information for the on-site assessment. Such information will include but not be limited to the following:
   - Current Home State DBE Certification letter
   - Signed and dated copies for the most recent (3) years of the firm’s Business Federal tax return, or a signed copy of “Application for Automatic Extension of Time to File Tax Return.”
   - Most recent marketing materials
   - Description of Payroll services or software
   - Description of Tax Preparation services or software
   - Copies of current NYSDOT contracts
   - Copy of signed Affidavit of No Change
   - Copy of a Business Plan and or a Financial Management Plan

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

8. Contact the NYSDOT Project Manager if any additional information regarding the DBE is required from NYSDOT; the Consultant shall arrange for the transmittal of such information.
9. Examine the status of the DBE business operations in the following areas: Administration and Management; Planning and Marketing; Bidding and Estimating and Scheduling and Project Control.

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

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

**NOTE:** For the protection of each DBE firm’s privacy, the Consultant is prohibited from taking documents from the DBE Firm, either physically or electronically. The Consultant must garner the needed information from the Consultant’s documents during the on-site visit. The Consultant may not request hard copies or electronic copies of the DBE firms’ documents. NYSDOT or its Consultant may not possess any of the DBE firms’ documents.

In its reports and questionnaire responses, the Consultant shall protect the identity of each DBE firm by utilizing a code, e.g. number ID, so that each DBE firm's business information is protected. The Consultant shall provide this code key within a separate draft document to the NYSDOT Project Manager. In no instance, should the DBE firm’s name/identifying information be listed in reports/questionnaires submitted to NYSDOT.

Each page of the Summary Report submitted to NYSDOT shall be labeled “DRAFT”. The report title shall be prefixed by “DRAFT” and the file name shall also be labeled “DRAFT”.

**Assessment Services Reporting**

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

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

Make any necessary revisions to the plan and re-submit final assessment report to the NYSDOT Project Manager and DBE client firm.

14. Provide monthly progress reports to NYSDOT which should include describing the number of firms, results of the assessments. Monthly progress reports should include number of initial assessment questionnaires sent, number of site visits completed,
number of draft development plans, results of these on-site assessments, identification of areas where DBE firms typically need assistance and recommendations to increase their business opportunities. Progress reports should also assess any other areas that are in need of improvement and provide recommendations for such. These monthly reports will be submitted electronically and in the form of two hard copies sent to NYSDOT. A completed and acceptable monthly report is a required component of the billing process.

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

16. Provide final report to NYSDOT no later than 60 days after the conclusion of the program with summary of the work accomplished and an update on the status of each business evaluated. All reports shall be submitted both as bound hard copy and in MS Word 2007 compatible electronic copy.

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

4. PROPOSAL FORMAT AND CONTENT REQUIREMENTS

4.1 General Procedures
Consultants must submit one complete proposal in response to this RFP, using the format and forms provided in this section and the relevant attachments, responding to all scope of service requirements and describing its approach and detailed scope of services to satisfying each requirement. In addition to Attachment 2’s certifications, submission of the consultant’s proposal shall be construed by NYSDOT as the consultant’s acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP.

For the purposes of evaluation and to be deemed responsive, each submitted proposal must include a separate, complete Technical and Management Proposal and a complete Cost and Contract Proposal. Technical and cost proposals must be complete in themselves in order that the evaluation of both can be accomplished independently and concurrently. Technical proposals shall be evaluated strictly on the basis of its technical merits and cost proposals shall be evaluated, in part, on the basis of competitive proposed costs. Cost information is not to be included in the technical submittal, and Technical and Management information is not to be included in cost submittal.

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

Consultants must submit complete technical and cost proposals in separate, sealed labeled packages. Both submissions shall have a Table of Contents, divided by labeled tabs, and must be separately bound (3-ring binders, spiral binding, etc). Clearly identify any attachment with the consultant’s and the RFP’s name on a cover sheet that is firmly attached to the document. Clearly identify any unattached documents with the consultant’s and the RFP’s name on each page of the document.

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

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

Your proposal must follow the format listed below.

4.2 Part 1 Technical and Management Proposal Submittal

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

<table>
<thead>
<tr>
<th>Part I - Technical and Management Submittal Checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Five (5) printed and bound hard copies, with tabbed sections, of Part I plus two copies of Part I on CD/DVD in MS Word 2007 compatible format</td>
</tr>
<tr>
<td>□□ Securely sealed and clearly labeled with the consultant’s name, address, email address and telephone number and the words “Part I DBE Orientation and Assessment Services #C031182”</td>
</tr>
<tr>
<td>□□ Name of person(s) who prepared proposal</td>
</tr>
</tbody>
</table>
The consultant must submit five (5) paper copies and one soft copy on a CD Thumb drive (in Microsoft Office compatible format) — each clearly identified on the cover or label with the consultant’s name and the words: “DBE Support Services C031182 Technical Proposal” Proposals must be securely sealed and clearly labeled. Any outside packaging containing Part I copies must be clearly marked with the words “DBE Support Services C031182 Technical Proposal”. In the case of a discrepancy between the electronic proposal and hard copy proposal, the hard copy proposal shall take precedence.

**Note:** Cost information is **not** to be included in your technical proposal, and Technical and Management information is **not** to be included in your cost proposal.

NYSDOT reserves the right to make clarifications to the scope of services to be performed under this Agreement, via RFP Attachment 1, Exhibit A, Scope of Service Clarifications, during contract negotiations with the selected Consultant.

4.2.1 Cover Letter
The consultant must submit one signed Cover Letter on official business letterhead. The Cover Letter must accompany each volume and include the following:

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

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

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

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

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

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

7. A brief description of how attainment of the 11% DBE goal for contract #C031182 shall be managed and met over the life of the contracts.

4.2.2 Table of Contents

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

4.2.3 Organization, Project Management and Staffing

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

Discuss management plan to ensure effective and efficient delivery of services (including managing subconsultants) while meeting the project’s objectives. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Some travel is required under C031182 and shall be directed. The selected Consultant is required to provide its own vehicle. Any requests for Car Rentals or Lodging must be pre-approved by NYSDOT in writing.
Present a DBE management plan, one which ensures that delivery of the contract’s 11 percent DBE goals are managed and met over the term of the contract. Discuss the role any DBE subconsultant would have in the delivery of the RFP’s Scope of Services.

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

4.2.4 Consultant Firm and Key Personnel Experience

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

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

Provide a description of the Consultant’s familiarity and experience with NYSDOT’s DBE Program including certification requirements as well as their business assessment/development experience.

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

4.2.5 Approach, Scope of Services and Schedule

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

Include enough substantive discussion to demonstrate an understanding of NYSDOT’s project objectives and familiarity with applicable State and Federal laws, rules, practices, procedural requirements, risks, etc. Highlight how the DBE goals will be met.

