NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
SAFETY MANAGEMENT SYSTEMS IMPLEMENTATION SERVICES FOR NYSDOT
Contract #C037625

July 28, 2017

Initial Information for Submittal

A. Please note the following dates and deadlines:
   • September 8, 2017: Deadline for the submission of proposals at 12:00 PM (Eastern Time)
   • August 15, 2017: Deadline for questions about the RFP at 12:00 PM (Eastern Time)
   • August 8, 2017: Pre-proposal webinar

B. To assist firms in preparing proposals in response to this solicitation, a pre-proposal webinar will be held on August 8, 2017 at 10 a.m. A general review of the solicitation will occur and specific questions regarding the solicitation may be answered. Interested firms are encouraged to attend.

   If you plan to attend, please provide the names of attendees to Patricia Kappeller, NYSDOT Contract Management, at (518) 474-6562 by noon on August 7, 2017. An opportunity will be afforded for questions and answers during the conference. However, to assist us in preparing for the meeting, we wish to receive any questions you may have, in writing, by the close of business on August 3, 2017

C. Complete proposals are to be submitted to the Designated Contact stipulated in Section 1.4.
RFP RESPONSE FORM

RFP RESPONSE FORM: C037625 – SAFETY MANAGEMENT SYSTEMS IMPLEMENTATION SERVICES FOR NYSDOT

Please review this RFP, complete the following information, and e-mail 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 Section 5.8) 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):
_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________

Date: ________________

Typed Name and Title: _________________________________________________

Telephone: ___________________ Fax: _________________________________

E-Mail Address: ______________________________________________________

Please e-mail to: Patricia.Kappeller@dot.ny.gov
# CONSULTANT CHECKLIST FOR PROPOSAL SUBMISSION

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**  
**REQUEST FOR PROPOSALS**  
**SAFETY MANAGEMENT SYSTEM IMPLEMENTATION SERVICES FOR NYSDOT**  
**Contract #C037625**  

**Part I - Technical and Management Submittal**  

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<td>Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “Safety Management System Implementation Services for NYSDOT RFP Part I — Technical and Management Proposal (C037625)”</td>
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<td>Executive Summary of proposed approach</td>
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<td>Complete and submit Attachment #12: Key Personnel Resume and References</td>
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<td>Complete and submit Attachment #19: Requirements Matrix</td>
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<td>Securely sealed and clearly labeled with the words “Safety Management System Implementation Services for NYSDOT RFP, Part II — Cost and Administrative Proposal (C037625)”</td>
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<td>Required Cost information (complete and submit Attachment 20, Cost Proposal)</td>
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<td>Complete and submit Attachment 2: Consultant Information and Certifications (sign both Sections II and III)</td>
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<td>Complete and submit the Attachment 3: Procurement Lobbying Law Compliance Forms</td>
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<td>Complete and submit (if applicable) <strong>Attachment 5a: DBE Participation Solicitation Log</strong> AND Goal Attainment Explanation Letter</td>
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<td>Complete and submit <strong>Attachment 10: Form AOR Acknowledgement of Receipt</strong></td>
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<td>Complete and submit <strong>Attachment 11: Non-Collusive Bidding Certification</strong></td>
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# REQUEST FOR PROPOSALS

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**REQUEST FOR PROPOSALS**

**SAFETY DATA MANAGEMENT SERVICES FOR NYSDOT**

**Contract #C037625**

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1 INTRODUCTION

1.1 Purpose
The New York State Department of Transportation (NYSDOT; the Department) is seeking proposals from responsive and responsible consultants for the acquisition and provisions of a Safety Information Management System (SIMS) and services to meet Federal standards for reporting, to use new data driven techniques required by Federal legislation, and integrate with NYSDOT Enterprise systems, and sunset legacy applications and procedures. NYSDOT intends to select and enter into contract #C037625 with a responsive and responsible consultant that provides the best value to the State based on this solicitation.

1.2 Background

1.2.1 NYSDOT Mission

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

To attain its missions, the responsibilities, functions, and duties of NYSDOT include coordinating and developing a comprehensive transportation policy for the State; coordinating and assisting in the development and operation of transportation facilities and services for highways, railroads, mass-transit systems, ports, waterways, and aviation facilities; and formulating and keeping current a long-range, comprehensive statewide master plan for the balanced development of public and private commuter and general transportation facilities. This mission also includes administering a public safety program for railroads and motor carriers engaged in intrastate commerce; directing state regulation of such carriers in matters of rates and service; and providing oversight in matters relative to the safe operation of bus lines, commuter railroads, and subway systems that are publicly subsidized through the Public Transportation Safety Board.

Today, the New York State transportation network includes:
- A state and local highway system that annually handles more than 100 billion vehicle miles, encompassing more than 110,000 highway miles, 17,000 highway bridges, and numerous other assets such as large culverts, retaining walls, tunnels, and sign structures
- 456 public and private aviation facilities through which more than 31 million people travel each year
- More than 130 public transit operators, serving more than 5.2 million passengers each day

The mission of the Office of Safety and Mobility is to provide a safe and efficient transportation environment for its users through the application of sound traffic engineering principles.

The office of Traffic Safety and Mobility works closely with all Department program areas, other public agencies, local governments and the private sector to accomplish its mission, consistent with statewide and regional program goals. In performing its mission, this Office emphasizes excellence in traffic engineering, high quality products, continuous improvement, customer service, and innovative use of technology.

1.2.2 NYSDOT Safety Data Management

The overall goals of New York’s highway safety program are to provide a safe and efficient transportation environment through the application of sound traffic engineering principles to prevent motor vehicle crashes, save lives and reduce the severity of the injuries suffered. NYSDOT collaborates with education, enforcement, engineering and emergency medical services organizations to save lives, prevent highway related crashes, and reduce the severity of crashes when they occur. NYSDOT is responsible for developing and implementing the New York State Strategic Highway Safety Plan (SHSP), the Highway Safety Improvement Program (HSIP) and other related safety programs, as well as maintaining and improving data for the Safety Information Management System.

The five priority results that the Commissioner of NYSDOT wants to provide to customers are:
1. To enhance their mobility and have reliable, predictable trips for themselves or in the movement of their goods.
2. Expect both the infrastructure and its users to contribute to the physical safety of people and their goods while in transit.
3. Recognize the critical relationship between a mature, multi-modal transportation system and the state’s economic vitality. Customers see viable transportation options as essential to both economic sustainability and livability of their communities, both Upstate and Downstate.
4. Expect the transportation infrastructure to be secure from external threat or potential abuse.
5. See the impact of transportation-related decisions at both macro and micro levels affecting the environment and expect the system to more than mitigate transportation’s impact.
NYSDOT’s Office of Traffic Safety and Mobility manages Safety Data through application of the Strategic Highway Safety Plan and implementation of the Highway Safety Improvement Program. An overview of these Programs are as follows:

**Data Analysis and Summarization:**
NYSDOT receives crash data daily from DMV and the New York State Police (NYSP). This data forms the basis of highway and modal safety programs administered by the Department.

SIMS is the analytical tool that allows the department to meet all federal mandated highway safety improvement program requirements in a systematic way. SIMS system combines roadway attribute and traffic volume data with the crash data to determine high accident locations as part of the Department’s network screening process (locate and study accidents). High accident locations are prioritized and studied to develop safety countermeasures to reduce crashes.

Specific processes involved are:
- Network Screening
- Systemic Screening
- Site Analysis
- High Accident Location Analysis Process

**Data Queries and Reporting**
NYSDOT also uses the crash data for long term monitoring and evaluation of safety programs and to develop crash reduction factors. The data is also made available for reporting to other State, Regional and Federal users.

1.3 **Project Background (Business Need)**

1.3.1 **Existing NYSDOT Safety Data Management Capabilities**

**Safety Information Management System (SIMS-DOT):** SIMS is a database of crash records for both state and local highway that is capable of utilizing two different location referencing systems. State highways utilize a field posted reference marker system and local highways uses a coordinate based location. SIMS provides for the capture and retrieval of data on crashes occurring on New York’s roadways (state and local), with the data being received electronically from the Department of Motor Vehicles’ (DMV) Accident Information System (AIS) and from the NYSP’s TraCS System. SIMS captures a subset of data from AIS, excluding limited data that pertains to individual occupants, primarily drivers, involved in crashes. SIMS does capture images of the original police and motorist reports for each crash.

In addition to assisting in the identification of high accident locations based on all crashes, the data from SIMS are used to compile specialty Priority Investigation Location lists (PILs) based on particular crash types; for example, a skid accident
report is generated annually based on wet road crashes. The SIMS data are used to create standardized annual reports, (average crash rates by facility type, crash severity distributions and etc.) that are available on NYSDOT’s website (https://www.dot.ny.gov/divisions/operating/osss/highway).

Post Implementation Evaluations (PIES-DOT): The Safety Information Management System (SIMS) has a module for evaluating the effect that highway safety improvements and projects have in reducing the number and severity of highway crashes. PIES links the location information for completed projects with the type of improvement implemented (with cost) and the crash data for that location. This provides the ability to assess if a particular improvement or project was successful in reducing crashes. Further analysis is performed by the PIES module to create an average value of effectiveness for each improvement type or category known as a reduction factor. These reduction factors are used by the engineers during their Highway Safety Investigation (HIS) program activities to help determine the expected benefit, in terms of accident reduction, for different proposed countermeasures.

Accident Location Information System (ALIS-DOT): ALIS is a GIS web-based database designed to provide map-based record interval, spatial analysis tools, and location coding of crashes by DMV. ALIS is linked with both AIS and SIMS to integrate crash information for use in both systems.

1.4 Minimum RFP Responsiveness
Any Firm that does not provide all of the following by the RFP deadline will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of proposals):

1. Part I of the Proposal – Technical and Management submission
2. Part II of the Proposal – Cost and Contract submission
3. Completion of all applicable attachments:
   Attachment 20: COST SUBMISSION
   Attachment 2: Consultant Information and Certification Form
   Attachment 3: Procurement Lobbying Law Forms
   Attachment 5: DBE Participation Form
   Attachment 5a: DBE Participation Solicitation Log
   Attachment 10: Form AOR
   Attachment 11: the Non-Collusive Bidding Certification
   Attachment 12: Key Personnel Resumes and References
   Attachment 13: Vendor Assurance of No Conflict of Interest
   Attachment 19: Requirements Matrix
4. Submission of DBE Participation Explanation Letter (if applicable) of Non-DBE Goal Attainment (or partial attainment towards either) along with Attachment 5 and 5A as indicated above.
1.5 **Designated Contact**

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department’s Designated Contact for this procurement is:

**Primary Contact:**
Ms. Patricia Kappeller  
New York State Department of Transportation  
Contract Management Bureau  
50 Wolf Road, 6th Floor  
Albany, NY 12232, USA  
E-mail: Patricia.Kappeller@dot.ny.gov

The above named person, as the Department’s Designated Contact for this procurement, shall be the Department’s only points of contact and source of information for this procurement;

1.6 **RFP Modifications**

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT web site ([https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities](https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities)) regularly to check for Modifications. The final Modification will be posted on NYSDOT’s web site not later than seven calendar days prior to the Proposal due date. If an additional Modification is required within seven days of the Proposal due date, the Proposal due date shall be revised such that there will be seven days from the final Modification to the Proposal due date.
2 CIVIL RIGHTS REQUIREMENTS

2.1 Disadvantaged Business Enterprise Participation

While not indicative of a proposer’s individual merit (technical excellence, proposer’s ability, experience, etc.), NYSDOT seeks to achieve the Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Section 26. NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBE) in its solicitations. The level of DBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. Please visit the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: http://www.nysucp.net/. The general DBE participation goal for federally-funded projects is 20%.

For this specific procurement, NYSDOT has established a DBE participation goal of eighteen percent (18%) for this solicitation. Meaningful participation by either a prime consultant who is certified as a NYSUCP DBE or inclusion of subconsultant (s) who is/are certified as a NYSUCP DBE count toward the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

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

Interested proposers should verify their attainment of the above established DBE participation goal by completing Attachment 5 DBE Participation Information. To count towards the Department’s DBE goal, a firm offering DBE participation must be currently certified per the NYSUCP DBE Directory. If the proposal does not meet or exceed the eighteen percent (18%) DBE participation goal, the firm must provide evidence of a good faith effort by completing Attachment 5a Participation Solicitation Log. Additionally, if the firm does not meet the specified goal, the firm must include in its submission a Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or if partially), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.
The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section 6.2 for the procedure the Department will follow in evaluating a firm’s proposed DBE participation.

2.2 Minority and Women-owned Business Enterprise Participation

Not Applicable

2.3 Diversity Practices

Not Applicable

2.4 Title VI Assurance

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

2.5 Equal Employment Opportunity – Pay Equity

In Accordance with New York State Executive Order 162, issued on January 9, 2017, the Operator shall provide workforce utilization reports in accordance with RFP Section 8.1 “Draft Contract”.
3 PROJECT OBJECTIVES

3.1 Project Objectives

The goal of this procurement is to acquire a Program Process review of NYSDOT’s Highway Safety Plan and analysis of processes and a Safety Data software solution and accompanying integration services to fulfill NYSDOT’s Office of Traffic Safety and Mobility business requirements from a responsive and responsible consultant.

