REQUEST FOR PROPOSALS
FTA Program Compliance Monitoring Services
Contract #C031383

October 19, 2015

To All Concerned:

The New York State Department of Transportation (NYSDOT) is releasing the Non-Engineering Request for Proposals (RFP) referenced above. NYSDOT is seeking to competitively select a responsive and responsible Consultant to provide FTA required site reviews and compliance monitoring of 5310, 5311, 5316, and 5317 grantees. All information necessary for the submission of your proposal is contained in this Request for Proposals.

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

Please note the following Tentative Dates and Deadlines:

- **November 16, 2015**  Deadline for questions about the RFP at 12:00 PM (Eastern Time)
- **November 30, 2015**: Deadline for the submission of proposals at 12:00 PM (Eastern Time)

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

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

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

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

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that, it will not utilize, on such Contract, any subcontractor that is identified on the prohibited entities list. Additionally, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list. During the term of the Contract, should the New York State Department of Transportation (NYSDOT) receive information that a Bidder/Contractor (or any assignee) is in violation of the above-referenced certification, NYSDOT will offer the Bidder/Contractor (or any assignee) an opportunity to respond. If the Bidder/Contractor (or any assignee) fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default. NYSDOT reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

We look forward to the receipt of your proposal.

Sincerely,
WILLIAM A. HOWE
Director
NYSDOT Contract Management Bureau
Enclosure
RFP RESPONSE FORM: C031383 RFP

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

__________  WE DO INTEND TO SUBMIT A PROPOSAL

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

____________________________________________________________________________

____________________________________________________________________________

Name and Address of Organization (Include Zip Code):

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

Signature: ____________________________  Date: ____________________________

Types of Printed Name and Title: ____________________________

Telephone: ____________________________  Fax: ____________________________

E-Mail Address: ____________________________

RFP Title: ____________________________

Please send to:

* E-Mail: Patricia.Rumore@dot.ny.gov RE: #C031383

* Regular Mail:
  New York State Department of Transportation
  Contract Management Bureau, 6th Floor
  50 Wolf Road
  Albany, New York 12232
  ATTN: Contract #C031383

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

REQUEST FOR PROPOSALS

FTA Program Compliance Monitoring Services
Contract #C031383

Proposal Due Date: November 30, 2015

Proposal Delivery Location:

Patricia Rumore
Contract Management Bureau
NYS Department of Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232
REQUEST FOR PROPOSALS
Contract #C031383
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
FTA Program Compliance Monitoring Services
Funded by FTA Programs

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REQUEST FOR PROPOSALS
FTA Program Compliance Monitoring Services
Funded by FTA Programs
Contract #C031383

1. INTRODUCTION

1.1 Purpose
The New York State Department of Transportation (NYSDOT) has issued this Request for Proposals (RFP) seeking proposals to award a contract to a responsive, qualified and responsible consultant to develop and manage a program providing Federal Transit Administration (FTA) required site reviews and compliance monitoring of the State’s FTA administered programs, including 5303, 5304, 5310, 5311, 5316, and 5317 grantees; to provide FTA required site reviews to ensure those subrecipients of NYSDOT administered Federal assistance comply with Federal requirements.

1.2 Background
Chapter V of FTA Circular 5010.1D, Grant Management Requirements, outlines FTA oversight to ensure grantee adherence to program and administrative requirements. The NYSDOT Program Guide for State-Administered Federal Transit Administration (FTA) Programs serves as a primary reference to assure continuity in implementation of oversight of the State-Administered Federal transit programs in the state of New York.

NYSDOT conducts its oversight program through risk assessments and site reviews for the State’s administration of Federal Transit Administration (FTA) Section 5310, 5311, 5303, 5304, 5316, and 5317 programs. Currently NYSDOT has 209 subrecipient entities, some of which are participants in more than one FTA program. Please see Attachment 14 for detailed Subrecipients Listing by location which can be found at https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities

The purpose of NYSDOT’s oversight program is to assess and audit the state of sub-recipients’ management practices and program implementation for compliance with Federal requirements and State requirements that do not conflict with Federal requirements. The program consists of: 1) Reviewing necessary documentation of procedures and practices for FTA and State funded facilities, equipment, and policies concerning operations; and 2) Reviewing records that validate these procedures.
2. PROJECT and CONTRACT OBJECTIVES

2.1 Project Objectives
The selected vendor will provide a comprehensive review based on criteria outlined in the RFP’s Scope of Services to ensure compliance with these program requirements.

The project objectives include, but are not limited to the following:
1. For the selected Consultant to review existing protocols, and offer a plan (draft and final) to transition the existing compliance program to a consultant based system for the next 3 year period.
2. To administer the updated review process under the direction of NYSDOT.
3. To assist NYSDOT and its subrecipients to comply with all applicable federal regulations.
4. To train, provide technical support, and assist FTA funded subrecipients and their operators.
5. For the selected Consultant to perform appropriate level of site reviews of up to 75 subrecipient site reviews per year over the 3-year contract.
6. To assist NYSDOT to produce ongoing documentation of compliance of the oversight responsibility in preparation for the FTA State Management Review (SMR) of NYSDOT.
7. To develop a web-based, externally hosted reporting and tracking system used by recipients, NYSDOT, and the selected Consultant to update and store required documentation and track oversight progress to support NYSDOT efforts to minimize compliance risk.

2.2 Contract Objectives
1. To hire a responsive, responsible, experienced, knowledgeable and qualified Consultant.
2. Contract Award: A single contract award shall be made under this RFP solicitation.
3. Disadvantaged Business Enterprise DBE Goals: To provide a participation opportunity for certified Disadvantaged Business Enterprises (DBEs) to meet/exceed the 18% DBE participation goal over the life of the contract.
4. Contract Term: The base term of the resultant agreement from this solicitation will be three years, with two optional one-year extensions to be exercised at the Department’s sole discretion. Attachment 1 contains the RFP’s Draft Contract’s Terms and Conditions for C031383. Expected start date is February 1, 2016.
5. Consulting Arrangements: Only one Prime Consultant will be retained for contract C031383. Subconsulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.

2.3 Minimum RFP Responsiveness Requirements
1. COMPLETE PROPOSAL. Any Firm that does not provide a complete proposal (complete Technical and Management submission and complete Cost submissions may be determined to be non-responsive and may be removed from further consideration prior to
the technical evaluation of proposals. It is NYSDOT’s sole discretionary determination as to whether a proposal is complete. It is recommended that the tables in RFP Section 4 be used to ensure all necessary documentation and attachments are in your technical and cost proposal submissions.

2. LATE PROPOSAL. Any proposal received after the submittal due date/time shall be deemed to be non-responsive, and shall become NYSDOT’s property. Late proposals will not be considered for contract award. Proposers that plan to deliver their proposals should ensure receipt, in NYSDOT Contract Management’s Bureau’s office, by the proposal due date/time stated in Section 6.4. Note that the deadline is for receipt of the proposal at NYSDOT’s office located at 50 Wolf Road, Albany, New York, not for the mailing or entrusting of the proposal to a delivery service.

3. RFP DRAFT CONTRACT. Acceptance of the RFP’s Draft Contract Terms and Conditions as is (see Attachments 1 and 2).

4. PLL FORMS (Mandatory Requirement). Submission of acceptable completed Procurement Lobbying Law forms (Attachment 3).

5. RFP Modification (Mandatory Requirement) Acknowledgement Form AOR (Attachment 13).

6. DBE GOAL. Submission of a proposal which meets/exceeds C031383’s 18% DBE goal or submission of an acceptable Good Faith Effort.

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

2.4 Method of Payment

In general, payments will be based on the acceptance of completed deliverables identified in RFP Section 3, Scope of Service (for exceptions see below). Additional work shall be paid for via the agreed-upon fully loaded labor rates proposed in Attachment 8. Deliverable pricing should include all costs, overhead, fee, profit, and travel expenses.

Requests for payment shall be made by the offeror on the basis of FIN 421, ‘Request for Consultant Reimbursement,’ forms prepared and submitted together with the deliverable item for which the payment request is being made. Advance submissions of electronic draft requests for payment are encouraged. All offerors/vendors are directed to register with the New York State Office of the State Comptroller to receive electronic payments per the Governor’s Directive.

Method of Payment for Task 6, Technical Assistance Help Desk staffing: Fully-loaded specific hourly rate reimbursement method billable on a monthly basis and due ten business days after the end of the month.

Method of Payment for Task 4.2 Site Visits: Fully-loaded specific hourly rate reimbursement method billable on a monthly basis and due ten business days after the end of the month. Back up documentation, including site visit start dates, arrival and departure dates and times, mileage, meal and hotel costs shall be included at NYSDOT’s request.
Method of Payment for Task 11, Transition Services, will only occur upon completion of all Task 11 services and shall only be required and occur if the Consultant is not designated for award of a contract to replace this contract.

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 2.0%, whichever is lower, will be used as a basis for increasing the hourly rates and/or deliverable prices. The rate adjustment will be effective on February 1 and calculated using the previous November Index, using Series ID PCU5412195412191 (other accounting services – non CPA firms). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

An example of the rate adjustment calculation is as follows (all numbers and titles used are for illustrative purposes only):

Auditor 2/1/18 - 1/31/19 Billing Rate $9.00/Hour
November 2018 PPI Index (PCU541219541219) 132.1
November 2017 PPI Index (PCU541219541219) 130.0
Index Point Change 2.1
Divided by previous Index 130.0
Percent change, rounded to nearest tenth 1.6%
Auditor 2/1/19 – 1/31/20 Billing Rate ($9 x 1.016) $9.14/Hour

If the actual start of the contract is substantially different than the above estimated date, then the effective date for the rate adjustment will be similarly changed.

The State reserves the right to negotiate a lower rate adjustment than stated above for the two additional one-year extensions.

2.5 TITLE VI ASSURANCE

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

2.6 Equal Opportunity

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

3.1 Tasks
The selected Consultant (or selected Consultant team) shall perform the following Tasks to develop and deliver the required services and deliverables.

TASK 1. Current NYSDOT Site Visit Program Review

This review is to understand the current NYSDOT methodology and evidence for conducting site visits to maintain FTA compliance and to identify deficiencies among subrecipients.

