NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT
Contracts #C037703 and #C037705

September 26, 2017

RFP #C037703 SCHEDULE:

- September 26, 2017: RFP Release
- October 4, 2017: Pre-Proposal Webinar (10:00AM ET)
- October 16, 2017: Questions from Vendors Due
- October 19, 2017: Answers from NYSDOT Due
- October 30, 2017: Proposal Due (2:00 PM ET)
- Weeks of December 6 & December 13, 2017: Interviews
- December 2017: Finalize Contract
- January 2018: Award Contract/NTP
RFP RESPONSE FORM

RFP #C037703: Due Diligence Impact Studies and Project Labor Agreement 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 RFP 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: alfred.hasenkopf@dot.ny.gov  Thank you.
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT
Contracts #C037703 & #C037705

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1 INTRODUCTION

1.1 Purpose
The New York State Department of Transportation (NYSDOT) is releasing this Request for Proposals (RFP) to seek proposals from responsive and responsible consultants to provide Due Diligence Impact Studies (DDIS) and Project Labor Agreement (PLA) Services to support NYSDOT capital construction and design-build projects. NYSDOT intends to competitively select two responsible and responsive consultants that provides best value to the State based on this solicitation.

1.2 Background
New York State Executive Order No. 2, dated January 1, 2011, requires State agencies to establish procedures to consider whether to require PLAs on construction projects. Section 222 of the New York State Labor Law provides further direction for conducting a labor and cost analysis and study to review the feasibility, economic benefits and appropriateness of using a PLA on these projects. The analysis will include an examination of the project and the proposed (or negotiated) PLA, including a description of the project and its significance, cost, schedule, effect on the public, and any aspects unique to the project, such as its complexity or atypical cost or schedule. The examination of potential PLA economic benefits should cover cost savings, schedule benefits, the potential for labor unrest, documentation as to how the PLA would not unreasonably restrict competition, and consistency with Labor Law.

NYSDOT has developed a Project Labor Agreement Policy which presents the following:

A. In order to implement a PLA, the Department must demonstrate a public purpose for entering into such an agreement and must prepare a project-specific record which shall contain a description of the significance of the project, including complexity, typical or non-typical, estimated cost, estimated schedule and impacts on the public. The DDIS and PLA will become part of this record. The record shall also contain an economic benefit study, which shall include:

1. Analysis of anticipated cost savings resulting from the proposed or anticipated PLA, which includes an analysis of how the proposed or anticipated PLA will alter provisions of any existing collective bargaining agreements involving, among other things, uniform wages, overtime, shift differentials, work rules and practices, and efficiency.

2. Analysis of specific contract cost savings, which includes savings in time and effect on the traveling public and the Department. This analysis shall consider the potential of direct savings to the Department, avoidance of revenue loss, reductions of supervision and engineering costs, and documented efficiencies and savings which would minimize inconvenience to the traveling public. All savings must be quantified.

3. Analysis of the potential problems which could be caused by labor unrest, including the likelihood of such unrest, the economic impact resulting from such potential labor unrest, as well as the effect on the project, the public and the Department of such potential labor unrest.

4. Documentation as to how non-union contractors and out-of-state contractors may still participate in and bid upon the proposed project and that the proposed or anticipated PLA will not unreasonably restrict competition.

5. Documentation of consistency with Article 8 of the Labor Law.
6. Any other appropriate topic arising out of the unique characteristics of the project.

B. If, upon review of the Record, the Commissioner decides that the use of the proposed or anticipated PLA will obtain the best possible work at the lowest possible cost, prevent favoritism, improvidence, fraud and corruption in the award of the contract, advance the interests of competitive bidding, and that its use is therefore appropriate, then the Commissioner may approve the use of the PLA. If the project is federally-aided, the Commissioner shall seek the concurrence of the applicable federal entity, e.g. Federal Highway Administration (FHWA).

C. Upon the approval of the use of a PLA by the Commissioner, and, if necessary, by the applicable federal entity, the PLA, if it has not already been signed by the participating labor organization(s), shall be signed by the participating labor organization(s).

D. Upon completion of the foregoing, the Department shall incorporate the fully executed PLA into the contract specifications for the subject project and advertise the project for bid. After letting of contract, the Department shall send the PLA to the Department of Labor, to determine the interaction, if any, between Article 8 of the Labor Law and the PLA.

1.3 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. Complete Technical and Management proposal submission
2. Complete Cost and Administrative proposal submission
3. Procurement Lobbying Law Forms (Attachment 5)
4. Meeting/Exceeding the contract’s 11% Disadvantaged Business Enterprise (DBE) subcontracting goal or Submission of an acceptable Good Faith Effort and submission of an acceptable DBE Participation Explanation Letter of Non-DBE Goal Attainment

1.4 Designated Contact

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can only be made to the following designated contact person:

    alfred.hasenkopf@dot.ny.gov
    New York State Department of Transportation
    Contract Management Bureau
    50 Wolf Road, 6th Floor
    Albany, NY 12232, USA

The above named person, as NYSDOT’s Designated Contact for this procurement, shall be the only point of contact and source of information for this procurement.

1.5 RFP Modifications

NYSDOT will issue at least one RFP Modification, to provide answers to questions and to possibly 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) regularly to check for Modifications. All parties who officially express interest in this RFP shall receive an e-mail alerting them to the release of new RFP information. The RFP’s final Modification will be posted on NYSDOT’s web site not later than 14 calendar days prior to the Proposal due date. If an additional substantial Modification is required within 14 calendar days of the Proposal due date, the Proposal due date shall be revised such that there will be 14 days from the date of release of the RFP’s final Modification to the Proposal due date.
2 CIVIL RIGHTS REQUIREMENTS

2.1 Disadvantaged Business Enterprise Participation
NYSDOT has a 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: https://nysucp.newnycontracts.com.

For this specific procurement, NYSDOT has established a DBE participation goal of 11% for this solicitation. Only meaningful participation by either a prime Consultants and/or meaningful participation by Subconsultants 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 are further defined in RFP Section 5.2.C ‘Cost and Administrative Submittal’. To receive DBE credit toward meeting a contract goal in the context of the prime contract award process, a DBE firm, prime or subconsultant, must be certified before or at the time of proposal due date per 49 CRF 26.18.

2.2 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.

2.3 Equal Employment Opportunity – Pay Equity
In Accordance with New York State Executive Order 162, issued on January 9, 2017, the selected Consultant shall provide workforce utilization reports in accordance with the RFP’s Draft Contract (Attachment 11, Article 33).

3 PROJECT AND CONTRACT OBJECTIVES

3.1 Project Objectives
The objective of this project is to contract with an entity that provides reliable, experienced and professional due diligence and analysis of the labor market, work history, potential economic benefits and other relevant factors pertaining to utilizing a Project Labor Agreement in connection with appropriate Design Build and construction projects for New York State Department of Transportation (NYSDOT). In addition, the Consultant may be directed by NYSDOT to further prepare a Project Labor Agreement based on the due diligence and analysis results for the construction project.

3.2 Contract Objectives
TWO CONTRACT AWARDS: Two awards will be made under this RFP solicitation, one for Upstate New York, preliminarily identified as Contract #C037703 which is most likely to cover NYSDOT
Regions 1, 2, 3, 4, 5, 6, 7 and 9; and another for Downstate New York, preliminarily identified as Contract #C037705 which is most likely to cover NYSDOT Regions 8, 10 and 11.

CONTRACT TYPE: The contract’s payment method is Time and Materials (Fully loaded specific hourly billing rate plus approved direct non-salary costs per Schedule B and Draft Contract Article 6 with payments set by approved task assignment Budget Schedules.

CONTRACT TERM: The base term of this contract will be for THREE (3) contract years commencing from the contract start date, with TWO (2) optional one (1) year contract term extensions. Execution of the extension will depend on performance, project need and funding availability.