3.2 Definitions and Acronyms

See Attachment #14.

3.3 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence on January 1, 2019. The base term or duration for the contract is three years. The contract may be extended for up to two additional one-year periods upon written agreement of both parties and approval by the Office of the State Comptroller and FHWA.

If the contract is extended for the optional years, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%, whichever is lower, will be used as a basis for adjusting the hourly rates/lump sum deliverable amounts. The rate adjustment will be effective on January 1 and calculated using the previous September Index, using Series ID PCU5413--5413--(Architectural, engineering, and related services. [http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable](http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable). 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):

| QAT-2 Auditor 1/1/18 - 12/31/20 Billing Rate | $9.00/Hour |
| October 2019 PPI Index (PCU5413--5413--) | 132.1 |
| October 2018 PPI Index (PCU5413--5413--) | 130.0 |
| Index Point Change | 2.1 |
| Divided by previous Index | 130.0 |
| Percent change, rounded to nearest tenth | 1.6% |
| QAT-2 Auditor 1/1/21 – 12/31/21 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 request zero percent rate increases for the two additional two-year extensions.
4 SCOPE OF SERVICES

4.1 Project Overview

The objectives of this project are:

The goal of this procurement is to acquire a Program Process review of NYSDOT’s Highway Safety Plan and Highway Safety Improvement Program and deliver a Safety Data software solution and accompanying integration services to implement recommendations based on this review and fulfill NYSDOT’s Office of Traffic Safety and Mobility business requirements from a responsive and responsible consultant.

4.2 Tasks

Consistent with the project vision, the following have been identified as key functionalities.

Task 1 - Safety Data Program Process and Methodology Review
- Review of NYSDOT SHSP for overall Safety Goals and vision
- Review of NYSDOT HSIP for alignment with Strategic Highway Safety Plan (SHSP).
  - Currently, NYSDOT uses Rate - Quality control method to perform the Highway Accident Location (HAL) analysis.
  - Department would like to make improvements to the current network screening and analysis methodologies to increase the accuracy of the road safety programs and data.
- Review and provide a roadmap of new data requirements, new data sources, high level business processes, and how to transition from the current NYSDOT linear referencing method (Reference Marker) to the Departments Statewide Enterprise Milepoint Linear Referencing System.
- Review processes and formulas for calculating performance metrics on all public roads.
- Propose a High level plan for calculating highway performance metrics that is integrated with NYSDOT Linear Referencing System (LRS) and NYSDOT assets and inventory.
- Consistent process that can be used in all Safety Programs and procedures (I.E. Network Screening, Systemic Analysis)

Task 2 - System Integration/Data Management
- Maintenance of Crash case record including data from all applicable sources (motorist, police, DMV, DOT)
- Accurate identification of all crash locations (State and local highways, rural roads, entire street network)
- Ability to integrate road, traffic and crash data via LRS (NYS Enterprise Linear Referencing System)
- Ability to integrate with the ESRI ArcGIS geographic information system (GIS)
- Plan for integration with NYSDOT “System of Engagement”-(Provide data to, or pull data from)
- Enable updates of the information sources (e.g. Update source CRASH data and updates to Agile Assets Work Orders)
- Display crash locations using geospatial layers representing information from multiple systems
- Consolidate and simplify interfaces through the common location reference (Milepoint LRS) and related capabilities of the ESRI Road and Highways platform
- Tools and reports for tracking data accuracy, completeness, and Timeliness.

Task 3 - Data Analysis and Summarization

- Annual Analysis Calculations
  - Ability to assist the user in appropriate selection of predefined countermeasures
  - Reduce analysis time for comparing the crash data against multiple systems
  - Centralize reporting and monitoring abilities. View Crash data warehouse information within the application to support analysis and decision making.
  - Calculation of Crash Metrics such as frequencies and rates, on both a statewide level and site/segment level.

- Site Analysis
  - Ability to identify crash contributing factors
  - Ability to analyze data and display analysis results via GIS mapping

- Network Screening Analysis
  - Priority Ranking based on locations with worst crash metric and/or best economic metric
  - Calculate crash metrics for user-selected crash focus populations.
  - Identify and capture designation of prioritized locations for safety improvements.

- Systemic Screening Analysis
  - Statistical Analysis and Summaries
  - Ability to drill down on crash counts and rates for user-selected populations of roadway and crash categories.
  - Ability to apply and associate appropriate risk factors to over-represented crash locations.

- Highway Safety Investigations
  - Ability to estimate cost-effectiveness of safety countermeasures
• Ability to track locations and Improvements
• Assesses the effectiveness of those improvements
• Measure Predictions, Report Metrics, Track Investigation Realized Benefit/Cost
  • Ability to analyze benefit-cost ratio, net-present value
  • Improve the ability to respond quickly and accurately to FOILs and Management
  • Provide the ability to centrally audit the safety efforts to reduce Fatal and Severe crashes on New York State’s Roadways

Task 4 - Data Queries and Reporting
• Ability to aggregate and drill down data
• Graphical User-Interface
• Cross-Tabulation capability
• Selectable reporting attributes and output formats
• Map presentation of the selected crashes with street view
• Ability to share and run a shared query
• Ability to work with layers of data on the map

Task 5 - Establish Training and Documentation
• Development of training materials
• Develop Web-based training tools and quick reference guides for end users
• Ability to train several different user groups. Including: Contractors/Consultants and MPOs (external), NYSDOT end users, NYSDOT Trainers, NYSDOT Support Staff, and NYSDOT 11 Regional Staff

Task 6 – Application Support
• Application Support for Incident (Break Fix), Problem Management and End User technical support.

Task 7 – User Mobile Applications (Proposers must include this task in their in approach and cost, it will be at NYSDOT’s discretion to include this task in the final contract)
• Ability to edit crash location data via mobile device
• Develop mobile application to display crash data in a map presentation
• Ability to share crash data to mobile applications developed by a 3rd party

4.3 Organization and Staffing
The qualifications and prior experience of the proposer are of great importance to NYSDOT. The Consultant will create an organization chart that describes reporting relationships of all key personnel identified in this section. The Consultant will be responsible for providing the following key personnel:
**Project Manager**-The contractor must provide a Project Manager (PM) dedicated to this project. The PM shall have at least five (5) years experience in managing projects involving the implementation of transportation management systems. The PM shall be responsible for directing the Contractor resources, coordinating and communicating with the NYSDOT Project Manager and ensuring the project deliverables are met according to the approved project plan.

**Technical Architect** – Will be responsible for defining, designing and developing the overall structure of the Safety Data system, and overseeing assignments of the implementation team. The Technical Architect shall have at least five (5) years experience in designing and delivering projects involving the implementation of transportation management systems, and be fluent in the English language (i.e., speaks, reads, writes, understands, and comprehends English fluently).

**Safety Subject Matter Expert** – The Safety Subject Matter Expert shall have at a minimum a Bachelor’s Degree in Civil Engineering, at least five (5) years experience involving the development and execution of transportation safety evaluation systems. The Safety Subject Matter Expert shall be responsible for analyzing the Safety Data Methodology.

### 4.4 Schedule

- **July 28, 2017** – Release of RFP
- **August 8, 2017** – RFP Pre-Proposal Webinar
- **August 15, 2017** – Deadline for questions from Proposers
- **August 22, 2017** – Deadline for responses to questions
- **September 8, 2017** – Deadline for submission of Proposals
- **Week of October 2, 2017** – Proposer Interviews/Demonstrations
- **October 11, 2017** – Designation of Tentative Award
- **October 25, 2017** – Negotiation of Final Contract
- **February 1, 2018** – Notice of Contract Award
5 PROPOSAL FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two parts, bound separately. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Contract submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is not to be included in the Part I submittal. Your proposal should follow the format listed below.

Web links, photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required in this section.

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law. If an offerer 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”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

Note: Cost information is not to be included in the Part I submittal, and Technical and Management information is not to be included in Part II submittal.

5.1 Part I: Technical and Management Submittal

Part I shall include the following sections:

5.1.1 Cover Letter, and Title page, indicating:

Name, address and phone number of the proposer, and the name, title, address, email, and telephone number of person(s) with authority to negotiate and who may be contacted during the procurement process. Provide a brief description of the proposed approach, work effort and resulting product. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed a single page.

5.1.2 A Table of Contents.

5.1.3 Narrative Description

Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, etc.
5.1.4 Project Delivery Strategy and Approach

Describe the approach for performing the work and accomplishing project objectives. Provide a detailed scope of services which describes by task what will be done. A general scope of services is outlined under Section 4 and should include the following:

- Project Planning and Project Management
- Application Strategy, Architecture and Planning
- Detailed Requirements Definition
- Design Specification
- Configuration/Programming/Development/Integration
- System Testing and Acceptance Testing
- Product Implementation and Deployment
- Communications
- Training and Change Management
- Knowledge Transfer
- Post Implementation Maintenance and Support

You may base your scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYSDOT wants to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Also, include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions.

5.1.5 Risk Management Plan

Clearly describe the methods to be utilized in the identification of potential risk; procedures utilized to predict the likelihood that a risk will occur; the methods for quantifying the potential impact to the project; and the methods for development of action plans to mitigate the impact of that risk occurrence.

5.1.6 Change Management Plan

Describe the process for making any adjustments to any aspect of the project plan or to any already approved deliverable(s). Including anything formally documented in the project plan, or any deliverable produced during the course of the project.

5.1.7 Communications Plan

Describe how communications will be managed on the project including:

- Identification of all stakeholder roles and channels for communication
• Project Information collection and storage procedures
• Distribution structure, specifically detailing what, how, and when information will be shared with stakeholders
• Method by which information will be accessed if it is needed between regularly scheduled communications.

5.1.8 System Testing and Acceptance

Describe the system testing and acceptance strategy proposal which shall include, but not be limited to, validation of system functions against requirements, performance of system functions and security features, how the system interoperates with all interfaces in terms of accuracy and performance. The contractor shall warranty all work for 30 days post system acceptance.

5.1.9 System Support and Maintenance Plan

Describe the ongoing support and maintenance services to provide support of the proposed solution.
• User Manuals
  o Administrator Manual
  o End User Manual
  o Update the Safety Investigation Procedures Manual to include the new tools and methods used to perform the investigation by state, local and field offices
• Training
  o Training & Knowledge Transfer Plans including development of Training Materials and proposed User Training
  o Training approach for end users at Main Office and 11 Regions
• Application Support
  o Ongoing support and maintenance services to provide support of the proposed solution
  o Application Support process for Incident (Break Fix), Problem Management, and End User technical support
  o Provide definitions and describe the process for Application Maintenance for software updates or enhancements

5.1.10 Schedule

Provide a project schedule that includes a detailed list of the tasks and the resources, timeframes, deliverables, and dependencies for each task. All critical milestones, deliverables, tasks, timeframes, dependencies and the schedules’ critical path shall be clearly delineated within the Project Schedule. The Project Schedule must be fully resourced – all technical and functional roles (Proposer and NYSDOT) required to meet the deliverables shall be clearly identified.
It is expected that the Contractor will locate Key Personnel at NYSDOT as necessary to: coordinate work activities, provide project communication, interact with NYSDOT Subject Matter Experts (SME), and develop business expertise with the goal of successful and timely project completion. Proposer shall include a schedule for Key Personnel minimum Onsite requirements.

5.1.11 Organization and Staffing

- Provide an organizational chart for the project showing the names of the Consultant’s Project Manager and Key Personnel.
- Describe the staffing management plan to ensure effective and efficient delivery of services while meeting the project objectives.
- Describe the Roles and responsibilities of both the Contractor and NYSDOT organizations for all tasks.
- Describe the staff requirements for both the Contractor’s staff and corresponding NYSDOT staff required to implement the solution.
- It is expected that the Contractor will locate Key Personnel at NYSDOT as necessary to: coordinate work activities, provide project communication, interact with NYSDOT Subject Matter Experts (SME), and develop business expertise with the goal of successful and timely project completion.
- Include an estimate of total effort hours contributed by each of the key personnel to each task and an estimate of total effort hours for each task.
- If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. The Consultant’s Project Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant’s Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as contractual matters on the Consultant’s side. Describe the level and type of interaction with NYSDOT.

5.1.12 Experience

The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct, prior experience in data management and integration is highly desirable.

- Provide a list of projects, with reference contact information, currently in progress and those completed within the last three years which are relevant to this effort.
- Provide case studies that describe how your company has supplied similar solutions to other transportation department customers, preferable large state or municipal transportation agencies or authorities.
- Provide Consultant Key Personnel Resume and Reference form in Attachment 12. Indicate proposed key personnel who are, or have worked, on such projects.
Include names, addresses and phone numbers of contact points with the listed clients and Key Personnel. NYSDOT reserves the right to request information from any source so named.

The Key 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 as Liquidated Damages.

In addition, if at any time during the term of the contract a member of the Consultant’s Key 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:

- Charge and bill the Consultant $100/hour for the use of in-house NYSDOT personnel, or
- 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 amounts specified above will be billed as an off-set against future Consultant invoices.