1. The selected Consultant shall review, and use as a guide in the program oversight process, the following materials from the NYSDOT Policy and Procedures library; Federal Programs (Remote) Compliance Review Manual, Site Visit Procedures 5310/5311/5316/5317 Programs Manual, Procurement Checklist, miscellaneous short forms, and system review letters. These documents are available as attachments 14-25.

2. The selected Consultant shall review the previous documentation of remote and on-site reviews of rural and small urbanized public transportation subrecipients (Section 5311) and operators who receive federal Section 5310, 5303, 5304, 5316, and 5317 funding. (See Attachment 20a, 20b, 20c).

3. The selected Consultant shall also have access to files for evaluation and compliance based on the NYSDOT risk assessment methodology requirements. The selected Consultant shall review existing protocols, and offer a Draft Outline to transition the existing compliance program to a consultant based system for the next 3 year period. Upon approval of the outline by NYSDOT, the selected Consultant shall prepare an Assessment Report (draft and final) including the outline, an implementation schedule of any changes and recommendations on what changes are needed to the NYSDOT oversight program. This may include modifications to the current process and documents used within the Policy and Procedure Library.

4. The Assessment Report’s recommendations and implementation schedule, as laid out in tasks 3 and 4, should be based on the FTA State Management Review (SMR) 3 year cycle. The Assessment Report shall include a 3 year calendar, beginning with the timeline to implement recommended changes, if any. The remainder should detail how the selected Consultant shall execute a comprehensive oversight program within this timeframe.

5. The initial Draft Assessment Report shall be completed within 60 days after formal Notice to Proceed has been given by NYSDOT (after contract award) and supplied to the NYSDOT coordinator for review and approval. This shall include a NYSDOT directed list of 10 pilot sites to use to test and refine the process. Any recommended changes should include a timeline to implement, not to exceed 30 days after approval of those changes. NYSDOT will share review comments on the Draft Assessment Report. The selected Consultant shall finalize and deliver the Assessment Report.
Deliverables

The consultant shall generate the following three reports associated with Task 1;

1.1 An Outline to transition the existing compliance program to a consultant based system for the next three year period shall include a bulleted list of major points where changes need to be made or are missing in the methodology.

1.2 Draft Assessment Report - will fully develop the bulleted list in the draft outline to include analysis of each oversight topic and the recommended path to updating the procedures to align with the Federal requirements.

1.3 Final Assessment Report - will incorporate comments from NYSDOT as the final accepted document.

TASK 2. Document Library

Upon approval of the NYSDOT coordinator, the selected Consultant shall update and modify the documents forms used for compliance monitoring. These shall be managed in the oversight repository (Task 9) to be developed by the selected Consultant and available to the Consultant, NYSDOT, and the sub-recipient community with appropriate permissions. The repository’s online location shall be remote from NYSDOT’s online environment (hosted outside of NYSDOT’s firewall). Currently the NYSDOT Library, as reflected in RFP Attachments 14 through 26, can be accessed under C031383 at: https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities.

Deliverables

2.1 Draft and Final Update: Based on deliverables in Task 1, the consultant shall prepare a draft update to the procedures and documents for oversight and sub-recipient compliance with Federal Regulations. This document will be reviewed by NYSDOT and comments incorporated into the final working version of the library.

2.2 Annual Review and Update: The consultant will also allocate time to review annually and update as needed.

Additional documents may be added to the library as needed. Once established, the selected Consultant shall be responsible to maintain and update the library located at the oversight repository provided by the selected Consultant in accordance with the current FTA guidelines and NYSDOT direction.

TASK 3. Ongoing Risk Assessment Process

The selected Consultant shall augment and incorporate site review schedules by integrating a two-step on-going assessment process. Implementation of an assessment process should identify for
each program a series of criteria that would measure the need and timing for a full site visit for up to 75 subrecipients a year, identified in Task 3, to ascertain the subrecipients’ programs and practices are in compliance with Federal regulations.

Step 1: Desk Review

Beginning with a prioritized list developed in cooperation with NYSDOT, the selected Consultant shall request necessary materials and reports from all subrecipients and shall perform a preliminary review prior to site visits and as part of the assessment validation. Sections include:

- Program Management-Legal, Financial, Technical
- Satisfactory Continuing Control
- Federal Procurement Procedures
- Civil Rights and Title VI
- DBE
- EEO Requirements
- Charter Bus Policy
- School Bus Policy
- ADA Requirements
- Drug and Alcohol Policy Requirements
- System Safety Practices

1: This section is currently outsourced by NYSDOT staff. The successful selected Consultant shall not be responsible for this section. The selected Consultant, per NYSDOT Coordinator request, shall place materials and reports generated from it in the Oversight repository.

Step 2: Desk Review Report

For each assessment of an FTA grant sub-recipient, the selected Consultant shall provide a report on the initial desk review including a recommendation of risk level concerning the items that require any follow-up action including a full site review to NYSDOT for review and comment.

Deliverables

3.1 The consultant shall assemble relevant material from NYSDOT and as appropriate through communications with sub-recipient, including a phone interview, to prepare assessment of risk level to oversight issues. The Consultant will submit a Desk Review Assessment for each subrecipient that shall include relevant comments on documents and procedures that require updates.

TASK 4. Develop & Implement Site-Visit Plan

TASK 4.1 Development of Site Visit Plan
Based on the results from ongoing desk reviews conducted in Task 3, the selected Consultant shall develop and implement a site-visit plan (with logistics and schedule) that shall perform and deliver up to 75 site visits per year. NYSDOT is seeking expertise regarding achieving economies and efficiencies regarding a recommended site visit plan, schedule and associated costing to deliver up to 75 site visits per year.

**TASK 4.2 Performing Site Visits**

The selected Consultant shall perform cyclical on site reviews of NYSDOT’s FTA grant subrecipients (see Attachment 14) based on findings in Task 3, and with direction from the NYSDOT contract coordinator. The Site visit shall revolve around the major topics developed during Task 3 and also review documentation for purchases, sub-contracts and other pertinent information. NYSDOT staff may accompany the selected Consultant to the site visits, or participate at the entrance and exit conference via telephone/WebEx. The selected Consultant shall schedule site visits, clustering these visits to reduce travel expenses. The selected Consultant shall use the NYSDOT Field Report, or similar agreed upon form, to document a summary of audit findings and recommendations from each visit and prioritize future activities concerning the subrecipient. This review shall be stored in the Oversight repository. After each site visit, the selected Consultant shall issue an exit report of deficiencies to the sub-recipient detailing findings and required corrective action. This information shall be recorded in the Oversight Repository and updated as materials are received to close any findings.

**TASK 4.3 Site Visit Reports**

The Consultant shall assemble a draft site visit summary report for each location visited that week and submit to the NYSDOT Project Manager for review and comment. After NYSDOT approval, the Consultant shall submit the finalized summary report.

**Deliverables**

1. The Consultant, in conjunction with TASK 3 and with approval of the NYSDOT coordinator, shall develop an individual Site Visit Plan for each subrecipient to be visited, assigning a low, medium or high level of effort for each subrecipient.

2. The Consultant shall conduct individual site visits, consolidating travel to maximize site visits within a geographic area for each work week.

3. The Consultant shall assemble a draft site visit summary report for each location visited submit to the NYSDOT Project Manager as completed for review and comment. After NYSDOT approval, the Consultant shall submit the finalized summary report.

**TASK 5. NYSDOT Staff/ Sub-Recipient Training**

**TASK 5.1 NYSDOT Staff Training**

During year 1 of the contract, the selected Consultant shall provide a 2 day, 7 hour per day training session for NYSDOT staff based on the changes incorporated from findings from Task 1.
Training shall focus on the updated compliance tools developed from Task 1, and how the selected Consultant shall integrate these changes with NYSDOT staff and subrecipients. The selected Consultant shall prepare draft training materials for NYSDOT review and shall finalize said materials after NYSDOT approval. The Training location will be the NYSDOT main office, 50 Wolf Rd., Albany N.Y.

**TASK 5.2 Subrecipient Training**

Throughout the three year Contract term, the selected consultant shall provide up to nine training sessions for subrecipients. Each seven hour session shall be scheduled at three centralized locations to maximize attendance. The tentative training locations will include one in the Albany area, one in the lower Hudson Valley, and one in the central/western part of the State each year. These training sessions shall focus on any new changes from FTA as a result of new legislation or implementation of the MAP-21 changes, as well as an overview of the most frequent findings by the selected Consultant, including tips, examples and best practices to address these topics. For all training sessions, the selected Consultant shall provide all meeting materials including presentations, lesson plans/documents. NYSDOT shall provide all meeting logistics including the location/facility, equipment and peripherals, and manage the outreach and registrations. For proposal evaluation purposes, the Consultant shall assume nine training sessions in their Cost Proposal (three training sessions per Contract year).

**Deliverables**

5.1 The consultant shall provide a NYSDOT staff training session for two full work days within the first Contract Year. The consultant shall prepare a Draft of the Agenda and all training materials and submit it to the NYSDOT coordinator for approval, 30 days before the date of the training session.

5.2 The consultant shall provide annual subrecipient training for a full work day for up to nine separate sessions (three training sessions per Contract year). The consultant shall prepare a Draft of the Agenda and all training materials for each training session, and submit it to the NYSDOT coordinator for approval, 30 days before the date of each training session.

**TASK 6. Technical Assistance**

The selected Consultant shall establish and maintain a toll free telephone line and email address, for assisting subrecipients. The Oversight Repository should allow for and track frequently asked questions and answers to those problems. The selected Consultant shall respond to subrecipient’s questions or requests for information within 24 hours of receipt, excluding weekends and holidays. In addition, the selected Consultant must maintain a communication log of all written and verbal requests for assistance, noting all dates/times, subject matter, summary of assistance provided, and an accounting (amount of labor and/or materials) of assistance provided.

**Deliverables**

6.1 The consultant shall plan for 2 hours each work day fielding calls, maintaining log, and track frequently asked questions.
TASK 7. Recommended Changes to State Management Plan for Sections 5310 and 5311

Based on the new or revised information derived from Tasks 1 through 4, the selected Consultant shall recommend changes to the State Management Plans and to NYSDOTs internal procedures. This shall include recommendations that provide a “value added” element, and any appropriate changes and additions to encompass the completion of the Section 5316 and 5317 programs and their incorporation into the 5310 and 5311 programs.