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

CONSULTANT ARRANGEMENTS: The resulting contract shall be between NYSDOT and the selected Prime Consultant. The Prime Consultant shall be responsible for completion of all agreed-upon services. NYSDOT will only contract with one (1) responsive and responsible Prime Consultant for each resulting awarded contract; each prime Consultant shall will be the sole contact with regard to all provisions contained in this RFP and the resulting contracts. All necessary communications will be directed from NYSDOT to the Prime Consultant (Project Manager). The Prime Consultant is responsible for offering qualified subconsultants with competitive rates/costs. Consultants are encouraged to partner to provide the required services and to meet the contract’s 11% DBE participation goal. Proposers must name a lead firm as the Prime Consultant that will serve as the legal contracting entity for the project period. If the proposal includes products or services from any other participating vendors, it is understood that those vendors will serve as subconsultants to the Prime Consultant. Joint ventures are not allowed. A firm offering to perform services as a prime consultant may be offered as a subconsultant in another firm’s proposal (and vice versa). If the Consultant’s selected solution includes subconsultants, the Consultant under contract will be the Prime Consultant who must assume full responsibility for all aspects of the project, including performance and completion of all subconsultant work.

CONFLICT OF INTEREST: A Prime Consultant and its TEAM would be considered Conflicted from participating in a Design Build (DB) Teaming Pursuit of a NYSDOT DB Procurement due to the advanced information and unfair advantage it would provide the Consultants selected from this RFP. This restriction shall be limited to only the contracts in which the Consultants selected under this RFP actually perform the DDIS and PLA studies.

DBE CONTRACT GOAL: Eleven percent (11%) or more DBE-certified Consultant participation over the life of the contract by the firm being awarded a contract via this RFP. Consultants are strongly encouraged to incorporate use of DBE Consultant(s) in their proposed approach and scope of services. NYSDOT will evaluate a Consultant team’s ability to perform the level of work required for the RFP’s various tasks to meet all of the RFP’s requirements. A Consultant team could be selected based on the significant contributions and commercially useful functions performed solely by DBE Consultants.

FAIR AND EQUITABLE TREATMENT: For all firms participating in this competitive consultant selection process to receive fair and equitable treatment.

3.3 Definitions and Acronyms

Project Labor Agreement (PLA): means a pre-hire collective agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public project, and which provides that only contractors and subcontractors who sign the pre-negotiated agreement with the labor organization can perform the project work.
**Due Diligence Impact Study (DDIS):** means an investigation of a project type with a certain standard of care and ensuring the data is within the market feasibility, and examining opportunities for cost savings while accounting for the project’s particular demands.

### 3.4 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence on January 1, 2018. 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 1/1/12 - 12/31/12 Billing Rate** $9.00/Hour
- October 2012 PPI Index (PCU5413--5413--) 132.1
- October 2011 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 1/1/13 – 12/31/13 Billing Rate ($9 x 1.016)** $9.14/Hour

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

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

### 4 SCOPE OF SERVICES

In order to implement a PLA, the Department must demonstrate a public purpose for entering into such an agreement. Pursuant to Section 222 of the NYS Labor Law, the Department may require a contractor awarded a contract for a project to enter into a PLA when it is part of the construction project’s RFP and when the Department determines that it’s in its interest in obtaining the best quality work at the lowest possible price, preventing favoritism, fraud and other considerations such as the impact of delay, the possibility of costs savings advantages and any local history of labor unrest. This determination must be made through preparation of a project-specific record (Record) or DDIS.

In anticipation of requesting numerous DDIS studies and PLAs in the next three (3) years, NYSDOT seeks to improve development and progression of these aspects of its Capital Program project delivery, including but not limited to design-build and construction best value procurements. Timely initiation and completion of these studies is necessary to ensure the Capital Program design-bid-build, design-build and best value project schedules are met. Additional time may be necessary to draft, negotiate and execute a PLA, if one is deemed necessary and beneficial to the State.
Due Diligence Impact Studies Services Task Assignment Requests: The selected Consultant shall deliver the following tasks:

1. Coordinate with NYSDOT for project initiation to review preliminary information available on the nature of the construction scope, schedule and budget, and review, on a preliminary basis, potential terms and conditions to be utilized in the analysis.

2. Conduct informal discussions with Construction Industry representatives, local labor unions, trade council representatives, and other stakeholders to obtain input related to cost savings available for the project.

3. Evaluate the merits of a project labor agreement (PLA) for the Project, considering economic and non-economic benefits.

4. Review local labor environment considering experience in compliance with the enforcement of Prevailing Wage Laws and other DOL requirements, and any labor conflicts or disruptions.

5. Analyze and prepare preliminary labor estimates for the project using conceptual project scope and conceptual project cost estimates developed by the NYSDOT project team.

6. Analyze existing labor agreements applicable to the work and labor demands related to the project to determine the potential for cost savings through implementation of a PLA.

7. Analyze available data from other projects with similar scope elements available from previous project work and applicable for this project scope. The analysis should also consider whether the project is a complex construction project where either costs or duration exceed those of typical and usual Department projects.

8. Analyze and review potential concurrent construction projects with the potential to pull resources from the same manpower pool.

9. Review the collective bargaining agreements of each of the unions that will be involved in the construction, with a focus on areas that could be standardized within the provisions of a proposed PLA.

10. Estimate economic benefits, if any, based upon PLA terms and conditions the consultant believes to be reasonable for a project of this nature and terms and conditions that have been historically agreed to on other similar projects in New York.

11. Consider the impact on, or potential for improved employment opportunities for minority-owned, women-owned businesses, and disadvantaged businesses.

12. Assess non-economic benefits, including, but not be limited to:
   a. Analysis of labor unrest/volatility to assess the potential for adverse cost and schedule impacts resulting from strikes, lockouts, or other job actions
   b. Providing for enhanced control of project schedule and contractor coordination
   c. Providing for enhanced security, stability, and work opportunities
   d. Providing enhanced work force diversity and training opportunities for the community
   e. Maximizing project safety conditions for workers and the public

13. Preparation and delivery of a draft report of the assessment with supporting documentation to NYSDOT Office of Legal Services for review and comment. Follow up teleconferences with NYSDOT project team reviewers to discuss the draft report may be necessary to obtain comments and feedback. The Study shall incorporate supporting data and documentation of research methodologies used by the Consultant.

14. Preparation and delivery of a Final Report, documenting any projected cost savings; identifying specific non-economic benefits; and recommendations for subsequent actions, if warranted. The final report shall include, but not be limited to, the following:
a. The estimated cost of the project.
b. The estimated time undertaking and completing the project.
c. The effect of the project upon the public during the construction.
d. Analysis of anticipated cost savings resulting from the proposed or anticipated PLA including analysis of how the provisions of any collective bargaining agreements involving uniform wages, overtime, shift differentials, work rules and practices and efficiency among other things.
e. Analysis of specific contract cost savings, which include savings in time and effect on the traveling public and the Department.
f. Documentation of how non-union contractors and out-of-state contractors may still participate in and bid upon the proposed project and that the anticipated PLA will not unreasonable restrict competition.
g. Documentation of consistency with Article 8, Section 222 of the Labor Law.
h. Any other appropriate topic arising out of the unique characteristics of the project.

15. Document consistency with Article 8, Section 222 of the NYS Labor Law. The Department will develop a Final Determination document which is signed by the Commissioner. Should the decision be made to implement a PLA, the Consultant shall draft, negotiate and deliver an executed Project Labor Agreement (PLA). If the project is federally-aided, the Department shall seek the concurrence of the applicable federal entity, e.g. Federal Highway Administration (FHWA).

Project Labor Agreement Services Task Assignment Requests: The selected Consultant shall deliver the following task:

16. Drafting, negotiation and finalization of a Project Labor Agreement (PLA) for execution, should the decision be made to implement one. Preparation of an updated report that reflects actual terms and conditions as agreed upon PLA shall be required.