5.2 Part II: Cost and Administrative Submittal

Part II of the proposal consists of two general sections:

- A Cost Proposal, which shall set forth hourly rates/direct non-salary costs for performing the work in the scope of services in for the lump sum payment of Task 1 and standard hourly rate/direct non-salary payment for Tasks 2-7; and
- The Administration Section, which shall specify the proposer’s acceptance of the terms and conditions contained in the draft Contract enclosed as Attachment 1 to this solicitation, as well as host several other administrative items.

The above general sections shall include the following:

1. Cost Proposal
NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel spreadsheets (see Attachment 20 ‘Cost Proposal Workbook’) in both a hardcopy Part II response and an electronic copy on CD, securely presented in the Part II response.

When completing the Excel cost worksheets included in Attachment 20, offerors shall follow these instructions:

1. The one-time and recurring costs the proposer provides within the Cost Proposal must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the contract, including but not limited to:
   a. All direct and indirect costs, all overhead, fees, profit,
   b. Labor, parts, shipping, material and equipment cost;
   c. Software licensing;
   d. Emergency work;
   e. Maintenance services as specified herein;
   f. Repairs and replacement of major or minor parts as necessary;
   g. Administrative, reporting or other requirements;
   h. Travel costs, parking fees, and any other ancillary fees including permits; licenses, insurance, etc., and
   i. Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.

2. Terminology used in the cost spreadsheets for products and services must be consistent with the terminology used in the technical portion of the response.

3. All worksheets included in Attachment 20 must be completed in order for the response to be considered complete.

4. Proposer should not make entries in colored cells in Attachment 20’s Excel spreadsheets. Changes should not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.


a. Salaries

Present a salary schedule to list descriptive job titles for the staff to be assigned to this project and their present hourly rates. If additional titles are used but are not assigned, they should be listed. The schedule should be prepared to distinguish anticipated assignment by project section/task.

Direct Labor or Direct Salary Cost component (A), the Indirect Cost component, also known as Overhead Cost component (B), and the Fee component (C), such that:
SHR = A + B + C

The calculation of the fee component, C, is to be made using the following formula: \[ C = M \times (\text{Direct Labor Cost} + \text{Overhead Cost}) \], or \[ C = M \times (A + B) \], where \( M \) = the fee multiplier.

b. Direct Non-Salary Costs
A direct non-salary cost schedule shall list by task number the items of direct non-salary costs (out-of-pocket expenses) expected to be incurred in the performance of the project. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available at the following Web site: [http://www.gsa.gov/](http://www.gsa.gov/)

Subconsultant costs (if any) should be shown in the schedule. On separate sheets, explain each item with all factors leading to the derivations of the cost.

Cost Proposal Instructions

Use Attachment 20 to complete the Cost Proposal response form. This attachment contains instructions to guide completion of this form. Should any questions arise pertaining to this form and its instructions, please submit them to the designated NYSDOT contact person before the Question & Answer deadline.

2. Administration Section
All signatures on each copy must be an original.

a) Acceptance of Agreement Terms and Conditions
Offerors shall 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 (Attachment 1). Attachment 2 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 365 days, a statement that the firm accepts the RFP’s Scope of Services ‘as-is’, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP, including all of its attachments. 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. **No exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT.** Conditional bids will be deemed non-responsive.

b) DBE Participation
In Part II of your firm’s proposal, provide the following:

i. Complete and submit **Attachment 5 DBE Participation Information.** Provide the legal names of all certified DBE consultants (prime and/or subconsultant).

ii. For firms whose DBE participation is less than the established goal stated in Section 2 (or where the prime consultants certified as a DBE proposes to meet the Department’s DBE participation goal via their meaningful participation), the firm must also complete and submit **Attachment 5a: DBE Participation Solicitation Log.** Submission of a **Goal Attainment Explanation Letter** shall be required for proposals with either partial goal attainment or no goal attainment at all.

c) **Modification Acknowledgement Forms**
   The Proposer shall include a completed Attachment 10: Form AOR, acknowledging receipt of any Modifications issued by the Department.

d) **Non-Collusion Bidding Certification**

   All Proposers shall submit a completed Attachment 11: Non-Collusive Bidding Certificate.

e) **Procurement Lobbying Law**


Filing the two required forms is mandatory for all consultants in order to be considered for contract award. These Forms are:

- Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf)

Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.
Use Contract Number C037625 wherever requested in the forms. Please call or e-mail the individuals identified as the Designated Contacts in section 1.4 of this RFP if you have any questions regarding how to complete this required form.

Per the Procurement/Lobbying Law of 2005, any person who wishes to contact NYSDOT regarding this project during the restricted period (i.e. from advertisement through designation), may only contact the persons noted in Section 1.4 to this solicitation.

For additional information, refer to Attachment 3: Procurement Lobbying Law Compliance.

f) Vendor Assurance of No Conflict of Interest or Detrimental Effect

Complete and submit Attachment 13: Vendor Assurance of No Conflict of Interest or Detrimental Effect.

g) Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All selected proposers of contracts valued at $100,000 or more will be required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website via [http://www.osc.state.ny.us/vendrep/index.htm](http://www.osc.state.ny.us/vendrep/index.htm) before negotiation of a contract. Proposers must certify the accuracy of the information they provide in the questionnaire.

In addition, **any subcontractor providing services valued at $100,000 or more** is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.
6 CRITERIA FOR EVALUATION OF PROPOSALS

6.1 General

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness (reference Section 1.3). Those which do not shall be deemed non-responsive and shall be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in the Department’s evaluation of proposals. Technical proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.3. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.4.

Technical and Management Proposal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each proposal individually and then meet as a group to discuss the proposals. Evaluators will be allowed to revise scores on the basis of the committee discussions. Only proposals determined to be technically acceptable and susceptible for contract award will be considered further and have their cost proposal included in the selection process.

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

The Department reserves the right to request best and final offers from firms that are determined to be susceptible for contract award.

An award shall be made to the offeror whose proposal receives the highest total score after considering all technical and cost/price evaluation factors. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm withdraw form this solicitations or be deemed non-responsive after initial evaluation and scoring.

Note: In the event two or more proposals are found to be “substantially equivalent”, the Department reserves the right to award the contract under the terms of State Finance Law §163 (10)(a).
At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on the NYSDOT web site. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.

6.2 Pre-Screening of Proposals

NYSDOT will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. RFP specifications include that it is NYSDOT’s sole discretionary determination as to whether a proposal is complete (reference “Minimum RFP Responsiveness” Section 1.3). Proposals which do not meet or exceed the mandatory specifications in the Minimum RFP Responsiveness section will be deemed non-responsive by NYSDOT and will not be considered further.

As part of the pre-screening process, the proposed DBE participation percentages offered for NYSUCP certified prime consultants and/or NYSUCP certified subconsultants will be reviewed (Attachment 5 DBE Participation Information). To count towards the Department’s DBE participation goal, each firm must be currently listed in the NYSUCP Directory. If the proposed DBE participation is less than the established eighteen percent (18%) goal (or where a prime consultants certified as a DBE proposes to meet the Department’s DBE participation goal via their meaningful participation), the firm’s evidence of a Good Faith Effort (Attachment 5a DBE Participation Solicitation Log) to achieve the goal will be reviewed, along with the firm’s letter of explanation (Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include verification of a firm’s Good Faith Effort evidence, if it is determined by the Department that the firm did not provide an acceptable Good Faith Effort, then the proposal will be deemed non-responsive and will be removed from further consideration.

6.3 Technical and Management

The technical and management proposal will be scored and will represent 600 points of the total score for a proposal. The major evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

1. Approach, Scope of Services, and Schedule
   
   a. Quality of Project Delivery Strategy and Approach: (up to 460 points)
- Task 1: Safety Data Program Process and Methodology Review (up to 50 points)
  o Review of existing processes to perform analysis, screening and investigations
  o Plan for calculating highway performance metrics that is integrated with NYSDOT Linear Referencing System (LRS)
  o Plan for using data for calculating required screening and improvement measures
- Task 2: System Integration/Data Management (up to 40 points)
  o Application Administration
  o Code and Adjust Crash Location
- Task 3 - Data Analysis and Summarization (up to 140 points)
  o Annual Analysis Calculations
  o Site Analysis
  o Network Screening Analysis
  o Systemic Screening Analysis
  o Highway Safety Investigations
  o Measure Predictions, Report Metrics, Track Investigation Realized Benefit/Cost
- Task 4 - Data Queries and Reporting (up to 20 points)
  o Queries Reporting
- Basic Information Technology Requirements (up to 50 points)
  o NYS ITS Standards
  o System Interfaces
  o User Interface
  o System Administration
  o System Security
- Integration with DOT applications and data sources (up to 50 points)
  o Integration with ODI/Oracle
  o Data Warehouse Interface
  o GIS Interface
- Task 5: Establish Training and Documentation (up to 50 points)
  o User Manuals
  o Training
  o Application Support

b. Completeness and Reasonableness of Schedule (up to 30 points)


3. Consultant and Key Personnel Experience (up to 40 points)
a. Quality, extent and relevance of experience, education and training of key personnel.

b. Quality, extent and relevance of current and prior experience of the firm.

4. Organization and Staffing (up to 30 points)

a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort.

b. Quality of plan for phasing key personnel into project.

c. Extent and quality of interaction with key participants

6.4 Cost

The cost portion of the cost and contract proposal will be point scored and will represent 300 points of the total score for a proposal. The Contractor shall provide, in the cost spreadsheets provided in Attachment 20: Cost Proposal Workbook, the total cost to perform the Scope of Services.

The calculation of a cost score will be determined by the following method:

1. The lowest cost proposal will receive the full amount of points.

2. Every other proposal within the competitive range will be given points in relation to the lowest price.

3. This point total will be calculated by dividing the lowest proposed price by the total price of each proposal, multiplied by the maximum weight for price (300 points).

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

6.5 Proposal Short Listing

The short listing rule for this solicitation shall be: Any proposal within 100 points of the top initial Best Value ranked proposal (plus any ‘cluster’ of initial best value proposal scores surrounding the cut-off line will be short-listed). Cost evaluation results shall be considered along with the initial raw after-group discussion written technical proposal score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined short listing of firms (determined to be mathematically susceptible for contract award).
Firms submitting proposals which do not make the shortlist shall not be included in the remaining best value evaluation process steps (not included in subsequent proposal scoring process). Such a firm’s proposal shall be classified as ‘Did Not Finish’ in the procurement record.

6.6 Technical Interviews (up to 100 points)

The Technical Interview portion of the Technical and Management proposal will be technically evaluated and point scored for firms after completion of initial Best Value considerations. Technical Interview evaluation shall account for a separate block of up to 100 points of the total best value score for a proposal.

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

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

Technical Interviews will be held at the Department’s offices located in Albany, New York at a date and time to be determined by NYSDOT.

1. Ability of the presenting consultant team to address and answer the committee’s clarifying and/or follow-up questions. (up to 40 points)

2. Additional insights into technical aspects of the firm’s proposal. (up to 30 points)

3. Ability to demonstrate proposed approach/system. (up to 30 points)

6.5 Final Written Technical Proposal Evaluation (Re-Scoring)

Scoring of written technical proposals shall remain open until after conclusion of evaluating and scoring the Technical Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier technical proposal scores/findings based upon
the additional clarification information garnered from the Technical Interviews. TEC members shall revisit their original hardcopy score sheets and should any after-Technical Interview changes be in order, may revise their after-group discussion, written technical proposal scores as a result of further group discussions. Reasons for any and all score changes shall be recorded on the applicable TEC member’s hardcopy score sheet as well as in Contract Management’s electronic composite score sheet. Once the re-scoring of written technical proposals has concluded, TEC members shall sign/date and surrender their score sheets to Contract Management.

6.6 Best & Final Offer (BAFO; Optional) & Proposal Withdrawal

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

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

6.7 Final Best Value Evaluation

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), NYSDOT will perfect (curve) the written technical proposal scores so that the highest-rated, average raw written technical proposal score gets changed and assigned a perfect score of 600 points for this solicitation with the other technical scores adjusted proportionately upward. NYSDOT will also perfect (curve) the Technical Interview scores so that the highest-rated, average raw Technical Interview score gets changed and assigned a perfect score of 100 points for this solicitation with the other Technical Interview scores adjusted proportionately upward. Cost proposals have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule (lowest total cost gets a perfect cost score of 300 points). Perfected cost scoring results will be added to the perfected written technical proposal score plus the perfected Technical Interview score by firm to generate a tentative final best value scores by firm. Firms shall be ranked in Final Best Value score order (highest to lowest).

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

Once all possible score ties have cleared, NYSDOT will determine the Final Best Value Score, where after the proposal with the highest Final Best Value score shall be recommended to NYSDOT Executive Management for contract award for contract #C037625.

6.8 Consultant Selection Recommendation & Tentative Contract Award

A consultant selection and designation memo shall be prepared and forwarded to the applicable NYSDOT Executive Manager(s) with an accompanying proposal evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award of C037625 to NYSDOT Executive Management. The Executive Manager will be asked to concur with the final conclusion of the proposal evaluation process - a recommendation for the tentative contract awards for the Department - and designate the top-Best Value rated consultant based upon the above results.

Should negotiations with the top-ranked Best Value Consultant fail to produce agreed-upon contracts, then NYSDOT Executive Management will designate and award contract #C037625 to the next highest-ranked Best Value Consultant. The Department will then enter into negotiations with the second-highest rated Consultant. This process may repeat itself until acceptable contracts are consummated. The consultant designation becomes final after the NYS Office of the State Comptroller approves Contract #C037625.

