NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

Air Quality Analysis and Related Services for NYSDOT

Contract # C031294

October 23, 2014

To All Concerned:

Attached is a copy of the Non-Engineering Request for Proposals (RFP) referenced above. The New York State Department of Transportation is using the Non-Engineering/Best Value Process for this solicitation. All information necessary for the submission of your proposal is contained in this solicitation.

The Department of Transportation (NYSDOT) estimates that work for the successful proposing firm/firm team will commence in early 2015 and continue for a period of three to five years (depending on the selected firm’s/team’s performance).

Please note the following dates and deadlines:

- **December 8, 2014**: Deadline for the submission of proposals is noon (Eastern Time) on December 8, 2014
- **November 6, 2014**: Deadline for the submission of questions regarding the RFP is noon (Eastern Time) on November 6, 2014

NYSDOT is encouraging the participation of certified Disadvantaged Business Enterprises (DBEs) in this solicitation. Please see the New York State Unified Certification Program
For this solicitation, NYSDOT has established a DBE contract participation goal of 20 percent. Only certified DBE Prime consultants and certified DBE subconsultants listed in the NYSUCP DBE Directory are eligible for credit in this procurement. The RFP contains additional 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), §165-a, effective April 12, 2012. This act may be viewed in its entirety at http://www.ogs.ny.gov/about/regs/docs/ida2012.pdf. Pursuant to SFL §165-a(3)(b), the Commissioner of the Office of General Services (OGS) has developed and maintains a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). The list may be found on the OGS website at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf.

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

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

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

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

A “Checklist for Proposal Submission” is included for reference purposes when submitting your proposal in response to this RFP. It also contains instructions for complying with the Procurement Lobbying Law (PLL) 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.
If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form.

Any questions regarding this Request for Proposals should be directed via email to Patricia.Rowe@DOT.NY.GOV Ms. Rowe of NYSDOT Contract Management is the designated contact for this solicitation.

Please see the RFP for more information.

NYSDOT looks forward to the receipt of your proposal.

Sincerely,

Patricia Rowe for

WILLIAM A. HOWE
Director, Contract Management

Attachment
RFP RESPONSE FORM

Air Quality Analysis and Related Services for NYSDOT

Contract # C031294

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 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: __________________________________________________________

Please send to:

*E-Mail:  patricia.rowe@dot.ny.gov
*US Mail:
    New York State Department of Transportation
    Contract Management, 6th Floor
    50 Wolf Road
    Albany, New York 12232
    ATTN: Patricia Rowe – Contract #C031294
*Fax:  518-457-8475
CONSULTANT CHECKLIST FOR PROPOSAL SUBMISSION
RFP: Air Quality Analysis and Related Services for NYSDOT

Contract #C031294

Part I - Technical and Management Submittal

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<td>Seven (7) hard copies – each copy within a 3 ring binder and one (1) electronic copy (PDF format) on CD of Part I</td>
<td>Part I must be sealed and properly labeled</td>
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<tr>
<td>Name, address and telephone number of proposing firm on cover page</td>
<td>Name and title of person who prepared proposal on cover page</td>
</tr>
<tr>
<td>Contact information including name, title, address, telephone number and e-mail address for person(s) with authority to negotiate and who may be contacted during proposal evaluation (include in cover letter)</td>
<td>Complete and submit Hypothetical Project Submissions – Attachments 12 and 13 with a Narrative for each</td>
</tr>
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<td>Organizational Chart</td>
<td>Résumés for Key Personnel (3 pages each)</td>
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<td>Four (4) hard copies each copy within a 3 ring binder and one (1) electronic copy</td>
<td>Part II must be sealed and properly labeled</td>
</tr>
<tr>
<td>Complete and submit Attachment 2 Consultant Information and Certifications (sign both Sections II and III)</td>
<td>Complete and submit Attachment 3 Procurement Lobbying Law Compliance Forms – These forms are required either with the RFP Response Form prior to Proposal submission or if you do not submit an RFP Response Form then the PLL forms are required with the Proposal</td>
</tr>
<tr>
<td>Complete and submit Attachment 6 DBE Participation Information Form</td>
<td>Complete and submit (if applicable) Attachment 7 DBE Solicitation Log AND Letter of Explanation of Non or Partial DBE Goal Attainment</td>
</tr>
<tr>
<td>Complete and submit required Cost information – Attachments 14 and 15</td>
<td>Complete and submit Attachment 16 Non-Collusive Bidding Certification</td>
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<tr>
<td>Complete and submit all future RFP Modification Acknowledgement Forms as instructed.</td>
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Requirements Needed Upon Contract Designation (for firms selected for contract award):

Vendor Responsibility

_____ All selected offerors of contracts valued at $100,000 or more will be required to provide vendor responsibility information through the Office of the State Comptroller website via [http://www.osc.state.ny.us/vendrep/index.htm](http://www.osc.state.ny.us/vendrep/index.htm) before negotiation of a contract. Interested parties are encouraged to become familiar with the state’s vendor responsibility requirements before being notified of selection for contract award. **If you are the successful offeror, 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

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. Firms should make themselves familiar with these forms by visiting the following Web sites:


Insurance Requirements of this Project

Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Articles 11 and 12 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived. Likewise, completion of insurance form C218 is required before work may begin on the contract. NYSDOT encourages interested proposers to verify with their insurance provider(s) that it will produce the completed C218 form on behalf of the proposer should the proposer be awarded the contract.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

It is the proposing firm’s responsibility to ensure it proposes staff who are eligible to provide the subject services and who are eligible to work on the subject project. Under the attached procedures, before the Consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics that approves his/her participation in the subject project. For an outline of the procedure that applies to this situation, see Attachment 4.

Consultant Employment Disclosure Requirements of this Project

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

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

Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Prime consultant will be required to electronically register with the Statewide Financial System (SFS) - if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.
Proposal Due: December 8, 2014 (Noon)

Proposal Delivery Location and Additional Information:

Director, Contract Management  
50 Wolf Road, 6th Floor  
NYS Department of Transportation  
Albany, NY  12232  
Attention: Ms. Patricia Rowe, Contract #C031294
REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
Air Quality and Related Services for NYSDOT

Contract #C031294

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REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

Air Quality Analysis and Related Services for NYSDOT

Contract C031294

I. INTRODUCTION

A. Purpose

The New York State Department of Transportation (NYSDOT/The Department) is accepting proposals from entities interested and capable of providing a variety of air quality analyses, conformity determination and related services. Air quality concerns, as they relate to NYSDOT activities, are often complex and time-consuming. To assist with its Air Quality Program, NYSDOT requires expert consultant services. This RFP describes the air quality analysis, conformity determination, climate change, energy analysis and other related services performed and required of and by NYSDOT.

B. Background

The passage of the Clean Air Act Amendments of 1990 imposed several requirements upon transportation agencies. Among these is a duty to more closely evaluate the air quality aspects of a transportation agency’s activities, including the air quality impact of the agency’s projects (in our case, NYSDOT’s activities) and to perform air quality analysis in order to determine that transportation plans, programs, and projects conform to the State Implementation Plan (SIP). This is accomplished with use of computer based emissions models and dispersion models, while adhering to air quality agency guidance and regulations.

NYSDOT is also required to conduct air quality analyses to comply with the National Environmental Policy Act (NEPA) and the New York State Environmental Quality Review Act (SEQR) for transportation projects and programs under certain conditions.

C. Contract Term, Type and Funding

The base term for this contract shall be three (3) years, with up to two (2) one year optional extensions based on need and performance as determined by the State, to be exercised upon written agreement of both parties and approved by the Office of the State Comptroller.

The contract resulting from this RFP shall follow a specific hourly rate reimbursement methodology. Reimbursement shall be based on specific hourly rates (comprised of direct labor rates, overhead rates and other fees as proposed) as well as estimated task hours, deliverables and direct non-salary costs as outlined in this RFP. Compensation for services provided under the agreement shall be paid based on monthly invoices for services performed at the approved rates, again as proposed and included in the resulting contract for tasks performed as well as compensation for direct non-salary expenses reviewed and pre-approved by the State’s project manager in the performance of the scope of services. Additional payment details can be viewed
in the draft terms and conditions included as Attachment 1 to this RFP and as agreed to during contract negotiations with the designated firm/team.

It should be noted that specific hourly rates shall be proposed by title for use in the resulting contract and for use in the Costing component of the RFP (Reference Sections IV and V for more details on titles, specific hourly rates and costing requirements).

The value of the contract (3 year base term plus two one year optional extension years) resulting from this solicitation is anticipated to be $500,000. Additional funding may be added during the life of the contract and will be done via supplemental agreement based on need and performance as determined by the State, to be exercised upon written agreement by both parties and approved by the Office of the State Comptroller. The level of authorized funding will vary over the life of the contract depending on availability and all funding shall be subject to the continued availability and authorization of Federal and State funds for this purpose. Direct non-salary costs are included in the anticipated $500,000 value of the five year contract and are expected to be approximately $2,000 annually. To reiterate, the value of the full five year contract (the 3 year base term plus the two one year optional extension years) is anticipated to be $500,000. The base term (the initial three years of the agreement) is anticipated to be valued at $300,000. This value shall be represented as the maximum amount payable in the original award/contract. This value shall be increased via supplemental agreement only if determined by the State as needed and funded and again, to be exercised upon written agreement by both parties and approved by the Office of the State Comptroller.