17. Execution of the PLA by obtaining necessary signatures from the unions identified as participating in the project scope, and whose participation in the PLA was assumed in the cost savings the DDIS.

ADDITIONAL TASK ASSIGNMENT INFORMATION:
Information Handling: The nature of this project requires the handling of sensitive and confidential information, pertaining to pre-award potential contract opportunities with New York state. The selected Consultant must uphold and abide by NYSDOT’s policies and practices regarding confidentiality of all applicable pre-award procurement information. The selected Consultant agrees that any breach of this provision may, at NYSDOT’s discretion, may result in immediate termination of the contract and may result in possible legal action. All staff assigned to the project by the selected Consultant will be required to sign a non-disclosure confidentiality agreement.

Conflict of Interest Management: All pre-award procurement information which may be accessed or viewed is to be treated as confidential. A Prime Consultant and its TEAM would be considered Conflicted from participating in a DB Teaming Pursuit of a future NYSDOT DB Procurement due to the advanced information and unfair advantage it would provide the Consultants selected from this RFP. This restriction shall be limited to only the contracts in which the Consultants selected under this RFP actually perform the DDIS and PLA studies.
The selected Consultant shall independently complete its analysis in a manner neutral to any perspectives or opinions. Additionally, the selected Consultant shall provide an independent analysis of the feasibility of utilizing a PLA that is supported by their legal, academic, and economic findings, and not compelled or otherwise influenced by any outside factor.

Work Product: All records/reports must be in Word, Excel, PDF or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via e-mail or managed file transfer (for larger sized documents). Should NYSDOT want to review records pertaining to this contract at the selected Consultant’s offices, NYSDOT shall be given access to those files upon reasonable notice. The Consultant must maintain all records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. Per the contract, all records produced under this contract are property of NYSDOT. Should the work between NYSDOT and the selected Consultant be terminated, all records shall be turned over to NYSDOT or its designated recipient.

4.1 Task Assignment Process

Task Assignment Process: Authorization and Management of Task Assignment Work

All work under this Agreement shall involve task order–based assignments, with detailed work plans to be developed based on the specific needs of each task assignment. The Consultant’s general approach to implementation enables NYSDOT to rapidly scope, staff, and budget tasks to address both quick-turn around and longer-term program needs.

The Consultant’s response to each task order request from NYSDOT follows the four-step process.

1. Plan
   a. NYSDOT develops task assignment plans and submits a task assignment request to the selected Consultant
   b. Review assignment: Upon receipt of a task order assignment request from NYSDOT, the Consultant shall review the assignment and, if necessary, convene a conference call/meeting with NYSDOT to discuss/clarify the task.
   c. Consultant shall develop detailed work assignment scope, schedule, and budget: The Consultant shall develop and submit to NYSDOT an annotated task order assignment, work plan, staffing plan, and budget estimate.
   d. NYSDOT shall review the annotated task order assignment, work plan, staffing plan, and budget estimate and convene a conference call/meeting with the Consultant to discuss NYSDOT’s review and agree upon a final arrangement.
   e. Consultant shall submit work plan, staffing plan, and budget for NYSDOT approval: The Consultant shall submit a final work plan, staffing plan, and budget for NYSDOT for final written approval.

2. Implement:
   a. Task Assignment Kick-off: Upon NYSDOT approval, the Consultant shall proceed with work on the assignment including initiating subcontractor agreements as needed.
   b. Execute the work plan: The Consultant and its assigned subcontractors shall conduct the Task Assignment in accordance with the task order work plan following the activities identified in the work plan with careful project management to ensure that the outcomes are achieved within the approved budget and schedule.
   c. Consultant shall submit all final draft deliverables to NYSDOT for its review.
3. Evaluate and Revise (Conditional):
   a. After review and comment, the Consultant shall make any necessary revisions and submit final work product(s).

4. Payment for Task Assignment Work:
   a. The Consultant shall prepare and submit one Invoice following the successful completion of each Task Assignment.
   b. Payment for Task Assignment work shall be per the Agreement’s payment method (Contract labor rates plus reasonable reimbursement for direct non-salary expenses).
   c. The Consultant shall prepare and submit monthly and quarterly progress reports reporting on all contract work completed on a life-to-date basis.

5 PROPOSAL FORMAT AND CONTENTS

Interested firms shall submit one proposal and indicate which contract award they seek in their Cover Letter: the upstate award (C037703), the downstate award (C037705) or both. The RFP contains instructions to guide your proposal submission accordingly.

For the purposes of evaluation, each proposal must be submitted in two separately bound Technical and Management proposal, and a Cost/Administrative proposal. 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 your technical proposal.

Photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required in this section. Web links are only allowed is very specific instructions are provided to permit evaluators to reach the specific area of the website supporting a proposal – generic websites may not be accessed.

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. Labeling all pages of a proposal as ‘Confidential’ is not allowed.

5.1 Technical and Management Proposal Submittal
Your technical proposal should follow the format listed below.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Table One: Technical Proposal Checklist</td>
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<tr>
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</tr>
<tr>
<td>☐</td>
<td>Six (6) Printed and bound hard copies (including one original) plus two complete electronic copies: one on CD and one on USB Thumbdrive in MS Office 2016 compatible format and in PDF format.</td>
</tr>
<tr>
<td>☐</td>
<td>Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “DDIS/PLA Technical and Management Proposal (C037703)”</td>
</tr>
<tr>
<td>☐</td>
<td>Signed Cover Letter on official business letterhead</td>
</tr>
<tr>
<td>☐</td>
<td>Table of Contents identifying each major section and page numbers</td>
</tr>
<tr>
<td>☐</td>
<td>Firm and Key Personnel Experience</td>
</tr>
</tbody>
</table>
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 two pages. Indicate which contract award(s) you are seeking.

2. A Table of Contents.

3. Firm Experience and Key Personnel Experience: The RFP’s primary determination regarding Upstate and Downstate contract award(s) shall be based on a firm’s union hall and labor experience. For the Upstate award, present all of the following experience requirements based on your firm’s union hall and labor experience within NYSDOT Regions 1, 2, 3, 4, 5, 6, 7 and 9. For the Downstate award C037705, present all of the following experience requirements based on your firm’s union hall and labor experience within NYSDOT Regions 8, 10 and 11. A map of New York State depicting NYSDOT’s regional boundaries is contained in Attachment 14. Should you opt to compete for both Upstate and Downstate contract awards, you must still separately present your Upstate and Downstate union hall and labor experience.

1. The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct, prior relevant experience is highly desirable. Qualifications need to clearly demonstrate previous experience with municipal, state or federal agencies regarding project labor agreements, due diligence impact studies, including specifically the successful completion of similar studies on major highway/bridge civil construction projects.
2. Provide a list of projects currently in progress and those completed within the last five years which are relevant to this effort. All projects listed must include significant civil construction work and have a construction value of at least $10 million dollars. One of the projects should have a construction value of at least $50 million dollars.
3. Complete and include Attachment 1 Key Personnel Resumes and References and Attachment 2 Company References. Include names, addresses and phone numbers of contact points with the listed clients. NYSDOT reserves the right to request information from any source so named. NYSDOT also reserves the right to contact its own references regarding your proposal.
4. Indicate proposed key personnel who are, or have worked together, on such projects presently and/or in the past.
5. Provide a record of demonstrated performance detailing a minimum five years of professional experience in labor consulting, economic and workforce development policy, or industrial relations.
6. Through disclosure of potential conflicts of interest of the proposing firm and of any employees participating on the project, and a certification that the contractor is free from conflicts of interest.
7. Demonstrated ability:
   a. To study and provide expertise of New York State labor relations and prevailing trends in the labor environment – Prior Experience providing the specified services in the state of
New York is preferred. Specific knowledge of these aspects by area of the state is strongly preferred.

b. To analyze relevant craft labor markets, provide a review of collective bargaining agreements for individual project areas, and to review a draft PLA or to draft an individualized PLA for a specified Public Works project.