Proposals must include a DBE firm assessment schedule including the estimated number of DBE firms that the consultant expects to be able to assess; the Consultant’s proposed methodology and approach to conducting the assessments.
Include a discussion on the important issues involved with delivering the requested services. Identify potential complications or difficulties that might be encountered in the implementation of required services along with suggested resolutions for each.

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

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

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

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

4.3 Part II Cost and Contract Proposal Submittal

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

<table>
<thead>
<tr>
<th>Part II - Cost and Contract Submittal Checklist</th>
</tr>
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<tbody>
<tr>
<td>☐ Three (3) Printed and bound hard copies of Part II plus Part II on two CD/DVDs, in MS Excel compatible format. Identify the name, title, address, email, and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation</td>
</tr>
<tr>
<td>☐ Submit one cover letter (can be same as Part I’s)</td>
</tr>
<tr>
<td>☐ Securely sealed and clearly labeled with the words “DBE Orientation and Assessment Services Cost Proposal”</td>
</tr>
<tr>
<td>☐ Complete and submit Attachment 2, (sign both Sections II and III);</td>
</tr>
<tr>
<td>☐ Complete and submit one set of Attachment 3 Procurement Lobbying Law Compliance Forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offeror Disclosure of Prior Non-Responsibility Determinations).</td>
</tr>
<tr>
<td>• These two forms are required with a firm’s RFP Response.</td>
</tr>
<tr>
<td>• Enter contract number on each form</td>
</tr>
<tr>
<td>• Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award</td>
</tr>
<tr>
<td>☐ Required Salary Cost information - complete and submit 9A</td>
</tr>
<tr>
<td>☐ Required Expense Cost information - complete and submit Attachments 9B, 9C, 9D, 9E, 9F, and 9G.</td>
</tr>
<tr>
<td>☐ Complete and submit Attachment 10, DBE Participation Information Form</td>
</tr>
</tbody>
</table>
Your cost proposal consists of two sections: (1) a Cost Section, which sets forth the proposed fully loaded labor rates for performing the work as well as all direct non-salary expenses supporting this work as required to deliver the scope of services under contract #C031182; and (2) the Contract Section, which provides the required State certification and RFP administrative forms. At least one copy must contain original signatures. Cost information is **not** to be included in the technical submittal, and Technical and Management information is **not** to be included in cost submittal.

The consultant must submit three (3) paper copies and one soft copy on a CD or Thumb drive (in Microsoft Office 2007 compatible format) — each clearly identified on the cover or label with the consultant’s name and the words “C031182 DBE Support Services.” All cost proposals must be packaged separately from technical proposals. Proposals shall be securely sealed and clearly labeled. Any outside packaging containing cost proposals must be clearly marked with the words “C031182 DBE Support Services Cost Proposal”.

### 4.3.1 Cost Section
Your cost proposal shall consist of completed RFP Attachments 9A, 9B, 9C, 9D, 9E, 9F and 9G. Complete and submit **Attachment 9A for Orientation Services and Attachment 9B for Assessment Services. Complete Attachment 9C for Total Labor Cost.** Present your proposed fully loaded labor rates by year and by person.

#### 4.3.1.1 Proposed Specific Hourly Rate Schedule
Present a proposed Salary Schedule for C031182 which will list not-to-exceed rates for each proposed Consultant person (named title). Present one table for the Prime Consultant and a separate table on a separate page for each subconsultant. Present by title/name fully loaded rates by contract year; these rates are broken-down into base salary, overhead additive and fixed labor fee additive. Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm’s proposed overhead. All direct nonsalary costs, except for those costs directly utilized in DBE Orientation Presentations must be included in the firm’s overhead costs. A firm’s labor fee may not exceed 10 percent. If additional titles are used but are not assigned, they should be listed with rates applied.

If the contract is extended beyond its base term, out-year rates may be adjusted 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, subject to current market conditions.

#### 4.3.1.2 Proposed Travel Costs
Present Travel Costs expense schedules using Attachment 9D and Attachment 9E. Estimates of travel costs shall be added to the selected consultant’s proposal to generate the total budget for the contract. Travel and meal reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates

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<th>Complete and submit (if applicable) <strong>Attachment 11, DBE Subconsultant Participation Solicitation Log</strong> AND Letter of Explanation of Non or Partial DBE Goal Attainment</th>
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<td>Complete and submit <strong>Attachment 13</strong> Non-Collusive Bidding Certification</td>
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are available via http://www.gsa.gov/. However, for the purposes of the cost evaluation, the reimbursable rates are provided in the cost attachment.

4.3.1.3. Proposed Direct Non-Salary Cost Schedule for Group Orientation Sessions
Present a proposed Direct Non-Salary Cost expenses schedule for Group Orientation Sessions using Attachment 9F for C031182. Estimates of direct non-salary expenses shall be added to the selected consultant’s proposal to generate the total budget for the contract. Any additional DNSC items shall be negotiated with and agreed-to with the selected Contractor during contract negotiations. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available via http://www.gsa.gov/.

4.3.1.4. Proposed Total Cost Schedule
Present a proposed Total Cost for C031182 using Attachment 9G.

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

4.3.2 Contract Section
The Consultant shall specifically state its acceptance of all Terms and Conditions of draft contract C031182 contained in Attachment 1 of this Request for Proposals by completing and submitting the Consultant Information and Certifications Form (Attachment 2), to indicate a firm’s acceptance of all of the terms and conditions contained in the RFP’s draft contract. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and will lead to the proposal being deemed non-responsive and subsequently dismissed.

4.3.2.1 DBE Participation
Interested proposers should verify their attainment of contract’s DBE subconsultant participation goals by completing and submitting the Attachment 10 DBE Participation Information form. Provide the full legal names of all certified DBE consultants (prime and/or subconsultant). The 11% DBE goal for either contract can be met by either subcontracting opportunities, by delegating a portion of the prime consultant’s work, or a combination of these.

Firms that offer a proposal under this solicitation may meet or exceed the 11% DBE contract goal. To count toward the 11% 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).
If the proposal does not meet the 11% percent DBE participation contract goal, the firm must provide acceptable evidence of a good-faith effort by completing Attachment 11 DBE Subconsultant Participation Solicitation Log.

**Additionally, if the firm does not meet the specified contract DBE goals,** 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 efforts. The letter should include sufficient justification as to why the goal was not met or was only met partially and should at a minimum address the following factors:

1. the potential firm’s method of accomplishing the work,
2. the subcontracting opportunities associated with the proposed approach and scope of services,
3. and the availability of certified firms for the work to be performed by either 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 11 DBE Subconsultant Participation Solicitation Log to be deemed responsive.

The above forms and letter must be included in Section 2 of the Cost Proposal submission. 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.