NOTE as provided in Article 5 – Maximum Amount – of the draft terms and conditions included as Attachment 1 to this RFP, “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” and “…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…”

If the contract is extended for the optional years, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%, whichever is lower, will be used as a basis for increasing the hourly rates. The rate adjustment will be calculated using Series ID PCU5413--5413--(Architectural, engineering, and related services). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

NOTE: NYSDOT reserves the right to request zero percent rate increases during the term of a contract with a firm under contract.
D. **Minimum RFP Responsiveness Requirements**

Any proposing firm that does not provide **all** of the following **by the RFP deadline may be determined to be non-responsive** (it is NYSDOT’s sole discretionary determination as to whether a proposal is complete):

1. Part I of the Proposal – Technical and Management submission, including all required RFP–specified attachments.
2. Part II of the Proposal – Cost and Contract submission, including all required RFP specified attachments.
3. For the purposes of evaluation, each proposal part (Part I and Part II) must be submitted separately. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently and the Technical and Management submittal can be evaluated strictly on the basis of its merits. **Cost information is NOT to be included in the Part I submittal. Technical information is NOT to be included in the Part II submittal.**
4. Attachment 2 - Consultant Information and Certifications Form
5. Attachment 3 - Procurement Lobbying Law Forms
6. Attachment 6 - DBE Participation Information Form
7. Compliance with other DBE requirements (if applicable):
   a. Attachment 7 - DBE Participation Solicitation Log
   b. DBE Good Faith Efforts Explanation Letter
8. Attachment 12 and Narrative for Hypothetical Project – Air Quality Analysis (reference Attachment 9 for required narrative and additional details)
9. Attachment 13 and Narrative for Hypothetical Project – Conformity Determination (reference Attachment 10 for required narrative and additional details)
10. Attachment 14 – Proposed Rate and Cost for Labor Table
12. Attachment 16 - Non-Collusive Bidding Certification

**Proposals deemed non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals) and the firm (s) notified.**

It is recommended that each offeror utilize the checklist provided as part of this solicitation to assist in ensuring all necessary documentation and attachments are provided as requested/indicated in this RFP. It is the proposing firm’s responsibility to ensure it includes all necessary forms, documents, and information needed for the review and evaluation of its proposal in response to this RFP.
E. Disadvantaged Business Enterprise (DBE) Participation

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

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

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

Interested proposers should verify their attainment of the above established DBE participation goal by completing **Attachment 6 DBE Participation Information**. To count towards the Department’s DBE goal, a firm offering DBE participation must be currently certified per the NYSUCP DBE Directory. If the proposal does not meet the **20 percent DBE participation goal**, the firm must provide evidence of a good faith effort by completing **Attachment 7 DBE Participation Solicitation Log**. Additionally, if the firm does not meet the specified goal, the firm must include in its submission a **DBE Goal Attainment Explanation Letter** explaining why the firm was unable to meet the DBE goal (in full or if partially), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a Prime consultant or via subcontract.

Additionally, Prime consultants certified as a DBE who propose to meet the Department’s DBE contract participation goal via their own meaningful participation are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that unless DBE outreach efforts by the Prime result in proposed DBE subconsultants, that the Prime consultant provide evidence of a good faith effort by completing **Attachment 7 DBE Participation Solicitation Log and submitting the DBE Goal Attainment Explanation Letter**.
The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section V. B for the procedure the Department will follow in evaluating a firm’s proposed DBE participation.

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


Title VI Assurance

The New York State Department of Transportation (NYSDOT), 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.
II. PROJECT OBJECTIVES AND ORGANIZATION

A. Project Objectives

The selected offeror (Consultant) shall be required to provide NYSDOT with timely air quality analysis, conformity analysis or related services on an as-needed, project assignment basis. The resultant agreement shall provide for the performance of certain tasks necessary to progress NYSDOT projects and programs as related to potential air quality, conformity, climate change or energy impacts. The tasks associated with the agreement may be in air quality, conformity, climate change, energy analysis or any combination thereof. The tasks will be related to the provision of services for specific NYSDOT projects or that will, in general, facilitate the progression of NYSDOT projects, which will be identified by NYSDOT at the time of assignment. Note: There is no guarantee of a minimum number of assignments.

The specific tasks or services to be procured under this RFP are described in Section III, Scope of Services. The Consultant may be assigned one or more tasks for a particular project. Due to the variable nature of the services required from project to project, the Consultant shall be required to submit a description of services to be provided for each assignment and a projected schedule prior to commencing work for review and approval by NYSDOT.

The Consultant shall assist NYSDOT, as determined necessary by NYSDOT, in all coordination activities that involve Federal, State and local agencies, including but not limited to meetings, correspondence and communications.

The need for expert services to perform these analyses is often unanticipated and may sometimes require immediate attention. Assignments determined by NYSDOT to require immediate attention will require the Consultant commence work within 48 hours of receiving the assignment. For other assignments, the Consultant shall commence work within 10 business days of receiving the assignment.

B. Project Organization

A project manager within NYSDOT shall be designated to make assignments to the Consultant under this agreement. Those assignments shall reflect the Consultant’s ability to respond in a timely manner, the applicability of the Consultant’s expertise to the perceived air quality, conformity, climate change or energy analysis and the status and schedule of the Consultant’s other tasks associated with this agreement (Consultant current workload related to Contract C031294). The NYSDOT project manager will be responsible for the day-to-day administration of the work assignment and be available to answer questions and provide overall direction to the Consultant. The Consultant, however, shall not consider the NYSDOT project manager as a staff resource. The ultimate responsibility for obtaining necessary information and completing the tasks is the responsibility of the Consultant.

The Consultant shall prepare and maintain work schedules as appropriate and be responsible for the preparation of necessary deliverables.
III. SCOPE OF SERVICES

A. Overview

In general, the work associated with this effort will include one or more of the first four tasks listed below. Other services (in keeping with the overall nature of the agreement) may be assigned as necessary and as appropriate in support of the air quality, conformity, climate change or energy needs for NYSDOT projects and may be in any phase of the project process from planning and design through active construction (see Task 5 below).

The proposed scope of services and staffing estimate shall address all air quality, conformity and related legislative, regulatory (including, but not limited to, 40 CFR parts 53 and 91, NYCRR Part 240, NEPA, and SEQR) and procedural (including, but not limited to, public process) requirements at each specified location. Other guidance information, which may include but may not be limited to the following, is as follows:


- Calculations necessary to obtain emission factors shall be in accordance with the U.S. Environmental Protection Agency’s Motor Vehicle Emission Simulator (MOVES), version 2010b (MOVES2010b) or the latest version in effect as determined by NYSDOT. Fugitive particulate matter emissions shall be calculated in accordance with the latest version of U.S. Environmental Protection Agency’s publication AP-42, *Compilation of Air Pollutant Emission Factors*.

- For each design alternative and the null alternative, the Consultant shall conduct a microscale analysis for carbon monoxide and/or PM10 and PM2.5 concentrations in accordance with the *NYSDOT Environmental Manual* and its related USEPA guidance. The analysis shall be performed in accordance with the *NYSDOT Environmental Manual* and using the specified emission model (currently MOVES2010b) and the CAL3QHC, CAL3QHCR, or AERMOD dispersion model. If necessary, NYSDOT will provide the program and tables, along with user guidance.

B. **Tasks**

**Task 1**  **Project Air Quality Analysis**

This task will consist of air quality analysis required under various environmental laws, regulations and procedures for NYSDOT projects to be identified. It is anticipated that this task will be required for those projects that are designed in-house or require an air quality analysis on a short notification basis. This activity will consist of all or part of the air quality analysis that is necessary to complete the analysis for a project. This could start as basic, simplified air quality analysis, and depending on the results, could evolve into a detailed, computerized air quality modeling analysis. Finally, depending on the potential impact of the project, mitigation analysis may be required.

**Task 2**  **Conformity Determination Analysis**

This task will consist of analytical support resulting in a positive conformity determination for a NYSDOT project, a Long Range Transportation Plan or a Transportation Improvement Program (TIP). The transportation conformity rule (40CFR Parts 51 and 93) requires transportation plans, programs and projects to conform to the purpose of the SIP. The general conformity rule (40CFR Parts 6, 51 and 93) may also be applicable. The analysis undertaken will be to support a positive conformity finding. This task may consist of microscale modeling for a project-level conformity determination or regional scale emissions modeling for TIP or long range plan conformity determinations. For TIP and long range plan conformity determinations it will be necessary to work with local Metropolitan Planning Organization (MPO) officials. For regional emissions analysis, in general, it is anticipated that traffic estimates and forecasts will be available, so that the task will consist of determining emissions and related air quality analysis. Nevertheless, the Consultant must be able to assist MPO officials in developing and/or running appropriate transportation demand models. For this reason, the Consultant is expected to have the staff technical skills and the computational resources available. Assignments may include use of the New York Metropolitan Transportation Council (NYMTC) transportation demand model, the Best Practices Model (BPM). **Attachment 8** contains the computer system configuration and specifications, as developed by NYMTC for their application of the new model. The Consultant must document in their proposal how they will be able to run the BPM model in a correct, efficient, and effective manner using available computer resources and technically capable staff.

**Task 3**  **Climate Change Matters**

This task will consist of assistance to NYSDOT on climate change issues. This work may be part of an air quality section of a project environmental document, assessing the impact of the project on greenhouse gas emissions. This task may include analysis of various transportation strategies to reduce greenhouse gas emissions or may include work related to dealing with the effects of climate change on the transportation infrastructure. In all cases, the Consultant will be
required to provide procedures and methodologies for NYSDOT approval and the Consultant may be required to evaluate NYSDOT approved greenhouse gas emission analysis procedures and recommend modifications or new or additional methods.

Task 4  Project Energy Analysis

This task will consist of project specific energy analysis. This analysis will be the basis of the energy section of a project environmental document. It is anticipated that some project analysis will be qualitative; however, it is likely that the bulk of this work will be for those projects that require a quantitative energy analysis. In this case, the Consultant will be required to provide the technical energy analysis in support of NYSDOT’s project using NYSDOT approved procedures and methodologies. As necessary to meet the project needs, the Consultant may be required to evaluate NYSDOT approved energy analysis procedures and recommend modifications or new or additional methods.

Task 5  Other Related Services

As necessary to meet identified project and program needs, the Consultant may be required to identify and evaluate new technical information or alternate analysis methods for appropriateness, reasonableness, consistency, and ease of application and recommend these for inclusion in the project’s air quality, conformity or energy analysis.