8. Have provided such an analysis in at least five (5) similar contractor workforce or labor agreement contexts which have required a review of the pertinent legal, economic, and/or academic research of PLAs.

9. Through résumés and other supporting documentation, demonstrate the applicable expertise, detailed experience, and ability of each researcher to perform their designated tasks.

4. Approach: Provide and describe your approach for performing the work and accomplishing all project objectives. Provide an overview of your proposal. Include 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. Include a discussion regarding your proposed schedule for accomplishing all of the task assignment work possible under the resulting contracts. Alternative approaches are encouraged and will be reviewed within the framework of the stated objectives and RFP’s scope of services. Fully explain and justify your approach. Include a list of any technical assumptions. NYSDOT wants to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer.

5. Organization and Staffing: Provide an organizational chart for the project showing the names of the Consultant’s Project Manager and all proposed Key Personnel by firm. Present a management plan to ensure effective and efficient delivery of services while meeting the project objectives, including meeting the contract’s 11% DBE goal over the life of the agreement. 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. The Consultant shall present an organizational chart that describes reporting relationships of all key personnel identified in this section.

Provide completed Attachment 3 Staffing Plan which presents proposed hours for all proposed staff by hypothetical task assignment, to present your estimate of total effort hours contributed by each of the key personnel for each Hypothetical Scenario (Attachment 13) and an estimate of total effort hours for each task assignment. Be sure to present any additional proposed staff NOT INCLUDED in your Hypothetical Scenario submission as well as an assumed level of effort (present operative assumption).

The Consultant will be responsible for providing the following minimum key personnel:

Project Manager: The Consultant’s Project Manager is responsible for all aspects of understanding, managing and delivering the Project and Contract Objectives in Section 3 and Scope of Services in RFP Section 4. The Consultant’s Project Manager will be the first point of contact for any discrepancies arising from contract or work activities.

AVAILABILITY OF KEY PERSONNEL: The Key Personnel 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:

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

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

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

6. Hypothetical Scenario Responses: Complete and submit Attachment 13. Instructions for completing these scenarios are included in the attachment. There are two scenarios, one for a DDIS task assignment and the other for a PLA task assignment. When completing Attachment 13, indicate any applicable Upstate and/or Downstate experience, and indicate the hypothetical Upstate and/or Downstate location for each project.

5.2 Cost and Administrative Proposal Submittal
Your Cost and Administrative proposal consists of two sections:
1. A Cost Proposal, which shall set forth fully loaded hourly billing rates for all Consultant personnel performing the work in the scope of services; and
2. An Administration Section, which shall specify the proposer’s acceptance of the terms and conditions contained in the draft Contract enclosed as Attachment 11 to this solicitation, as well as host several other administrative items.

Your Cost and Administrative Proposal should contain the following:

<table>
<thead>
<tr>
<th>Table Two: Cost &amp; Administrative Proposal Checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Three (3) Printed, bound, complete hard copies plus two complete electronic copies: One on CD and one on USB Thumbdrive in MS Excel 2016 compatible format and in PDF format</td>
</tr>
<tr>
<td>☐ Securely sealed and clearly labeled with the words “DDIS/PLA Cost &amp; Administrative Proposal (C037703)”</td>
</tr>
<tr>
<td>☐ Required Cost information (complete and submit Attachment 4, Cost Proposal)</td>
</tr>
<tr>
<td>☐ Complete and submit Attachment 5: Consultant Information and Certifications (sign both Sections II and III)</td>
</tr>
<tr>
<td>☐ Complete and submit the Attachment 6: Procurement Lobbying Law Compliance Forms</td>
</tr>
<tr>
<td>☐ Complete and submit Attachment 7: DBE Participation Information Form</td>
</tr>
<tr>
<td>☐ Complete and submit (if applicable) Attachment 7a: DBE Participation Solicitation Log AND Goal Attainment Explanation Letter</td>
</tr>
</tbody>
</table>
The following additional information is presented to assist with proposal development:

1. **Cost Proposal:** Complete and submit Attachment 4 to present your Cost Proposal, one for each contract award. This attachment contains instructions to guide completion. Present a complete schedule of fully-loaded hourly billing rates for each Key Personnel and for all other proposed Consultant staff, for each proposed firm, for Contract Years One, Two and Three. Submit one completed Attachment 4 for each contract award your firm is competing for. Present a salary schedule for all proposed Consultant staff to be assigned to this project and present their hourly rates. If additional titles are used but are not assigned, they should be listed. The billing rate schedule shall be used to generate costs for all task assignment work generated under the resulting agreement. Rates can be presented by named person or by generic labor category.

NYSDOT’s rate schedule contains the following information: A Direct Labor or Direct Salary Cost component (A); an Indirect Cost component (also known as Overhead Cost component (B); and the firm’s Fee component (C), such that: Rate = A + B + C. **The calculation of the fee component, C, is to be made using the following formula:** C = M times (Direct Labor Cost + Overhead Cost), or C = M x (A + B), where M = the fee multiplier.

Direct non-salary cost (out-of-pocket expenses) information shall not be proposed but instead shall be identified and allocated to each approved task assignment’s budget. Such costs shall be necessary to be incurred in the performance of each task assignment. 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/)

Should any questions arise pertaining to the completion of Attachment 4 and/or its instructions, please submit them to the designated NYSDOT contact person before the Question & Answer deadline. Terminology used in the cost spreadsheets for products and services must be consistent with the terminology used in the technical portion of the response. All worksheets included in Attachment 4 must be completed in order for the response to be considered complete. Proposer should not make entries in colored cells in Attachment 4’s Excel spreadsheets. Changes should not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.

**Method of Payment:** Payment will be based on the acceptance of completed work product for services advertised in RFP Section 6, Scope of Service, per agreed upon Task Assignment requests. All Task Assignment work shall be paid for via the agreed-upon, not-to-exceed labor rates negotiated via the rates proposed in Attachment 4, with reasonable reimbursement for agreed-upon out-of-pocket expenses (subject to New York State reimbursement limitations).

Requests for payments shall be made by the Consultant based on standard NYSDOT consultant reimbursement request form FIN 421 ‘Request for Consultant Reimbursement’ forms prepared and submitted, together with the deliverable item for which the payment request is being made. Advance submission of electronic, draft requests for payment is encouraged, using the following sample: [https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions](https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions) (scroll down to ‘Payment and Invoice Forms’ – ‘Consultant Billing Spreadsheet’). The spreadsheet
contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy.

All vendors are directed to register with the New York State Office of the State Comptroller to receive electronic payments per the Governor’s Directive.

2. Administration Section: Present all required forms and attachments. One copy must be labeled on the cover as an original and must contain original signatures. All other copies may be photocopied.

A. Procurement Lobbying Law Compliance (covers both awards)

Complete and submit Attachment 5. All proposers should become familiar with NYSDOT’s Procurement Lobbying Law Interim Guidelines and Procedures. The document is located at: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf. Filing the two required forms is mandatory for all consultants in order to be considered for contract award. These forms are contained in Attachment 5 Procurement Lobbying Law Compliance Forms:

1. 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. Offerer Disclosure of Prior Non-Responsibility Determinations

Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award. 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 Designated RFP Contact Person.

B. Acceptance of RFP’s Draft Contract’s Terms and Conditions (covers both awards)

Complete and submit Attachment 6 Consultant Information and Certifications to indicate their acceptance of all of the RFP’s terms and conditions contained in the RFP’s draft contract (Attachment 11). Attachment 6 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 180 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. After proposal submission, no exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive.