In your firm’s Cost Proposal, provide the following: **Attachment 11 DBE Participation Information.** Provide the full legal names of all certified DBE consultants (prime and/or subconsultant).

Proposers are encouraged to ask questions regarding this aspect of the solicitation.
4.4 Other Proposal Considerations

Document Preparation

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

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

Proposals must be organized in accordance with the format set forth in the RFP document.

Proposals must be self-contained and should not reference web-links. Should web links be unavoidable, you must identify what specific information is being reference via the link and must detail the location/path instructions required to locate this specific information. Non-specific link information shall not be considered.

Proposals should strive to consistently use 12 point font size. Smaller font sizes are allowed in footnotes or table headers but not the text itself.

Illustrations that support the text must be simple and direct and be either sized to fit on 8 ½ by 11-inch paper or printed on 11 inch by 17 inch paper as long as the pages are folded to the 8 ½ by 11-inch size, and fold out from the non-bound edge. Illustrations must be reproducible in black and white without obscuring their distinctive information; photographs must be black and white.

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

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

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

Consultant Identification Number & SFS Vendor ID Number

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

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

5. **PROPOSAL EVALUATION PROCESS**

5.1 **Pre-Screening of Proposals**

It is NYSDOT’s sole discretionary determination as to whether a proposal is complete. Proposals which do not meet the requirements of the RFP’s Minimum Responsiveness and Mandatory Requirements 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 October 23, 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 4). 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.

**Mandatory Proposal Requirement.** Per RFP Section 2.2:

The total proposed cost for both services years under Contract #C031182 must not exceed $914,000. *Any firm whose cost proposal exceeds this amount will be deemed non-responsive and shall have its proposal removed from further consideration (prior to the technical evaluation of proposals).*

**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 11% DBE contract goal for C031182 or offers acceptable Good Faith Effort documentation and Letter of Explanation.
4. Submission of completed PLL forms (Attachment 3)
5. Submission of signed Attachment 2
6. Acknowledged receipt of any RFP Modifications.

**DBE Goal Attainment/GFE Acceptance Review.** 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. The proposed DBE participation percentages offered for NYSUCP certified subconsultants will be reviewed (RFP Attachment 10.) Each offered DBE must be currently listed in the NYSUCP Directory to count towards the Department’s 11% DBE participation.
goal. If the proposed DBE participation is less than the established 11% goal, the firm’s evidence of a Good Faith Effort (RFP Attachment 11) 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 11% 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 question 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 11% DBE goal for C031182, then the submitted good faith log will be reviewed for acceptability and verification of the robustness of effort. Proposals with blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and be 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 80 points of the total Best Value score for the proposal. The cost portion of the Cost and Contract portion will be point scored and will represent 20 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 80 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 score sheet 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 score sheets) 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 **Written Technical and Management Proposal** (up to 80 Points): The Technical and Management proposal will be point scored and will represent 80% of the total best value score for the proposal (out of 100 total possible points). The major criteria and the respective sub-criteria are listed in descending order of importance:

1. **Experience of Firm and Proposed Key Personnel** (up to 30 Points)
   a. Quality, extent and relevance of experience, education and training of key personnel. Proposed Consultant key personnel have demonstrated ability, competence and experience to properly perform the requested DBE orientation and assessment services, including orientation, business assessment and recommendations, required meetings, reporting, etc. Proposed personnel conducting the group orientation sessions have presentation skills and experience in effectively communicating to a large audience of DBE firms. Proposed Consultant has experience in developing curriculums, resource manuals and audio visual aids. (up to 20 Points)
   b. Quality, extent and relevance of current and prior experience of the firm in conducting similar projects. Demonstrated knowledge or experience of DBE applications in the State’s procurement process (construction, engineering, non-engineering and purchase) as related to this project. (up to 7 Points)
   c. Proposed Consultant personnel has demonstrated solid, working knowledge of FHWA’s DBE Program (specifically: 49 CFR Part 26: Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs), including its regulations and certification process. (up to 3 Points)

2. **Approach and Scope of Services** (Up to 24 Points)
   a. The approach for accomplishing the RFP’s objectives, including ability to maximize the number of DBE firms receiving on-site assessments, and delivering all of the requested services was specified, is efficient, met the stated objectives, and was
considered to be reasonable and accomplishable; Reasonableness and effectiveness of DBE Management Plan. (up to 12 points).

b. Quality, completeness and relevance of Initial Assessment Questionnaire. (up to 5 points)
c. Interpersonal skills, ability to communicate with a diverse audience, and ability to represent the Department in a professional manner. (up to 4 points)
d. Degree to which the proposed Approach and Scope of Services provided innovative ideas and a sense of ownership by the Consultant. (up to 3 points)

3. **Organization** (Up to 22 Points)
   a. Reasonableness of Organization and Organizational Chart; quality of Project Manager; Ability to manage the Project quality plan for interacting with NYSDOT and with DBEs. (up to 10 points)
   b. Quality and robustness of project staffing, including any sub-consultant arrangements; Extent of prior collaborative efforts with sub-consultant; Quality of DBE subconsultant participation management plan. (up to 6 points)
   c. Reasonableness of staff allocations by task and hour estimations for each task and total effort. (up to 6 points).

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

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

The proposal which receives the highest written technical proposal average raw score will have its average raw score perfected to a total of 80 points. All other proposals will receive proportionately lower perfected scores based on the relation to the highest scoring technical proposal.

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 score sheets 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 20 Points)
All proposals passing pre-screening shall have their Cost Proposals evaluated. The cost portion of the cost and contract proposal will be evaluated, checked for compliance with the RFP’s cost proposal submission instructions, and point scored, and will represent 20% of the total possible best value score for a proposal. Clarification questions may be asked. Evaluation of Cost Proposals shall be based upon a comparative evaluation of Attachment 9G. The firm with the lowest total proposed cost will receive a perfected cost score of 20 points. All other offered total costs will receive a proportionate lower cost score based on the relation to the lowest offered total cost.

5.5 Initial Best Value Determination
Perfected cost scoring results will be added to the initial, average raw written technical proposal 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 short listing rule for this solicitation shall be: the top three highest initial best value proposals (plus any ‘cluster’ of initial best value proposal scores within one and one-half points of the lowest score of the top three shortlisted proposals) will be deemed eligible for contract award and therefore interviewed. 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 short listing 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
The Technical Interview portion of the proposal evaluation process shall be an interview only for firms subject to contract award (i.e., shortlisted). Short-listed firms shall receive a Technical Interview invitation package, which shall include instructions, (without changing their original proposal), and may include additional clarification questions from the Technical Evaluation Committee (TEC). The original proposal may not be changed. 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. This is not a re-sale opportunity.