The Consultant may be required to provide project and program related expert services or technical analysis on matters involving air quality, conformity or energy, including but not limited to, litigation, preparation of scopes of services and response to comments on NYSDOT’s environmental documents.

C. Deliverables

The deliverables shall be the various work products described in the above tasks. These include, but are not limited to, work schedules, all computer inputs and outputs, data, statistical analysis, air quality or energy reports and conformity determinations.
IV. PROPOSAL FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management submittal. Part II shall consist of the Cost and Contract submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits, focusing on the firm’s responsiveness to the RFP, including mandatory requirements and demonstrated experience of the firm. Failure to clearly identify and present the required proposal content, in the designated location, may result in the firm being deemed non-responsive with no further consideration being given to the proposal. Cost information is not to be included in the Part I submittal NOR should any Technical information be included in the Part II submittal.

A proposing firm’s proposal shall follow the format listed below:

NOTE: NYSDOT will 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. If an offeror believes information included in its proposal is confidential and proprietary, the offeror should identify those page(s) of its proposal which contain such information as “confidential and proprietary”. Additionally, offerors need to explain the 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 (see A. 3. below).

A. Part I: Technical and Management Submittal

1. Cover Letter

Cover letter should be prepared on firm stationary and signed by an individual/officer of the firm authorized to bind the firm to a State contract. The cover letter shall include the name, address, phone number and e-mail address of the proposing firm as well as, the name of the individual who prepared the proposal and the name of a contact person to whom questions should be asked. No exceptions to any of the draft contract terms and conditions will be entertained by NYSDOT. Conditional offers or bids will be deemed non-responsive.

2. Table of Contents

All sections shall be separated by labeled tabs.

3. Executive Summary

Provide a brief description of the proposed approach and work effort. Confidential and proprietary information should also be identified and addressed in this section.
4. **Introductory Narrative Description**

Describe in general the steps which will be taken to meet the RFP’s objectives and provide the required services. Include a discussion which clearly demonstrates the Prime firm/team understand transportation air quality issues in general and how these issues affect NYSDOT. The discussion should include consideration of the Clean Air Act Amendments of 1990, the National Environmental Policy Act, the State Environmental Quality Review Act, MAP-21, the other pertinent Federal, State or local legislation, as well as implementing regulations.

5. **Approach, Scope of Services and Schedule**

This section should outline the Proposing firm’s overall approach to NYSDOT’s air quality program/needs/activities in providing the RFP specified services.

Describe the Proposing firm’s approach for implementing the Scope of Services as described in Sections II and III of this RFP. The firm’s approach to the items below must reflect acceptance of the Scope of Services of this RFP. Confirm in your discussion that the proposing firm accepts the RFP’s Scope of Services.

If subconsultants or joint ventures are proposed, describe the need, indicate the arrangements, and detail how the coordination will be achieved between parties.

The Proposing firm should describe its approach for managing and delivering the contract’s 20 percent DBE goal, including the Commercial Useful Function (CUF) the DBE firm(s) will be providing.

**Additionally, Proposals shall describe in detail:**

- An understanding and comprehension of the RFP’s scope and objectives and the general issues impacting NYSDOT’s air quality program/needs/activities. Describe the resources available and being proposed to meet NYSDOT’s needs.

- The firm’s approach to accomplishing the Tasks identified in Sections II and III. The proposal shall include each task, but not assume any specific type of transportation project. The firm’s approach should provide sufficient information for NYSDOT to evaluate the proposal in terms of analytical capability, proposed ongoing interaction with NYSDOT and/or other involved agencies during an assignment, and a description of accepted analytical methodology. The proposed approach shall describe by task what will be done, presenting the activities, methods, procedures, and techniques to be used in carrying out NYSDOT’s air quality program and activities and meeting the needs of the Department as well as detail the proposer’s understanding of and ability to provide the deliverables.

- A complete and thorough listing of the firm’s/team’s air quality, energy, and transportation demand model computer programs available.
The firm’s success in dealing with RFP related issues and meeting the service needs of clients.

A Response as outlined in Attachment 9 – Hypothetical Project – Air Quality Analysis. Attachment 9 explains the requirement of submitting a narrative and instructions for completion of Attachment 12.

It is expected that many assignments under the contract resulting from this RFP shall be for various types of project level air quality analysis. To assist in evaluating proposals received in response to the RFP, each offeror must submit a detailed procedural scope of services with associated staffing (by title as proposed) for an air quality analysis of the hypothetical project described in Attachment 9. Again, submission of a narrative and Attachment 12 are explained in Attachment 9. The scope of services and staffing estimate shall address all air quality and related legislative, regulatory and procedural requirements for a project of this sort in this location and should assume that all necessary traffic parameters would be supplied by NYSDOT.

A Response as outlined in Attachment 10 – Hypothetical Project - Conformity Determination. Attachment 10 explains the requirement of submitting a narrative and instructions for completion of Attachment 13.

It is expected that some assignments under the contract resulting from this RFP shall be for conformity determinations. To assist in evaluating the proposals received in response to the RFP, each offeror must submit a detailed procedural scope of services with associated staffing (by title as proposed) for a conformity determination for a hypothetical project described in Attachment 10. Again, submission of a narrative and Attachment 13 are explained in Attachment 10. The scope of services and staffing estimate shall address all air quality, conformity and related legislative, regulatory (including, but not limited to, 40 CFR parts 53 and 91, and NYCRR Part 240) and procedural (including, but not limited to, public process requirements) for a conformity determination of this sort in this location.

6. Experience

The qualifications and prior experience of the proposer are very important to NYSDOT. Referencing the Project’s Objectives and Scope of Services (Sections II and III of this RFP), provide the relevant experience of the proposed team (all firm team members and Key personnel) as indicated below:

**Experience of Key Personnel**

Provide relevant experience (within the last 10 years) proposed Key personnel assigned to this effort possess. It is preferable that relevant experience of Key personnel relate to the projects referenced under the firm experience below. If not possible, projects should be similar in nature and detail Key personnel’s experience –
identifying each individual’s area of expertise. Where appropriate, include examples of when/where Key personnel proposed here worked together as a team on other projects.

Provide brief résumés (no more than three pages per résumé) for all Key personnel (including subconsultants). Résumés shall include name, experience, education, role in referenced projects and proposed role in this RFP’s project(s).

Firms shall determine and propose Key personnel titles, as well as other titles, and job descriptions for all proposed staffing in line with the objectives and tasks associated with this RFP. The proposed titles and job descriptions shall be referenced consistently throughout the RFP and RFP required Attachments. Examples of titles may be but are not limited to: Principal in Charge, Project Manager, Sr Project Scientist, Project Scientist, Sr. Project Engineer, Project Engineer, Sr. Computer Programmer, Computer Programmer, Technician, Technical Assistant, Administrative Assistant, etc.

**Firm Experience**

Demonstrated broad experience in transportation air quality analysis is sought. Experience in NYSDOT air quality analysis procedures and/or other NYSDOT air quality work is preferred. Other relevant experience, such as conformity determinations, energy analysis, climate change work and other applications of air quality principles to transportation matters is also desirable.

Provide a description of proposed experience (by firm) as it relates to the services requested in this RFP - performing relevant air quality analysis and related work.

Firm experience shall include completed projects (within the last 10 years for commercial and/or government entities) involving similar or related services. Include correlation between the experience proposed and how it is similar and/or related to the services requested in this RFP.

Firm experience shall also include current projects (for commercial and/or government entities) involving similar or related services. Include correlation between experience proposed and how it is similar and/or related to the services requested in this RFP. Include the plan for managing current work load and as well as services required if designated for contract award resulting from this RFP.

All proposed experience (for completed projects and current projects) shall include customer name, point of contact, title, phone number, email address, fax number, project title, project duration, project value and again how it relates to this project.
(reference Sections II and III). The Department may contact the customer point of contact (POC) for verification and to obtain past performance information. POC telephone, email address and fax numbers must be accurate and current.

Proposal shall clearly represent firm experience proposed as either complete or currently underway.

Specify the names and roles of Key personnel proposed who have worked on or are currently working on the project(s) included in the firm experience.

Provide the above requested Key Personnel and Firm experience in a narrative format and in list/table format.

NOTE: Firms (Primes and subconsultants) that propose Key Staff who are not current employee(s) of the offering firm (Prime or subconsultant) at the time proposals are due for this RFP, must obtain written confirmation from each of those Key Staff persons that he/she will accept employment with the proposing firm should the offering team be selected for contract award. The written confirmation must further state that the Key Staff person will accept the reimbursement rate provided in the submitted Cost Proposal (although no reference should be made to the specific dollar rate in the Part 1, Technical Proposal). These confirmation documents are to be submitted as an Attachment to the Technical Proposal. Firms are encouraged to consider whether any staff person they are intending to propose is subject to any restrictions from accepting employment with that firm (i.e. non-competition clauses). As a point of clarification, NYSDOT may contact the proposing Prime Consultant/firm to produce the confirmation documentation.

NOTE: Experience provided (firm and/or Key personnel) not directly related or comparable to the RFP’s Scope of Services will not be evaluated.

NOTE: NYSDOT reserves the right to contact any and all references provided by the Proposing firm as well as any firms cited in the experience section of a proposal but not offered as a reference. Experience attestations may be confirmed in various ways (email, phone, etc.) using contact information provided in the proposal and/or as deemed necessary and appropriate by the Department of Transportation. New York State Department of Transportation experience may be considered whether offered or not. Again, NYSDOT reserves the right to request information from any source so named as well as seeking additional references should ones offered fail to verify attested experience. Previous, comparable work experience with NYSDOT is eligible and may be considered whether offered or not.

7. Organization and Staffing

Describe the organization (management plan) of the proposing firm/team and the proposed staffing plan to ensure compliance with the objectives and scope of services of this RFP. Include the available resources, including number of staff available per title/position, facilities equipment, computer resources, etc.
The proposed management plan shall include the role of the subconsultant (s) if proposed and shall include how each subconsultant shall be managed and maintained during the course of the contract. Of particular interest to NYSDOT is the role of proposed subconsultant (s) satisfying the DBE goal in this RFP and throughout the resulting contract.