C. DBE Participation

Complete and submit Attachment 7. 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: https://nysucp.newnycontracts.com.
For this specific procurement, NYSDOT has established a **DBE participation goal of 11%** for this solicitation. Only meaningful participation by prime Consultants and/or meaningful participation by Subconsultants **who are certified as a NYSUCP DBE** count toward the DBE participation goal. Participation of Prime DBE Consultants shall count towards the contract’s DBE goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

1. 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,
2. Be for scope of service elements which can be and are completely performed, supervised and managed by the DBE consultant, and/or
3. Perform significant tasks which can be considered commercially marketable.

To receive DBE credit toward meeting a contract goal in the context of the prime contract award process, a DBE firm, prime or subconsultant, must be certified before or at the time of proposal due date per 49 CRF 26.18.

Interested proposers should verify their attainment of the above established DBE participation goal by completing **Attachment 7 DBE Participation Information.** To count towards the Department’s DBE goal, a firm offering DBE participation must be currently certified per the NYSUCP DBE Directory. If the proposal does not meet the 11% DBE participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 7a DBE 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.

Additionally, participation by prime consultants who are certified as a DBE will not count towards meeting the Department’s DBE participation goal. To be determined to be responsive, DBE prime Consultants are still required to seek participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services. In these situations, it is expected that unless DBE outreach efforts by the prime results in meeting or exceeding the contract 11% DBE goal, the prime consultant must provide acceptable evidence of a good faith effort by completing **Attachment 7a DBE Participation Solicitation Log.**

Firms are advised to refer to RFP Section 6.1 for the procedure the Department will follow in evaluating a firm’s proposed DBE participation.

D. Non-Collusion Bidding Certification (covers both awards)

All Proposers shall submit a completed **Attachment 8 Non-Collusive Bidding Certificate.**

E. RFP Modification Acknowledgement Forms (covers both awards)

The Proposer shall include a completed **Attachment 9 Acknowledgement of Receipt (Form AOR),** acknowledging receipt of this RFP as well as acknowledging receipt of any RFP Modifications. Do not include any RFP Announcements.
F. Vendor Assurance of No Conflict of Interest or Detrimental Effect (covers both awards)

All Proposers shall submit a completed Attachment 12 Vendor Assurance of No Conflict of Interest or Detrimental Effect.

6 PROPOSAL EVALUATION PROCESS

6.1 Pre-Screening of Proposals

It is NYSDOT’s sole discretionary determination as to whether a proposal is complete per RFP Tables One and Two. Proposals which do not meet all of the RFP’s Minimum Responsiveness Requirements may be deemed incomplete. NYSDOT reserves the right to seek clarifications before completion of the RFP’s proposal pre-screening step. Proposals deemed to be incomplete shall be deemed to be non-responsive and shall be removed from further consideration.

Proposal Due Date. All proposals must be delivered to NYSDOT Contract Management in hard copy by 2:00 PM on October 30, 2017. Any proposals received after that time/date shall not be evaluated further. Late proposals shall become property of NYSDOT.

Proposal Opening, Log-in and Certification. Proposals received on or prior to the due date and time will be opened, inventoried for completeness, certified, and logged-in (per RFP Tables One and Two). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT by COB that same day.

Minimum Proposal Requirements. Any proposal which does not include all of the following by the RFP deadline may be determined to be non-responsive. Any proposals deemed non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals):

1. Complete Technical and Management proposal
2. Complete Cost and Administrative proposal
3. A proposal which either meets/exceeds the 11% DBE contract goal or offers robust, acceptable Good Faith Effort documentation and Letter of Explanation
4. Submission of completed Attachment 5 Procurement Lobbying Law Compliance Forms

DBE Goal Attainment/GFE Acceptance Review. The proposed DBE participation percentages offered for NYSUCP certified Consultants will be reviewed (RFP Attachment 7). Each offered DBE must be currently listed in the NYSUCP Directory to count towards the Department’s 11% DBE participation goal. If the proposed DBE participation is less than the established 11 percent goal, the firm’s evidence of a Good Faith Effort (RFP Attachment 7a) to achieve the goal will be reviewed along with the firm’s letter of explanation as to why it was unable to meet the goal. If a proposer submits a proposal which meets or exceeds the 11% DBE goal (for either award), then the certification registration status of all offered DBE Consultants will be verified by NYSDOT, and if certified, the proposed DBE goal accepted.

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

If a proposer submits a proposal which does not meets the 11% DBE goal for either award, then the submitted good faith log will be reviewed for acceptability and verification of the robustness of effort.
Blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and have their proposal removed from further consideration. Such proposers will be contacted to request clarification of their submitted good faith effort log. Offered clarifications will be considered by NYSDOT. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

6.2 Contract Award Rule and Proposal Evaluation Category Weight Distribution

AWARD RULE: Two best value determinations shall be made. Proposals will be evaluated either once or twice depending upon which contract award a firm competes for (only Upstate, only Downstate or both Upstate and Downstate). Therefore, the RFP contains a singular or bifurcated proposal evaluation process and shall lead to two contract awards based on the following rules:

1. Should two different firms provide the best value for the separate Upstate and for the Downstate contract awards, the first highest best value ranked firm competing for Upstate contract C037703 shall be awarded Upstate contract C037703, and the first highest best value ranked firm competing for Downstate contract C037705 shall be awarded Downstate contract C037705; or

2. Should one firm provide the best value for both contract awards, the first highest best value ranked firm shall be awarded C037703 and no award shall be made under C037705.

Should the two awards be combined into one contract award, and should the designated Consultant present a conflict of interest regarding upcoming task assignment work, then NYSDOT may seek DDIS and/or PLA services via open market purchase order.

EVALUATION WEIGHTING: For each contract award, proposals will be evaluated using the NYSDOT’s Best Value method based upon a 100 total point scale. The Technical and Management portion will be point scored and will represent 70 points of the total Best Value score for the proposal. The cost section of the Cost and Administrative proposal will be evaluated and point scored and will represent 30 points of the total Best Value score for the proposal. A more detailed breakdown of the RFP’s proposal evaluation category weights is as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm Experience</td>
<td>25</td>
</tr>
<tr>
<td>Key Personnel Experience</td>
<td>15</td>
</tr>
<tr>
<td>Organization and Staffing</td>
<td>5</td>
</tr>
<tr>
<td>Approach</td>
<td>5</td>
</tr>
<tr>
<td>Hypothetical Scenarios</td>
<td>20</td>
</tr>
<tr>
<td>Cost</td>
<td>30</td>
</tr>
<tr>
<td><strong>TOTAL POINTS</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

6.3 Technical & Management Proposal Evaluation (Up to 70 Points)

6.3.1 General

Technical evaluation of proposals will be accomplished by the members of the Technical Evaluation Committee (TEC) comprised, as appropriate, of technical, program and management subject matter experts. An evaluator package shall be prepared and submitted to members of the TEC; this package shall contain evaluator instructions and evaluation instruments, and shall become part of the procurement record. The TEC shall be briefed on the proposal evaluation process prior to distribution of proposals.

Members of the Committee will evaluate and score each proposal individually. Each evaluator shall measure the degree of responsiveness of each proposal’s responses to the specifications and requirements contained in the RFP against the RFP’s proposal evaluation factors, looking for quality, experience and expertise, reasonableness and professionalism. Clarification questions may be
formulated during group discussion, and forwarded to firms for responding (either for further TEC group discussion or for the interviews). Clarification responses shall be forwarded to the TEC for additional consideration. Scoring of written proposals shall remain open until after conclusion of evaluating and scoring the Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier scores/findings based upon the additional clarification information garnered from the Interviews.

6.3.2 Technical and Management Written Proposal Evaluation (Up to 70 Points)
While there is no limit to the total number of pages allowed in your technical proposal, NYSDOT prefers to read concise and succinctly written proposals which provide just the right amount of additional supporting details.