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

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation(s) will be posted the ‘Consulting Services’ listing on NYSDOT’s website via: https://www.dot.ny.gov/business. All proposers will be notified in writing regarding the results from the solicitation. All non-designated firms will be offered an opportunity to request a debriefing.

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

7.1 Proposal Submission

7.1.1 The proposal shall be signed by an official authorized to bind the offeror.

7.1.2 Proposers shall submit ten (10) copies of Part I and four (4) copies of Part II.

7.1.3 Your proposal must be received by NYSDOT by Noon on September 8, 2017. The proposal must be addressed to:
Ms. Patricia Kappeller
NYS Department of Transportation
50 Wolf Road, 6th floor
Albany, New York 12232
Attention: #C037625, Safety Management System Implementation Services for NYSDOT

7.2 State’s Rights

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

a. To accept or reject any or all proposals;
b. To correct any arithmetic errors in any or all proposals;
c. To change the proposal’s due date upon appropriate notification to interested firms;
d. To eliminate any mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;
e. To adopt any or all of a successful offeror’s proposal;
f. 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;
g. 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;
h. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
i. To eliminate any requirement that is found to be unmet by all offerors;
j. 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;
k. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
1. 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;

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

7.3 Consultant Responsibility when Proposing Former NYSDOT Employees

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

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

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

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

Procedure

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

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

- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.

7.4 Method of Payment

Payment for services provided under the agreement resulting from this RFP will be fixed for the duration of the agreement unless changed by an executed supplemental agreement. The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Contract.

Lump Sum Payment will be based on the acceptance of completed deliverables, For Task 1, identified in the RFP.
Payment for services provided under the project shall be a specific hourly rate reimbursement and compensation for actual non-salary costs incurred in the performance of the scope of services in Tasks 2-7.

Requests for progress and final payments shall be made by the designated consultant on standard payment request forms (FIN 421). Use proper procedure for billing each deliverable: Submit a draft billing to NYSDOT’s assigned Project Manager via the following sample electronic billing: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS FIN 421 payment request forms.

7.5 Information for the Selected Consultant

7.5.1 Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All Proposers valued at $100,000 or more are required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website via http://www.osc.state.ny.us/vendrep/index.htm at time of proposal submission. Proposers must certify the accuracy of the information they provide in the questionnaire. In addition, any subconsultant/subcontractor providing services valued at $100,000 or more is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website at time of proposal submission.

7.5.2 Registration with NYSDOT

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

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

7.5.3 Registration with Statewide Financial System (SFS)

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

7.5.4 Consultant Employment Disclosure Requirements of this Project

Go to Office of the State Comptroller’s Web site ([http://www.osc.state.ny.us/procurement/consultantdisclosure.doc](http://www.osc.state.ny.us/procurement/consultantdisclosure.doc)) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment” ([Form A, Attachment 4](http://www.osc.state.ny.us/procurement/consultantdisclosure.doc)) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” ([Form B, Attachment 4](http://www.osc.state.ny.us/procurement/consultantdisclosure.doc)) 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.

7.5.5 Insurance Requirements of this Project

Please carefully read the terms and conditions of the draft Contract appended as [Attachment 1](http://www.osc.state.ny.us/procurement/consultantdisclosure.doc) of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 12 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

7.5.6 Contractor Tax Certification

Per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit Forms ST-220-TD and ST-220-CA (Contractor Certifications) prior to negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites: [http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA) and [http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD).
7.6 Inquiries and Information

All questions concerning this solicitation must be directed *only* to the individual specified in Section 1.4 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.8 below.

Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT web site.

7.7 Protest Procedure

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

7.8 Tentative Schedule of Key Events

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

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
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<tbody>
<tr>
<td>RFP Release Date:</td>
<td>July 28, 2017</td>
</tr>
<tr>
<td>Question Submittal Deadline:</td>
<td>August 15, 2017</td>
</tr>
<tr>
<td>Proposals Due:</td>
<td>September 8, 2017, 12 noon Eastern Time</td>
</tr>
<tr>
<td>Recommendation &amp; Designation:</td>
<td>Approximately October 11, 2017</td>
</tr>
<tr>
<td>Contract Finalizing:</td>
<td>November 1, 2017</td>
</tr>
<tr>
<td>Contract Award:</td>
<td>February 1, 2018</td>
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</table>
8 ATTACHMENTS
8.1 ATTACHMENT 1: DRAFT CONTRACT
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C_________

PROJECT: _________________________

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

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

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

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

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

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

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

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

ARTICLE 5. MAXIMUM AMOUNT.

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

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

ARTICLE 6. PROVISION FOR PAYMENT.

The STATE shall pay to the CONSULTANT, and the CONSULTANT agrees to accept as full compensation for services provided under this agreement:

Item I  Specific Hourly rates of pay shown in SCHEDULE B (EXHIBIT ___) for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged is subject to audit. If the AGREEMENT is extended beyond ______(end date in Article 4), then all of the Specific Hourly Rates of pay shown in
EXHIBIT ___ are eligible for rate adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – architectural, engineering and related services (Series ID: PCU5413--5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 1.5%, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

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

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

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

ARTICLE 7. CONTRACT PAYMENT.

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

ARTICLE 8. PARTIAL PAYMENTS.

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

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

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

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

ARTICLE 9. FINAL PAYMENT.

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

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

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

ARTICLE 10. EXTRA WORK.

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

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

ARTICLE 11. CONSULTANT LIABILITY.

To the fullest extent permitted by law, the Consultant shall indemnify and save harmless the State, 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 required in the Article of this Contract entitle “Insurance” shall be utilized for claims involving the Consultant’s professional negligence.

The Consultant has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorneys’ fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, or the negligence of any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the State, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building,
highway or structure or appurtenances and appliances thereof including moving, demolition and excavating 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 12. INSURANCE.

The Consultant shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until satisfactory completion of all work under the contract, 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 Number. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing the Contract
Number and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov

Certificates may be mailed to:

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. Special Protective and Highway Liability Policy. (applicable to any project where Consultant is required to conduct field work where Consultant controls the field location for the work). The Consultant shall maintain, separate and apart from its
umbrella policy, a policy issued to and covering the liability of the People of the State of New York, The State of New York, the Commissioner of Transportation, all employees of the 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, against damages that the insureds may be held legally liable to pay for property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by Consultant, including at the location of any of the work. This should be ISO form CG 00 14 12 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 per occurrence and at least $2,000,000 for each aggregate limit.

4. 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.

5. 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.

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

7. Professional Liability/ Errors and Omissions. (applicable to professional services requiring the signature, stamp or certification of a licensed professional, including, without limitation, erection plans, demolition plans, containment plans, coffer dams, and temporary sheeting.) The Consultant shall maintain at its own expense or
shall require to be maintained, such insurance as is customary to compensate the Department for any claims or losses that occur because of Consultant’s errors, omissions, malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than $250,000. subject to approval by the Department, such approval not to be unreasonably withheld, except that it is also agreed that the Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on a claims-made basis (or a policy form providing equivalent coverage) in an amount of no less than $1,000,000 per claim and $1,000,000 in the aggregate.

8. Railroad Protective Liability Insurance. (applicable to any consulting work where the consultant is entering railroad right-of-way independent of a construction contract described in §105-09). The Consultant shall maintain at its own expense railroad protective liability policy of insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes on Railroad Insurance, or if no limits of coverage are specified, the limits shall be not less than $5,000,000 combined Bodily Injury Liability and/or Property Damage for each occurrence with a $10,000,000 aggregate Limit applying separately to each annual period. Said policy shall be subject to the approval of the railroad and comply with 23 CFR 646 Subpart A.

9. Marine Protection & Indemnity. (applicable to any consulting work that necessitates the consultant’s use of barges or other watercraft independent of a construction contract). Anytime the activity involves work on navigable water or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Consultant shall obtain Protective and Indemnity Liability insurance for all marine operations under the Agreement, with a minimum ($1,000,000) limit. The policy shall be endorsed to add the Department as an Additional Insured.

ARTICLE 13. INTERCHANGE OF DATA.

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

ARTICLE 14. DISPOSITION OF DATA.

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

ARTICLE 15. DAMAGES AND DELAYS.
The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 9 of this AGREEMENT.

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this contract shall be treated as an executory contract under 11 USC §365 of the Bankruptcy Laws or successor statute, and subject to assumption or rejection by the debtor within the time permitted by law.

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

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

The CONSULTANT agrees that the automatic stay under 11 USC §362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this contract.

ARTICLE 17. TERMINATION.

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

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

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

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

**ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.**

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

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

**ARTICLE 19. INDEPENDENT CONTRACTOR.**

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

**ARTICLE 20. COVENANT AGAINST CONTINGENT FEES.**

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

**ARTICLE 21. TRANSFER OF AGREEMENT.**

The CONSULTANT specifically agrees, as required by the State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the AGREEMENT or of their right, title or interest therein, or their power to execute such AGREEMENT, to any other person, company or corporation, without the previous consent in writing of the STATE.
If this provision of the law be violated, the STATE shall revoke and annul the AGREEMENT and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the AGREEMENT, and such transferee shall forfeit and lose all moneys therefore assigned under said AGREEMENT, except so much as may be required to pay his employees.

ARTICLE 22. PROPRIETARY RIGHTS.

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

ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.

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

ARTICLE 24. ORDER OF PRECEDENCE.

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

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

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

3. Does not have a proposed debarment pending; and

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

EXCEPTIONS -

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

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

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

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

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

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

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

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

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

CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §889-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, CONSULTANT shall be liable for the costs associated with such breach if caused by CONSULTANT’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT’s agents, officers, employees or SUBCONSULTANTS.
ARTICLE 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). General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

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

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

ARTICLE 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, Exhibit ___) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any 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: consultantdisclosure@dot.ny.gov.

ARTICLE 31. NOTICES.

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

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

8.1.1.1.1 New York State Department of Transportation:
   Contact Person’s Name: William A. Howe, Contract #C037625
   Title: Director
   Address: NYSDOT Contract Management Bur., 50 Wolf Rd., 6th Fl, Albany, NY 12232
   Telephone Number: 518-457-2600
   Facsimile Number: 518-457-2875
   E-Mail Address: Bill.howe@dot.ny.gov

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

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

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

ARTICLE 32. TITLE VI ASSURANCE.

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

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

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

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

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

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

(a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
(b.) cancellation, termination or suspension of the contract, in whole or in part.
(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

ARTICLE 33. ENSURING PAY EQUITY BY STATE CONSULTANTS /CONTRACTORS.

In accordance with Executive Order 162, issued on January 9, 2017, the consultant shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant – or subcontractor – that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a State contract, then the CONSULTANT and each subconsultant shall provide such information of each employee in the CONSULTANT’S entire workforce. Such information shall be reported to the Department at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31). The reporting requirement shall begin on the effective date of the contract and continue for the duration of the contract term. Reports shall be submitted within 15 calendar days from the end of each reporting period. This provision is in effect for the quarterly reporting period ending December 31, 2017, or the quarterly reporting period that is immediately subsequent to the effective date of the contract, whichever date is later.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by the Department and as in accordance with Consultant Instruction 17-01.

The consultant shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant, if the subcontract is in excess of $25,000.

ARTICLE 34. CONFLICTS OF INTEREST.

The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT’s performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

The CONSULTANT hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could
prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this AGREEMENT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

ARTICLE 35. ETHICS REQUIREMENTS.

The Consultant and its Subconsultants/Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The Consultant certifies that all of its employees and those of its Subconsultants/Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Consultant or its Subconsultants/Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Consultant or its Subconsultants/Subcontractors derived from this Contract. The Consultant shall identify and provide the State with notice of those employees of the Consultant and its Subconsultants/Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Consultant provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subconsultant/Subcontractor if utilizing such Subconsultant/Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

ARTICLE 36. SUBCONTRACTING.

The CONSULTANT agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the STATE. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONSULTANT may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained.
by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this AGREEMENT.

The CONSULTANT retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the Department of Transportation, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONSULTANT shall give the STATE immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT’s duties under the AGREEMENT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed $100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.
IN WITNESS WHEREOF, this Contract No. _________ has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY

________________________________

CONTRACT MANAGEMENT
TRANSPORTATION

DATE: ____________________________

Consultant Certifications: I certify that all the information with respect to the “Vendor Responsibility Questionnaire” submitted by (CONSULTANT FIRM NAME) on the ______ day of ___________________________, 201______ pursuant to the requirements set forth in OSC’s Guide to Financial Operations is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the “Vendor Responsibility Questionnaire” submitted that date.

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

________________________________

DATE: ____________________________

FIRM

Safety Management System Implementation Services for NYSDOT

APPROVALS

ATTORNEY GENERAL

THOMAS P. DI NAPOLI

STATE COMPTROLLER

________________________________

DATE: ____________________________

________________________________

DATE: ____________________________
Acknowledgement for Contract #____________

For contracts signed in New York State

State of New York              )
County of                     ) ss.:

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

_____________________________________
NOTARY PUBLIC

My Commission Expires: ____________________________

For contracts signed outside New York State

State of
County of                  ) ss.:

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

_____________________________________
NOTARY PUBLIC

_____________________________________
(Signature and office of individual taking acknowledgement.)

My Commission Expires: ____________________________
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.
7. NON-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. INTERNATIONALBOYCOTT 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 that 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 $25,000,00.00, 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:
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.
with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

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

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

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

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

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

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

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

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

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

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.
25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

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

Updated January 2014
During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

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

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

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

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

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

(a.) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b.) cancellation, termination or suspension of the contract, in whole or in part.