The summary of the staffing plan shall include a brief summary of each title proposed and a corresponding job description for each position proposed (including the roles and responsibility of each). The summary shall name the Project Manager/Director and list the experience of the proposed Project Manager/Director, the person primarily responsible for managing the performance of the Air Quality Program (this is in addition to the résumé requirement).

Describe the firm’s plan for maintaining and phasing project personnel into the effort over the life of the project. Describe the working relationship between proposed Key personnel and NYSDOT staff and the level of interaction proposed between the two.

Provide an organizational chart for the project showing the names, titles and firm names of the Key personnel who will be assigned to provide services under the contract resulting from this RFP. The job titles shown on the organizational chart shall correspond to those referenced throughout the Proposal narrative and the Technical Proposal Attachments as well as the Cost Proposal Attachments.

B. Part II: Cost and Contract Submittal

Part II of the proposal consists of two sections, (1) a Cost proposal which sets forth proposed specific hourly rates of pay applicable to the work specified in the scope of services as well as for use in the cost evaluation; and (2) the Contract section which specifies the proposer’s acceptance of all of the terms and conditions contained in the draft Agreement (included as Attachment 1) as well as other administrative items.

Each Cost and Contract proposal shall contain the following:

1. Cost Proposal

As stated previously, Proposing Prime firms shall determine and provide the staffing titles for use throughout the Proposal, for use when completing the required attachments and for use in the resulting contract if designated for contract award.

Each Cost proposal shall include the following worksheets:

Attachment 14- Proposed Rate and Cost for Labor Table

Attachment 15 – Costing Proposal – For Cost Evaluation

Firms are cautioned to maintain the integrity of the worksheets and the accuracy of the excel formulas.
If the contract is extended for the optional extension years, all of the contract’s out-year labor rates are subject to the following rate adjustment rule: The Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%, whichever is lower, subject to current market conditions. NYSDOT reserves the right to request zero percent rate increases during the term of a contract with a firm under contract.

**Guidelines for Direct Non-Salary Costs:**

Any costs associated (including labor, travel, meals and lodging) with general continuing education, certification classes, or educational and professional activities are not reimbursable or chargeable to the project.

All estimates of direct non-salary expenses in the agreed-upon contract are subject to reasonable reimbursement by NYSDOT, NYS Procurement Guidelines, and review and prior approval by NYSDOT.

Travel, meals, and lodging reimbursements shall be limited to the maximum rates established by the State Comptroller at the time such expenses are incurred. The latest state and nationwide rates are available at the following Web site: [http://www.gsa.gov/](http://www.gsa.gov/)

For Cost proposal purposes, most direct-non salary costs associated with this project cannot be estimated at this time. Therefore, NYSDOT is directing proposing firms not to submit information in regard to Direct Non-Salary expenses in Proposals submitted in response to this RFP. As stated, in Section I.C. of this RFP, the value of direct non-salary expenses are anticipated to be $2,000 annually. Refer to Section I. C. of the RFP for more information regarding Direct Non-Salary Costs and reimbursement.

The “Value of Cost Proposal” field as entered by the Proposing Prime firm on Attachment 15, Cost Proposal – For Cost Evaluation Worksheet, shall be used in the evaluation of Cost proposals. It shall utilize, via the use of excel formulas, the “Average Billing Rate” which can also be found on Attachment 15.

Please note, the “Average Billing Rate” and the “Value of the Cost Proposal” as they appear on the completed Attachment 15 shall be utilized for the cost evaluation purposes only. Actual rates per title as submitted by the proposing Prime firm on Attachment 14 shall be the rates utilized in the contract resulting from this RFP.

A proposing Prime firm may access the following link to complete the Excel Spreadsheet containing the Technical and Cost exhibits (Again, the Technical Part I submission shall not include any Cost information and vice versa):

[https://www.dot.ny.gov/business](https://www.dot.ny.gov/business)
Once the link is accessed, click on “Consulting Services” then select “Opportunities” and then find and click on the respective project document within the correct contract (C031294).

**Proposal Part I and Part II Reminder:**

As a reminder: **Attachments 12 and 13 along with a narrative for each shall be completed by the Proposing Prime firm and included in the Technical Part I submission and**

**Attachments 14 and 15 shall be completed by the Proposing Prime firm and included in the Cost Part II submission.**

All Attachments shall be included in the appropriate Part (I or II) of the Proposal.

NYSDOT reserves the right to request electronic copies of these documents.

*NYSDOT encourages proposers to be competitive when proposing escalation rates, overhead rates and fees.*

2. **Contract Proposal**

   a. **Acceptance of Terms and Conditions**

      The Prime consultant shall specifically indicate its acceptance of all Terms and Conditions of the draft Agreement contained in **Attachment 1** of this Request for Proposals by completing and submitting with its proposal the “Consultant Information and Certifications Form,” included as **Attachment 2** to this RFP. **Altering Attachment 2 without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed.**

      **NOTE:** No exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT. Conditional offers or bids will be deemed non-responsive.

   b. **DBE Participation**

      In Part II of your firm’s proposal, provide the following: Complete and submit **Attachment 6 DBE Participation Information.** Provide the legal names of all firms proposed (Prime and Subconsultant).

      For proposing firms whose DBE participation is less than the established contract goal of 20 percent **OR** where the Prime Consultant’s certified as a DBE and proposes to meet the Department’s participation contract goal via its own meaningful participation, the firm must also complete and submit **Attachment 7 “DBE Participation Solicitation Log.”** **Submission of a DBE Goal Attainment Explanation Letter** shall be required for proposals with either partial goal attainment or no goal attainment explaining why the firm was unable to meet the
DBE goal (in full or if partially) which serves to substantiate the firm’s good faith efforts.

The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a Prime Consultant or via subcontract.

To reiterate, in situations where the Prime Consultant is certified as a DBE (thus meeting the contract’s goal) the Prime firm must still reach out and solicit certified DBE subconsultant firms. **The Prime consultant is not relieved of the burden of reaching out to and contracting with DBE subconsultants (using Attachment 7 to document all attempts made).**

c. **Modification Acknowledgement Forms**

Included with any and all future Modifications to this RFP shall be Acknowledgement forms. All respondents must have an authorized representative of the firm, or organization, acknowledge receipt and acceptance of each of the Modifications by including a signed copy of this/these form(s) with the Part II Cost and Contract Submission.

d. **Procurement Lobbying Law Forms**


Filing the two required forms (Offeror’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) is mandatory for all Consultants in order to be considered for contract award. Copies of the two required forms are included with this RFP (see **Attachment 3**) and can be obtained electronically at:


**NOTE:** Failure to submit the required PLL forms with your proposal may result in elimination from consideration for contract award.

Use **Contract Number C031294** wherever requested in the forms. Please call or e-mail the person identified as the contact in the Administrative Specifications
section (Section VI) of this RFP if you have any questions regarding how to complete this required form.

Per the Procurement/Lobbying Law of 2005, any person who wishes to contact NYSDOT regarding this project during the restricted period (i.e. from advertisement through designation), may only contact the person noted in the cover letter to this solicitation.

e. **Consultant Identification Number (CIN)**

All respondents to this solicitation must reference their Consultant Identification Number (CIN) in their Part II proposal.

If a proposing firm does not have a CIN and it is selected for contract award, the firm will be required to obtain one through the following NYSDOT website prior to negotiation of the contract: “How to Register a New Consultant Firm with NYSDOT” at:


f. **Consultant Disclosure Legislation**

Go to OSC’s website (listed below) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment” Form A (**Attachment 5**) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” Form B (**Attachment 5**) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and NYSDOT on or before May 15th of each year the contract is in effect. This information may also be obtained from the OSC website via this link:

http://www.osc.state.ny.us/procurement/consultantdisclosure.doc
V. CRITERIA FOR EVALUATION OF PROPOSALS

A. General

Proposals shall be pre-screened to determine if they meet minimum RFP responsiveness (reference Section I. D.). Those which do shall be considered further; those which do not may be deemed non-responsive and may be removed from further consideration. It is NYSDOT’s sole discretionary determination as to whether a proposal is complete.

NYSDOT will evaluate proposals using a Best Value Method of evaluation. The process will be based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in the Department’s evaluation of proposals. Technical proposals will be scored based on the information provided under Section IV. A. Part I: Technical and Management Submittal in accordance with the pre-established criteria listed in Section C. below. The cost portion of Part II: Cost and Contract Submittal will be point scored in accordance with the pre-established criteria listed in Section D. below.

The Technical and Management proposal evaluation will be accomplished by subject matter experts/representative committee comprised of technical, program and management personnel as determined by NYSDOT. Committee members will score each Technical proposal (Part I) individually and then meet as a group to discuss their findings. Evaluators will be allowed to revise scores on the basis of the committee discussions. A short-list of proposing firms will be established based upon the committee’s scores following these discussions. Only proposals determined to be susceptible for contract award (short-listed) will be considered further and have their cost proposal included in the selection process. Firms susceptible for contract award shall be those whose proposal receives a minimum raw technical score of 50.00 points or higher (out of the 75 points available) after discussions by the Evaluation Committee. Proposals with raw technical scores lower than 50.00 are considered not susceptible for contract award and will not be considered further in the evaluation process. The short-list of firms will be posted on NYSDOT’s website.

Proposing firms may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the evaluation of technical proposals (Part I), evaluators will be allowed to revise their technical scores based on this additional information. NYSDOT reserves the right to ask clarifying questions regarding each cost proposal (Part II) and DBE participation as well.

NYSDOT may request best and final offers (BAFOs) from firms that are determined to be susceptible for contract award. Firms should not be led to anticipate the opportunity or requirement of a BAFO in all procurements. NYSDOT reserves the right to utilize the BAFO option on a case by case basis.
NYSDOT shall award a contract based on the highest total score after considering all technical and cost/price evaluation factors.