The technical evaluation criteria listed below, per the RFP, shall be used by the TEC. Each factor’s respective weight is identified in parenthesis. The major evaluation categories are divided into subcategories with no assigned subweights, as the one higher-level category weight covers all subcategories. These are detailed below:

A. Firm Experience (up to 25 points; Evaluated twice: once for Upstate contract C037703 and once for Downstate contract C037705)
   1. Quality, extent and relevance of current and prior experience of the firm.
   2. Degree to which proposal reflects understanding and comprehension of project scope and objectives.
   3. Quality of proposer’s resources relative to the needs of the project.

Firm qualifications need to clearly demonstrate previous experience with project labor agreements, including specifically the successful completion of similar due diligence studies on major heavy highway/bridge civil construction projects. Familiarity with Upstate versus Downstate must be featured depending upon which contract award(s) a firm is competing for.

B. Key Personnel Experience (up to 15 points; Evaluated twice: once for Upstate contract C037703 and once for Downstate contract C037705)
   1. Quality, extent and relevance of experience, education and training of key personnel.
   2. Understanding of general issues impacting project.
   3. For upstate C037703 contract award: relative relevant experience. For the downstate C037705 contract award: relative relevant experience.

C. Organization and Staffing (up to 5 points; Evaluated twice: once for Upstate contract C037703 and once for Downstate contract C037705)
   1. Quality of project organization.
   2. Quality of plan for phasing key personnel into project.
   3. Extent and quality of interaction with key participants.

D. Approach (up to 5 points; Evaluated twice: once for Upstate contract C037703 and once for Downstate contract C037705)
   1. Quality of approach for accomplishing project objectives
   2. Initiative and creativity of proposer.
   3. Applicable upstate and/or downstate approach.
   4. Reasonableness of schedule.

E. Hypothetical Scenarios (up to 20 points; Evaluated twice: once for Upstate contract C037703 and once for Downstate contract C037705)
1. Quality and applicability of experience for all proposed consultant staff.
2. Quality of scope of services for accomplishing project objectives.
3. Reasonableness of staff/task allocations for each task and total effort.
4. Reasonableness of cost.
5. Reasonableness of schedule.

6.4 Reference Checks
Reference checks (to verify offered experience) may be required to complete the evaluation of technical proposals. The TEC may request verification of a firm’s offered references. Subject references shall be contacted by Contract Management using its standard reference check questionnaire, adjusting that per the RFP. Reference check feedback will be forwarded to the TEC for their considerations during the after-group discussion phase. The TEC may meet to consider reference check information. Evaluators will be allowed to revise their technical scores based on consideration of this additional information and their follow-up discussions.

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

6.6 Cost Proposal Evaluation (Up to 30 Points; Evaluated twice: once for both Upstate contract C037703 and once for Downstate contract C037705)
Cost proposals shall be reviewed, evaluated and scored once for each contract award a firm is competing for. If a firm prefers to compete only for one contract award, their cost proposal shall be evaluated only once. Cost proposals shall be point scored with up to 30 best value points available out of the 100 best value points total. Cost proposal clarification questions may be asked at this time.

For each contract award, the cost proposal with the lowest total proposal cost shall receive a perfected cost score of 30 points. Proposals with higher relative total proposal costs shall receive proportionately lower cost proposal scores.

Cost scores shall be calculated using the following method:
1. Derive total Hypothetical Scenario cost: Total Hypothetical Scenario #1 Cost equals total Hypothetical Scenario Labor Cost plus total Hypothetical Scenario Direct Non-Salary Cost. Total Hypothetical Scenario #2 Cost equals total Hypothetical Scenario Labor Cost plus total Hypothetical Scenario Direct Non-Salary Cost
2. Sum up total proposed cost for Hypothetical Scenario #1 and Hypothetical Scenario #2 to derive total Hypothetical Scenario cost;
3. To ensure that any proposed rates for proposed Consultant personnel not contained in either Hypothetical Scenario response gets evaluated: Multiply each proposed fully loaded billing rate in Attachment 4 by the corresponding level of effort presented in Attachment 3 Staffing Plan to derive total Staffing Plan Labor cost (assumes no direct non-salary costs);
4. Add total Hypothetical Scenario cost to total Staffing Plan Labor cost to determine total proposal cost; then
5. Repeating steps one, two, three and four above for each contract award as applicable, resulting in two cost proposal evaluations scores: one for C037703 and one for C037705.
For each contract award, cost scores (which are relative to the field of consultants competing for contract award) are subject to change depending upon whether or not cost proposal clarifications responses (or Best and Final Offer responses or proposal withdrawals) lead to proposed cost changes. Cost scoring results shall be used to determine 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.

6.7 Interview Evaluation
Each firm submitting a responsive proposal shall be interviewed.

Firms shall receive an Interview invitation package, which shall include instructions, areas which NYSDOT is seeking further clarifications, and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend Interviews shall present a brief overview of key personnel present, make brief opening presentation (limited to 10 minutes), and respond to TEC member questions.

TEC members will utilize results and findings from each Interview to enhance their understanding of the technical proposal presented. Using the RFP’s Technical proposal evaluation criteria listed in section 6.3.2, TEC members shall consider the following during the interviews:

1. Further insight and understanding of the consultant’s proposed experience (firm and key personnel, featuring any Upstate and any Downstate considerations.
2. Adequacy of Hypothetical Scenario Presentation; adequacy of approach; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver the RFP’s work; were all Key Personnel in attendance with an adequate short introductions and discussion of their capabilities, experience/expertise and proposed project roles and articulated and demonstrated knowledge of the proposal; Upstate and Downstate applicability.
3. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarification questions.
4. Clarity and quality of presentation; team chemistry.

6.8 Final Written Technical Proposal Evaluation (Re-Scoring)
For each contract award, scoring of written technical proposals shall remain open until after conclusion of evaluating and scoring the Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier scores/findings based upon the additional clarification information garnered from the Interviews.

6.9 Best & Final Offers (BAFO; Optional)
For each contract award, the Department reserves the right to request Best and Final Offers from firms which make the shortlist. Any Best and Final Offer (BAFO) request may ask additional further clarifying technical and/or cost proposal questions of firms to further clarify their submitted proposals. Should NYSDOT opt to request BAFOs, all firms will receive a BAFO request. Responding firms will be allowed to submit a Best and Final Offer; firms may opt to not submit a BAFO. Evaluators will be allowed to revise their technical scores for the written proposal based on their consideration of any new or changed technical proposal information contained in any Best and Final Offer (will re-sign/re-date the applicable hardcopy scoresheets). If changes to a firm’s technical proposal lead to corresponding, necessary revisions to their cost proposal (or should a firm opt to clarify their cost proposal) or should the Department opt to request cost-only BAFOs, the Department’s Contract Management representative shall make the necessary, appropriate adjustments to that firm’s cost proposal evaluation.
Should any firm withdraw their proposal after a possible BAFO request, NYSDOT will remove that firm’s technical and cost evaluation calculations and shall recalculate the remaining field’s technical and cost scores (without the withdrawn firm’s information).

6.10 Final Best Value Evaluation

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, interviews, and possible Best and Final Offers), NYSDOT will perfect (curve) the technical scores for each contract award so that the highest-rated average weighted written technical proposal score gets changed and assigned a perfect score of **70 points** for this solicitation with the other technical scores adjusted proportionately downward. Cost proposals for each contract award have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule (lowest total cost gets **30 points**). For each contract award, perfected cost scoring results will be added to the perfected written technical proposal score to generate a tentative final best value score. Firms shall be ranked in Final Best Value score order (highest to lowest), one list for each contract award. Should any firm withdraw their proposal during the proposal evaluation process, NYSDOT will remove that firm’s technical and cost information from the Best Value evaluation documentation, shall recalculate the remaining field’s technical and cost scores (without the withdrawn firm’s information), and shall document the withdrawn proposal’s technical and cost proposal evaluation results (as applicable) in the procurement record.