Technical Evaluators will be looking for interpersonal skills, ability to communicate with a diverse audience, ability to represent the Department in a professional manner; how the team works together, presentation skills, attendance of key personnel and demonstrated knowledge of the proposal. The Evaluators are interested in responses to any clarification questions and concerns, and in further insight and understanding of the consultant’s proposed approach and scope of services.

Final Written Technical Proposal Evaluation (Re-Scoring)
Scoring of written technical proposals shall remain open until after conclusion of 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 score sheets 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 hard copy score sheet as well as in Contract Management’s electronic composite score sheet. Once the re-scoring of written technical proposals has concluded, TEC members shall sign/date and surrender their score sheets to Contract Management.

5.8 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 score sheets). 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).
5.9 Final Best Value Evaluation
After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), NYSDOT will perfect (curve) the technical proposal scores so that the highest-rated, average raw written technical proposal score gets changed and assigned a perfect score of 80 points for this solicitation with the other technical scores adjusted proportionately upward. Perfected cost scoring results will be added to the perfected technical proposal 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 #C031182.

5.10 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 C031182 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 #C031182 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 #C031182.

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.

5.11 Consultant Start of Work
NYSDOT is requiring that, after contract #C031182 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 C031182 has been completed.

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

6. ADMINISTRATIVE SPECIFICATIONS

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

- August 22, 2014: RFP release
- September 4, 2014: Pre-Proposal Webinar @ 10:30 AM
- September 12, 2014: Deadline for questions about the RFP
- September 22, 2014: Release of answers to RFP questions
- October 23, 2014 @ 2:00 PM ET: Deadline for the submission of proposals
- December 2014: Technical Interviews
- December 2014: Consultant Selection
- March 2015: Approved Contract

6.2 Pre-Proposal
To assist firms in preparing proposals in response to this solicitation, an optional Pre-Proposal Webinar will be held on September 4, 2014 at 10:30 AM. An overview of the RFP will be given, with opportunities for vendors to pose questions. NYSDOT will either respond to questions or document questions for later response. **Please note that Procurement Lobbying Law (PLL) forms (Attachment 3) must be completed, scanned and e-mailed along with your registration request.**
Questions submitted in advance of the conference may be answered during the conference. An opportunity will be afforded for questions and answers during the conference. Interested DBE subconsultants are also encouraged to participate.

6.3 Proposal Submission
The proposal must be submitted and shipped to:
Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031182 DBE Orientation and Assessment Services

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

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

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

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

Barbara Sonenberg, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
E-Mail: Barbara.Sonenberg@dot.ny.gov  Subject: C031182
Fax: 518-457-8475

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

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

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

Contractor Tax Certification
- All vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency) during negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites:
  http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
  http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
Insurance Requirements of this Project
- Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in the draft Contract C031182. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

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

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

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

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

Consultant Billing/Reimbursement Request Information

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

SFS Registration

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

Attachments

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ATTACHMENT 1
Draft Contract

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. NO.: _____________
P.I.N.: _____________

COMPTROLLER'S CONTRACT NO. C031182

PROJECT: DBE ORIENTATION AND ASSESSMENT SERVICES FOR NYSDOT

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

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

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

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

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

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

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees that the base term of the AGREEMENT shall be 24 months from ___________ to _______________. Additionally, this AGREEMENT may be extended for a one-year period based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT.

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

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

ARTICLE 6. PROVISION FOR PAYMENT.

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

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

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

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

ARTICLE 7. CONTRACT PAYMENT.

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

ARTICLE 8. PARTIAL PAYMENTS.

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

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

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

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

ARTICLE 9. FINAL PAYMENT.

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

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

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

ARTICLE 10. EXTRA WORK.

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

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

ARTICLE 11. CONSULTANT LIABILITY.

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

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

ARTICLE 12. INSURANCE.

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

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

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

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

3. Certificates of Insurance/Notices. CONSULTANT shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference Contract Number C031182. Certificates shall be mailed to the:

New York State Department of Transportation  
Contract Management Bureau, 6th Floor
Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon thirty (30) days’ prior written notice to the Department by Certified Mail, return receipt requested at the stated address. In addition, if required by the Department, the CONSULTANT shall deliver to the Department within Forty-Five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

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

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

5. Primary Coverage. All insurance policies, excepting workers’ compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available to the Department for any claim arising from the CONSULTANT’s Work under this contract, or as a result of the CONSULTANT’s activities.
6. **Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of CONSULTANT’s policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.

7. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in subdivision (A)(3) above.

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

9. **Waiver of Indemnities.** The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.
B. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:

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

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

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

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

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

ARTICLE 13. INTERCHANGE OF DATA.

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

ARTICLE 14. DISPOSITION OF DATA.

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

ARTICLE 15. DAMAGES AND DELAYS.

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

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

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

The CONSULTANT must immediately send written notice to Contract Management of the New York State Department of Transportation at its main office in Albany and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the State by final audit or otherwise.
The determination of any rights under this contract shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, New York.

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

ARTICLE 17. TERMINATION.

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

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

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

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

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.

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

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within (60) days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT'S successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the STATE for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.
ARTICLE 19. CODE OF ETHICS.

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

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

ARTICLE 20. INDEPENDENT CONTRACTOR.

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

ARTICLE 21. COVENANT AGAINST CONTINGENT FEES.

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

ARTICLE 22. TRANSFER OF AGREEMENT.

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

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

ARTICLE 23. PROPRIETARY RIGHTS.

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

ARTICLE 24. SUBCONTRACTORS/SUBCONSULTANTS.

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

ARTICLE 25. ORDER OF PRECEDENCE.

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

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


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

1. Is not currently under suspension, debarment, voluntary exclusion, or
determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined
ineligible by any federal agency within the past three years;
3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS -

ARTICLE 27. CERTIFICATION FOR FEDERAL-AID CONTRACTS.

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

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

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

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

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

ARTICLE 28. RESPONSIBILITY OF THE CONSULTANT.

(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.
(b) Neither the STATE’S review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE caused by the CONSULTANT’S negligent performance or breach of contract of any of the services furnished under this contract.

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

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

(e) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

ARTICLE 29. SECURITY AND CONFIDENTIALITY OF INFORMATION.

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

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

ARTICLE 30. VENDOR RESPONSIBILITY.

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

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

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

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

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

ARTICLE 31. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit ___) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any
subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

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

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

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

ARTICLE 32. NOTICES.

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

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

New York State Department of Transportation:
Contact Person’s Name: William A. Howe, Contract #C031182
Title: Director
Address: NYSDOT Contract Management Bur., 50 Wolf Rd., 6th Fl, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2875
E-Mail Address: bill.howe@dot.ny.gov

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

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

ARTICLE 33. TITLE VI ASSURANCE.

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

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

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

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT’s Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

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

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

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

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

ARTICLE 34. RESPONSIBILITY PROVISIONS.