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

At the conclusion of the evaluation process, an announcement of the Department’s designation will be posted on NYSDOT’s website at [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business). Once the link has been accessed, click on “Consulting Services” then “Opportunities” and then click on the project line which represents “C031294.” All non-selected proposing firms shall be notified in writing regarding the results of this solicitation and shall be offered a debriefing. It is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Furthermore, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.

**B. Pre-Screening of Proposals, Including DBE Participation**

NYSDOT will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. It is NYSDOT’s sole discretionary determination as to whether a proposal is complete (reference Sections I. D. and V.A.). Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section may be deemed non-responsive. All proposals deemed non-responsive by NYSDOT shall not be considered further.

As part of the pre-screening process, the proposed DBE contract level participation percentages offered for NYSUCP certified DBE subconsultants will be reviewed ([Attachment 6 DBE Participation Information](#)).

Refer to Section I. E. of this RFP for guidance regarding the offering of DBE participation. For this solicitation, NYSDOT has established a DBE contract participation goal of 20 percent.

To count toward the contract DBE participation goal, each DBE firm offered must be currently listed in the NYSUCP directory of certified Disadvantaged Business Enterprises ([http://biznet.nysucp.net/](http://biznet.nysucp.net/)). If the proposed DBE participation is less than the established 20 percent goal, then the firm’s evidence of Good Faith Efforts ([Attachment 7 DBE Participation Solicitation Log](#)) to achieve participation in the goal will be reviewed, along with the firm’s letter of explanation as to why it was unable to meet the goal either fully or if only partially.

**Attachment 7 also includes instructions for completing the DBE Participation Solicitation Log and Guidance Concerning Good Faith Efforts. The Guidance Concerning Good Faith Efforts** provides information describing actions a firm should
take to demonstrate its good faith efforts. If it is determined by the Department during the review process, which will include verification of a proposing firm’s good faith effort evidence, that the firm did not provide acceptable good faith efforts, the proposal may be deemed non-responsive. Proposals deemed to be non-responsive will be removed from further consideration.

C. **Technical and Management (Up to 75 Points)**

The Offeror shall provide a detailed Proposal response that describes how it will meet the requirements as published in Sections II and III of the RFP.

Proposers shall begin this section by reiterating that the firm accepts the scope of services advertised in this RFP.

The Technical and Management proposal will be point scored and will represent up to 75 percent of the total Best Value score for the proposal. The proposal with the highest final raw technical score will receive a perfected score of 75 points. Other technically acceptable offers, will have their lower technical score also perfected and will receive a proportionately lower final technical score.

The major evaluation criteria are listed below in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

1. **Approach, Scope of Services and Schedule (up to 35 Points)**

   **NOTE:** A firm shall only be evaluated based upon the offered tasks/work proposed in the Consultant’s scope of services and requested in the RFP.

   a. Degree to which the proposed approach reflects understanding of Sections II and III of the RFP as they relate to transportation air quality issues, general environmental issues, legislation and implementing regulations impacting NYSDOT projects as well as the demonstrated capability and resources necessary to accomplish the work (tasks and deliverables) of the RFP, providing the RFP specified services and achieving the objectives of the RFP. (up to 10 points)

   b. Completeness, accuracy, and clarity of response to the hypothetical project for air quality analysis (Provide a narrative and complete Attachment 12 as explained in Attachment 9) including thoroughness of addressing and describing all applicable requirements. (up to 9 points)

   c. Completeness, accuracy, and clarity of response to the hypothetical project for conformity determination (Provide a narrative and Attachment 13 as explained in Attachment 10) including thoroughness of addressing and describing all applicable requirements. (up to 9 points)

   d. Demonstrated quality and extent of analytical capabilities (outline past successes), the adequacy and quality of proposed response to receipt of assignments and proposed interaction with NYSDOT and other key participants/agencies. (up to 4 Points)
e. Availability and completeness of air quality, energy and transportation demand model computer programs, including documentation of capability to run the Best Practices Model (BPM) in a correct, efficient and effective manner. (up to 3 Points)

2. **Experience of the Firm and Key Personnel (up to 30 points)**

   **NOTE:** Experience offered which is not directly related to the Scope of Services shall not be evaluated. **Any provided, obtained and relevant references may be used in the evaluation of a firm/team’s experience as well as Key Personnel experience.** As included in Section IV of this RFP NYSDOT reserves the right to contact any and all references provided in the Proposal as well as any firms cited in the experience section of a proposal but not offered as a reference. New York State Department of Transportation experience may be considered whether offered or not. NYSDOT reserves the right to request information from any source so named as well as seeking additional references should ones offered fail to verify attested experience.

   a. Overall quality, extent and relevance of experience and education of Key Personnel in transportation air quality analysis, conformity determinations, climate change and energy analysis during the past ten years. (up to 15 Points)

   b. Overall quality, extent and relevance of experience of the Proposer (including subconsultant firm team member(s)) in transportation air quality analysis, conformity determinations, climate change and energy analysis during the past ten years. (up to 15 Points)

3. **Organization and Staffing (up to 10 Points)**

   a. Quality and reasonableness of management plan (including coordination of all firm team members – of particular interest is the management of the commercially useful function of the DBE) and organizational chart (up to 5 points).

   b. Quality and reasonableness of titles and position descriptions. (up to 5 Points)

D. **Cost and Contract (Up to 25 Points)**

The Cost portion of the Cost and Contract Proposal will be point scored and will represent up to 25 percent of the total proposal score. The Cost score for each Cost Proposal will be based on the total **Value of the Cost Proposal** as it appears on **Attachment 15** of the Proposing firm’s Cost Proposal. Only Cost Proposals from proposing Prime firms/Offerors that have been short-listed per Section V.A. of this RFP will be evaluated and scored.

The Cost score for each short-listed offeror shall be calculated by comparing the derived **Value of the Cost Proposal as submitted on Attachment 15** of each proposal to determine which is the lowest. The Offeror with the lowest derived **Value of the Cost Proposal** shall receive a perfected cost score of 25 points. All other offerors will receive proportionately lower perfected cost scores based upon their **Value of the Cost Proposal** against the lowest derived **Value of the Cost Proposal**.
VI. ADMINISTRATIVE SPECIFICATIONS

A. Proposal Submission

1. The proposal shall be signed by an official authorized to bind the Offeror.

2. Proposers shall submit seven (7) hard copies and one (1) electronic copy on CD of Part I and four (4) hard copies of Part II along with one (1) electronic copy on CD of Part II.

   NOTE: If there is a discrepancy between the hard copy and the CD, the hard copy of each Part (Part I and Part II) shall take precedence over the CD of the respective part. Furthermore, NYSDOT reserves the right to ask for additional electronic versions of all Attachments, Narratives and any/all elements of an Offeror’s proposal (Part I and/or Part II) in response to this RFP.

3. Your proposal must be received by NYSDOT by Noon on December 8, 2014. The proposal must be addressed to:

   Director, Contract Management
   NYS Department of Transportation
   50 Wolf Road, 6th Floor
   Albany, New York  12232
   Attention:  Ms. Patricia Rowe - Contract #C031294 -
   “Air Quality Analysis and Related Services for NYSDOT”

B. 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 Offeror 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.

NYSDOT has the following prerogatives with regard to proposals submitted:

- to accept or reject any or all proposals;
- to correct any arithmetic errors in any or all proposals;
- to change the proposal’s due date upon appropriate notification;
- to eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
- to adopt any or all of a successful Offeror’s proposal;
to negotiate modifications to the scope, cost and contract terms &
conditions with the selected Offeror prior to contract award only if such is
in the best interest of the State;
• to request clarification of any and all firms’ proposals;
• 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;
• to revise/amend any provision of this RFP by written notification to all
potentially interested firms, prior to proposal submission;
• 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;
• To select and award the contract to the Offeror whose proposal represents
the best value to NYSDOT;
• 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;
• If NYSDOT terminates the contract — without again requesting
proposals, to begin contract negotiations with the next-best-value offeror;
and
• To extend the terms and conditions as well as the contract’s scope and
pricing terms as is of any contract entered into pursuant to contract award
arising from this solicitation 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.

C. Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract
award to vendors that are determined to be responsive and responsible. All
selected offerors of contracts valued at $100,000 or more will be required to
provide vendor responsibility information through the OSC website before
negotiation of a contract. Offerors must certify the accuracy of the information
they provide in the questionnaire. Firms should become familiar with this form by
visiting the following website:
http://www.osc.state.ny.us/vendrep/index.htm

D. Registration with NYSDOT

Consultant firms entering into contracts with the New York State Department of
Transportation (NYSDOT) as Prime consultants, joint venture partners or
subconsultants are required to electronically register their firm using the
Consultant Selection System web application (CSSWeb). All consultant firms
entering into Non-Architectural/Non-Engineering 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:
or via:


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

E. Contractor Tax Certification

Per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit Forms ST-220-TD and ST-220-CA (Contractor Certifications) prior to 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)

F. Inquiries and Information

All questions concerning this solicitation must be directed only to:

Name:            Ms. Patricia Rowe, Contract Management Specialist 1
Email:           Patricia.Rowe@dot.ny.gov
Telephone:       518-485-5118
Fax:             518-457-8475

Or questions may be directed to the specified management as provided in Attachment 3 (PLL Compliance).
The last date to submit questions for this solicitation is November 6, 2014. All inquiries should be addressed to:

Director, Contract Management  
NYS Department of Transportation  
50 Wolf Road, 6th Floor  
Albany, New York 12232  
**Attention: Ms. Patricia Rowe - Contract #C031294**  
Email: Patricia.Rowe@dot.ny.gov

Responses to all questions of a substantive nature, as well as copies of the questions, will be given to all consultant contractors being solicited.