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

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

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

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

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

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

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

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

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

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

PROMPT PAYMENT MECHANISMS

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

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

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

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

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

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

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

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a The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.
b [www.cfda.gov](http://www.cfda.gov)
(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.

USE OF UNITED STATES-FLAG VESSELS: The contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

April 2016
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, NYS Executive Law Article 15, 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, by Executive Order 162, issued on January 9, 2017 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.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.

B. In performing the contract, the Consultant shall:

1. Ensure that each Consultant and subcontractor – or sub-consultant – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.

3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.

4. The Consultant’s EEO policy statement shall include the following language:
   a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
   b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
   c. The Consultant 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 the implementation of the Consultant’s obligation herein.
d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.

The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. AFFIRMATIVE ACTION IN SUBCONTRACTING

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

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

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

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

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Updated December 2012
APPENDIX D

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES
(revised State 7-12-2017)

I. General Provisions

A. The New York State Department of Transportation (NYSDOT) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (NYCRR) for all State contracts, as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The consultant to the subject contract (the “Consultant” and the “Contract” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSSDOT, to fully comply and cooperate with NYSDOT in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (EEO), and contracting opportunities for New York State-certified Minority and Women-Owned Business Enterprises (MWBEs). The Consultant’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix C and such other remedies are available to NYSDOT pursuant to the Contract and applicable law.

II. MWBE Utilization Plan

A. The Consultant represents and warrants that the Consultant has submitted an MWBE Utilization Plan, or shall submit a MWBE Utilization Plan at such time as shall be required by NYSDOT. The MWBE Utilization Plan is to be submitted consistent with the requirements stated in the procurement document.

B. The Consultant agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.

C. The Consultant further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such material breach, NYSDOT shall be entitled to any remedy
provided herein, including but not limited to, a finding that the Consultant is non-responsive.

III. Waivers Post Contract Execution

A. If the Consultant, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Consultant may submit a request for a waiver to the NYSDOT Contract Management Bureau, Civil Rights Unit. Such waiver request must be supported by evidence of the Consultant’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSDOT shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

B. If NYSDOT, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NYSDOT may issue a notice of deficiency to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

IV. Liquidated Damages – MWBE Participation

A. Where NYSDOT determines that the Consultant is not in compliance with the requirements of this Appendix and the Consultant refuses to comply with such requirements, or if the Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Consultant shall be obligated to pay to NYSDOT liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:
   1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
   2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSDOT, the Consultant shall pay such liquidated damages to NYSDOT within sixty (60) days after they are assessed. Provided, however, that if the Consultant has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consultant following the complaint process.
APPENDIX E
INFORMATION TECHNOLOGY INFRASTRUCTURE REQUIREMENTS

1. PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE
   1.1 Consultant is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Consultant is providing under this Agreement.
   1.2 All Data security provisions agreed to by the Consultant within this Agreement may not be diminished for the duration of this Agreement. No reduction in these conditions in any fashion may occur at any time without prior written agreement by the parties amending this Agreement.

2. SECURITY POLICIES AND NOTIFICATIONS
   2.1 State Security Policies and Procedures: The Consultant and its personnel shall review and implement all State security policies, procedures and directives currently existing or implemented during the term of this Agreement, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)).
   2.2 Security Incidents: Consultant shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies).

3. DATA BREACH - REQUIRED CONSULTANT ACTIONS
   3.1 Unless otherwise provided by law, in the event of a Data Breach, the Consultant shall:
      3.1.1 notify the NYSDOT Project Coordinator or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Consultant has knowledge of a Data Breach;
      3.1.2 consult with and receive authorization from the NYSDOT Project Coordinator as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by NYSDOT;
      3.1.3 coordinate all communication regarding the Data Breach with the NYSDOT Project Coordinator;
      3.1.4 cooperate with the NYSDOT Project Coordinator in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
      3.1.5 take corrective action in the timeframe required by the NYSDOT Project Coordinator. If Consultant is unable to complete the corrective action within the required timeframe, the NYSDOT Project Coordinator may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to NYSDOT, or until NYSDOT has completed a new procurement for a replacement service system. The Consultant will be responsible for the cost of these services during this period.
   3.2 Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General (“OAG”) to bring an action against Consultant to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Consultant’s liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

4. DATA OWNERSHIP, ACCESS AND LOCATION
   4.1 Data Ownership: NYSDOT shall own all right, title and interest in Data.
   4.2 Access to Data:
      4.2.1 NYSDOT shall have access to its Data at all times, through the term of the Agreement.
      4.2.2 NYSDOT shall have the ability to import or export Data in piecemeal or in its entirety at NYSDOT’s discretion, without interference from the Consultant.
   4.3 Consultant Access to Data: The Consultant shall not copy or transfer Data unless authorized by NYSDOT. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Consultant shall not access any Data for any purpose other than fulfilling the service. Consultant is prohibited from Data Mining, cross tabulating, monitoring NYSDOT’s Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by NYSDOT be copied, disclosed, or retained by the Consultant or any party related to the Consultant. The Consultant is allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to NYSDOT upon request. Consultant must comply with any and all security requirements within the Contract.
4.4 Data Location and Related Restrictions: All Data shall remain within the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS. All Data in transit must be handled in accordance with FIPS-140-2 or TLS1, or TLS2 (or successor).

4.4.1 Support Services: All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

5. CONSULTANT PORTABLE DEVICES

5.1 Consultant shall not place Data on any portable Device unless Device is located and remains within Consultant's CONUS Data Center.

5.2 The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Consultant is no longer contractually required to store the Data.

6. TRANSFERRING OF DATA

6.1 General: The Consultant will not transfer Data unless directed to do so in writing by NYSDOT.

6.2 Transfer of Data at end of the Agreement: At the end of the Agreement, Consultant may be required to transfer Data to a new Consultant. This transfer must be carried out as specified by NYSDOT in the Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.

6.3 Transfer of Data; Charges: Transfer of Data shall be done at no additional charge to NYSDOT, except for the cost detailed for Task 11 in Attachment 8.

6.4 Transfer of Data; Contract Breach or Termination: In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Consultant.

7. ENCRYPTION

7.1 All Data must be encrypted at all times unless specifically authorized by the NYSDOT Project Coordinator. At a minimum, encryption must be carried out at the most current NYS Encryption Standard (NYS-S14-007), (or successor policy(ies) with key access restricted to NYSDOT only, unless with the express written permission of NYSDOT.

8. REQUESTS FOR DATA BY THIRD PARTIES

8.1 Unless prohibited by law, Consultant shall notify the NYSDOT Project Coordinator in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than NYSDOT, and the Consultant shall secure Written acknowledgement of such notification from the NYSDOT Project Coordinator before responding to the request for Data.

8.2 Unless compelled by law, the Consultant shall not release Data without NYSDOT’s prior written approval.

9. SECURITY PROCESSES

9.1 Consultant shall cooperate with all reasonable NYSDOT requests for a written description of Consultant's physical/virtual security and/or internal control processes. NYSDOT shall have the right to terminate this Agreement when such a request has been denied.

10. UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT

10.1 The Consultant shall give a minimum of five (5) business days advance written notice to the designated NYSDOT Project Coordinator of any upgrades or system changes that will impact services as provided in this Agreement.

11. EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES

11.1 Return of Data: The Consultant shall return Data in a format agreed upon within the Contract or as agreed to with the NYSDOT Project Coordinator. The Consultant must certify all Data has been removed from its system and removed from backups within timeframes established in the Contract or as agreed to with the NYSDOT Project Coordinator.

11.2 Suspension of Services: During any period of suspension of service, NYSDOT shall have full access to all Data at no charge. The Consultant shall not take any action to erase and/or withhold any NYSDOT Data, except as directed by the NYSDOT Project Coordinator.

11.3 Expiration or Termination of Services: Upon expiration or termination of the Agreement, NYSDOT shall have full access to all Data for a period of 60 calendar days at no charge. During this period, the Consultant shall not take any action to erase and/or withhold any Data, except as directed by the NYSDOT Project Coordinator.

12. SECURE DATA DISPOSAL

12.1 When requested by the NYSDOT Project Coordinator, the Consultant shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor.
Certificates of Destruction, in a form acceptable to NYSDOT, shall be provided by the Consultant to the NYSDOT Project Coordinator.

13. ACCESS TO SECURITY LOGS AND REPORTS
   13.1 Upon request, the Consultant shall provide reports to NYSDOT in a format as specified in the Contract.

14. CONSULTANT PERFORMANCE AUDIT
   14.1 The Consultant shall allow NYSDOT to assess Consultant's performance by providing any materials requested in the Contract (e.g., page load times, response times, uptime, fail over time). NYSDOT may perform this Consultant performance audit with a third party at its discretion.
   14.2 The Consultant shall perform an independent audit of their Data Centers, at least annually, at Consultant expense. The Consultant will provide a full version of the audit report upon request by NYSDOT. The Consultant shall identify any confidential, trade secret, or proprietary information in accordance with Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law.
   14.3 The Office of the State Comptroller reserves its right conduct an audit of the Consultant.

15. PERSONNEL
   15.1 Background Checks: NYSDOT may require the Consultant to conduct background checks on certain Consultant staff at no charge to NYSDOT.
   15.2 Separation of Duties: NYSDOT may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

16. BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS
   16.1 The Consultant shall provide a business continuity and disaster recovery plan to the NYSDOT Project Coordinator within 30 days of receiving the Notice to Proceed.

17. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS
   17.1 If required, Consultant will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that NYSDOT is required to comply with.

18. AUTHENTICATION TOKENS
   18.1 NYSDOT may require authentication tokens for all systems. For more details, please see NYS ITS Policy S14-006 Authentication Tokens Standard or successor.

19. MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION WITHIN AN AUTHORIZED USER AGREEMENT
   19.1 As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. NYSDOT requires notification of any such changes to ensure security and business needs are met.
   19.2 Any changes to the description, type of service(s), or SKU (e.g., PaaS to IaaS) must be provided to NYSDOT.
   19.3 In addition, notification must be provided to the NYSDOT Project Coordinator for review and acceptance, prior to implementation. Any changes to the Agreement will require NYSDOT to re-assess the risk mitigation methodologies and strategies and revise the Agreement as needed.

December 2015
State Consultant Services  
Contractor’s Annual Employment Report  
Report Period: April 1, 2023, to March 31, 2023

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

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

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Grand Total
8.2 ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS

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

CONTRACT NUMBERS: C037625
PROJECT TITLES: Safety Management System Implementation Services for NYSDOT

I. CONSULTANT INFORMATION

FIRM NAME: ______________________________________________________________
ADDRESS:_________________________________________________________________
CITY:_________________________________________ STATE: ___________
ZIP CODE: __ __ __ __ __ - __ __ __ __
TELEPHONE : (_____) _____ - __________ FAX: (_____) _____ - __________
E-MAIL ADDRESS: _________________________________________________________
CONTACT PERSON: ________________________________________________________

Consultant’s Federal Identification Number (FIN):________________________
Consultant’s NYSDOT Consultant Identification Number (CIN):_________________

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

Preparer’s Name/Title: _____________________________________________________
Address:  ___________________________________________________________________
Telephone: (_____) _____ - __________  FAX: (_____) _____ - __________

Other Authorized Individual(s):
Name/Title:________________________________________________________________
Address:____________________________________________________________________
Telephone: (_____) _____ - __________  FAX: (_____) _____ - ______
II. **PROPOSER CERTIFICATIONS**

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

- 180-Day Offer: This proposal is a firm offer for a 180-day period from the date of submission.
- The firm has read and will follow the procedure outlined in Section 7.3 of the RFP if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10 days of notification of designation. (http://www.osc.state.ny.us/vendrep/forms_vendor.htm)
- ST-220: If selected for contract award greater that $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:

Signature: ____________________________________________

III. **ACCEPTANCE OF CONTRACT**

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

Signature: ____________________________________________

(Name of Acceptor)
8.3 ATTACHMENT 3: PROCUREMENT LOBBYING LAW COMPLIANCE

1. **Required Forms:** The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant’s proposal.
   - Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf

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


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

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

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

   **b) Contacts after designation**
   NYSDOT identifies its primary negotiation contacts. The designated contacts include:
The Contract Management Designation Contract Specialist
The Contract Management Designation Supervisor
The Contract Management Civil Rights Unit Supervisor
The Contract Management Assistant Directors
The Contract Management Director

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

c) Information Required from Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:
The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:
   Person’s name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

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

4. Rules and regulations and more information on this law, please visit:
   http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html (Advisory Council FAQs)

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

Ms. Patricia Kappeller
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Patricia.Kappeller@dot.ny.gov
Tele: (518) 457-2600
### FORM A

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

State Agency Name: Transportation
Contractor Name: ______________
Contract Start Date: __ / __
Contract End Date: __ / __

<table>
<thead>
<tr>
<th>O*Net Employment Category</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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Total this page 0 0 $ 0.00

Grand Total

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

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

Contracting State Agency Name: Transportation
Agency Code: 3900283
Contract Number: C037625
Contract Term to
Contractor Name:
Contractor Address:

Description of Services Being Provided:

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

<table>
<thead>
<tr>
<th>O<em>NET Employment Category Number and O</em>NET Job Title</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Total this page                      0  0  $ 0.00
Grand Total

Name of person who prepared this report:
Preparer's Signature:___________________________________________________
Title: ___________________________ Phone #: ______________________
Date Prepared: / /

Use additional pages if necessary)
8.5 ATTACHMENT 5: DBE PARTICIPATION INFORMATION

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm’s legal name, checking if they are a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm’s percentage of the total salary for the contract. Please keep in mind that only NYSUCP certified DBEs are eligible to count toward attainment of this federally-funded procurement with a DBE participation goal.