**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 upstate contract award for contract #C037703, and the proposal with the highest Final Best Value score shall be recommended to NYSDOT Executive Management for downstate contract award for contract #C037705. Should the same firm achieve the highest best value scores for both awards, then that one firm shall be recommended for contract award for contract #C037703 for both upstate and downstate task assignment work.

6.11 Consultant Selection Recommendation & Tentative Contract Award

Depending upon how final best value is determined, 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 based on the following rules:

1. Should two different firms provide the best value for the separate Upstate and for the Downstate contract awards, the first highest best value ranked firm competing for Upstate contract C037703 shall be awarded Upstate contract C037703, and the first highest best value ranked firm competing for Downstate contract C037705 shall be awarded Downstate contract C037705; or

2. Should one firm provide the best value for both contract awards, the first highest best value ranked firm shall be awarded C037703 and no award shall be made under C037705 (i.e., Upstate DDIS/PLA task assignment work and Downstate DDIS/PLA task assignment work shall be included in the combined, single contract).

The memo shall recommend selection of the top-ranked Best Value Consultant(s) for tentative contract award(s) of C037703 and/or C037705 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 award(s) for the Department - and designate the top-Best Value rated consultant(s) based upon the above results.
The designation(s) shall be publically posted. Once the public has been notified of the solicitation’s results, negotiations and/or contract confirmations with the selected Consultant(s) can commence. The final contract(s) are subject to approval by NYSDOT, the Attorney General, and the Office of the State Comptroller, and are not binding until such approval is received.

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designations 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 participating in this RFP’s consultant selection process 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

The proposal shall be signed by an official authorized to bind the offeror. Your proposal must be received by NYSDOT by 2:00 PM Easter Time on September 26, 2017. The proposal must be addressed to:

Mr. William A Howe, Director
NYS Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th floor
Albany, New York 12232
Attention: Al Hasenkopf, RFP #C037703

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:

1. To accept or reject any or all proposals;
2. To correct any arithmetic errors in any or all proposals;
3. To change the proposal’s due date upon appropriate notification to interested firms;
4. To eliminate any RFP requirement or specification that is found to be unmet by all offerors in the evaluation of received proposals;
5. To adopt any or all of a successful offeror’s proposal;
6. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
7. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;

8. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;

9. To 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;

10. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;

11. 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;

12. 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/](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 Information for the Selected Consultant**

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

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.

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.

CONSULTANT EMPLOYMENT DISCLOSURE REQUIREMENTS OF THIS CONTRACT:

Go to Office of the State Comptroller’s Web site (http://www.osc.state.ny.us) 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 10) 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 10) 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.
INSURANCE REQUIREMENTS OF THIS CONTRACT:

Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in 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.

CONTRACTOR TAX CERTIFICATION:

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

7.5 Inquiries and Information

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

7.6 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

7.7 Tentative Schedule of Key Events

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

- September 26, 2017: RFP Release
- October 4, 2017: Pre-Proposal Webinar (10:00AM ET)
- October 16, 2017: Questions from Vendors Due
- October 19, 2017: Answers from NYSDOT Due
- October 30, 2017: Proposal Due (2:00 PM ET)
- Weeks of December 6 & December 13, 2017: Interviews
- December 2017: Finalize Contract
- January 2018: Award Contract/NTP

8 ATTACHMENTS

1. Key Personnel Resumes and References
2. Company References
3. Staffing Plan
4. Cost Proposal
5. Procurement Lobbying Law Compliance Forms
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<thead>
<tr>
<th></th>
<th>Title</th>
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<tbody>
<tr>
<td>6</td>
<td>Consultant Information and Certifications</td>
<td>40</td>
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<td>7</td>
<td>DBE Participation Information</td>
<td>42</td>
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<td>7a</td>
<td>DBE Participation Solicitation Log (GFE)</td>
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<td>8</td>
<td>Non-Collusive Bidding Certificate</td>
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<td>9</td>
<td>Form AOR: Acknowledgement of Receipt</td>
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<td>10</td>
<td>Consultant Employment Disclosure Forms A &amp; B</td>
<td>51</td>
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<td>11</td>
<td>Draft Contract</td>
<td>53</td>
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<td>12</td>
<td>Vendor Assurance of No Conflict of Interest or Detrimental Effect</td>
<td>96</td>
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<td>13</td>
<td>Hypothetical Scenarios</td>
<td>98</td>
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<td>14</td>
<td>Map of NYSDOT Regions</td>
<td>104</td>
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</tbody>
</table>
**ATTACHMENT 1**

**KEY PERSONNEL RESUME AND REFERENCES**

Instructions:
- Complete Attachment 1 for each Key Personnel title identified in the RFP.
- Attachment 1 shall not exceed three pages in length for each person.
- Proposer’s may expand the boxes as necessary.
- 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>
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<tr>
<td>2. Title Assigned for this Project:</td>
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<td>3. Firm working for on this Project:</td>
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<td>4. Current Employment Status:</td>
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<td>[ ] Employed by Firm identified #3 above</td>
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<td>[ ] Employed by a different Firm</td>
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<td>[ ] Unemployed</td>
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5 Years of Relevant Experience

6. Description of Relevant Experience:

7. Certifications/Licenses:

8. Education:

**Past Project Experience**

Complete below for a maximum of five past projects

9.1 Project Description (include contract number where appropriate):

9.2 Client Name:

9.3 Client Contact Information (including contact name, phone number, and e-mail address):

9.4 Description of person’s role and responsibilities during project:

10.1 Project Description (include contract number where appropriate):

10.2 Client Name:

10.3 Client Contact Information (including contact name, phone number, and e-mail address):

10.4 Description of person’s role and responsibilities during project:

11.1 Project Description (include contract number where appropriate):

11.2 Client Name:

11.3 Client Contact Information (including contact name, phone number, and e-mail address):

11.4 Description of person’s role and responsibilities during project:

12.1 Project Description (include contract number where appropriate):
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<th>12.2 Client Name:</th>
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<td>12.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
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<td>12.4 Description of person’s role and responsibilities during project:</td>
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<td>13.1 Project Description (include contract number where appropriate):</td>
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### Project Information

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<td>Types of Staff Involved:</td>
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Degree to which offered key personnel were primarily responsible for project delivery:

Description of all services provided and how they were/are comparable to the size and scope of the services specified in this RFP:

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

A list of all subconsultants and the duties they performed (if applicable):

Project results and benefits delivered to the client

----- Please add pages as appropriate -----
Provide your proposed Staffing Plan which presents all proposed consultant staff featuring total level of effort. Be sure to present any additional proposed staff NOT INCLUDED in your Hypothetical Scenario submission as well as an assumed level of effort (present operative assumption). Assume 30 non-location specific DDIS studies will be requested under C037703’s three-year contract term, and assume 20 non-location specific PLA studies will be requested under C037703’s three-year contract term.