G. **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)

H. **Tentative Schedule of Key Events**

NYSDOT will attempt to adhere to the following aggressive schedule with regard to this solicitation:

- **RFP Release Date**: October 23, 2014  
- **Question Submittal Deadline**: November 6, 2014  
- **Proposals Due**: December 8, 2014  
- **Proposal Evaluation Completion**: January, 2015  
- **Contract Negotiations Complete**: February, 2015  
- **Contract Award**: April, 2015
### VII. 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. C031294

PROJECT: Air Quality Analysis and Related Services for NYSDOT

This Agreement made this __________ day of ___________________, 201___ pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the “STATE”) acting by and through the New York State Department of Transportation (hereinafter referred to as "STATE" or “DEPARTMENT”) whose Main Office is located at 50 Wolf Road in the County of Albany, State of New York 12232, and

CONSULTANT FIRM NAME
CONSULTANT FIRM ADDRESS
(herinafter referred to as “CONSULTANT”)

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

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

**ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.**

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

**ARTICLE 3. INSPECTION.**

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

**ARTICLE 4. TERM OF THE AGREEMENT.**

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

**ARTICLE 5. MAXIMUM AMOUNT.**

Item I  The maximum aggregate amount payable by the State to the CONSULTANT hereunder for the performance and completion of the work is $______ 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. If the AGREEMENT is extended
beyond _____ (end date in Article 4), then all of the Specific Hourly Rates of pay shown in EXHIBIT ___ are eligible for rate adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413--5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 2.0%, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item II The CONSULTANT shall be paid on a cost reimbursement basis in milestone progress payments based on a payment schedule established by the Project Director and the CONSULTANT, as follows:

(To be Negotiated)

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

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

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

Item III 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 IV 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. 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 consulting 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 the NYSDOT Contract D Number. Certificates shall be mailed to the:

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

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

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

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

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

6. **Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of CONSULTANT’s policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.

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

8. **Self-Insured Retention/Deductibles.** Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, CONSULTANT-administered insurance deductible shall be limited to the amount of the bid deposit or $100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim 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 (applicable to any project where automobiles or other vehicles will be employed to complete the work). 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 (applicable to all contracts). The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

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

6. Subconsultants’ Insurance. In the event that any portion of the work described in this contract is performed by an approved subcontractor, the insurance requirements of this Article shall be incorporated into the subconsultant agreement. Subcontractor insurance requirements shall include the requirements for Workers’ Compensation, Commercial General Liability, and, if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. CONSULTANT shall require that Certificates of Insurance, meeting the requirements of the Department are provided to the Department documenting the insurance coverage for each and every subconsultants employed by them to do work under this contract.

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.

ARTICLE 31. CONSULTANT DISCLOSURE LEGISLATION.

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

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:

o New York State Department of Transportation:
  Contact Person’s Name: William A. Howe, Contract #C031294
  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: William.Howe@dot.ny.gov

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

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

Item 3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.
ARTICLE 33. TITLE VI ASSURANCE.

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

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

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

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

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

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

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

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
IN WITNESS WHEREOF, this Contract No. _________ 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 DEPARTMENT OF
TRANSPORTATION

DATE: ________________ DATE: ________________

Consultant Certifications: I certify that all the information with respect to the “Vendor Responsibility Questionnaire” submitted by (CONSULTANT FIRM NAME) ________________ on the ___ day of __________________________, 201____ 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

Project name

APPROVALS

ATTORNEY GENERAL THOMAS P. DI NAPOLI

STATE COMPTROLLER

By ______________________________

By ______________________________

Date ______________________________ Date ______________________________

51
Acknowledgement for Contract #___________

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 applicable for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

7. NON-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 affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessee of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessee 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, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

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

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

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

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

19. 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
212-803-2414
e-mail: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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

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

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

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

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

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

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

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

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

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

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law Section 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

Updated February 2014
APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

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

4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYS DOT 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 NYS DOT’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, NYS DOT 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 subcontractor procurement as NYS DOT 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 NYS DOT to enter into such litigation to protect the interests of NYS DOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
APPENDIX B

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

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

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

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

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

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend $500,000, or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations”. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than $500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency1 the New York State Department of Transportation, the New York State Comptroller’s Office and the U.S. Governmental Accountability Office (GAO).

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA2), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

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

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205. Additional CFDA numbers for other transportation and non-transportation related programs are:

- 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

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

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

1 The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.
2 www.cfda.gov/
(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 March 2013
APPENDIX B

U.S. GOVERNMENT REQUIRED CLAUSES

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Requirements – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the municipal corporation with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Charter Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Charter Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Pursuant to 69 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities.

Cargo Preference - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime
Administration, Washington, DC 20590 and to the municipal corporation (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

Seismic Safety – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation – Applicability – All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000). Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over $100,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.

Bus Testing – Applicability – Rolling Stock/Turnkey. Contractor [manufacturer] shall comply with 49 USC 5323(l) and FTA’s implementing regulation 49 CFR 665 and shall perform the following: 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the municipal corporation prior to the municipal corporation’s final acceptance of the first vehicle. 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public. 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the municipal corporation prior to the municipal corporation’s final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer’s basis for concluding that it is not a major change requiring additional testing. 4) If the manufacturer represents that the vehicle is “grandfathered” (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle’s configuration and major components.

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey. Contractor shall comply with 49 USC 5323(l) and FTA’s implementing regulation 49 CFR 665 and submit the following certifications: (1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. (2) Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications. (3) Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports—Applicability—As shown below. These requirements do not apply to micro-purchases ($3,000 or less, except for construction contracts over $2,000)
The following access to records requirements apply to this Contract:
1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)(1), which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)(1), which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1)) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the municipal corporation, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).
FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes—Applicability—All Contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)
Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the municipal corporation and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Bonding Requirements—Applicability—For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:
a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required...
Within the time specified.

b. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

1. 50% of the contract price if the contract price is not more than $1 million;
2. 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or
3. $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bid Bond Requirements (Construction)

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient). It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
   (i) Fifty percent of the contract price if the contract price is not more than $1 million.
   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
   (iii) Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial
compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.
(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
   (i) Fifty percent of the contract price if the contract price is not more than $1 million;
   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
   (iii) Two and one half million if the contract price is increased.
Advance Payment Bonding Requirements
The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).
Patent Infringement Bonding Requirements (Patent Indemnity)
The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).
Warranty of the Work and Maintenance Bonds
1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Clean Air – Applicability – All contracts over $100,000
(1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. (2) Contractor shall include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FTA assistance.
Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and
Davis-Bacon and Copeland Anti-Kickback Acts – Applicability

Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over $2,000

1. Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The
Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve any additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The municipal corporation shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantees may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the municipal corporation for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number
029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(iii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (ii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the
provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 2, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over $100,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the municipal corporation shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in
para. (2) of this section.
(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)
(1) The municipal corporation and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the municipal corporation, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)
(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over $10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is $100,000
a. Termination for Convenience (General Provision) the municipal corporation may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the municipal corporation's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation. If contractor is in possession of any the municipal corporation property, contractor shall account for same, and dispose of it as the municipal corporation directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the municipal corporation may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the municipal corporation that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the municipal corporation, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the municipal corporation in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate
conditions
If contractor fails to remedy to the municipal corporation's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the municipal corporation setting forth the nature of said breach or default, the municipal corporation shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the municipal corporation from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the municipal corporation elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the municipal corporation shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the municipal corporation, by written notice, may terminate this contract, in whole or in part, when it is in the municipal corporation's interest. If the contract is terminated, the municipal corporation shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation’s convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the municipal corporation goods, contractor shall, as directed by the municipal corporation, protect and preserve the goods until surrendered to the municipal corporation or its agent. Contractor and the municipal corporation shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation’s convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the municipal corporation may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the municipal corporation resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the municipal corporation in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the municipal corporation, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantines restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the municipal corporation in writing of the causes of delay. If in the municipal corporation’s judgment, delay is excusable, the time for completing the work shall be extended. the municipal corporation’s judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the
delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the municipal corporation’s convenience.

i. Termination for Convenience or Default (Architect & Engineering) the municipal corporation may terminate this contract in whole or in part, for the municipal corporation’s convenience or because of contractor’s failure to fulfill contract obligations, the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the municipal corporation all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the municipal corporation’s convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor’s failure to fulfill contract obligations, the municipal corporation may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the municipal corporation.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation’s convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the municipal corporation may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the municipal corporation or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the municipal corporation, or property supplied to contractor by the municipal corporation. If termination is for default, the municipal corporation may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation and the parties shall negotiate the termination settlement to be paid to contractor.

If termination is for the municipal corporation’s convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the municipal corporation determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the municipal corporation, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over $25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the municipal corporation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the municipal corporation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees
operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Breaches and Dispute Resolution – Applicability – All contracts over $100,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the municipal corporation’s authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the municipal corporation’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation’s CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the municipal corporation, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the municipal corporation and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within New York State.
A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work: (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA. (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is
exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor’s status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401. (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified. (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor’s status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401. (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

1. Contractor shall comply with applicable transit employee protective requirements as follows:

(a) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.]

(b) Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over $3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The New York State goal is available by contacting the Department. The municipal corporation’s overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere. b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate.

Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). c. If a separate contract goal has been established, Bidders/offereors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. d. If no separate contract goal has been established, the successful bidder/offeree will be required to report its DBE participation obtained through race-neutral means throughout the
period of performance. e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the municipal corporation. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the municipal corporation and contractor’s receipt of the partial retainage payment related to the subcontractor’s work. e. The contractor must promptly notify the municipal corporation whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the municipal corporation.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)
The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the municipal corporation to be in violation of FTA terms and conditions.

Drug & Alcohol Abuse and Testing – Applicability – Operational service contracts except micro-purchases ($3,000 or less, except for construction contracts over $2,000)

Other Federal Requirements

Full and Open Competition – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.


Access Requirements for Persons with Disabilities – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.
Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General’s list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General’s list of ineligible contractors for federally financed or assisted construction, the municipal corporation shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the municipal corporation’s Procurement Guidelines, available upon request from the municipal corporation.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the municipal corporation to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.