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

Suspension or Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.
Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant’s expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
IN WITNESS WHEREOF, this Contract No. C031182 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK

__________________________________

CONTRACT MANAGEMENT BUREAU

DATE: ______________________

DEPARTMENT OF TRANSPORTATION

DATE: ______________________

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

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

By ____________________________ Date: ____________________________

FIRM

DBE Orientation and Assessment Services For NYSDOT

APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI

STATE COMPTROLLER

By ____________________________ By ____________________________

Date ____________________________ Date ____________________________
Acknowledgement for Contract #C031182
For contracts signed in New York State

State of New York       )
County of              ) ss.:

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

________________________________________________________________________

- NOTARY PUBLIC

My Commission Expires: ______________________________

For contracts signed outside New York State

State of       )
County of         ) ss.:  

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

________________________________________________________________________

- NOTARY PUBLIC

________________________________________________________________________

(Signature and office of individual taking acknowledgement.)

My Commission Expires: ______________________________
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.
12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

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

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

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

Information on the availability of New York State subcontractors and suppliers is available from:
NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:
NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
http://esd.ny.gov/MWBE/directorySearch.html

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

Updated December 2012
During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

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

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

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

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

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

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

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

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

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

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

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

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

THE CFDA IDENTIFICATION NUMBER

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

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

PROMPT PAYMENT MECHANISMS

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

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

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

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

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

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

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

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

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

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

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

Updated January 2009
APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

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

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

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of $10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection I 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 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 qualified 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 of submittal of a formal proposal to the State's Contracts Bureau.

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

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

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

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

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

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

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
CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBERS:  C031182
PROJECT TITLE:  DBE Orientation and Assessment Services for NYSDOT

I.  CONSULTANT INFORMATION

FIRM NAME: ______________________________________________________________

ADDRESS:_________________________________________________________________

CITY:_________________________________________ STATE: __________

ZIP CODE:  __ __ __ __ __ - __ __ __ __

TELEPHONE : (____) _____ - _________  FAX: (____) _____ - _________

E-MAIL ADDRESS: _________________________________________________________

CONTACT PERSON: _______________________________________________________

Consultant’s Federal Identification Number (FIN):______________________________
Consultant’s NYSDOT Consultant Identification Number (CIN):____________________
Consultant’s New York State SFS Vendor Identification Number:__________________

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

Preparer’s Name/Title: ______________________________________________________

Address:_________________________________________________________________

Telephone:  (____) _____ - _________  FAX: (____) _____ - _________

Other Authorized Individual(s):

Name/Title:_______________________________________________________________

Address:_________________________________________________________________

Telephone:  (____) _____ - _________  FAX: (____) _____ - _________
II. PROPOSER CERTIFICATIONS

By signing below, I, _________________________________, authorized individual of _______________________________ make the following certifications regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
- The firm has read and will follow the procedure outlined in Attachment 5 if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility forms to NYSDOT within 10 days of notification of designation both electronically and in hard copy per the NYSDOT Web site. (https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions)
- ST-220: If selected for contract award greater that $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- The firm is in compliance with the requirements of the Omnibus Procurement Act as described in APPENDIX A which is found in the Draft Contract C031182 attached to this RFP.

Signature: ____________________________________________

III. ACCEPTANCE OF CONTRACT

By signing below, I, _________________________________, authorized individual of _______________________________ hereby certify that I have read and accept all terms and conditions contained in the draft Contract for C031182 including Appendix A which is included as Attachment 1 to this Request for Proposals.

Signature: ____________________________________________
Attachment 3

Procurement Lobbying Law Compliance

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

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


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

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

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

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

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

c) Information Required from Offerors that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:
The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

Person’s name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

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

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

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

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

Contract Procurement No. _____C031182

By: ________________________________ Date:____________________

Name: ______________________________

Title: ______________________________

Contractor Name: ________________________________

Contractor Address: ____________________________

__________________________________________________________________

__________________________________________________________________
Offeror Disclosure of Prior Non-Responsibility Determinations

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

Address: ____________________________________________________________________________________________________________

Name and Title of Person Submitting this Form: ____________________________________________________________

Contract Procurement Number: _______C031182

Date: __________________________________________

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

If yes, please answer the next three questions:

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

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

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

   Governmental Entity: __________________________________________________________________________________________

   Date of Finding of Non-Responsibility: ________________________________________________________________

   Basis of Finding of Non-Responsibility: __________________________________________________________________________

   _______________________________________________________________________________________________________

   _______________________________________________________________________________________________________

   _______________________________________________________________________________________________________

   (Add additional pages as necessary)

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

6. If yes, please provide details below.

   Governmental Entity: __________________________________________________________________________________________

   Date of Termination or Withholding of Contract: ______________________________________________________________

   Basis of Termination or Withholding: ____________________________________________________________________________

   __________________________________________________________________________________________________________

   __________________________________________________________________________________________________________

   __________________________________________________________________________________________________________

   (Add additional pages as necessary)

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

By: __________________________________________ Date: __________________________

Signature

Name: __________________________________________

Title: __________________________________________
### FORM A

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

<table>
<thead>
<tr>
<th>O<em>Net Employment Category And O</em>NET Employment Title</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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**Grand Total**

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

(Use additional pages, if necessary)  
Page  of
# State Consultant Services
## Contractor's Annual Employment Report
### Report Period: April 1, to March 31,

Contracting State Agency Name: DOT  
Agency Code: 3900283

Contract Number: C031182

Contract Term: / / to / /

Contractor Name:

Contractor Address:

Description of Services Being Provided: **DBE Orientation and Assessment Services**

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<tr>
<th>Scope of Contract (Choose one that best fits):</th>
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<tr>
<td>Analysis [ ] Evaluation [ ] Research [ ] Training [ ]</td>
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<tr>
<td>Data Processing [ ] Computer Programming [ ] Other IT consulting [ ]</td>
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<tr>
<td>Engineering [ ] Architect Services [ ] Surveying [ ] Environmental Services [ ]</td>
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<tr>
<td>Health Services [ ] Mental Health Services [ ]</td>
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<tr>
<td>Accounting [ ] Auditing [ ] Paralegal [ ] Legal [ ] Other Consulting [ ]</td>
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Total this page 0 0 $ 0.00

Grand Total

Name of person who prepared this report:
Preparer's Signature:___________________________________________________

Title:__________________________________________________ Phone #:____________________

Date Prepared: / /

Use additional pages if necessary)
Attachment 5

Consultant’s Responsibility When Proposing Former NYSDOT Employees

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

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

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

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

Procedure

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

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

- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
COMPANY (Firm) REFERENCES:
- Provide at least three Firm references.
- Fill one the form below for each Firm Reference
- Fill in #_____ i.e., ‘Firm Reference #1; Firm Reference #2, etc.)
- Form is expandable – be concise.