Deliverables

7.1 The consultant shall generate a report of recommended changes and additions to the 5310 and 5311 State Management Plans within 12 months after contract execution.

TASK 8. Reporting

The selected Consultant shall provide the NYSDOT Coordinator with reports on a regular basis (written, via e-mail, with an initial draft and final copy after NYSDOT review/acceptance). At minimum, the reports shall be delivered on the following schedule and include:

- Monthly Report (due on the first day of the following month)
  - Status Report
  - Billing Report (hours, expenses)
  - Site Visits Completed in prior month
  - Site Visits Scheduled (next two months)
  - Red Flag Report by sub-recipient and topic, with recommended action
  - Desk Review Assessments
- Quarterly Report (due fifteen days after each quarter)
  - Summary of Subrecipients Visits with Findings
  - Action Items Completed, Pending, Overdue (based 30/60/90 day response)
  - Summary of Technical Assistance Provided (by topic)
  - Special Projects Based Output
  - Technical Assistance Report (Communication Log)
- Annual Report (draft 30 days prior to Contract Year; Final due 30 days after Contract Year End)
  - Summary of Site Visits Performed
  - Upcoming Calendar of Activities
  - Training Schedule
  - Budget Forecast
  - Analysis of Deficiencies with Suggested Measures to Correct

2: This report shall include all subrecipient operators. It shall include sufficient detail so that NYSDOT staff can evaluate the review process and prioritize the selected Consultants’ activities as resources allow.
3: The selected Consultant shall maintain a phone and email log of all communications and make it available for inspection as needed. At minimum, the log shall include the date, time, subject, and participant name(s) and organization(s) of each communication.

NOTE: Should the contract end after three years, the 3rd Annual Report shall be labeled the Final Annual Report. Should the contract be extended for year 4 and/or year 5, the 4th and or 5th Annual Report, respectively, shall be labeled the Final Annual Report.

Failure of the Consultant to provide the above reports complete and within the time frames specified will result, at NYSDOT’s discretion, in a penalty of 10% of the invoice amount for that specific report. All penalties will be billed as an offset against the relevant invoice.

All written correspondence to subrecipients and operators shall be copied to the NYSDOT Coordinator and stored on the oversight repository, to be filed in a “Correspondence Log”, cataloged by subrecipient and chronologically.

**Deliverables**

8.1 The consultant shall annually produce 17 reports (12 monthly, 4 quarterly, 1 annual) to include the required information as listed above.

**TASK 9. Web-Based Portal for Tracking Oversight Process (Oversight Repository)**

The Consultant shall develop and host a stand-alone, limited access web portal for NYSDOT oversight reporting and tracking referred to as the “Oversight Repository”. The site should include a library of files, communications, and reporting tools that allow subrecipients to submit documents online. It should also include a dashboard for NYSDOT to track, monitor, and prepare reporting documents.

The website, the dashboard, and accompanying data and documents shall be the sole property of NYSDOT; transferrable upon completion of the contract period or upon NYSDOT request.

**Deliverables**

9.1 The consultant shall develop, install, implement, manage, monitor and maintain the Oversight Repository. The portal design shall include a security and backup system to mitigate threats to the confidentiality, integrity, and availability of the system data. System testing and acceptance of the working repository will fulfill the deliverable.

9.2 Maintain and update the Portal on a weekly basis, including back-ups, system monitoring, registering users and managing access for users, and any operational, design, and performance issues.
TASK 10. Special Projects

During the contract period, the selected Consultant may be requested to help NYSDOT with certain special projects relating to the design, implementation, or administration of the FTA oversight program for site visits. These projects shall incorporate Federal and State changes into NYSDOT documents and methodologies, determine their effect on the programs and processes, as well as identify issues and trends from findings.

For proposal development and cost submission purposes, the following is an example of what some of the Special Projects may be. Based on need, NYSDOT is not limited to these projects.

- a. FTA Circular Updates and impact to oversight process
- b. FTA State Management Review changes
- c. Production/management of newsletter/quarterly communication with subrecipients
- d. Review/recommend changes to NYSDOT Payment/contracting forms and reporting documents as a result of oversight reviews
- e. Development of a model Local Standard Operating Procedure (SOP)

The implementation of the Special Projects Fund shall be at the sole discretion and direction of the NYSDOT Project Manager.

Special Project Services Work Order Process

Work Order costs will be based on labor hours using rates not to exceed those established in the Attachment 8 ‘Cost Proposal Workbook’. Work Order costs must be reasonable, supportable, auditable, and in the best interest of the State. The Work Order process is defined below.

A. Work Order Input

NYSDOT will inform the consultant of its need for an Additional Special Project Service via a Work Order Input Form. The Work Order Input Form will capture (at minimum) the Additional Service’s:

- Name and brief description of its operation, function or service
- Key individuals needed to execute the Special Project

B. Work Order Project Plan

The consultant, following discussions with NYSDOT, will use the provided Work Order Input form to develop a Work Order Project Plan. Multiple iterations of the project plan may be necessary. The Work Order Project Plan will include (at minimum):

- Scope
  The Work Order Plan shall include a description and scope for the work order.
- Schedule
  The Work Order Plan shall include the schedule for the implementation of the work order. The schedule shall include tasks, milestones, resources, and deliverables.
- Resources
The Work Order Plan shall include a description of the resources that will be used to implement the work order. The utilization of the resources by labor hours shall be indicated on the schedule provided as part of the work order.

- Cost
  The Work Order Plan shall include a description of the costs associated with implementing the work order.

- Deliverables
  The Work Order Plan shall include a description of the deliverables that will be provided as part of implementing the work order. The timing of the deliverables shall be indicated on the schedule provided as part of the work order.

C. Work Order Approval

When a Work Order Quote has been agreed upon, it will be submitted for approval to NYSDOT management, for approval, including possible review by the NYSDOT Contract Management Bureau to confirm the reasonableness of price. Upon NYSDOT approval, NYSDOT will issue a formal Work Order Approval, containing all the information on the Work Order Plan and providing formal authorization for the Consultant to proceed with perform the specified task in the Work Order Plan.

TASK 11. Contract Transition

This task shall only be required if the Consultant is not designated for award of a contract to replace this contract. To ensure a seamless transition between the Consultant and a future designated Consultant, NYSDOT will establish a transition period during which the Consultant will work with the future designated Consultant to provide the necessary coordination and services to maintain NYSDOT FTA Program Compliance Monitoring Services without interruption of service during the transition.

The selected consultant shall construct a 90 day transition plan, ready to execute prior to completion of the contract period (or extension(s), if any). The plan shall ensure a transfer of the FTA Program Compliance Services Program without interruption of service if the Consultant is not designated for award of a replacement contract.

At the discretion of the NYSDOT Project Manager, the Consultant will participate in meetings with partner agencies and the future designated Consultant to address any concerns prior to transition.

The plan shall identify the operational requirements during the transition and provide technical support for any oversight systems malfunctions and uncompleted subrecipient inspections. It shall detail a schedule of staffing necessary to transition the program, and include an interim status report.

The plan shall include the process to transfer all physical and intellectual assets. The Consultant shall return to the NYSDOT Project Manager all NYSDOT property including the Oversight Repository, Portal and Library.
At the end of the contract, the Consultant shall remove such data from any electronic equipment owned by the consultant.

**Deliverables**

11.1 Produce a 90 day transition plan that identifies the required steps to transfer the FTA Program Compliance Monitoring Services contract to another party. It shall include an outline of work to be completed, a tentative schedule of events, and personnel assignments. The proposer shall identify how their plan will process an effective transfer of all aspects of the contract.

3.2 Deliverables

All task-specific deliverables are defined above. All records/reports must be in Word, Excel, PDF or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via e-mail or managed file transfer (for larger sized documents). Should NYSDOT want to review records pertaining to this contract at the selected Consultant’s offices, NYSDOT shall be given access to those files upon reasonable notice.

The Consultant must maintain all records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. Per the contract, all records produced under this contract are property of NYSDOT. Should the work between NYSDOT and the selected Consultant be terminated, all records shall be turned over to NYSDOT or its designated recipient.
4. PROPOSAL SUBMISSION FORMAT AND CONTENTS

4.1 Overview

For the purposes of separate evaluation, each proposal must be submitted in a separate Technical and Management proposal submittal and a separate Cost and Contract proposal submittal. Each proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently. The Technical and Management submittal can be evaluated strictly on the basis of its merits, focusing on the firm’s responsiveness to the RFP, including mandatory requirements. 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. Technical information is not to be included in the Cost proposal. Cost information is not to be included in the Technical proposal.

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

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

1. Proposals must be printed on standard 8½ by 11-inch white paper. Pages can be printed double-sided.
2. Proposals must be organized in accordance with the format set forth in the RFP document.
3. Proposals must be self-contained and shall not reference web-links.
4. Proposals should strive to consistently use 12 point font size. Smaller font sizes are allowed in footnotes or table headers but not the text itself.
5. Illustrations that support the text must be simple and direct and be either sized to fit on 8½ by 11-inch paper or printed on 11 inch by 17 inch paper as long as the pages are folded to the 8½ by 11-inch size, and fold out from the non-bound edge. Illustrations must be reproducible in black and white without obscuring their distinctive information; photographs must be black and white.
6. NYSDOT requires technical and cost proposals in separate 3-ring binders.
7 Consultants must deliver hardcopy proposals to the NYS Department of Transportation’s Contract Management Bureau no later than 12 noon ET on the specified RFP proposal due date stated in Section 6.4. Consultants mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals.