Environmental Protections – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Federal Single Audit Requirements For State Administered Federally Aid Funded Projects Only
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 §3052.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, the New York State Department of Transportation, the New York State Comptroller’s Office and the U.S. General Accounting Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Rd, Albany, NY 12232.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project 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 CFDA number for the Federal Transit Statewide/Metropolitan Transportation Planning (Section 5304) is 20.505. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Updated July 2013
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-c, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

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

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

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

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

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

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

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

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)
(b) In order to make the CONSULTANT’s equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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
State Consultant Services  
Contractor’s Annual Employment Report  
Report Period: April 1, to March 31,

Contracting State Agency Name: Transportation  
Agency Code: 17000  
Contract Number:  
Contract Term to  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided:

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

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Grand Total

Name of person who prepared this report:  
Preparer’s Signature: ________________________________________________________________

Title:  
Phone #:  
Date Prepared: / /

Use additional pages if necessary)  
Page of
ATTACHMENT 2

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

CONTRACT NUMBER: [INSERT CONTRACT NUMBER]

PROJECT TITLE: [INSERT RFP TITLE]

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): _________________

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 offerer and also who may be contacted during the
period of proposal evaluation:

Preparer’s Name/Title: _______________________________________________________

Address: _________________________________________________________________

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

Other Authorized Individual(s):

Name/Title:________________________________________________________________

Address:___________________________________________________________________

Telephone: (_____ ) _____ - ___________ FAX: (_____ ) _____- __________
II. PROPOSER CERTIFICATIONS
By signing below, I, _____________________________, authorized individual
(Name)
of ______________________________ make the following
(Firm) certifications regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day period from the date of submission.
- The firm has read and will follow the procedure outlined in Attachment 4 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.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions)
- ST-220: If selected for contract award greater than $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)

Signature: __________________________________________

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

Signature: __________________________________________
(Name of Acceptor)
ATTACHMENT 3
Procurement Lobbying Law 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.
   1. “Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)”

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 the Department determines an impermissible contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offerer.

   **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 Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:**

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

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

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 offerer.

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

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/  
http://www.nylobby.state.ny.us/lobbying.html (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: Patricia Rowe  
NYSDOT Contract Management  
50 Wolf Road, 6TH Floor  
Albany, New York 12232  
E-mail: Patricia.Rowe@dot.ny.gov  
Tele: (518) 457-2600
Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

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

Contract Procurement No. ________________

By: ________________________________ Date:____________________

Name: ________________________________

Title: ________________________________

Contractor Name: _____________________________________________________

Contractor Address: ____________________________________________________

____________________________________________________________________

____________________________________________________________________

____________________________________________________________________
Offerer Disclosure of Prior Non-Responsibility Determinations

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

________________________________________________________________________________________

Address:  ______________________________________________________________

Name and Title of Person Submitting this Form:  ______________________________

Contract Procurement Number:  _______________________________

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)

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

By:__________________________________________________________________________ Date:__________________

Name:________________________________________________________________________ Title:________________________________________
ATTACHMENT 4

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 Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
ATTACHMENT 5
CONSULTANT DISCLOSURE LEGISLATION FORMS A & B

Background:

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement (Request for Proposals, Mini-Bid, or Invitation for Bids) must complete Form A, State Consultant Services Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term upon notification of award. The completed Form A must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete Form B, State Consultant Services Contractor’s Annual Employment Report annually for each year of the contract term, on a State fiscal year basis. The first report is due on May 15 for the period April 1 through March 31.

Form A must be submitted to NYSDOT as the contracting agency, and Form B must be submitted to NYSDOT (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term and Form B, State Consultant Services Contractor’s Annual Employment Report, are attached to these instructions. Please see these instructions for further information regarding completion and submission of the forms.

Instructions:

FORM A:

Upon notification of contract award, use Form A, State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term, attached to these instructions, to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete Form A for contracts for consulting services in accordance with the following:

- **Employment category**: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract.

(Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at [www.online.onetcenter.org](http://www.online.onetcenter.org) to find a list of occupations.)
• **Number of employees**: the total number of employees in the employment category anticipated to be employed to provide services under the contract, including part time employees and employees of subcontractors.

• **Number of hours to be worked**: the total number of hours anticipated be worked by the employees in the employment category.

• **Amount payable under the contract**: the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit completed **Form A** within 48 hours of notification of selection for award to NYSDOT (as the contracting agency) at the address provided in this solicitation.

**FORM B:**

Use **Form B, State Consultant Services Contractor’s Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit Form B to NYSDOT (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete **Form B** for contracts for consulting services in accordance with the following:

• **Scope of Contract**: a general classification of the single category that best fits the predominate nature of the services provided under the contract.

• **Employment Category**: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at [www.online.onetcenter.org](http://www.online.onetcenter.org) to find a list of occupations.)

• **Number of Employees**: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

• **Number of hours worked**: the total number of hours **worked** during the Report Period by the employees in the employment category.

• **Amount Payable under the Contract**: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.
Submit the completed Form B annually by May 15th for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

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

By fax: (518) 474-8030 or (518) 473-8808

To DCS:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

To 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.
FORM A  

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

State Agency Name: Transportation  
Agency Code: 17000  
Contractor Name:  
Contract Number: C031294  
Contract Start Date: / /  
Contract End Date: / /  

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

Contracting State Agency Name: Transportation
Agency Code: 17000
Contract Number: C031294
Contract Term: / / to / /
Contractor Name:
Contractor Address:
Description of Services Being Provided: Operation of the Hudson Valley Transportation Management Center (HVTMC) Services for NYSDOT

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

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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 6

DBE Participation Information

Please complete the following table for the Prime firm and all subconsultants (consultant team composition): please identify each firm’s legal name, checking if it is a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm’s percentage of the total value of the resulting contract.

Please keep in mind that only NYSUCP certified DBEs are eligible to count toward goal attainment of this federally-funded procurement with a DBE contract participation goal. Only participation by a certified DBE Prime consultant as well as certified DBE subconsultants may count toward DBE contract participation goal attainment.

If the combined percentage of total contract value for all proposed, certified DBEs is less than the DBE Contract Participation Goal of 20 percent established for this solicitation/contract, then the proposing Prime firm is required to fill out and submit the DBE Participation Solicitation Log (Attachment 7), and is required to submit the DBE Goal Attainment Explanation Letter. Reference RFP Sections I. E., IV. B. and V. B. for more information on DBE participation.

Please provide a copy of the firm’s DBE letter from a NYSUCP certifying partner with your Part II proposal.

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>% of Overall Contract Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Prime CONSULTANT*</td>
<td>None</td>
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<tr>
<td>B. SUBCONSULTANTS</td>
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</table>

Total 100%

*A proposing Prime consultant that proposes to meet the DBE contract participation goal through its own participation is NOT relieved from seeking subconsultant participation or demonstrating that it made adequate, acceptable GFE to meet the goal even though it did not succeed.
ATTACHMENT 7

DBE Participation Solicitation Log
(Good Faith Effort Documentation)

<table>
<thead>
<tr>
<th>CONTRACT NO. C031294</th>
<th>DBE PARTICIPATION GOAL</th>
<th>PAGE NUMBER ___ OF ___</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DBE % ___</strong></td>
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<table>
<thead>
<tr>
<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
<th>E-MAIL</th>
</tr>
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<tbody>
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<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>
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99
INSTRUCTIONS FOR COMPLETING
DBE Participation Solicitation Log
(Good Faith Effort Documentation)

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

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

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

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

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

CONTRACT NO: Enter NY State DOT contract number (Example: C012345).

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

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

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

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

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

DBE CONSULTANTS SOLICITED:

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

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

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

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

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

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

1. This firm is unavailable to participate in the contract for the reason(s) stated on the DBE Solicitation Response. (Attach explanation to the Log.)
2. This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.
3. The soliciting Prime CONSULTANT was unable to reach this firm after having a telephone conversation to follow-up on the DBE participation solicitation inquiry. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which follow-up was attempted.)
4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left.)
Guidance Concerning Good Faith Efforts
In Meeting DBE Participation Goals In Federally-Funded Contracts

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

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

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

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

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

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

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

- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
ATTACHMENT 8

Best Practices Model (BPM)

Computer Hardware System Configuration and Specification

Application Computer System Configuration and Specification for Conformity Analysis

Please visit with the NYMTC website to access the latest BPM specs: http://www.nymtc.org/project/BPM/model/bpm_finalrpt.pdf

<table>
<thead>
<tr>
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<th>Specification</th>
<th>Units</th>
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<tr>
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<td>6 to 8</td>
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<td>Windows 2000 Professional</td>
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<td></td>
<td>Dual 1 GHZ P3 Xeon Processors</td>
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<tr>
<td></td>
<td>2 GB SDRAM</td>
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<tr>
<td></td>
<td>3 x 73 GB 10K Ultra 160 Hard Drives (RAID5)</td>
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<td>64 bit gigabit Ethernet Card</td>
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<td>48 x CDROM &amp; 32 x CDRW</td>
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<td></td>
<td>21&quot; Monitor</td>
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<td>File Server</td>
<td>DELL Precision 620 Workstation with:</td>
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<td>Windows NT 4.0</td>
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<td>2 GB SDRAM</td>
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<td>3 x 73 GB 10K Ultra160 Hard Drives (RAID5)</td>
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<td>Two 64 bit gigabit Ethernet Cards (one for LAN &amp; one for WAN)</td>
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<td>48 x CDROM &amp; 32 X CDRW</td>
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<tr>
<td></td>
<td>21&quot; Monitor</td>
<td></td>
</tr>
<tr>
<td>Backup Systems</td>
<td>20/40G Tape Backup - Power Vault 120T DDS4, AutoLoader w/ Veritas Backup Exec Server</td>
<td>7 to 9</td>
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<tr>
<td>Plotter</td>
<td>HP Design Jet 800PS</td>
<td>1</td>
</tr>
<tr>
<td>Printer</td>
<td>HP 8150DN LaserJet Printer</td>
<td>1</td>
</tr>
<tr>
<td>Local Area Network (LAN)</td>
<td>CISCO Superstack 12 Port Hubs - 10 base T</td>
<td>1</td>
</tr>
<tr>
<td>Hub</td>
<td>CISCO Superstack 12 Port Hubs - 10/100 baseT</td>
<td>1</td>
</tr>
</tbody>
</table>
ATTACHMENT 9

Hypothetical Project - Air Quality Analysis
Guidance and Specifications for Use in Completing Attachment 12

This hypothetical project involves the widening of a two-mile portion of an urban arterial in Westchester County, New York. There are currently two lanes in each direction. The widening would consist of the addition of one travel lane in each direction. The purpose of the project is to relieve congestion and improve travel speeds in the project area. The projected average annual daily traffic (AADT) for the design year is 150,000 vehicles/day. The land use in the vicinity of the project area is commercial. No residences, schools, hospitals, parks, or other sensitive lands uses exist in the immediate vicinity of the project area.