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

provide a brief description of a recent relevant project for which they are serving to reference:

•
Attachment 7

**Project Manager References:**

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

<table>
<thead>
<tr>
<th>Staff Title:</th>
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<tr>
<td>Client Name (Reference Company):</td>
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<td>Reference Main Line of Business:</td>
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<td>Project Name:</td>
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<td>Name &amp; Title of Contact:</td>
<td></td>
</tr>
<tr>
<td>E-Mail Address &amp; Telephone Number:</td>
<td></td>
</tr>
<tr>
<td>Provide a Brief Description of Recent, Relevant Project for which they are Serving to Reference</td>
<td></td>
</tr>
</tbody>
</table>
Attachment 8

Level of Effort

TO BE INCLUDED IN THE PART I TECHNICAL PROPOSAL

- List all titles and names of personnel to be used during the term of the resulting agreement.
- Level of effort should be based on 2000 FTE hours per contract year.
- Offerors must group titles by firm (prime consultant plus any subconsultants that are being proposed), adding lines as necessary.
- Firms must provide total labor hours for the project as well as total labor hours for the prime and each sub.
- Hours listed must match the hours listed in the cost proposal.

Attachment 8 may be accessed via the following link:
https://www.dot.ny.gov/business and clicking on “Consulting Services Opportunities”, then “Opportunities”.
ATTACHMENT 9

Cost Proposal Spreadsheet Instructions

Proposing Prime/offering firms must complete the EXCEL Cost Proposal spreadsheet available on NYSDOT’s website under Contract C031182. Do not use any alternate spreadsheet. This spreadsheet contains seven (7) individual worksheets (LABOR COST ORIENTATION, LABOR COST ASSESSMENTS, TOTAL LABOR COSTS, TRAVEL COSTS FOR ORIENTATION GROUP MEETINGS, TRAVEL FOR ASSESSMENT SITE VISITS, DNS COSTS FOR GROUP ORIENTATION and COST PROPOSAL TOTAL) that are identified on the tabs at the bottom of the spreadsheet. Only one Cost Proposal Spreadsheet is to be submitted with each Cost Proposal. The Prime consultant is responsible for the completion and submission of the spreadsheet. The spreadsheet shall reflect the participation of all members of the proposed Consultant team. Subconsultants should not submit their own separate Cost Proposal Spreadsheets. The information provided in the Offeror’s Cost Proposal Spreadsheet will provide the basis for evaluation of the Cost Proposal and contract negotiations between NYSDOT and the consultant team designated for contract award.

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

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

Two CDs/thumb drives, etc., with the Excel file of the Cost Proposal Spreadsheet are to be submitted with the completed Cost Proposal. The file is not to be locked. Note: The hard copy spread sheets will take precedence over the electronic spread sheets should a discrepancy occur.
COST PROPOSAL

ATTACHMENT 9A DBE: ORIENTATION LABOR COSTS
ATTACHMENT 9B: DBE ASSESSMENT LABOR COSTS

PROVIDE A SEPARATE SECTION OF GROUPED TABLES FOR 9A AND
A SEPARATE SECTION OF GROUPED TABLES FOR 9B

Present a salary table for all proposed staff (prime consultant and all subconsultants). **List each subconsultant firm on a separate page.** For cost proposal purposes, rates remain the same for both base term contract years. (Rates may increase for the optional year extension at NYSDOT’s discretion, or by the PPI or 1.5%, whichever is lower.)

Instructions: Submit completed Attachment 9A.

- Present person-specific fully loaded rates. Present each person’s title. Rates are to be broken-down into base hourly salary, overhead additive and fixed firm fee additive.
- The calculation of the fixed fee component is to be made using the following formula (where C = Fixed Fee and where M = the fee multiplier):
  
  \[ C = M \times (\text{Direct Labor Cost} + \text{Overhead Cost}) \text{, or } C = M \times (A + B). \]
- NYSDOT’s overtime and holiday payment policies apply (straight pay; not subject to change).
- Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm’s proposed overhead.
- A firm’s labor fee may not exceed 10 percent.
- List all titles to be used during the term of the resulting agreement.
- For titles with multiple positions, you must propose one rate per person.
- Cost evaluation shall be based on 4000 FTE Hours (2000 FTE hours per contract year.)
- Firms must provide total labor cost including subconsultants.

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

ATTACHMENT 9C

TOTAL PROPOSED LABOR COSTS

Present the total proposed labor cost (Orientation Labor cost plus Assessment Labor Cost).
## ATTACHMENT 9D INSTRUCTIONS

### PROPOSED TRAVEL EXPENSES FOR ORIENTATION REGIONAL MEETINGS

**COLUMN A:** The address of each NYSDOT Regional Office to be utilized during the Contract:

<table>
<thead>
<tr>
<th>Region</th>
<th>Address</th>
<th>Address Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region 1 (Albany)</td>
<td>50 Wolf Road</td>
<td>Albany, NY 12232</td>
</tr>
<tr>
<td>Region 2 (Utica)</td>
<td>Utica State Office Building, 207 Fenessee Street</td>
<td>Utica, NY 13501</td>
</tr>
<tr>
<td>Region 3 (Syracuse)</td>
<td>Senator John H. Hughes State Office Bldg. 333 East Washington Street</td>
<td>Syracuse, NY 13202</td>
</tr>
<tr>
<td>Region 4 (Genesee Valley)</td>
<td>1530 Jefferson Road</td>
<td>Rochester, NY 14623</td>
</tr>
<tr>
<td>Region 5 (Western NY)</td>
<td>100 Seneca Street</td>
<td>Buffalo, NY 14203</td>
</tr>
<tr>
<td>Region 6 (Central Southern Tier)</td>
<td>107 Broadway</td>
<td>Hornell, NY 14843</td>
</tr>
<tr>
<td>Region 7 (North Country)</td>
<td>Dulles State Office Bldg. 317 Washington Street</td>
<td>Watertown, NY 13601</td>
</tr>
<tr>
<td>Region 8 (Hudson Valley)</td>
<td>Eleanor Roosevelt State Office Building, 4 Burnett Boulevard</td>
<td>Poughkeepsie, NY 12603</td>
</tr>
<tr>
<td>Region 9 (Binghamton)</td>
<td>New York State Office Bldg. 44 Hawley Street</td>
<td>Binghamton, NY 13901</td>
</tr>
<tr>
<td>Region 10 (Long Island)</td>
<td>State Office Building, 250 Veterans Memorial Highway</td>
<td>Hauppauge, NY 11788</td>
</tr>
<tr>
<td>Region 11 (New York City)</td>
<td>Hunters Point Plaza, 47-40 21st Street</td>
<td>Long Island City, NY 11101</td>
</tr>
</tbody>
</table>