Further, participation by a certified DBE prime consultant will count toward DBE participation goal attainment.

If the combined percentage of total salary for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, eighteen percent (18%), then the proposing prime firm is required to fill out and submit the Participation Solicitation Log (Attachment 5a), and the Goal Attainment Explanation Letter. Further, prime consultants certified as a DBE who propose to meet the Department’s DBE participation goal via their meaningful participation, are required to fill out and submit the Participation Solicitation Log (Attachment 5a) unless their outreach efforts results in proposed DBE subconsultant.

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

Contract#: C037625

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>% of Total Contract Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DBE</td>
<td>None</td>
</tr>
<tr>
<td>A. Prime Consultant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Sub-Consultants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
</tr>
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</table>
## 8.5a ATTACHMENT 5a: DBE PARTICIPATION SOLICITATION LOG

Good Faith Effort Documentation

<table>
<thead>
<tr>
<th>CONTRACT NO. C037625</th>
<th>18% DBE PARTICIPATION GOAL</th>
<th>PAGE NUMBER ___ OF ___</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIME FIRM NAME/ADDRESS/ZIP CODE</td>
<td>CONTACT PERSON</td>
<td>TELEPHONE NUMBER (INCLUDE AREA CODE)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>E-MAIL</td>
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</table>

<table>
<thead>
<tr>
<th>SOLICITED COMPANY NAME AND CONTACT PERSON</th>
<th>TELEPHONE (WITH AREA CODE)</th>
<th>FEDERAL EMPLOYER ID #</th>
<th>WORK TYPES BEING SOLICITED</th>
<th>TYPES AND DATES OF CONTACTS</th>
<th>CONTACT RESULT(S)</th>
</tr>
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<tbody>
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8.6 ATTACHMENT 6: DIVERSITY PRACTICES QUESTIONNAIRE

Not Applicable
8.7 ATTACHMENT 7: M/WBE PARTICIPATION INFORMATION

Not Applicable
ATTACHMENT 8: SOLICITATION LOG INSTRUCTIONS
(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed D/M/WBE participation does not meet the established participation goal must document and report their efforts to solicit participation by certified D/M/WBE in this Non-Architecture/Non-Engineering contract. The Solicitation Log is used for this purpose.

PLEASE NOTE: For RFP’s with a DBE goal, only participation by NYSUCP certified DBE prime consultants as well as NYSUCP certified DBE subconsultants may count toward goal attainment. For RFP’s with MBE and/or WBE goals, only consultants or subconsultants certified by New York State Empire State Development may count toward goal attainment.

Guidance concerning Good Faith Efforts in meeting D/M/WBE participation goals 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 D/M/WBE participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a Solicitation Log, along with a Goal Attainment Explanation Letter, documenting the firm’s Good Faith Effort. A separate Solicitation Log must be submitted for each Participation Goal established in the RFP.

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

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

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

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

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

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

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

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

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

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

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

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

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

CODE DESCRIPTION:

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

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

3 The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the 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 D/M/WBE Participation Goals in Federally-Funded Contracts

The following is a list of types of actions that demonstrate good faith efforts in obtaining D/M/WBE participation. This list is not exclusive or exhaustive. The bidder must show that it took all necessary and reasonable steps to achieve a D/M/WBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient D/M/WBE 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/ or the ESD M/WBE Directory -http://www.esd.ny.gov/MWBE.html) the interest of all certified D/M/WBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the D/M/WBEs to respond to the solicitation. The bidder must determine with certainty if the D/M/WBEs are interested by taking appropriate steps to follow up initial solicitations.

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

- Providing interested D/M/WBEs 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 D/M/WBEs – it is the bidder’s responsibility to make a portion of the work available to D/M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE subcontractors and suppliers, so as to facilitate D/M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBEs 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 D/M/WBEs to perform the work.

- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including D/M/WBE subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a D/M/WBEs is not in itself sufficient reason for failure to meet the contract D/M/WBE 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 D/M/WBEs 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 D/M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.
8.9 ATTACHMENT 9: NEW YORK BUSINESS REPORTING

Not Applicable
ACKNOWLEDGMENT OF RECEIPT OF
RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

<table>
<thead>
<tr>
<th>NAME OF PROPOSER</th>
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We hereby acknowledge receipt of the Safety Data Management (contract #C037625) Request for Proposals, dated July 27, 2017 and subsequent responses to questions and Modifications issued by the Department, as listed below.

Add additional lines in tables below, if needed.

<table>
<thead>
<tr>
<th>Modification number:</th>
<th>Date issued by Department:</th>
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<tr>
<th>SIGNED</th>
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<tbody>
<tr>
<td>DATE</td>
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<table>
<thead>
<tr>
<th>NAME (printed or typed)</th>
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<table>
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<tr>
<th>TITLE</th>
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</table>
8.11 ATTACHMENT 11: NON-COLLUSIVE BIDDING CERTIFICATION

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

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

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTYTHERETO 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 ANYAWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

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

Subscribed to under penalty of perjury under the laws of the State of New York, this _______ day of ____________, 20____ as the act and deed of said corporation of partnership.
NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

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

<table>
<thead>
<tr>
<th>Names of Partners or Principals</th>
<th>Legal Residence</th>
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IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME  LEGAL RESIDENCE

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<tr>
<th>Name</th>
<th>Legal Residence</th>
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<tbody>
<tr>
<td>President:</td>
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<tr>
<td>Secretary:</td>
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<tr>
<td>Treasurer:</td>
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</table>

President:  
Secretary:  
Treasurer:  

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: _____________________________   Address: ______________________

Street

_____________________________  _______________________

City   State     City    State
**8.12 ATTACHMENT 12: KEY PERSONNEL RESUME AND REFERENCES**

Instructions:
1. Complete Attachment 12 for each Key Personnel title identified in the RFP.
2. Attachment 12 shall not exceed three pages in length
3. Proposer’s may expand the boxes as necessary
4. The term “Client” below refers to the past project owner. “Client” is NOT a Prime Contractor
   where the proposing firm acted in the capacity as a Subcontractor.

<table>
<thead>
<tr>
<th>1. Personnel Name and Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Title Assigned for this Project:</td>
</tr>
<tr>
<td>3. Firm working for on this Project:</td>
</tr>
<tr>
<td>4. Current Employment Status:</td>
</tr>
<tr>
<td>[ ] Employed by Firm identified #3 above [ ] Employed by a different Firm [ ] Unemployed</td>
</tr>
<tr>
<td>5 Years of Relevant Experience</td>
</tr>
<tr>
<td>6. Description of Relevant Experience:</td>
</tr>
<tr>
<td>7. Certifications/Licenses:</td>
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<tr>
<td>8. Education:</td>
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<tr>
<td>Past Project Experience Complete below for a maximum of five past projects</td>
</tr>
<tr>
<td>9.1 Project Description (include contract number where appropriate):</td>
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<tr>
<td>9.2 Client Name:</td>
</tr>
<tr>
<td>9.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
</tr>
<tr>
<td>9.4 Description of person’s role and responsibilities during project:</td>
</tr>
<tr>
<td>10.1 Project Description (include contract number where appropriate):</td>
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<tr>
<td>10.2 Client Name:</td>
</tr>
<tr>
<td>10.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
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<tr>
<td>10.4 Description of person’s role and responsibilities during project:</td>
</tr>
<tr>
<td>11.1 Project Description (include contract number where appropriate):</td>
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<tr>
<td>11.2 Client Name:</td>
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<tr>
<td>11.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
</tr>
<tr>
<td>11.4 Description of person’s role and responsibilities during project:</td>
</tr>
<tr>
<td>12.1 Project Description (include contract number where appropriate):</td>
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<tr>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>12.2 Client Name:</td>
</tr>
<tr>
<td>12.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
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<tr>
<td>12.4 Description of person’s role and responsibilities during project:</td>
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<tr>
<th>13.1 Project Description (include contract number where appropriate):</th>
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<tbody>
<tr>
<td>13.2 Client Name:</td>
</tr>
<tr>
<td>13.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
</tr>
<tr>
<td>13.4 Description of person’s role and responsibilities during project:</td>
</tr>
</tbody>
</table>
**Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to this [RFP/Contract], as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;

2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;

3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm’s ability to carry out its obligations under any existing contracts between the Firm and the State;

4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;

5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,
hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this [RFP/Contract] should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature: Date:

This form must be signed by an authorized executive or legal representative.
### ATTACHMENT 14: DEFINITIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Term/Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AADT</td>
<td>Average Annual Daily Traffic [count] in vehicles per day</td>
</tr>
<tr>
<td>ADRP</td>
<td>Accident Damage Recovery (ADR)/Claims Database Programs</td>
</tr>
<tr>
<td>AIS</td>
<td>Accident Information System (DMV); citizen- and police-reported crash information for all reportable crashes in NYS; also includes driver and violations information</td>
</tr>
<tr>
<td>ALIS</td>
<td>Accident Location Information System (DOT); used to provide safety analysts and DMV users with crash location coding to enable mapping layers for generating maps and diagrams regarding roadway locations for reportable crashes in NYS.</td>
</tr>
<tr>
<td>ArcGIS</td>
<td>Esri geospatial application used across the NYS DOT</td>
</tr>
<tr>
<td>Capital Improvement</td>
<td>Large dollar DOT investment projects to establish, maintain or improve NYS roads and highways</td>
</tr>
<tr>
<td>CIN</td>
<td>Consultant Identification Number</td>
</tr>
<tr>
<td>CNSE</td>
<td>New York State College of Nanoscience and Engineering; NYS ITS Agency data center</td>
</tr>
<tr>
<td>&quot;Complete&quot; Date</td>
<td>Date designated before which all crash data is considered to be final and available for use in calculations</td>
</tr>
<tr>
<td>CRF</td>
<td>Crash Reduction Factor; The percentage crash reduction that might be expected after implementing a given countermeasure at a specific site; factor is used to compute the expected number of crashes after an improvement has been implemented.</td>
</tr>
<tr>
<td>Crash Data</td>
<td>Overall term used to refer to Crash, Vehicle, Commercial Vehicle, Apparent Factor, and Supplemental Event data records</td>
</tr>
<tr>
<td>CSSWeb</td>
<td>Consultant Selection System Web Application</td>
</tr>
<tr>
<td>DBE</td>
<td>Disadvantaged Business Enterprise</td>
</tr>
<tr>
<td>DEV/Test</td>
<td>Lowest application tier used for the development/initial deployment of software applications</td>
</tr>
<tr>
<td>DMV</td>
<td>New York State Department of Motor Vehicles</td>
</tr>
<tr>
<td>DOH</td>
<td>New York State Department of Health</td>
</tr>
<tr>
<td>DOT</td>
<td>New York State Department of Transportation</td>
</tr>
<tr>
<td>EB</td>
<td>Empirical Bayes Adjustment Method</td>
</tr>
<tr>
<td>Esri</td>
<td>Developer/Vendor of ArcGIS geocoding application</td>
</tr>
<tr>
<td>FEIN</td>
<td>Federal Employer Identification Number</td>
</tr>
<tr>
<td>FHWA</td>
<td>Federal Highway Administration</td>
</tr>
<tr>
<td>FMCSA</td>
<td>Federal Motor Carrier Safety Administration</td>
</tr>
<tr>
<td>FOIL</td>
<td>Freedom of Information Law</td>
</tr>
<tr>
<td>GIS</td>
<td>Geographic Information System</td>
</tr>
<tr>
<td><strong>GTSC</strong></td>
<td>Governor's Traffic Safety Committee</td>
</tr>
<tr>
<td><strong>HAL</strong></td>
<td>High Accident Location</td>
</tr>
<tr>
<td><strong>Highway Safety Investigation</strong></td>
<td>The Investigation of a high or potentially high accident location directed at determining the cause or causes of the accident occurrence at the location and the formulation of recommendations for corrective action. Characterized by a collection of historical accident data, preparation of collision diagrams, existing geometrics, skid resistance, maintenance history, analysis including a field review of the location.</td>
</tr>
<tr>
<td><strong>HSI</strong></td>
<td>Highway Safety Investigation</td>
</tr>
<tr>
<td><strong>HSIP</strong></td>
<td>Highway Safety Improvement Program</td>
</tr>
<tr>
<td><strong>HSM</strong></td>
<td>FHWA Highway Safety Manual</td>
</tr>
<tr>
<td><strong>HSSP</strong></td>
<td>Highway Safety Strategic Plan - GTSC Plan 2013</td>
</tr>
<tr>
<td><strong>ITSMR</strong></td>
<td>Institute for Traffic Safety Management and Research</td>
</tr>
<tr>
<td><strong>LRS</strong></td>
<td>Linear Referencing System</td>
</tr>
<tr>
<td><strong>Maintenance Improvement</strong></td>
<td>Any improvement (low cost), other than Traffic Control Improvements, which is to be implemented by Department Maintenance personnel.</td>
</tr>
<tr>
<td><strong>Milepoint</strong></td>
<td>Specific indicators of location along the length of a roadway, used for pinpointing exact safety concern spots</td>
</tr>
<tr>
<td><strong>MPO</strong></td>
<td>New York State Metropolitan Planning Operations</td>
</tr>
<tr>
<td><strong>NYCDOT</strong></td>
<td>New York City Department of Transportation</td>
</tr>
<tr>
<td><strong>NYS</strong></td>
<td>New York State</td>
</tr>
<tr>
<td><strong>NYSCUP</strong></td>
<td>New York State Unified Certification Program</td>
</tr>
<tr>
<td><strong>NYSDOT</strong></td>
<td>New York State Department of Transportation</td>
</tr>
<tr>
<td><strong>NYSP</strong></td>
<td>New York State Police</td>
</tr>
<tr>
<td><strong>PIES</strong></td>
<td>Post Implementation Evaluation System (DOT); investigation and analytics application used to determine proposed Capital and low cost Safety investments in NYS roads and highways.</td>
</tr>
<tr>
<td><strong>PII</strong></td>
<td>Priority Investigation Intersection</td>
</tr>
<tr>
<td><strong>PIL</strong></td>
<td>Priority Investigation Location</td>
</tr>
<tr>
<td><strong>PLL</strong></td>
<td>Procurement Lobbying Law</td>
</tr>
<tr>
<td><strong>PM</strong></td>
<td>Project Manager</td>
</tr>
<tr>
<td><strong>PPI</strong></td>
<td>Producer Price Index published by the US Department of Labor, Bureau of Labor Statistics</td>
</tr>
<tr>
<td><strong>PROD</strong></td>
<td>Production tier of NYS IT architecture for fully deployed applications</td>
</tr>
<tr>
<td><strong>PSS/OPPM</strong></td>
<td>NYS DOT Project Scheduling System/Oracle Project Portfolio Management applications used for capital projects in NY</td>
</tr>
<tr>
<td><strong>QA</strong></td>
<td>Quality Assurance tier used for QA and validation application testing in NYS</td>
</tr>
<tr>
<td><strong>Rate-Quality Control Method</strong></td>
<td></td>
</tr>
<tr>
<td><strong>RFC</strong></td>
<td>Request for Comment</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Reference Marker</strong></td>
<td>Reference Marker numbers correspond to field posted signs along state highways in New York.</td>
</tr>
<tr>
<td><strong>RFP</strong></td>
<td>Request for Proposal</td>
</tr>
<tr>
<td><strong>Roadway Segment</strong></td>
<td>Specific section of road defined for analysis purposes</td>
</tr>
<tr>
<td><strong>SafetyNet</strong></td>
<td>FMCSA application designed to manage and provide appropriate access to crash data, roadside inspection history and data, and motor carrier and shipper identification information.</td>
</tr>
<tr>
<td><strong>SAML 2.0</strong></td>
<td>Web authentication standard for NYS</td>
</tr>
<tr>
<td><strong>SDL</strong></td>
<td>Safety Deficient Location</td>
</tr>
<tr>
<td><strong>SFS</strong></td>
<td>Statewide Financial System</td>
</tr>
<tr>
<td><strong>SHSP</strong></td>
<td>Strategic Highway Safety Plan - NYS DOT plan 2010</td>
</tr>
<tr>
<td><strong>SIMS</strong></td>
<td>Safety Information Management System (DOT); transformed data received from the DMV AIS application used with location, roadway sufficiency information to perform screening and site analysis.</td>
</tr>
<tr>
<td><strong>SME</strong></td>
<td>Subject Matter Experts</td>
</tr>
<tr>
<td>** Sufficiency**</td>
<td>Refers to information regarding roadway surface characteristics. For example, pavement condition.</td>
</tr>
<tr>
<td><strong>TLS</strong></td>
<td>Transport Layer Security</td>
</tr>
<tr>
<td><strong>Traffic Control Improvement</strong></td>
<td>An improvement which involves only a change in traffic regulation such as installing stop signs, signals, speed limits, parking restrictions, passing restrictions, etc.</td>
</tr>
<tr>
<td><strong>UTM Zone 18</strong></td>
<td>Universal Transverse Mercator Zone 18 location codes; 2-dimensional Cartesian coordinate system within 6 degree bands of longitude; Zone 18 covers most of NYS</td>
</tr>
<tr>
<td><strong>VDI</strong></td>
<td>Virtual Desktop Interface; NYS DOT application virtualization strategy using the VMWare product</td>
</tr>
</tbody>
</table>
**8.15 ATTACHMENT 15: NYS OFFICE OF ITS SECURITY STANDARDS AND POLICIES**

**NYS Office of ITS Security Standards and Policies**

Statewide technology policies and guidelines set standards and define best practices for the NYS Information Technology community. By submitting a bid, all Bidders agree that under any subsequent contract entered into between ITS and the successful bidder, the winning Bidder must comply with and remain compliant with applicable New York State Information Technology Security Policies, as they currently exist or are reasonably modified or added to in the future, currently published by the NYS Enterprise Information Security Office (EISO) at its.ny.gov/eiso/policies/security or at such other website as ITS may designate in the future, upon notice to the winning Bidder. Below is a summarized list of Policies and Standards.

*Please note: Not all policies are applicable to every project.*

<table>
<thead>
<tr>
<th>Policy No.</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYS-G10-001</td>
<td>Cyber Incident Reporting Procedure</td>
</tr>
<tr>
<td>NYS-P03-002</td>
<td>Secure Use of Social Media Guideline</td>
</tr>
<tr>
<td>NYS-P10-006</td>
<td>Information Security Policy</td>
</tr>
<tr>
<td>NYS-P13-001</td>
<td>Identity Assurance Policy</td>
</tr>
<tr>
<td>NYS-P14-001</td>
<td>Information Security Exception Policy</td>
</tr>
<tr>
<td>NYS-S10-001</td>
<td>Acceptable Use of Information Technology (IT) Resources Policy</td>
</tr>
<tr>
<td>NYS-S13-001</td>
<td>CPE Requirements for ISOs/Designated Security Representatives Standard</td>
</tr>
<tr>
<td>NYS-S13-002</td>
<td>Secure System Development Life Cycle (SSDLC) Standard</td>
</tr>
<tr>
<td>NYS-S13-003</td>
<td>Sanitization/Secure Disposal Standard</td>
</tr>
<tr>
<td>NYS-S13-004</td>
<td>Identity Assurance Standard</td>
</tr>
<tr>
<td>NYS-S13-005</td>
<td>Cyber Incident Response Standard</td>
</tr>
<tr>
<td>NYS-S14-001</td>
<td>Information Security Risk Management Standard</td>
</tr>
<tr>
<td>NYS-S14-002</td>
<td>Information Classification Standard</td>
</tr>
<tr>
<td>NYS-S14-003</td>
<td>Information Security Controls Standard</td>
</tr>
<tr>
<td>NYS-S14-005</td>
<td>Security Logging Standard</td>
</tr>
<tr>
<td>NYS-S14-006</td>
<td>Authentication Tokens</td>
</tr>
<tr>
<td>NYS-S14-007</td>
<td>Encryption Standard</td>
</tr>
<tr>
<td>NYS-S14-008</td>
<td>Secure Configuration Standard</td>
</tr>
<tr>
<td>NYS-S14-009</td>
<td>Mobile Device Security</td>
</tr>
<tr>
<td>NYS-S14-010</td>
<td>Remote Access Standard</td>
</tr>
<tr>
<td>NYS-S14-013</td>
<td>Account Management / Access Control Standard</td>
</tr>
<tr>
<td>NYS-S15-001</td>
<td>Patch Management Standard</td>
</tr>
<tr>
<td>NYS-S15-002</td>
<td>Vulnerability Scanning Standard</td>
</tr>
<tr>
<td>NYS-S15-003</td>
<td>802.11 Wireless Network Security</td>
</tr>
</tbody>
</table>
ITS Technical Services and Standards Overview
Exhibit 1 – Technology Services Overview

February 28, 2017
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1. Document Version History

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Author(s)</th>
<th>Change Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>V0.00</td>
<td>4/27/2016</td>
<td>Richard Green / G. Zink / J. Jacob / A. Ahmed</td>
<td>NYSTEC DRAFT Continued</td>
</tr>
<tr>
<td>V0.01</td>
<td>5/3/2016</td>
<td>Azim Ahmed</td>
<td>DRAFT – Content update, removed duplicates, reorganized and reformatted to standard template</td>
</tr>
<tr>
<td>V0.02</td>
<td>5/12/2016</td>
<td>Rob Roddy</td>
<td>Style review and updates. Distributed for internal ITS SME review.</td>
</tr>
<tr>
<td>V1.00</td>
<td>5/13/2016</td>
<td>Azim Ahmed</td>
<td>Version 1.00 Final</td>
</tr>
<tr>
<td>V2.00</td>
<td>11/22/2016</td>
<td>Azim Ahmed</td>
<td>Updated with current service offerings</td>
</tr>
<tr>
<td>V2.01</td>
<td>2/28/2017</td>
<td>Maha Madan</td>
<td>Removed Roles and Responsibilities , Project and Application Lifecycle Standards</td>
</tr>
</tbody>
</table>

2. Introduction

The Office of Information Technology Services (ITS) provides architectural frameworks and platform components used to build, configure, and customize proposed solutions. A proposed solution must use the supported enterprise shared service platforms and components whenever practical. ITS enterprise technologies are available for the successful bidder to build and configure a solution that meets business requirements defined by the New York State customer agency. All builds and configurations must comply with NYS Information Technology Policies, Standards, and Best Practice Guidelines. These guidelines can be found on the ITS website at https://www.its.ny.gov/tables/technologypolicyindex.

Using NYS ITS enterprise shared services and components for on premise solutions is the preferred architecture, however, other products may be proposed based on potential integration advantages and/or alignment with the ITS enterprise strategic direction and with approval by the New York State Chief Technology Officer.
3. ITS Managed Services – Infrastructure

3.1 Supported Servers and Database

3.1.1 General Purpose Servers

Virtual servers to support multiple sized workloads running current supported operating systems. Service features include configuration of memory and CPU based on tiers (small, medium, large), managed network, system monitoring, security, and capacity planning:

**Operating Systems:** IBM AIX, Microsoft Windows, or Red Hat Linux (RHEL)

**Web Server Options:** RedHat Apache HTTP, Microsoft IIS

3.1.2 Application Servers

Application servers and platforms to support Java J2EE and .NET frameworks. Service offerings include standalone and scalable configuration of memory and CPU based on tiers (small, medium, large), managed network, system monitoring, security, and capacity planning.

**Java J2EE Application Servers:** RedHat JBoss

**Microsoft .NET:** Native Windows or ITS Private Cloud

3.1.3 Database System

Managed relational database services include database support and physical database design in addition to infrastructure support. The service targets OLTP structured data workloads. Supported technologies include current releases of:

**Oracle Database Server**

**Microsoft SQL Server**
3.2 Example Application Hosting Stacks

<table>
<thead>
<tr>
<th>Web Server</th>
<th>Application Server</th>
<th>Database</th>
<th>Software Workloads</th>
</tr>
</thead>
<tbody>
<tr>
<td>RedHat HTTP (Apache)</td>
<td>RedHat JBoss</td>
<td>Oracle DB / MS SQL</td>
<td>Java J2EE Workloads</td>
</tr>
<tr>
<td>Microsoft IIS on Apprenda PaaS</td>
<td>Microsoft .NET on Apprenda PaaS</td>
<td>MS SQL on Apprenda PaaS</td>
<td>.NET Workloads</td>
</tr>
</tbody>
</table>

3.3 Managed IBM z-series Mainframe Services

Service Features: Review, configure, generate, install, and maintain the mainframe operating system software including libraries, components, patches, and upgrades.

Service Options: Disaster Recovery

4. ITS Managed Services – Enterprise Software

4.1 Identity Management

4.1.1 User Authentication

User authentication is available using ny.gov and Active Directory. Agency user authentication must leverage ADFS. External users and citizens that are not integrated through ADFS will be supported using ny.gov accounts. Both methods pass credentials using Oracle Identity Manager to the CRM/OLTP solution where role based security is defined.

4.1.2 Data Integration Security

Data Integration security is managed by the ITS SOA backplane. Security access controls and logging requirements for integration and data access is to be established by ITS in alignment with NYS security policy.