8 NYSDOT will not accept faxed or e-mailed complete proposals.

9 NYSDOT may automatically disqualify any offering that is not in compliance with the submission criteria.

4.2 Technical and Management Proposal Submittal Requirements

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

<table>
<thead>
<tr>
<th>Technical and Management Proposal Submittal Checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Six (6) printed and bound hard copies with tabbed sections, plus one complete copy on CD/ or thumb drive in MS Word 2007 compatible format</td>
</tr>
<tr>
<td>☑ Securely sealed packaging with label (Consultant Name, RFP #C031383; Technical Proposal)</td>
</tr>
<tr>
<td>☐ Title Page: Clearly labeled with the consultant’s name, address, email address and telephone number and the words “FTA PROGRAM COMPLIANCE MONITORING SERVICES CONTRACT C031383”</td>
</tr>
<tr>
<td>☑ Signed Cover Letter on official business letterhead</td>
</tr>
<tr>
<td>☐ Table of Contents identifying each major section and initial-page numbers</td>
</tr>
<tr>
<td>☐ Organization Chart with Project Management Plan</td>
</tr>
<tr>
<td>☐ Technical and Management Approach</td>
</tr>
<tr>
<td>☐ Detailed Scope of Services</td>
</tr>
<tr>
<td>☐ Project Schedule</td>
</tr>
<tr>
<td>☑ Complete and submit Attachment 6 Company Experience and References</td>
</tr>
<tr>
<td>☑ Complete and submit Attachment 7 Key Personnel Experience and References</td>
</tr>
<tr>
<td>☑ Complete and submit Attachment 12 Staffing Level of Effort By Task</td>
</tr>
<tr>
<td>☑ Information on Proposed Portal Design, Security and Backup System and Dashboard</td>
</tr>
</tbody>
</table>

The consultant must submit six (6) paper copies and one complete soft copy on a CD or thumb drive (in Microsoft Word 2007 compatible format) — each clearly identified on the cover or label with the consultant’s name and the words: FTA Program Compliance Monitoring Services Contract #C031383 Technical Proposal” Proposals must be securely sealed and clearly labeled. Any outside packaging containing technical proposal copies must be clearly marked with the words “FTA Program Compliance Monitoring Services Contract #C031383.” In the case of a discrepancy between the electronic proposal and hard copy proposal, the hard copy proposal shall take precedence.

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

NYSDOT reserves the right to make clarifications to the scope of services to be performed under this Agreement, via RFP Schedule A, Scope of Services, during contract finalization with the selected Consultant.

**REQUIRED TECHNICAL PROPOSAL SECTIONS:**
Title Page: Indicate the name, mailing and e-mail addresses and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal. Title shall be: FTA Program Compliance Monitoring Services Contract #C031383

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

1. The signature of an official authorized to bind the consultant to all of the RFP’s provisions.
2. A statement that, if awarded the contract, the consultant will comply with all the requirements set forth in the RFP.
3. A statement that the offered named key personnel will be provided once NYSDOT issues a notice to proceed. The NYSDOT does not allow unapproved substitutes.
4. Any claims of confidential and proprietary information should also be identified and addressed in the cover letter. (See Section 4.1)
5. The following information regarding the consultant’s official representative for its proposal:
   1. Name of consultant’s official representative(s)
   2. Title
   3. Name of company
   4. Address
   5. Telephone number
   6. FAX number
   7. E-mail address of the consultant’s representative(s)
      (If there are multiple offices of the consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.)
6. The full, legal names of all subconsultants involved in the consultant’s response.
7. A brief description of how attainment of the 18% DBE goal for contract #C031383 shall be managed and met over the life of the contracts.

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

Organizational Chart and Project Management Plan:
Provide a one-page Organizational Chart showing the names and titles of the proposed Project Manager and all personnel identified in Attachment 12, including any subconsultants.
Discuss your proposed Project Management Plan to ensure effective and efficient delivery of services (including managing subconsultants) while meeting the project’s objectives. At a high level, discuss the proposed Consultant Staffing Plan, as well as maintaining that level of consultant resources over the life of the contract. All consultant replacements are subject to NYSDOT’s prior review and approval. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements.
Present a DBE Management Plan, one which ensures that delivery of the contract’s 18% percent DBE goals are managed and met over the 3-year base term of the contract. Discuss the role any DBE subconsultant would have in the delivery of the RFP’s Scope of Services.

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

Consultant Firm and Proposed Key Personnel Experience:
The qualifications and prior experience of the selected Consultant and proposed personnel are of great importance to NYSDOT. Direct, prior and relevant experience in performing similar oversight and FTA grantee regulatory audits described in this RFP is highly desirable. Include the resumes of the Consultant Project Manager and all proposed personnel as indicated in Attachment 12. All proposed personnel identified in Attachment 12 are defined as Key Personnel for this project. Please limit each resume to 2-3 pages. Indicate personnel assigned to this account that are working, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients. (Attachments 6 and 7). NYSDOT reserves the right to request information from any reference check source so named, as well as contact additional relevant references. Experience not directly related or comparable to the RFP’s Scope of Services will not be evaluated.

The following experience requirements describe what NYSDOT considers to be minimally required experience for the Consultant’s Project Manager:

1. A minimum of three (3) years of FTA Program Compliance Monitoring experience with a minimum of two (2) years experience with providing instructional training and technical assistance must be demonstrated and supported by verifiable references. Double counting of time is not allowed.

2. Experience with at least two relevant state departments of transportation or at least two transit or motor carrier operators regarding FTA compliance monitoring programs.

NYSDOT will allow experience working with quasi-governmental agencies or demonstrated experience with a variety/mixture of agencies provided that said experience is relevant to this RFP.

Specific examples documenting minimum qualifications must be provided including the name(s) of the client(s) for which the work was performed; the client contact person name, email address and phone number; and a brief description of the work for which the key person was primarily responsible for; and duration of work. Document this experience in Attachment 7.

Include reference or contact information for verification purposes. NYSDOT reserves the right to request information from any source so named. NYSDOT also reserves the right to contact additional references should those provided fail to adequately confirm a firm’s offered experience. NOTE: Prior project experience not directly related or comparable to the RFP’s Scope of Services will not be evaluated.

Previous, comparable work experience with NYSDOT is eligible.
**Approach, Scope of Services and Project Schedule:**

Present your approach to ensure all project objectives are met and requested services and deliverables provided. Describe your understanding of project requirements contained in the Scope of Services. Describe your approach for preparing for and implementing NYSDOT’s Scope of Services as outlined in Section 3 of this RFP.

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

Include a discussion on the important issues involved with delivering the requested services. Identify potential complications or difficulties that might be encountered in the implementation of required services along with suggested resolutions for each. Include enough substantive discussion to demonstrate an understanding and comprehension of NYSDOT’s project scope of services and objectives and familiarity with applicable laws, FTA regulations, rules, etc.

Present a detailed scope of services, based on what’s presented in RFP Section 3. NYSDOT is seeking the selected Consultant’s expertise to craft a scope of services to meet the RFP’s objectives in an effective and efficient manner. Provide a detailed Scope of Services which describes by task what will be done, by whom (detailing hours) and schedule. Identify specific methods to be used to complete each project requirement. Present succinct details to ensure NYSDOT gets a complete understanding of your proposed scope. Proposing tasks or work not identified in the RFP’s Scope of Services poses some risk unless sufficient linkages are described. Present a detailed consultant staffing plan at the task and subtask level (including hours by person). Note: All consultant replacements are subject to NYSDOT’s prior review and approval. Discuss the role any other subconsultant (if any) would have in the delivery of the RFP’s Scope of Services.

Describe the level of interaction contemplated between the Consultant’s management team and NYSDOT management. Describe the level of interaction contemplated between the Consultant’s team and FTA grant subrecipients (based on vehicle fleet size). Describe the level of interaction contemplated between the Consultant personnel, DBEs and other subconsultants.

Based on your proposed Approach, proposed Scope of Services, proposed personnel and your expertise, present a recommended schedule to deliver all of the requested services per the RFP’s requirements over the 3-year base term of the contract. NYSDOT will consider the recommended schedule proposed by the selected Consultant during contract finalization, with this schedule subject to revision and fine-tuning.

**Portal Design, Dashboard, Security And Backup System**

Consultants should indicate the type of portal design, security and backup system and dashboard they propose in their Part I Technical Proposal and their schedule to complete installation of these systems.

**Attachment 12 Instructions**

**Staffing Table by Task Without Rates/Costs.** Present a table which shall list all descriptive job titles for the staff to be assigned to this project and to which tasks they are assigned to, depicting
the proposed level of effort by percentage per task to deliver all of the services required by this RFP. **No rate or cost information is to be presented in this schedule.** Example titles included in Attachment 12 should be deleted and actual titles being proposed substituted. The table shall be prepared to distinguish anticipated assignment by project section/task. **THIS TABLE MUST BE INCLUDED IN YOUR TECHNICAL PROPOSAL SUBMISSION – DO NOT INCLUDE THIS TABLE IN YOUR COST PROPOSAL SUBMISSION.**

**Staffing Level Penalties**

The personnel (as identified in Attachment 12) proposed by the designated Consultant are an important factor in the evaluation of its proposal. Thus, the Department expects that the personnel proposed will be available at the start of the contract term. As a result, any personnel proposed by the designated Consultant that does not perform the required work under the contract for the initial 30 calendar days after the effective date of the Notice to Proceed will, at NYSDOT’s discretion, result in a $10,000 charge per personnel title.

In addition, if at any time during the term of the contract (except for the initial 30 day period specified above) a member of the Consultant’s personnel needs to be replaced, the Consultant shall have 30 calendar days to submit a qualified Candidate (same level of experience and expertise) to NYSDOT for approval. In the event the Consultant is unable to provide a qualified Candidate within 30 calendar days, and NYSDOT must use in-house NYSDOT staffing, or NYSDOT must hire a separate consultant to provide the personnel, NYSDOT will, at its discretion:

a. Charge and bill the Consultant $100/hour for the use of in-house NYSDOT personnel, or

b. Charge and bill the Consultant a 10% administrative fee on top of and in addition to whatever NYSDOT is billed by an out-of-house consultant. If, for example, NYSDOT must hire a separate consultant to provide a service at $100/hour, NYSDOT will charge and bill the Consultant $110.

The determination that a Candidate is “qualified” is the sole decision of NYSDOT. All penalties specified above will be billed as an off-set against future Consultant invoices.