**COLUMN B:** The address of the firm’s office location from where they will be travelling to conduct the group orientation. **Add one line for each additional person, if any, who will travel for each group orientation.**

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

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

**COLUMN E:** The Cost per Mile is 0.56.

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

**COLUMNS G, H, and I** are for Air Travel Only. If filling in G, H, and I, PLACE “0” in COLUMN D so that car miles will not calculate. **COLUMNS J, K, and L:** state reimbursement rate utilized for this cost evaluation.
<table>
<thead>
<tr>
<th></th>
<th>Address</th>
<th>Breakfast</th>
<th>Dinner</th>
<th>Lodging</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>28 State St., Schenectady, NY 12305</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Utica State Office Bldg., 207 Genesee St., Utica, NY 13501</td>
<td>$9</td>
<td>$29</td>
<td>$122</td>
</tr>
<tr>
<td>3</td>
<td>Senator John H. Hughes State Office Bldg., 333 East Washington St., Syracuse, NY 13202</td>
<td>$7</td>
<td>$23</td>
<td>$83</td>
</tr>
<tr>
<td>4</td>
<td>530 Jefferson Road, Rochester, NY 14623</td>
<td>$9</td>
<td>$29</td>
<td>$96</td>
</tr>
<tr>
<td>5</td>
<td>100 Seneca St., Buffalo, NY 14203</td>
<td>$8</td>
<td>$26</td>
<td>$101</td>
</tr>
<tr>
<td>6</td>
<td>107 Broadway, Hornell, NY 14843</td>
<td>$9</td>
<td>$29</td>
<td>$107</td>
</tr>
<tr>
<td>7</td>
<td>Dulles State Office Building, 317 Washington St., Syracuse, NY 13202</td>
<td>$7</td>
<td>$23</td>
<td>$83</td>
</tr>
<tr>
<td>8</td>
<td>Eleanor Roosevelt State Office Bldg., 4 Burnett Boulevard, Poughkeepsie, NY 12603</td>
<td>$11</td>
<td>$34</td>
<td>$102</td>
</tr>
<tr>
<td>9</td>
<td>NYS Office Bldg., 44 Hawley St., Binghamton, NY 13901</td>
<td>$7</td>
<td>$23</td>
<td>$97</td>
</tr>
<tr>
<td>10</td>
<td>NYS Office Bldg., Veterans Memorial Highway, Hauppauge, NY 11788</td>
<td>$12</td>
<td>$36</td>
<td>$119</td>
</tr>
<tr>
<td>11</td>
<td>Hunters Point Plaza, 47-40 21st St., Long Island City, NY 11101</td>
<td>$12</td>
<td>$36</td>
<td>$260</td>
</tr>
</tbody>
</table>

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

**COLUMN M**: Calculate **ROUND TRIP** cost of Tolls from Column B to Column A (Firm location to Regional Destination). If Proposer does not enter this value, NYSDOT will enter a $53 default value.
(The Consultant may use: NYS Thruway Toll and distance calculator: [http://www.thruway.ny.gov/travelers/tolls/calc/findclass/classtree.cgi](http://www.thruway.ny.gov/travelers/tolls/calc/findclass/classtree.cgi)

If the proposer will travel by air or train, enter “0”.
If the proposer will travel by taxi, must include toll fees: For taxi fare information the following site may be helpful: [http://www.nyc.gov/html/tlc/html/passenger/taxicab_rate.shtml](http://www.nyc.gov/html/tlc/html/passenger/taxicab_rate.shtml)

**Note**: Ferry costs should be included in Column M.

**COLUMN N**: Enter cost of any ROUND TRIP bridge/tunnel tolls from Column B to Column A (Firm location to Regional Destination). If the Proposer does not enter this value, NYSDOT will enter a default value of $30.
(The Consultant may use the following website for assistance in calculating bridge tolls: [http://beta.costtodrive.com/new-york-tolls/](http://beta.costtodrive.com/new-york-tolls/))

If the proposer will travel by air or train, enter “0”.
If the proposer will travel by taxi, must include bridge fees.

**COLUMN O**: The formula totals all costs.
## Attachment 9E

**PROPOSED TRAVEL EXPENSES FOR ASSESSMENT SITE VISITS INSTRUCTIONS**

**COLUMN A:** The address of each NYSDOT Regional Office is listed below.

<table>
<thead>
<tr>
<th>Region 4 (Genesee Valley)</th>
<th>Region 5 (Western NY)</th>
<th>Region 8 (Hudson Valley)</th>
<th>Region 10 (Long Island)</th>
<th>Region 11 (New York City)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1530 Jefferson Road</td>
<td>100 Seneca Street</td>
<td>Eleanor Roosevelt State Office Building, 4 Burnett Boulevard</td>
<td>State Office Building, 250 Veterans Memorial Highway</td>
<td>Hunters Point Plaza, 47-40 21st Street</td>
</tr>
<tr>
<td>Rochester, NY 14623</td>
<td>Buffalo, NY 14203</td>
<td>Poughkeepsie, NY 12603</td>
<td>Hauppauge, NY 11788</td>
<td>Long Island City, NY 11101</td>
</tr>
</tbody>
</table>

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

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

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

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

**COLUMN E:** The Cost per Mile is 0.56.

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

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

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

<table>
<thead>
<tr>
<th></th>
<th>Region 4</th>
<th>Region 5</th>
<th>Region 8</th>
<th>Region 10</th>
<th>Region 11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$9</td>
<td>$8</td>
<td>$11</td>
<td>$12</td>
<td>$12</td>
</tr>
<tr>
<td>Dinner</td>
<td>$29</td>
<td>$26</td>
<td>$34</td>
<td>$36</td>
<td>$36</td>
</tr>
<tr>
<td>Lodging</td>
<td>$96</td>
<td>$101</td>
<td>$102</td>
<td>$119</td>
<td>$260</td>
</tr>
</tbody>
</table>

Trips of less than 40 miles one way are not eligible for meals/lodging reimbursables.

Trips greater than 150 miles one way are eligible for: breakfast.

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

**COLUMN M:** Calculate ROUND TRIP cost of Tolls from Column B to Column A (Firm location to Regional Destination). If Proposer does not enter this value, NYSDOT will enter a $53 default value.
(The Consultant may use: NYS Thruway Toll and distance calculator: [http://www.thruway.ny.gov/travelers/tolls/calc/findclass/classtree.cgi](http://www.thruway.ny.gov/travelers/tolls/calc/findclass/classtree.cgi))

If the proposer will travel by air or train, enter “0”.
If the proposer will travel by taxi, must include toll fees: For taxi fare information the following site may be helpful: ([http://www.nyc.gov/html/tlc/html/passenger/taxicab_rate.shtml](http://www.nyc.gov/html/tlc/html/passenger/taxicab_rate.shtml))

Note: Ferry costs should be included in Column M.