4.2 User Interface and Customer Experience

The preferred UI for external users is Oracle Policy Automation (OPA) web determination and Siebel UI for internal users. .Net is an option for rich/custom interfaces that do not fit in the OPA/Siebel model.
4.3 Data Integration

4.3.1 SOA Backplane

The ITS SOA backplane is used to connect customer portals to CRM/OLTP system of record, agency internal systems, and databases. The ability to integrate with existing .Net applications that support ORA is engineered through integration services established using the ITS SOA Backplane. The ability to share/integrate data with organizations both internal and external to the proposed solution is engineered through web services that are established using ITS SOA Backplane. Possible integrations may include but are not limited to development of legacy system interfaces, back office applications, peripheral technology services, and other inter-application SOA/API services developed by ITS based on the project system design specifications.

- SOA Akana

4.3.2 Managed File Transfers

Batch managed file transfer (MFT) imports and exports may also be required when web services are not a viable option. ITS MFT services will be available for this requirement.

- IBM Sterling/Aspera

4.4 CRM and BPM

4.4.1 Customer Relationship Management (CRM)

Core CRM system, UI, data design, workflow design and development are the responsibility of the SI. ITS supported technology sets are based on Oracle Siebel products. These include:

- Oracle Service Cloud
- Siebel CRM Innovation Pack
- Siebel Public Sector on premise configuration built for NYS ITS internal state cloud
- Siebel Public Sector E-Service
- Siebel eMail Response
- Siebel Mobile
- Siebel CTI
• Siebel Partner Portal
• Siebel Partner Manager
• Siebel Tools
• Oracle UPK

4.4.2 Business Process Management (BPM)

Scheduling function is supported through Oracle Real Time Scheduling and preferred over custom scheduling solutions.

• Siebel Application Management Pack
• Oracle Policy Automation
• Oracle Real-Time Scheduler (ORS)
• Siebel Data Quality
• Oracle Enterprise Data Quality
• IBM WebSphere Process Server

4.5 Document Management

The Enterprise Content repository is managed by ITS. New York State’s ECM APIs provide SOAP-based web services that support integration using the following base capabilities for use by client applications that have to store and manage content in a NYS Transactional Enterprise Content Repository:

1. Single and Multiple Document Ingestion
2. Document Query and Retrieval based on metadata
3. Update Document Metadata
4. Delete document

The Siebel integration requires the use of Siebel EAI to call this repository services which are transport agnostic.
4.5.1 Capture

Document ingestion for new cases use Kofax Capture software to image paper documents, Siebel File upload integration capabilities with IBM FileNet, as well as automated e-scan capabilities to capture email messages and attachments.

4.5.2 Store and Retrieve

FileNet is the preferred platform, however Documentum and the CMIS standards are currently supported if there is a strong justification. With CMIS any object store that supports the CMIS standard is accessible using the CMIS standard APIs even if the Object Stores implementation of CMIS is varies. If a new object store is required, a new protocol can be quickly added by modifying one functional component.

*Message and Transport Protocols Supported include:* SOAP over HTTP or JMS, REST, JSON, FTP, and more are supported. If an additional protocol is required, a new protocol can be added by modifying one functional component.

4.6 Master Data Management

The Oracle Customer Hub is an available technology for master data that extends beyond the Siebel operational systems of record.

- Oracle MDM
- Enterprise Oracle Data Quality

Integration support for existing verification services such as address validation and identity verification is supported by ITS.

4.7 Business Intelligence and Analytics

Data warehouse for custom reporting and analytics is:

- MSSQL (SQL Server 2014 w/X-Velocity)

Reporting, Business Intelligence and Data Analytics capabilities is provided through:

- Case Management Analytics Fusion Edition
- Oracle Business Intelligence Suite Enterprise Edition Plus
- Business Intelligence Management Pack
- BI Publisher for Siebel Reports
- Oracle Data Integrator for ETL

4.8 Customer Correspondence

Document generation and correspondence with delivery of the documents to a designated output channel is supported by ITS through services based on the project system design specifications.

- OpenText Exstream
- GovDelivery (email/SMS gateways)

4.9 Geographic Information Systems (GIS)

The statewide GIS platform provides capability to share and discover geographic information, create and manage state geographic assets, visualize and analyze geospatial information, and collaborate geographic data in real-time. It is used to find, create, and share maps to meet analytical requirements. All maps and APIs should go through the standard NYS offering rather than Google, Bing, or other industry sources. GIS services such as map and feature services is exposed to service consumers as a RESTful end-point.

- ESRI ArcGIS 10.3.x

4.10 Other ITS Standard Capabilities

Payment Gateway - Integration development with payment gateways will depend on established patterns and merchant provider.

Collaboration Meeting Rooms – CMR in alignment with ITS standards is a preferred solution for system extensions for managed videoconference meetings.

Statewide Financial System (SFS) – Statewide application based on PeopleSoft for Agency accounting and financial management.

Human Capital Management – Agency employee management and recruitment based on PeopleSoft and Oracle Taleo Cloud.
Web Content Management – Acquia Cloud provides website authoring, collaboration, and administration tools allows users to create and manage website content. Akamai serves content to end-users via a cloud based media and software delivery network.

Grants Management – Agate Software.

E-Licensing – Accela.

Virtual Desktop - VMWare’s Virtual Desktop Infrastructure (VDI) solution is used to provide desktop applications and network access to the majority of agency users. Through VDI users are provided the Microsoft Office Desktop Suite and Internet access.

eMail and Collaboration - eMail and workplace collaboration are provided from a public cloud via Microsoft 0365 Exchange, One Drive and SharePoint.
8.17 ATTACHMENT 17 – SAFETY DATA INTEGRATION PROJECT – FUTURE STATE

Identity Verification (NY.gov/DIM)
Single Sign On
   Role Mapping
     Administrator Location Editor Analyst/Engineer SafetyNet Query

Management Reporting Data Sources

Data Warehouse
  ArcGIS
  Roads and Highways
  PSS/OPPM (Project Data)
  Filenet

CLEAR Application
  Crash Data Admin
  Location Editing
  HAL Calculations
  Network Screening
  Systemic Screening
  Site Analysis
  Safety Investigation
  Safety Net UI

Warehouse “CLEAR”

Reporting/Analytics

Crash Data
  Transformed

Agile Assets
  Maintenance Module

Internal DOT Applications
  ADRP
  Safety Net
Overview:

NYS ITS will provide the historical data that must be migrated to the selected CLEAR application solution. This data must be used to provide the initial population of the application database.
Vendor is responsible for establishing the methods for incorporating and disseminating all data that is required by the CLEAR application on an ongoing basis. The methods established to incorporate data from other NYS DOT applications into the CLEAR application and to distribute CLEAR application information to other NYS DOT applications must align with NYS ITS technical requirements (see attached ITS Technical Services and Standards Overview document).

A. Program Support System (PSS)/Oracle Project Portfolio Management (OPPM)

PSS/OPPM is the system of record for capital project dates, cost, locations, work types and accomplishments. Users must be able to initiate updates of existing CLEAR application safety investigations with associated capital project details.

B. SafetyNet

Commercial Vehicle crash data is exported from the CLEAR application to an XML file for upload to the NYS DOT Federal Motor Carrier Safety Administration (FMCSA) SafetyNet Application.

C. ArcGIS

The NYS DOT uses the Esri ArcGIS application to manage geographic data about roadways in NYS. Display of ArcGIS specific location data and map layers from within the CLEAR application is a critical functionality that must be supported. The capture of location data, including GIS coordinates and milepoints, on individual crash records must be supported.

D. Accident Damage Recovery Program (ADRP)

ADRP is the business software application used to manage public property damage claims for properties managed by the NYS DOT. Crash data from crashes resulting in public property damage and Insurance Carrier information for drivers and companies involved in such crashes must be distributed from the CLEAR application to the ADRP application.

E. Roads and Highways

The NYS DOT Roads and Highways application manages the roadway linear referencing system and is the source for roadway Inventory, Sufficiency, NYS Reference Marker and Daily Traffic Volume data. The CLEAR application must be able to access and use this information to perform analysis based on roadway characteristics and calculate safety measures.

F. Agile Assets

The Agile Assets application provides roadway asset management information for the NYS DOT. There is a bi-directional sharing of data between the CLEAR and Agile applications. Information from the CLEAR application that must be transferred to the Agile Assets application includes Priority Investigation Locations.
(PILs) and calculated roadway segment crash rates. In addition, Agile Assets maintenance Work Orders must be initiated by CLEAR application users for those safety improvements that are low cost. The Agile Assets application must provide Work Order status and asset maintenance information to the CLEAR application.

G. FileNet

The FileNet document repository stores the crash reporting forms received from citizens and State Police officers. These documents must be retrievable through the CLEAR application interface, using the web services templates provided by the NYS Enterprise ITS Electronic Content Management (ECM) team.
<table>
<thead>
<tr>
<th>Name</th>
<th>Entity/ System/Subsystem</th>
<th>Application/ Technology</th>
<th>Entity Explanation/Purpose of System</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLEAR Application</td>
<td>System</td>
<td>TBD</td>
<td>The system must provide an overarching ability to support Administration, Location Editing, High Accident Location (HAL) calculations, Network Screening, Systemic Screening, Site Analysis, and Safety Investigations. It must also be able to generate an XML report to support the NYS DOT compliance with the Federal SafetyNet mandated Commercial Vehicle Crash reporting requirements.</td>
</tr>
<tr>
<td>Identify Verification (NY.Gov ID)</td>
<td>System</td>
<td>TBD</td>
<td>The NY.gov ID Service provides a centralized user identity and access management solution for NYS Internet and Intranet applications.</td>
</tr>
<tr>
<td>Management Reporting Sources</td>
<td>Data</td>
<td>System</td>
<td>There will be four data sources that contain information which will be used by the software solution. These include the Esri ArcGIS application, Roads and Highways, PSS/OPPM, and the FileNet document repository. The Esri ArcGIS application contains the information used to locate accidents and provides map layers that can be used during screening and site analysis tasks. The Roads and Highways application contains Linear Referencing, Inventory, Sufficiency, and Traffic Volume information used to calculate crash measures and assist in roadway safety investigations. The PSS/OPPM application information supports tracking for the execution of proposed capital improvements and capital project location layer information on analysis maps used when investigating improvement alternatives. The FileNet document repository holds crash reports that the NYS DOT receives from the NYS Department of Motor Vehicles (DMV). These are DMV forms, in .pdf and .xml formats, that are required to be filed by NYS State Police and Motorists for crashes that happen in NYS. These data sources include both data contained in the NYS DOT Data Warehouse schemas and application databases.</td>
</tr>
<tr>
<td>Name</td>
<td>Entity/System/Subsystem</td>
<td>Application/Technology</td>
<td>Entity Explanation/Purpose of System</td>
</tr>
<tr>
<td>-------------------------------------</td>
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<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Crash Data (Transformed)</td>
<td>System</td>
<td>Oracle v12 c</td>
<td>The NYS DOT receives data about vehicle crashes in NYS from the DMV. Received crash data is formatted using DMV entities and coding. The NYS DOT has established a process that transforms the received data and stores the information in a format that is usable by downstream analysis and other DOT applications.</td>
</tr>
<tr>
<td>CLEAR Data Warehouse</td>
<td>System</td>
<td>Oracle v12 c</td>
<td>Information, including DMV-sourced crash data, that is used or generated when performing analysis and investigation tasks in the CLEAR application will be transferred to a database schema that can be used for management reporting purposes. It is anticipated that this data will be refreshed nightly.</td>
</tr>
<tr>
<td>Reporting/Analytics</td>
<td>System</td>
<td>OBIEE</td>
<td>Reporting capabilities within the NYS DOT are delivered using the Oracle Business Intelligence Enterprise Edition reporting tools. Data definitions, set up for this BI tool, and implementation tasks are performed by internal NYS ITS staff.</td>
</tr>
</tbody>
</table>
| Agile Assets                        | System                  | TBD                    | The Agile Assets application includes a module supporting the work tasks that are assigned to DOT staff responsible for maintenance tasks on roadways in NYS.  
The CLEAR application must support the initiation of Work Orders in the Agile Assets application when a low-cost improvement is identified during a safety investigation. CLEAR application PIL Locations and Segment Accident Rates will be transferred to the Agile Assets application to enhance their existing roadway data.  
Information relating to completed Work Orders must be transferred back to the CLEAR application. |
| Accident Damage Recovery Program    | System                  | TBD                    | The ADRP application receives information relating to Vehicle Crashes that involve public property, enabling the NYS DOT to recover damages from motorist insurance carriers.                                                                    |
| SafetyNet                           | System                  | TBD                    | NYS DOT is required to report Commercial Vehicle crash information to the Federal Motor Carrier Safety Administration (FMCSA). FMCSA created the SafetyNet program to support this mandated reporting. The CLEAR application must produce the required XML reporting file to import into SafetyNet for upload to FMCSA. |
8.19 ATTACHMENT 19: REQUIREMENTS MATRIX

Attachment 19, which contains the RFP’s Requirements Matrix, is be downloaded from the NYSDOT project web site, located at https://www.dot.ny.gov/business. Click on “Consulting Services”, then click on “Opportunities”, and then click on the date to the left of ‘C037625…’.
8.20 ATTACHMENT 20: COST PROPOSAL

Attachment 20, which contains the RFP’s cost proposal instructions, is be downloaded from the NYSDOT project web site, located at https://www.dot.ny.gov/business. Click on “Consulting Services”, then click on “Opportunities”, and then click on the date to the left of ‘C037625…’.