4.3 Cost and Contract Proposal Submittal Requirements

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

<table>
<thead>
<tr>
<th>Cost and Contract Proposal Submittal Checklist</th>
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<tbody>
<tr>
<td>† Three (3) Printed and bound hard copies plus complete copy on CD or thumb drive in MS Excel and PDF compatible format. Identify the name, title, address, email, and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation</td>
</tr>
<tr>
<td>† Securely sealed packaging with label (Consultant Name, RFP #C031383; Cost Proposal)</td>
</tr>
<tr>
<td>† Title Page: Clearly labeled with the consultant’s name, address, email address and telephone number and the words “FTA Program Compliance Monitoring Services C031383”</td>
</tr>
<tr>
<td>† Table of Contents</td>
</tr>
<tr>
<td>†</td>
</tr>
</tbody>
</table>
| † | Complete and submit one set of **Attachment 3** Procurement Lobbying Law Compliance Forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offeror Disclosure of Prior Non-Responsibility Determinations).  
   a. These two forms are required with a firm’s RFP Response.  
   b. Enter contract number on each form  
   d. **Note:** Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award |
| † | Required Deliverables, Labor and Expense Cost information (Attachment 8) |
| † | Complete and submit **Attachment 9**, DBE Participation Information Form |
| † | Complete and submit (if applicable) **Attachment 10**, DBE Subconsultant Participation Solicitation Log AND Letter of Explanation of Non or Partial DBE Goal Attainment |
| † | Complete and submit **Attachment 11** Non-Collusive Bidding Certification |
| † | Complete and submit Attachment 13 Form AOR |

Your cost proposal consists of two sections: (1) the Cost Section which includes (a) a Deliverables Section, which includes all the costs for delivering the tasks described in the Scope of Services (Section 3) and (b) the Operations Cost Section, which sets forth the proposed fully loaded labor rates for performing the Site Visits, Technical Assistance and Special Projects required to deliver the Scope of Services; and (2) the Contract Section, which provides the required Consultant certifications, information and RFP administrative forms. At least one copy must contain original signatures. Cost information is **not** to be included in the technical submittal and Technical and Management information is **not** to be included in cost submittal.

**Title Page:** indicating the name, mailing and e-mail addresses and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal.

**Table of Contents:** Cost proposal sections shall be divided by labeled tabs. Provide a Table of Contents identifying each section and subsection plus any attachments.

**Cost Sections:** Provide an all requested cost information using the RFP’s attachments contained in **Attachment 8**.

**DELIVERABLES SECTION:**

Provide a cost for each deliverable described in Section 3, the Scope of Services and as indicated in Attachment 8 (Excel spreadsheet). The proposed cost for each deliverable should include all costs associated with its delivery.

**PROPOSED SPECIFIC HOURLY RATE COST SECTION:** Provide a proposed salary schedule which will list an all inclusive, fully-loaded hourly rate (which includes salary, overhead, travel, lodging, meals, and fee) for each task which is based on hourly rates. Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm’s proposed hourly rates. Propose one hourly rate per task which will apply for each of the three years of the Contract.
NYSDOT shall not directly reimburse the selected Consultant (and any of its sub consultants) for the cost of local living and commuting (such expenses are to be included in the consultant’s overhead rate). In addition, any costs associated with general continuing education, certification classes, or educational and professional activities are not reimbursable or chargeable to the project.

**Contract Sections:**

**ATTACHMENT 2:** Each proposer is required to accept the terms and conditions contained in the RFP’s draft contract enclosed as **Attachment 1**. Complete and submit the “Consultant Information and Certifications Form,” included as **Attachment 2** to this RFP, to indicate their acceptance of all of the terms and conditions contained in the draft Agreement. Altering this form 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. **Should any firm take an exception to any of the draft contract’s terms and conditions, the proper method of communicating such is prior to proposal submission during the RFP’s Question and Answer period. NYSDOT will not entertain any RFP draft contract exceptions brought to its attention after the proposal due date or during contract negotiations. Please ensure that the proper parties read and understand all of the terms and conditions contained in RFP Attachment 1.**

**Attachment 2** also requires the signature of an official authorized to bind the offeror to all of the RFP’s provisions, a statement certifying that the consultant’s proposal shall remain valid for at least 365 days, a statement that, if awarded the contract, the offeror will comply with all the requirements set forth in the RFP, including the contract terms and conditions in the Contract Provisions section, the New York State and Federal Required Contract Clauses, Proposer Responsibility reporting and filing requirements, Procurement Lobbying Law requirements, and Consultant Disclosure Legislation reporting and filing requirements, except as may be hereinafter modified and accepted by NYSDOT.

**Consultant Identification Number (CIN):** All respondents to this solicitation must reference their Consultant Identification Number (CIN) in your Cost proposal (**Attachment 2**).

If an offeror does not have a CIN and they are selected for contract award, they will be required to obtain one through the following NYSDOT Web site prior to finalization of the contract: “How to Register a New Consultant Firm with NYSDOT” at: [https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions?nd=nysdot](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions?nd=nysdot)

**SFS Vendor ID Number**

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

**DBE PARTICIPATION (ATTACHMENTS 9 and 10):** Interested proposers should verify their attainment of contract’s DBE subconsultant participation goals by completing and submitting the Attachment 9 DBE Participation Information form. Provide the full legal names of all certified DBE consultants (prime and/or subconsultant). The 18% DBE goal for this contract can be met by either subcontracting opportunities, by delegating a portion of the prime consultant’s work, or a combination of these.
Firms that offer a proposal under this solicitation may meet or exceed the 18% DBE contract goal. To count toward the 18% DBE contract goal, any offered DBE firm must be currently NYSUCP DBE Directory certified (Biznet website: http://www.nysucp.net/). Out-of-state DBEs are not automatically acceptable and must be acceptable to NYSDOT before proposal submittal (successfully go through New York State’s DBE certification process).

If the proposal does not meet the 18% percent DBE participation contract goal, the firm must provide acceptable evidence of a good-faith effort by completing Attachment 10 DBE Subconsultant Participation Solicitation Log.

Additionally, if the firm does not meet the specified contract DBE goals, the firm must include in its submission a DBE Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or in part), which serves to substantiate the firm’s good faith efforts. The letter should include sufficient justification as to why the goal was not met or was only met partially and should at a minimum address the following factors:

1. the potential firm’s method of accomplishing the work,
2. the subcontracting opportunities associated with the proposed approach and scope of services,
3. the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

Prime consulting firms are reminded that DBE participation can be via delegation of discrete commercial useful functions and via provision of part of the work being provided by the Prime Consultant.

Additionally, any Prime Consultant certified as a DBE who submits a proposal is not relieved from seeking participation of certified DBEs for sub-contractible services in this solicitation (failure to acceptably comply with the RFP’s DBE requirements could lead to proposal dismissal). In these situations, it is a proposal requirement that unless DBE outreach efforts by the Prime result in proposed DBE subconsultants, the Prime Consultant must provide acceptable evidence of a good-faith effort by completing Attachment 10 DBE Subconsultant Participation Solicitation Log to be deemed responsive.

The above forms and letter must be included in Section 2 of the Cost Proposal submission. Firms are advised to refer to RFP Section 5 for the procedure NYSDOT will follow in evaluating a firm’s proposed DBE participation. During the review process, which will include examination of the adequacy and the robustness of a firm’s Good Faith Effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive and may be removed from further consideration. NYSDOT reserves the right to ask clarification questions on a firm’s DBE proposal. DBEs certified out of New York State are not automatically eligible for consideration (required to go through New York State’s DBE certification process). NYSDOT may apply FHWA’s ‘administrative reconsideration’ process, depending upon circumstances. Pending DBEs (at the time of proposal submission) are not allowed.

In your firm’s Cost Proposal, provide the following: Attachment 10 DBE Participation Information. Provide the full legal names of all certified DBE consultants (prime and/or subconsultant).

Proposers are encouraged to ask questions regarding this aspect of the solicitation.
Firms are advised to refer to Proposal Pre-Screening section of the RFP for the procedure NYSDOT will follow in evaluating a firm’s proposed DBE participation.

**RFP MODIFICATION ACKNOWLEDGEMENT FORMS (MANDATORY RFP REQUIREMENT):**

The Proposer shall include a completed acknowledgment of receipt form (Attachment 13: Form AOR), acknowledging receipt of any Modifications issued by the Department.


Filing the two required forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer Disclosure of Prior Non-Responsibility Determinations) is **mandatory** for all consultants in order to be considered for contract award. Hard copies of the two required forms are included with this RFP (see Attachment 3). **NOTE:** Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.

Use Contract Number C031383 wherever requested in the forms. Please e-mail the person identified as the contact in the RFP’s Administrative Specifications section 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.
5. Proposal Evaluation Process

Contract award shall be made to the offeror whose proposal receives the highest total Best Value score after considering all technical and cost proposals against the RFP’s specifications and evaluation factors. Using the proposal evaluation process described herein, NYSDOT will evaluate proposals that are received prior to the deadline and deemed complete. NYSDOT will not consider proposals that are received late or are deemed to be incomplete. Written technical proposals will receive a final perfected score that will be weighted such that the highest raw technical score will be assigned a max score of 60 points toward the final best value score. 40 perfected cost score points will be allocated to the lowest proposed total cost.

5.1 Pre-Screening of Submitted Proposals

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

Proposal Due Date. All proposals must be delivered to NYSDOT’s Contract Management Bureau’s 50 Wolf Road, 6th Floor, Albany NY 12232 office by the date and time specified in Section 6.4. Any proposals received after that time/date shall not be evaluated further but shall become NYSDOT property. It is the sole responsibility of the consultant to assure that its proposal is received on time.

Proposal Opening, Log-in and Certification. Proposals received on or prior to the proposal due date and time will be opened, inventoried for completeness, certified, and logged-in (per the RFP proposal submission criteria listed in RFP Section 4). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks. Those proposals which meet all minimum RFP proposal responsiveness requirements shall be considered further in the proposal evaluation process; those which do not may be deemed non-responsive.

Minimum Proposal Requirements. Please refer to Section 2.3.

DBE Goal Attainment/GFE Acceptance Review. As part of the pre-screening process, the proposed DBE subconsultant participation percentage offered for NYS certified DBE subconsultant participation will be reviewed (Attachment 9, DBE Participation Information). To count towards NYSDOT’s 18% DBE subconsultant participation goal, each offered DBE firm must be currently listed in the NYS’s Directory. If the proposed DBE participation is less than the 18% goal, then the firm’s evidence of a Good Faith Effort (Attachment 10, DBE Subconsultant Participation Solicitation Log to achieve the DBE goal will be reviewed, along with the firm’s letter of explanation (DBE Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include examination of the adequacy and the robustness of a firm’s Good Faith Effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable Good Faith Effort then the entire proposal may be deemed non-responsive and may be removed from further consideration. NYSDOT reserves the right to ask clarification questions on a firm’s DBE proposal. Pending DBEs (not
NYS certified at the time of proposal submission) are not allowed. Firms are encouraged to ask questions regarding this aspect of the RFP.