**COLUMN N**: Enter cost of any ROUND TRIP bridge/tunnel tolls from Column B to Column A (Firm location to Regional Destination). If the Proposer does not enter this value, NYSDOT will enter a default value of $30.

(The Consultant may use the following website for assistance in calculating bridge tolls: [http://beta.costtodrive.com/new-york-tolls/](http://beta.costtodrive.com/new-york-tolls/))

If the proposer will travel by air or train, enter “0”.
If the proposer will travel by taxi, must include bridge fees.

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

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

**COLUMN Q**: The formula calculates the total cost of trips per region for the two-year contract. Note: The actual travel schedule for site visits may include all regions of NYS. The reimbursements for breakfast, dinner, and lodging are for cost evaluation purposes only.

**Attachment 9F INSTRUCTIONS**

**DIRECT NONSALARY COSTS FOR GROUP ORIENTATION SESSIONS**

Direct Nonsalary Costs For Orientation Training Materials (Binders, Hand-Outs)

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

The following is the process by which the Consultant will purchase any commodities, equipment rental, and third party services to support the delivery of services under Contract #C031182. The selected Consultant will refer to available OGS contracts for the purchase of commodities and services ([http://www.ogs.ny.gov/BU/PC/default.asp](http://www.ogs.ny.gov/BU/PC/default.asp)). If the item or service is listed in an OGS contract, then the Consultant will contact at least three of the contractors listed in the OGS contract to obtain quotes. If the item is not listed, then the Consultant shall obtain three price quotes from the open market to be submitted with the bill to the NYSDOT Project Manager. The Consultant is expected to select the lowest price item meeting the requested form, function and utility unless there are extenuating circumstances in which a higher priced item should be purchased. All purchases shall be performed in accordance with New York state purchase requirements. Note: Cell phones are not eligible for direct non-salary reimbursement.

Note: Costs for computers, audio-visual materials may not be included. NYSDOT reserves the right to reject any ineligible Direct Nonsalary Costs.
Attachment 9G INSTRUCTIONS

COST PROPOSAL TOTAL

All total costs shall be calculated based upon your inputs in the preceding spreadsheets.

SPECIFICALLY 9C+9D+9E+9F = COST PROPOSAL TOTAL
Attachment 10

DBE Participation Information

DBE SUPPORT SERVICES for NYSDOT
Contract # C031182

Please complete the following table for the prime firm and all proposed subconsultants (consultant team composition). SUBMIT ONE ATTACHMENT 10. All DBEs must be certified at the time of proposal submission and must be listed on New York State’s NYSUCP DBE Directory (http://biznet.nysucp.net/). Only certified DBEs are eligible to count towards contract’s 11% DBE goal. Using the tables provided below, please identify each firm’s full legal name and indicate each firm’s percentage of the total dollar amount for Contract #C031182.

<table>
<thead>
<tr>
<th>For Contract #C031182</th>
<th>Firm Legal Name</th>
<th>DBE</th>
<th>% of Total Budget</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>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

ADDITIONAL ATTACHMENT 10 INSTRUCTIONS:

If the percentage of total dollar contributions for all proposed, certified DBEs is less than the 11% DBE Participation Goal set for Contract #C031182, then the proposing prime firm is required to fill out and submit the DBE Subconsultant Participation Solicitation Log (Attachment 11; as applicable), and provide a DBE Goal Attainment Explanation Letter (as applicable). Further, prime consultants certified as a DBE are not relieved of meeting the DBE contract goal solely via their participation, as this is a subconsultant program opportunity. DBE primes need to either meet the DBE subconsultant participation goal, or submit the DBE Subconsultant Participation Solicitation Log (Attachment 11) and the DBE Goal Attainment Explanation Letter.
# Attachment 11

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

<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
<th>E-MAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>C031182</td>
<td></td>
<td></td>
<td></td>
<td></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>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

93
INSTRUCTIONS FOR COMPLETING ATTACHMENT 11
MBE and WBE Participation Solicitation Log
(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed MBE participation and WBE participation does not meet the established MBE participation goal and/or the WBE participation goal must document and report their Good Faith Efforts to solicit participation by certified Minority Business Enterprises and/or certified Women-owned Business Enterprises in this Non-Architecture/Non-Engineering contract. The MBE and WBE Participation Solicitation Log is used for this purpose.

PLEASE NOTE: Only participation by certified MBE and/or WBE subconsultants may count towards the contract participation goal. Participation by a certified MBE or WBE prime consultant does not count towards meeting the contract goal (participation by a certified MBE or WBE prime consultant helps to meet the Department’s corporate DBE goal).

Guidance concerning Good Faith Efforts in meeting DBE participation goals in state-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 fully attained or is partially attained, then the proposer must complete all sections of this form and submit one MBE and WBE Participation Solicitation Log. In addition, the firm must also submit a MBE and WBE Goal Attainment Explanation Letter, documenting the firm’s Good Faith Effort.

*** MBE and WBE Certification is a New York State Program. ***
IT IS SEPARATE AND DISTINCT FROM THE FEDERAL DBE CERTIFICATION PROGRAM.
PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS

INSTRUCTIONS:

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.
**MBE and WBE CONSULTANTS SOLICITED:**

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

**TELEPHONE (With Area Code):** Enter TELEPHONE number of the solicited firm.

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

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

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

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

1. This firm is unavailable to participate in the contract for the reason(s) stated on the MBE and WBE Participation 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 MBE and/or WBE 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 Goals
On Solely State-Funded Contracts

The following is a list of types of actions that demonstrate good faith efforts in obtaining DBE participation on state-funded contracts. This list is not exclusive or exhaustive. The bidder must show that it took all necessary and reasonable steps to achieve an 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 Empire State Development Corporation DBE Directory-
  http://nylovesmwbe.ny.gov ) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs— it is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding DBEs is not in itself sufficient reason for failure to meet the contract DBE goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.
- Do not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. 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 13

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 13

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 13

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

Identifying Data

Potential Contractor: ________________________________________________

Address: ________________________________________________________

                                                  Street

                                                  City, Town, etc.

Telephone:__________________________  Title__________________________

If applicable, Responsible Corporate Officer

Name:______________________________  Title__________________________

Signature: _________________________________________________________

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

________________________________________________________________

Legal name of person, firm or corporation

________________________________________________________________

Legal name of person, firm or corporation

By

________________________________________________________________

Name

________________________________________________________________

Name

________________________________________________________________

Title

________________________________________________________________

Title

Address:

________________________________________________________________

Street

________________________________________________________________

City  State

Address:

________________________________________________________________

Street

________________________________________________________________

City  State