One build alternative is under consideration. There is one signalized intersection within the project limit. Hourly traffic data are available for each of the four time periods: morning peak, midday, evening peak, and overnight. Vehicle mix data are available for both build and no-build alternatives.

The project is subject to analysis under the National Environmental Policy Act (NEPA) (classified as NEPA Class I) and Transportation Conformity Regulation 40 CFR Part 93.123. To comply with NEPA and transportation conformity requirement, a PM10 and PM2.5 microscale analysis will be conducted using CAL3QHCR dispersion model in accordance with the NYSDOT’s Environmental Manual and the most recent USEPA guidance, Transportation Conformity Guidance for Quantitative Hot-Spot Analysis in PM2.5 and PM10 Non-Attainment and Maintenance Areas (USEPA Publication EPA-420-B-10-040, December 2012). The analysis shall be performed for the year of estimated completion (ETC) and the critical analysis year of ETC+10 or ETC+20.

Any other assumptions made by the offeror in response to this hypothetical air quality analysis shall be included by the offeror in the offeror’s narrative.

Proposing firms shall demonstrate their compliance and understanding of the above by submitting a narrative and completing Attachment 12 – Hypothetical Project – Air Quality Analysis for inclusion in the Part I – Technical and Management Submittal.

The response to Hypothetical Project – Air Quality Analysis (Attachment 12) shall comply with the RFP’s scope of services and staffing assignments proposed (including the total number of hours per title, per task) to complete the above analysis. Be advised that the staffing levels submitted for this hypothetical project analysis shall be considered in NYSDOT’s review of staffing levels on future assignments throughout the resulting contract with the selected offeror. All titles included in the Offeror’s proposal and for use in the resulting contract, SHALL be included in the Offeror’s response to this Hypothetical Project.

Attachment 12, along with the required narrative, shall represent the Proposers submission in response to the guidance and specifications contained in this Attachment (Attachment 9), and the RFP, and shall utilize the titles and title/position descriptions (reference Section IV.A.7 of the RFP) proposed by the Offeror and used throughout the Offeror’s proposal in response to the RFP. The narrative submitted as requested above shall be in any format the Proposer chooses. Attachment 12 shall be submitted using the provided Excel worksheet.
This hypothetical conformity determination is for the Transportation Improvement Programs (TIPs) for a Metropolitan Planning Organizations (MPO) in New York State. The planning area boundary for the MPO is an urban area consisting of one county. The county is classified as maintenance for the annual PM2.5 standard. The PM2.5 SIP is currently under development. The MPO has a travel demand model.

The Consultant must perform the emissions analysis for the MPO and combine the results into a regional emissions analysis and conformity narrative. The narrative must include enough detailed information to allow the reviewing agencies to understand the analytical approach (e.g. pollutants analyzed, conformity tests, etc.) and process undertaken to demonstrate conformity.

The TIPs that are subject to this conformity determination are for Federal Fiscal Years 2014-2018. The MPO has a Long Range Metropolitan Transportation Plan (MTP) with a horizon year of 2040.

The following assumptions should be made:
- The consultant has the same transportation demand model that is used by the MPO.
- The consultant will be required to run EPA’s MOVES2010b emission model
- Previous transportation demand model run files for the MTP are available.
- There are 10 new non-exempt projects included in the TIP for the MPO.
- The analysis shall be done for the years of 2017, 2025, 2035, and 2040.

It is also assumed that the analysis will successfully meet the appropriate conformity tests for this area. Any other assumptions made by the offeror in response to this hypothetical conformity determination shall be included by the offeror in the offeror’s narrative.

Proposing firms shall demonstrate their compliance and understanding of the above by submitting a narrative and completing Attachment 13 – Hypothetical Project – Conformity Determination for inclusion in the Part I – Technical and Management Submittal.

The response to Hypothetical Project – Conformity Determination (Attachment 13 and the narrative) shall comply with the RFP’s scope of services and staffing assignments proposed (including the total number of hours per title, per task) to complete the above analysis. Be advised that the staffing levels submitted for this hypothetical project analysis shall be considered in NYSDOT’s review of staffing levels on future assignments throughout the resulting contract with the selected offeror.

All titles included in the Offeror’s proposal and for use in the resulting contract, SHALL be included in the Offeror’s response to this Hypothetical Project.

Attachment 13, along with the required narrative, shall represent the Proposer’s submission in response to the guidance and specifications contained in this Attachment (Attachment 10), and the RFP, and shall utilize the titles and title/position descriptions (reference Section IV. A. 7 of the RFP) proposed by the Offeror and used throughout the Offeror’s proposal in response to the RFP. The narrative submitted as requested above shall be in any format the Proposer chooses. Attachment 13 shall be submitted using the provided Excel worksheet.
Attachment 11 - Excel Spreadsheet Instructions

Attachments 12 through 15

Technical Part I Information shall not be included in the Cost Part II Proposal Submission
AND
Cost Part II Information shall not be included in the Technical Part I Proposal Submission.

To Access the Excel Spreadsheet, click on the following link:

https://www.dot.ny.gov/business

For Inclusion in the Technical Part I Submission:

Attachment 12: Hypothetical Project – Air Quality Analysis
Narrative to accompany/explain Attachment 12 submission – The narrative may be presented in the format of the Proposer’s choosing.

Attachment 13: Hypothetical Project – Conformity Determination
Narrative to accompany/explain Attachment 13 submission – The narrative may be presented in the format of the Proposer’s choosing.

These hypothetical project exercises shall be a realistic representation of the Proposing firm/firm team’s ability and approach to handling the respective project.
The staffing levels provided in these exercises shall be referenced during negotiations with the designated firm as well as after contract execution, for project management purposes, with the firm awarded the contract resulting from the RFP.
The hourly breakdown/information provided in these exercises will be utilized in the Cost proposal (Part II of the Offeror’s Proposal) and will be forwarded to the Costing Spreadsheet (Attachment 15) via the use of excel formulas.

No monetary or costing information shall be included in Attachment 12 or Attachment 13 or the corresponding narratives.

Please reference Attachments 9, 10, 12 and 13 for additional directions and details.
Attachment 11 - Excel Spreadsheet Instructions  
(Continued)

Attachments 12 through 15

For Inclusion in the Cost Part II Submission:

Attachment 14: Proposed Rate and Cost for Labor Table

Proposing Prime Firm shall complete the Title column using the titles proposed. Proposing Prime Firm shall complete the Firm Name Column. Proposing Prime Firm shall enter Year 1 Direct Labor Rate for all titles in column (a) of Attachment 14 and the rates for items (i) through (iii) where noted also on Attachment 14. See Attachment 14 for additional directions. The remainder of Attachment 14 is formula driven.

Attachment 14 shall serve 2 purposes: 1. It shall be used in the Cost evaluation of the Cost proposal (Part II) where as the billing rates for years 1, 2 and 3 will be used to create an average billing rate on Attachment 15 for use with the hypothetical exercises (Attachments 12 and 13) AND 2. The billing rates submitted on Attachment 14 for years 1, 2 and 3 (the base term of the contract) shall be referenced during negotiations with the Designated firm and in the contract resulting from this RFP.

Attachment 15: Costing Proposal – For Cost Evaluation

The billing rates for years 1, 2 and 3 (per title proposed) from Attachment 14 (reference Attachment 14 for explanation of billing rates) shall be used to create an average billing rate per title proposed demonstrated on Attachment 15. The average billing rate (the average billing rate is for use only in the cost evaluation of the proposal) per title shall then be multiplied by the hours for each hypothetical project exercise per title (as provided on Attachment 12 and Attachment 13). These values of the two hypothetical exercises per title shall be added together via the use of excel formulas to establish a Total Value per title - to determine a cost per title for staffing the hypothetical exercises. All Total Values (all values for all titles) shall be added together to establish the Value of the Cost Proposal. It is this Value of the Cost Proposal that will be used in conducting the Cost evaluation of all Cost Proposals susceptible for contract award (short-listed).

Each Proposing Prime firm shall complete the attestation statement on Attachment 15 certifying the firm’s Cost proposal.

Reference Sections IV and V of the RFP and Attachments 14 and 15 for additional directions/details.

It is the responsibility of each Prime Proposing firm to ensure the integrity and accuracy of the formulas and the ultimate Cost proposal submission.

The Prime proposing firm may insert additional rows within each worksheet but again, the Prime proposing firm is responsible for maintaining the integrity of the worksheet and its formulas.
Attachments 12 through 15 may be accessed via the following link:

https://www.dot.ny.gov/business

Once the link is accessed, click on “Consulting Services” then select “Opportunities” and then find and click on the respective project document within the correct contract (C031294).
Attachment 16

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

<table>
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<th>LEGAL RESIDENCE</th>
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</table>

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

President: ____________________________
Secretary: ____________________________
Treasurer: ____________________________

President: ____________________________
Secretary: ____________________________
Treasurer: ____________________________
NON-COLLABORATIVE 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

By

Name

Title

Address: __________________________ Street

City __________________________________ State __________________________

Legal name of person, firm or corporation

Name

Title

Address: __________________________ Street

City __________________________________ State __________________________