5.2 Evaluation Category Weight Distribution

Proposals which pass pre-screening will be evaluated using the NYSDOT’s Best Value method based upon a 100 total point scale. The Technical and Management portion will be evaluated and point scored based on the offeror information provided via RFP Sections 3 and 4 against the RFP’s technical requirements. Technical proposal evaluation will represent 60 points of the total Best Value score for the proposal. The cost portion of the Cost and Contract portion will be evaluated and point scored and will represent 40 points of the total Best Value score for the proposal.

5.3 Proposal Evaluation

Technical evaluation of proposals will be accomplished by the members of the Technical Evaluation Committee (TEC) comprised, as appropriate, of technical, program and management subject matter experts. A short-list of proposing firms will be established based upon the committee’s scores. 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 36.00 points or higher (out of the 60 points available) after discussions by the Evaluation Committee. Proposals with raw technical scores lower than 36.00 are considered not susceptible for contract award and will not be considered further in the evaluation process.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the technical evaluation of proposals, firms shall receive clarification requests, and technical evaluators will be allowed to revise their technical scores based on consideration of this additional, clarifying information. The Department reserves the right to ask clarifying questions regarding each cost proposal and DBE participation as well. Furthermore, the Department reserves the right to request best and final offers from firms that are determined to be susceptible for contract award.

The written Technical and Management proposal will be evaluated and point scored and will represent 60% of the total score for the proposal (out of 100 total possible points). Reference check validations will assist to inform experience considerations. The following evaluation factors shall be used to measure each proposal degree of responsiveness against the RFP:

**Technical and Management Proposal Evaluation** (up to 60 Points)

1. Experience (Up to 30 points)
   a. Quality, extent and relevance of past and current project-relevant experience, education and training of proposed consultant personnel per the specifications contained in the RFP. (Up to 15 points)
   b. Quality, extent and relevance of current and prior relevant experience of the Firm. (Up to 15 points)
2. Scope of Services, Approach and Schedule (Up to 20 points)
   a. Quality and appropriateness of scope of services and approach for accomplishing project objectives; initiative and creativity of proposer. (Up to 7 points)
   b. Completeness and reasonableness of schedule. (Up to 6 points)
   c. Quality and appropriateness of proposed dashboard, portal design, security and backup system. (Up to 7 points)

3. Organization and Staffing (Up to 10 points)
   a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort. (Up to 8 points)
   b. Quality of plan for maintaining consultant resources over the life of the project. (Up to 2 points)

Cost Proposal Evaluation (Up to 40 Points)

All proposals passing pre-screening which have been shortlisted shall have their Cost Proposals evaluated. The cost portion of the cost and contract proposal will be point scored and will represent 40% of the total score for a proposal. The highest possible score for a cost proposal will be based upon the lowest proposed Grand Total cost of Deliverables submitted in Attachment 8 Cost Proposal added to the sum of NYSDOT calculated uniform estimated costs based on the Consultant’s proposed hourly rates for Site Visits, Technical Assistance, and Special Projects. The firm with the lowest total cost will receive a perfected cost score of 40 points. All other offered total costs will receive a proportionate lower cost score based on the relation to the lowest offered total cost.

Cost scores are subject to change depending upon whether or not cost proposal clarifications responses (or Best and Final Offer responses or proposal withdrawals or pass/fail dismissals) lead to proposed cost changes. A final cost score shall be calculated once all cost proposal evaluations have been completed.

Reference Checks: At NYSDOT’s discretion, reference checks will be conducted.

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

5.4 Best and Final Offers & Proposal Withdrawal

NYSDOT reserves the right to request Best and Final Offers (BAFO) from proposing shortlisted firms. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals while considering any best and final offer information. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm either withdraw
from this solicitation or be deemed non-responsive after initial evaluation and scoring.

5.5 Final Best Value Determination

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), NYSDOT will perfect (curve) the technical proposal scores so that the highest-rated raw written technical proposal score gets changed and assigned a perfect score of 60 points for this solicitation with the other technical scores adjusted proportionately upward. Perfected cost scoring results will be added to the perfected written technical proposal score. Firms shall be ranked in Final Best Value score order (highest to lowest).

**Tie-Breaking Rule:** 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).

5.6 Consultant Selection Recommendation & Tentative Contract Award

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

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation(s) will be posted to the ‘Consulting Services’ listing on NYSDOT’s website via: [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business). All proposers will be notified in writing regarding the results from the solicitation. All firms will be offered an opportunity to request a debriefing. A debriefing is limited to a review of how your proposal faired against the RFP’s requirements.

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

6.1 Inquiries and Information

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

Patricia Rumore, NYSDOT Contract Management Bureau
Email: Patricia.Rumore@dot.ny.gov
Fax: 518-457-8475

NYSDOT will respond to all questions of a substantive nature, answers to which shall be posted to NYSDOT’s website under this solicitation.

6.2 Proposal Submission

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

Your proposal must be received by NYSDOT by 12:00 noon on the day indicated in Section 6.4, Schedule of Key Events (below). The proposal must be addressed to:

William A. Howe, Director, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: Patricia Rumore RFP C031383

6.3 State’s Rights to Proposals

All proposals, upon submission to NYSDOT, shall become NYSDOT property for use as deemed appropriate. By submitting a proposal, the proposer covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. With regard to proposal submitted, NYSDOT asserts the following rights and prerogatives (the RFP expressed others elsewhere):

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

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

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Release Date</td>
<td>October 19, 2015</td>
</tr>
<tr>
<td>Question Submittal Deadline</td>
<td>November 16, 2015</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>November 30, 2015, 12 noon Eastern Time</td>
</tr>
<tr>
<td>Recommendation &amp; Designation</td>
<td>Approximately December 20, 2015</td>
</tr>
<tr>
<td>Contract Finalizing</td>
<td>Two weeks</td>
</tr>
<tr>
<td>Contract Award</td>
<td>4–6 weeks after completion of contract finalizing</td>
</tr>
</tbody>
</table>

6.5 Protest Procedure

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

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

Contractor Tax Certification

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


Insurance Requirements of this Project

Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 to this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Attachment 1, Article 11. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived. Proof of Workers’ Compensation and Disability Benefits Insurance are required before the contract can be approved. The following are acceptable proofs:

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

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

**WC/DB Exemption:**
- CE-200 Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage For more information see GFO Chapter XI Section 18G
**Please Note:**
- The name and FEIN of the contracting entity must match the name and FEIN identified on the proof of coverage or exemption.
- The following links to information regarding acceptable proofs of coverage are provided below:
  - Workers' Compensation: [http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp](http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp)
  - Disability Benefits: [http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp](http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp)
  - Exemption: [http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
  - Please find a link to the attached WCB publication Prove it to Move it Program 2010, which outlines current guidelines for WCB compliance: [http://www.wcb.ny.gov/content/main/Employers/ProveItToMoveIt.pdf](http://www.wcb.ny.gov/content/main/Employers/ProveItToMoveIt.pdf)

**Consultant Employment Disclosure Requirements of this Project**

The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment” (Attachment 4, Consultant Employment Disclosure Legislation Form A) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Attachment 4, Consultant Employment Disclosure Legislation Form B) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May15 of each year the contract is in effect.

**Consultant Responsibility When Proposing to Use a Former NYSDOT Employee**

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

**Registration with NYSDOT**

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

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.

Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Prime Consultant will be required to register electronically with New York State’s SFS, if a firm is not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime Consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime Consultant, usable for all NYS-related transactions. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity but is instructed to enter its SFS number in Attachment 2. However, an SFS vendor number is specific to the legal name of a firm. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity with which NYSDOT is doing business.
Attachment 1: Draft Contract

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C031383

PROJECT:  FTA Program Compliance Monitoring Services

This Agreement made this ________ day of __________________, 201__ pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as "STATE") whose office is at 50 Wolf Road, in the County of Albany, State of New York 12232, and

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

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

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

ARTICLE 2. DOCUMENTS FORMING THE AGREEMENT.

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

ARTICLE 3. INSPECTION.
The duly authorized representatives of the STATE, and on federally aided projects, representatives of the Federal Highway Administration, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees to complete all the work of this AGREEMENT as required by this AGREEMENT within a 36-month base term for this AGREEMENT, which shall commence on _________ __, _____ and end on _________ __, ____. The AGREEMENT may be extended for up to two 12-month time periods as may be agreed upon by the parties to the AGREEMENT and as approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT PAYABLE.

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 1) 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 SCHEDULE B EXHIBIT 1 are eligible for rate adjustments.

Item II One-time fixed lump-sum costs and annual fixed lump-sum costs as set forth and according to the billing milestones identified in SCHEDULE B.

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.

ARTICLE 7. CONTRACT PAYMENT.

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

ARTICLE 8. FINAL PAYMENT.

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

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in ARTICLE 8 (b).
b) The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at all reasonable times during the period of this Agreement and for the period of time specified in Clause No. 10, "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration, or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

ARTICLE 9. EXTRA WORK.

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

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Work which the CONSULTANT is obligated to perform in accordance with Article 9 hereof shall be performed without cost to the STATE. Compensation for other work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 10. CONSULTANT RESPONSIBILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, and/or any municipality, public benefit corporation, railroad, and/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 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 and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The CONSULTANT’s obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or for any consultants working for the State. It is understood by the State and the CONSULTANT that the CONSULTANT’s Professional Liability/Errors and Omissions policy (if applicable) required in the Article of this Contract entitled “Insurance” shall be utilized for claims involving the CONSULTANT’s professional negligence.

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

ARTICLE 9. EXTRA WORK.

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

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Work which the CONSULTANT is obligated to perform in accordance with Article 9 hereof shall be performed without cost to the STATE. Compensation for other work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE’s directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 10. CONSULTANT RESPONSIBILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, and/or any municipality, public benefit corporation, railroad, and/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 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 and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The CONSULTANT’s obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or for any consultants working for the State. It is understood by the State and the CONSULTANT that the CONSULTANT’s Professional Liability/Errors and Omissions policy (if applicable) required in the Article of this Contract entitled “Insurance” shall be utilized for claims involving the CONSULTANT’s professional negligence.

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.
connected therewith. Notwithstanding the foregoing, the parties being defended by the Consultant may elect to join any action or tender their own defense, at their sole expense and discretion.

ARTICLE 11. WORKER'S COMPENSATION AND LIABILITY INSURANCE.

The Consultant shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) 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. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

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 Paragraph B, Insurance Requirements, below. General liability 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.

Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable. Policy forms must be provided to the Department upon request.

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. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing Contract Number C031383 and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov

Certificates may be mailed to the:

New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, Sixth Floor
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 ten (10) days’ prior written notice to the Department by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the Department, the Consultant shall deliver to the Department within ten (10) work 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 a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.

b. Be signed and dated by an authorized representative of the insurance carrier or producer.

c. Disclose any deductible, self-insured retention, aggregate limit.
d. Refer to this Contract by number on the face of the certificate.

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:

a. 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

b. May withhold further contract payments in accordance with Article 8 No Payment Due to Consultant’s Non-Compliance of the contract agreement, or

c. 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(s) that provides equivalent coverage.

5. Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage 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 ten (10) calendar 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 Paragraph A.3. Certificates of Insurance/Notices 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, the Consultant or third-party-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-) or better. 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.

10. Subconsultant's Liability Insurance. In the event that any portion of the work described in this contract is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant 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 subconsultant employed by them to do work under this contract.

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, the 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. The 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:

   a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).

   b. 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, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees” 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.

   c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.

   d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.

   e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.

   f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

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, the 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 may 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 each accident.

4. Umbrella or Excess Liability Insurance. The Consultant shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Consultants, products-completed operations, personal injury and advertising injury, and 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 or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than $5,000,000 per occurrence/aggregate.
5. **Consultant’s Risks.** The Consultant shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

**ARTICLE 12. INTERCHANGE OF DATA.**

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

**ARTICLE 13. DISPOSITION OF DATA.**

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

**ARTICLE 14. DAMAGES AND DELAYS.**

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 8 of this AGREEMENT.

**ARTICLE 15. NOTICE OF BANKRUPTCY, VENUE, AUDITS.**

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

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

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

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

**ARTICLE 16. TERMINATION.**

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

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the percentage of work satisfactorily completed by the CONSULTANT, as determined by the STATE, times the Lump Sum amount.

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

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

ARTICLE 17. DEATH OR DISABILITY OF THE CONSULTANT.

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

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

ARTICLE 18. CODE OF ETHICS.

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

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

ARTICLE 19. INDEPENDENT CONTRACTOR.

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES.

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

ARTICLE 21. TRANSFER OF AGREEMENT.

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

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

ARTICLE 22. PROPRIETARY RIGHTS.

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

ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.

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

ARTICLE 24. ORDER OF PRECEDENCE.

In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:
1. APPENDIX A,
2. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, APPENDIX B, APPENDIX B-1, and APPENDIX C;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’s Request for Proposals; and
7. The CONSULTANT’s Proposal.

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

The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):
1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
3) does not have a proposed debarment pending; and
4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS:

ARTICLE 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

**ARTICLE 27. RESPONSIBILITY OF THE CONSULTANT.**

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

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

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

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

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

**ARTICLE 28. SECURITY AND CONFIDENTIALITY OF INFORMATION.**

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

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

**ARTICLE 29. VENDOR RESPONSIBILITY.**

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

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

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

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

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, RFP Attachment 4) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

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

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

NYS Department of Transportation:

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

ARTICLE 31. NOTICES.

Item 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- via certified or registered United States mail, return receipt requested;
- by facsimile transmission;
- by personal delivery;
- by expedited delivery service; or
- by e-mail.

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

New York State Department of Transportation:
Contact Person’s Name: William A. Howe, Contract #C031383
Title: Director
Address: NYSDOT Contract Management Bur., 6th Fl., 50 Wolf Road, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2874
E-Mail Address: bill.howe@dot.ny.gov

Consultant’s Name: ____________________

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

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

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

ARTICLE 32. TITLE VI ASSURANCE.

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

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

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

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

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to 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. C031383 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK

___________________________________ By: ________________________________

CONTRACT MANAGEMENT DEPARTMENT OF TRANSPORTATION

DATE: ___________________ DATE: ___________________

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

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

By ________________________________ Date: ____________________________

FIRM

FTA Program Compliance Monitoring Services

APPROVALS

ATTORNEY GENERAL THOMAS P. DI NAPOLI

STATE COMPTROLLER

By ________________________________ By ________________________________

Date ______________________________ Date ______________________________
Acknowledgement for Contract #C031383

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: ________________
STANDARD CLAUSES FOR NYS 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, licenser, licensee, lessor, lessee or any other party):

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

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

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

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

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (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
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 lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

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

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

19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS)**. 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 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS)**. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

NYS Department of Economic Development  
Division of Minority and Women’s Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
Email: mwbecertification@esd.ny.gov  
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). 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 §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](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 §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.
APPENDIX A-1
SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

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

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

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

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

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

REQUIREMENTS FOR FEDERALLY-ΑΙΔΕ ΤΡΑΝΣΡΟΝΤΑ ΡΟΝΕΡΝΤ ΠΡΟΚΑΤΣ

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

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

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

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

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

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

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

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

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation’s DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
FEDERAL SINGLE AUDIT REQUIREMENTS
Non-Federal entities that expend $500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations”. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than $500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller’s Office and the U.S. Governmental Accountability Office (GAO).

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

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

The 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.

(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

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/
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-1

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).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

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(c) 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 663 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.

Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over $100,000.

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, certifies 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 to 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, 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 Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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.
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.

(y)(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 an additional classification and wage rate and fringe benefits thereof 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 grantee 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)(ii)(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. (iii) 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 journeyman 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 3, 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 the 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, quarantine 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.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the municipal corporation or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Patent and Rights Data – Applicability – Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases ($3,000 or less, except for construction contracts over $2,000)

Contracts Involving Experimental, Developmental, Or Research Work.

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. § 18.34 and 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.]

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

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

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

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

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

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

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

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

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

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

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

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

5. RECRUITMENT

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

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

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

6. PERSONNEL ACTIONS

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

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

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

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

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

7. TRAINING AND PROMOTION

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

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

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

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

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

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

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

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

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

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

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

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

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

10. RECORDS AND REPORTS

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

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

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

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

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

11. TRAINING SPECIAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

Updated December 2012
SCHEDULE A

Scope of Services

FTA Program Compliance Monitoring Services
Contract #C031383

<PlaceHolder>
SCHEDULE B

Consultant Rates and Project Budget

FTA Program Compliance Monitoring Services

Contract #C031383

<PlaceHolder>
Attachment 2: Consultant Information and Certifications

(Please submit this with your Cost Proposal)

**CONTRACT NUMBER:**  **C031383**

**PROJECT TITLE:**  **FTA PROGRAM COMPLIANCE MONITORING SERVICES**

---

### I. CONSULTANT INFORMATION

**FIRM NAME:**  

**ADDRESS:**  

**CITY:**  

**STATE:**  

**ZIP CODE:**  

**TELEPHONE #:** (_____ ) _____ - ________  

**FAX#:** (_____ ) _____ - ________

**E-MAIL ADDRESS:**

**CONTACT PERSON:**

- Consultant's Federal Identification Number (FIN):
- Consultant's Consultant Identification Number (CIN):
- Consultant’s SFS Vendor Identification Number:

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

  **Preparer’s Name/Title:**  

  **Address:**  

  **Telephone #:** _______________  

  **FAX #:** _______________  

  **E-Mail** _______________

  **Other Authorized Individual(s):**

  **Name/Title:**  

  **Address:**  

  **Telephone #:** _______________  

  **FAX #:** _______________  

  **E-Mail** _______________

Add additional pages if necessary.
II. OFFEROR CERTIFICATIONS

By signing below, I, ________________________________, authorized individual (NAME)

Of ________________________________, make the following certifications (FIRM)

regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
- The firm has read and will follow the procedure outlined in Attachment 5 if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: In accordance with New York State law, if selected for contract award, the firm will complete and submit the required Vendor Responsibility questionnaire through the Office of the State Comptroller VendRep system, which is accessible via: http://www.osc.state.ny.us/vendrep/index.htm. Vendors must certify the accuracy of the information they provide in the questionnaire and must file their VRQ within 10 days of notification of designation. NYSDOT cannot sign a contract if a firm’s vendor responsibility certification is more than 12 months old.
- ST-220: If selected for contract award greater than $100,000, the firm will complete and submit the required Forms ST-220-TD and ST-220-CA during negotiations with NYSDOT. The ST-220 forms with instructions are downloadable from the following websites:
  http://www.tax.ny.gov/pdf/current_forms/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 AGREEMENT*

By signing below, I, ________________________________, authorized individual (NAME)

of ________________________________ hereby ACCEPT all terms and conditions (FIRM)

contained in the Draft Contract (including Appendix A), which is included as Attachment 1 to this Request for Proposals.

Signature: ____________________________________________ (NAME OF ACCEPTOR)
Attachment 3: Procurement Lobbying Law Forms

Required Forms

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

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

NYSDOT Guidelines and Procedures

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


Summary of the policy and prohibitions regarding permissible contacts

Contacts Prior to Designation

Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

3. The Contract Management Bureau designation analyst
4. The Contract Management Bureau designation analyst supervisor
5. The Contract Management Bureau Assistant Directors
6. The Contract Management Bureau Director

These are some communications exempted from this restriction:

7. Participation in a pre-proposal conference or webinar
8. Protests, complaints of improper conduct or misrepresentation

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

Contacts After Designation

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

1. The Contract Management Bureau negotiation analyst
2. The Contract Management Bureau negotiation analyst supervisor
3. The Contract Management Bureau Assistant Directors
4. The Contract Management Bureau Director
5. The Consultant Management Bureau consultant job manager
6. The Consultant Management Bureau consultant job manager’s immediate supervisor
The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

Information Required from Offerers that Contact NYSDOT Staff, Prior to Contract Approval by the Office of the State Comptroller:

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

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

Applicability to an Executed Contract

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

Rules, Regulations And More Information On This Law

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

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

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

Patricia Rumore, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: RFP C031383
E-Mail: Patricia.Rumore@dot.ny.gov
Fax: 518-457-8475
Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

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

Contract No. C031383

<table>
<thead>
<tr>
<th>By:</th>
<th>Date:</th>
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<tbody>
<tr>
<td>Name:</td>
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<td>Title:</td>
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<td>Contractor Name:</td>
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<td>Contractor Address:</td>
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</table>
# 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: C031383

Date: 

<table>
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<tr>
<th>Question</th>
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<tbody>
<tr>
<td>Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?</td>
<td>Yes/No</td>
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<td>If yes, please answer the next questions:</td>
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<tr>
<td>Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?</td>
<td>Yes/No</td>
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<tr>
<td>Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?</td>
<td>Yes/No</td>
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<td>If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.</td>
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<td>Governmental Entity:</td>
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<td>Date of Finding of Non-responsibility:</td>
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<td>Basis of Finding of Non-responsibility:</td>
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(Add additional pages as necessary.)

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<th>Question</th>
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<td>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?</td>
<td>Yes/No</td>
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<td>If yes, please provide details below.</td>
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<tr>
<td>Governmental Entity:</td>
<td></td>
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<tr>
<td>Date of Finding of Non-responsibility:</td>
<td></td>
</tr>
<tr>
<td>Basis of Finding of Non-responsibility:</td>
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(Add additional pages as necessary.)

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

By: _______________________________ Date: _______________________________

Name: _______________________________ Signature: ___________________________

Title: _______________________________
# Attachment 4: Consultant Employment Disclosure Legislation Forms A and B

## FORM A

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

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

<table>
<thead>
<tr>
<th>ONET Employment Category Code</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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<tbody>
<tr>
<td>ONET Employment Category Name</td>
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Total this page: 0 0 $0.00

Grand Total

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

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

<table>
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<tr>
<th>Contracting State Agency Name:</th>
<th>NYSDOT</th>
<th>Agency Code:</th>
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<tbody>
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<td>Contract Number:</td>
<td>C031383</td>
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<td></td>
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<tr>
<td>Contract Term:</td>
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<td>Contractor Address:</td>
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<tr>
<td>Description of Services Being Provided:</td>
<td>Transit Service Information &amp; Technical Support Services for New York State Transit Agencies</td>
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<tr>
<td>Contract #</td>
<td>C031383</td>
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</tr>
</tbody>
</table>

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

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

**ONET Employment Category Code**

<table>
<thead>
<tr>
<th>ONET Employment Category Name</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
</tr>
</thead>
</table>

**Name of person who prepared this report:**

Preparer's Signature: ____________________________

Title: ____________________________ Phone #: ____________________________

Date Prepared: ____________________________

(Use additional pages if necessary.)
Attachment 5: Use of Former NYSDOT Employees

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

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

- It is two years or less between the date that the individual is proposed and the individual’s date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

Procedure

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

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

- Failure to obtain the New York State Joint Commission on Public Ethics (http://www.jcope.ny.gov/) approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
Attachment 6: Company Experience and References

INSTRUCTIONS

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

Fill out the requested information using the provided form. Duplicate and use one form for each company reference provided, for up to five past project references. Be sure to cover the proposed Prime Consultant and each proposed Subconsultant (indicate accordingly on the Form) when filling Attachment 6 out. Fill out all boxes which are applicable per each reference response – fill in any not applicable box with ‘N/A’.

Include Attachment 6 in your Technical and Management Proposal submission.
Attachment 6
Company Experience and References
<current date>

<Consultant’s legal company name>
<Subconsultant Name if appropriate>
<Consultant/Subconsultant street address>
<Consultant/Subconsultant city, state, zip>
<Consultant/Subconsultant phone>

<table>
<thead>
<tr>
<th>Reference Name:</th>
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<tbody>
<tr>
<td>Reference Main Line of Business:</td>
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<tr>
<td>Reference Contact Information</td>
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<td>Primary Contact Person’s Name:</td>
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<tr>
<td>Title:</td>
<td></td>
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<tr>
<td>Affiliation/Company employed by</td>
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<tr>
<td>Mailing Address:</td>
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<td>Phone:</td>
<td></td>
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<tr>
<td>E-mail:</td>
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Provide a brief description of a recent project for which they are serving to reference.

Project Name:

Project Description:

Project Dollar Amount:

Length/Period of Engagement:

Description of all services provided:

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

Relevance to C031383 RFP:

A list of all subconsultants and the duties they performed (if applicable):
Attachment 7: Key Personnel Resumes and References

INSTRUCTIONS: Identify relevant experience for all proposed Consultant Key Personnel.

Key Personnel Experience and Qualifications:

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

Offerors are required to complete 3-5 experience/reference forms in Attachment 7 for each proposed key personnel, including key subcontracted staff. Resume summary information should include name, proposed role on this project, years of relevant experience, description of relevant experience and expertise, and three to five successfully reachable references. For the number of years of experience, while inclusion of partial years is allowed, please indicate start/end months (complete months only).

Include Attachment 7 in your Technical and Management Proposal submission. Also include resumes for key personnel. Each resume should be no more than 2-3 pages in length.
Attachment 7  
Key Personnel Experience and References  
**Offeror’s legal company name:**  
Company Mailing Address:  
Company Phone:  
Company Fax:  

### Section 1: Personnel Information  

<table>
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<th>Proposed Project Role</th>
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<tr>
<td><strong>Name:</strong></td>
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<tr>
<td><strong>Mailing Address Line 1</strong></td>
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<tr>
<td><strong>Mailing Address Line 2</strong></td>
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<tr>
<td><strong>Mailing Address Line 3</strong></td>
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<td>City</td>
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<td><strong>Country/Province</strong></td>
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<tr>
<td><strong>Daytime Phone</strong></td>
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<td><strong>E-Mail Address</strong></td>
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### Section 2: Past/Current Employer  

<table>
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<th>Employer Name</th>
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<tr>
<td><strong>Employer Address</strong></td>
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</tbody>
</table>
| **Beginning date of service**  
(when the key staff person provided services to the client/firm) |  
| **Ending date of service**  
(when the key staff person provided services to the client/firm) |  
| **Total time claimed** | _____ Years | _____ Months |  
| **Employment Status** | _____ Full Time | _____ Part Time | ___ hrs/week |  
| **Primary contact person at the firm** |  
| • name and title |  
| • e-mail address |  
| • telephone number |  

### Section 3: Work Description  

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

----- Please add additional pages as appropriate and attach your resume-----
Attachment 8: Cost Proposal

Contract #C031383

Instructions

The Cost Proposal shall contain the following elements:

1. Cost of Deliverables as outlined in Scope of Services
2. Fully Loaded Hourly Rates for Site Visits (Task 4.2), Technical Assistance (Task 6.1) and Special Projects (Task 10)

This will be an Excel spreadsheet located at https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities under C031383.
Attachment 9: DBE Participation Information

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

Please identify each full firm’s legal name and indicate each firm’s percentage of the total cost/total budget for contract #C031383.

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

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>% of Total Cost</th>
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<tbody>
<tr>
<td></td>
<td>DBE</td>
<td>None</td>
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<tr>
<td>A. Prime Consultant</td>
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<tr>
<td>B. Sub-Consultants</td>
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<td>Total</td>
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<td>100%</td>
</tr>
<tr>
<td>SOLICITED COMPANY NAME AND CONTACT PERSON</td>
<td>TELEPHONE (WITH AREA CODE)</td>
<td>FEDERAL EMPLOYER ID #</td>
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Please use additional pages as necessary
Instructions For Completing Attachment 10, DBE Subconsultant Participation Solicitation Log (Good Faith Effort Documentation)

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

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

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

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

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

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

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

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

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

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

**DBE CONSULTANTS SOLICITED:**

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

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

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

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

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

CODE DESCRIPTION:

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

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

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

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

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

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

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

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

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

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

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

Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
SECTION 139-D, Statement of Non-Collusion in bids to the State:

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

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

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

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

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

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

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

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

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

________________________________________________________________________
                     ________________________________

________________________________________________________________________
                     ________________________________

________________________________________________________________________
                     ________________________________

________________________________________________________________________
                     ________________________________

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

President:                                                ________________________________

Secretary:                                                ________________________________

Treasurer:                                                ________________________________

President:                                                ________________________________

Secretary:                                                ________________________________

Treasurer:
ATTACHMENT 11

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

Identifying Data

Potential Contractor: ____________________________________________________________

Address: _____________________________________________________________________

_______________________________ Street

____________________________________________________________________________

City, Town, etc.

Telephone:__________________________ Title______________________________

If applicable, Responsible Corporate Officer

Name:______________________________ Title______________________________

Signature: _________________________________________________________________

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

__________________________________________

Legal name of person, firm or corporation

__________________________________________

Legal name of person, firm or corporation

By

______________________________

Name

______________________________

Name

______________________________

Title

______________________________

Title

Address: _________________________________

______________________________ Street

__________________________________________

Address: _________________________________

______________________________ Street

__________________________________________

City, State

__________________________________________

City, State
Attachment 12: Staffing Level of Effort by Task

Located at: https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities under C031383.
We hereby acknowledge receipt of the FTA Compliance Monitoring Services (contract #C031383) Request for Proposals, dated October 14, 2015 and subsequent responses to questions and Modifications issued by the Department, as listed below.

Add additional lines in tables below, if needed.

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Attachments 14-26

The following attachments can be located at: https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities under Contract #C031383

14. FTA Subrecipient List
16. NYSDOT Site Visit Procedures Federal Section 5310/5311/5316/5317 Programs
17. FTA Section 5310 Review and Report Forms: 17a) Pre-Site Visit Questionnaire 16b) Site Inspection Procedures, 17c) Subrecipient Site Visit Review Report
18. NYSDOT Procurement Guidance Checklist
19. NYSDOT Short Forms: 19a) Risk Assessment Scorecard, 19b) Field Report, 19c) Site Reviews, 19d) Corrective Action Required
20. NYSDOT Site Review Agenda
21. NYSDOT Letters; 21a) System Review, 21b) System Review Follow up, 21c) Site Review Closeout
22. Program Guide for State-Administered FTA Programs
23. State of New York, State Management Plan, Section 5310 Program
24. State of New York, State Management Plan, Section 5311 Program
25. State of New York, State Management Plan, Section 5316 Program
26. State of New York, State Management Plan, Section 5317 Program