Firm Name: ________________________________

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34
ATTACHMENT 4

COST PROPOSAL

Instructions

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

1. **Proposed Staffing/Fully Loaded Rate Schedule (Exhibit 1).** Present a billing rate for each proposed Key Personnel (one rate for each person) and for all generic job titles requiring a billing rate for employees not named in your proposal. Rates shall be for Year 1 of the contract only. If additional titles are used but are not assigned, they must be listed. Offerors must present one Rate Schedule per firm in its team (prime consultant plus any sub-consultants that are being proposed), making multiple copies of the exhibit, as needed. Fully loaded hourly rates for all sub-consultants must also be included. Rates shall be broken down into salary, overhead additive and fee additive components. Overhead shall be an additive based on a fixed percentage of salary. Fee shall be an additive based on a fixed percentage of salary (not to exceed 10%). The RFP’s Exhibit 1 presents fictitious titles.
ATTACHMENT 4

Exhibit 1
Proposed Staffing/Fully Loaded Rate Schedule

Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT
Contract #C037703

Consultant Name:_________________________

<table>
<thead>
<tr>
<th>EXAMPLE TITLE</th>
<th>NAME</th>
<th>(a) YEAR ONE DIRECT LABOR</th>
<th>(b) OVERHEAD (___%)</th>
<th>(c) FEE (___%) Not to exceed 10%</th>
<th>(a)+(b)+(c) YEAR ONE BILLING RATE</th>
<th>YEAR TWO BILLING RATE</th>
<th>YEAR THREE BILLING RATE</th>
<th>YEAR FOUR BILLING RATE</th>
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<td>Project Manager</td>
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</table>
Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

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

Contract No. C037703

By: ____________________________ Date: ____________________________

Name: ____________________________

Title: ____________________________

Contractor Name: ____________________________

Contractor Address: ____________________________

______________________________

______________________________
# Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address:  ____________________________________________

Name and Title of Person Submitting this Form: ________________________________________________

Contract Procurement Number: C037703

Date: ____________________________________________

<p>| | |</p>
<table>
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</table>
| 1. | Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): **No**  **Yes**
|   | If yes, please answer the next questions:
| 2. | Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle): **No**  **Yes**
| 3. | Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): **No**  **Yes**
| 4. | If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.
|   | Governmental Entity: _________________________________________________________________
|   | Date of Finding of Non-responsibility: ______________
|   | Basis of Finding of Non-responsibility: _______________________________________________
|   | (Add additional pages as necessary.)
| 5. | Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): **No**  **Yes**
| 6. | If yes, please provide details below.
|   | Governmental Entity: _________________________________________________________________
|   | Date of Finding of Non-responsibility: ______________
|   | Basis of Finding of Non-responsibility: _______________________________________________
|   | (Add additional pages as necessary.)

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

By: ____________________________________________  Date: ____________________________________________

Name: ____________________________________________

Title: ____________________________________________
ATTACHMENT 5

PROCUREMENT LOBBYING LAW COMPLIANCE FORM INFORMATION

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)  
   - Offerer Disclosure of Prior Non-Responsibility Determinations  

2. **NYSDOT Guidelines and Procedures**
   Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through 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 Specialist
      - 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 Analyst Supervisor
The Contract Management Civil Rights Unit Supervisor
The Contract Management Assistant Directors
The Contract Management Director
The Consultant Management Bureau consultant job manager
The Consultant Management Bureau consultant job manager’s immediate supervisor

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

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

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

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

4. Rules and regulations and more information on this law, please visit:
http://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:

Al Hasenkopf, CMS II
NYSDOT Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: alfred.hasenkopf@dot.ny.gov
Tele: (518) 457-1560
CONSULTANT INFORMATION AND CERTIFICATIONS

CONTRACT NUMBERS:  C037703

PROJECT TITLE: Due Diligence Impact Studies and Project Labor Agreement 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 NYS Vendor Identification Number (VIN): _________________________

Consultant’s NYSDOT Consultant Identification Number (CIN): _________________

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

Preparer’s Name/Title: ____________________________

Address: ___________________________________________________________________

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

Other Authorized Individual(s):

Name/Title: __________________________________________________________________

Address: ___________________________________________________________________

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

By signing below, I, _____________________________, authorized individual (Name) of _____________________________ make the following (Firm) certifications regarding the subject proposal:

- **180-Day Offer:** This proposal is a firm offer for a 180-day period from the date of submission.
- **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](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 (Name) of _____________________________ hereby **certify that I have read and accept** all terms and conditions contained in the Draft Contract, including Appendix A, which is included as Attachment 11 to this Request for Proposals.

**Signature:** __________________________________________ (Name of Acceptor)
ATTACHMENT 7

DBE PARTICIPATION INFORMATION

Please complete the following table for the prime Consultant 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 budget 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 11% DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the Participation Solicitation Log (Attachment 7a), and the Goal Attainment Explanation Letter. Further, prime consultants certified as a DBE do count towards meet the RFP’s 11% DBE goal.

Contract#C037703: 11% DBE Goal

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>% of Total Contract Value</th>
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<tbody>
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<td></td>
<td>DBE</td>
<td>None</td>
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<tr>
<td>A. Prime Consultant</td>
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<tr>
<td>B. Sub-Consultants</td>
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<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100%</td>
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<tr>
<td>PRIME FIRM NAME/ADDRESS/ZIP CODE</td>
<td>CONTACT PERSON</td>
<td>TELEPHONE NUMBER (INCLUDE AREA CODE)</td>
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GOOD FAITH EFFORT SOLICITATION LOG INSTRUCTIONS
(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed DBE participation does not meet the established participation goal must document and report their efforts to solicit participation by certified DBE 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 Consultants may count toward goal attainment.

Guidance concerning Good Faith Efforts in meeting DBE 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 DBE participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a 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

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

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

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

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

DBE CONSULTANTS SOLICITED:

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

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

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

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

**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:

<table>
<thead>
<tr>
<th>CODE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>This firm is unavailable to participate in the contract for the reason(s) stated on the DBE Solicitation Response. (Attach explanation to the Log.)</td>
</tr>
<tr>
<td>2</td>
<td>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.)</td>
</tr>
<tr>
<td>3</td>
<td>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.)</td>
</tr>
<tr>
<td>4</td>
<td>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.)</td>
</tr>
</tbody>
</table>

**Guidance Concerning Good Faith Efforts in Meeting DBE Participation Goals In Federally-Funded Contracts**

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory [https://nysucp.newnycontracts.com/] the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.

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

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

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

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

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

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

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

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

<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:

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<thead>
<tr>
<th>NAME</th>
<th>LEGAL RESIDENCE</th>
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<tbody>
<tr>
<td>President:</td>
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<td>Secretary:</td>
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<tr>
<td>Treasurer:</td>
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<td>President:</td>
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<td>Secretary:</td>
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<td>Treasurer:</td>
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</table>
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  
________________________________________

By

______________________________________
Name

______________________________________
Title

Address:   __________________________________________
Street

City  State

______________________________________

______________________________________
Name

______________________________________
Title

Address:   __________________________________________
Street

City  State
ATTACHMENT 9
FORM AOR

ACKNOWLEDGMENT OF RECEIPT OF RFP, RFP MODIFICATIONS AND RESPONSES TO QUESTIONS

<table>
<thead>
<tr>
<th>NAME OF PROPOSER</th>
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We hereby acknowledge receipt of the Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT for Contract #C037703 Request for Proposals (dated September 26, 2017) and subsequent responses to questions and Modifications issued by the Department, as listed below (DO NOT INCLUDE ANY RFP ANNOUNCEMENTS).

Add additional lines in tables below, if needed.

<table>
<thead>
<tr>
<th>RFP Acknowledgement</th>
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<tbody>
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<td>Date issued by Department:</td>
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<th>DATE</th>
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<td>TITLE</td>
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## FORM A

### OSC Use Only:

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

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<td>Contractor Name:</td>
<td>Contract Number: C037703</td>
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<tr>
<td>Contract Start Date: / /</td>
<td>Contract End Date: / /</td>
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<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:  

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  
Contract Number: C037703  
Contract Term to  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided: Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT

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

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Name of person who prepared this report:
Preparer’s Signature:__________________________________________________________
Title:  
Phone #:  
Date Prepared: / /  

Use additional pages if necessary)
ATTACHMENT 11
DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C037703

PROJECT:  Due Diligence Impact Studies and Project Labor Agreement Services for NYS DOT

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; as modified; dated ____ ) incorporated by reference, and the CONSULTANT’s Proposal (as clarified; 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 36 months from ___________ to _______________. Additionally, this AGREEMENT may be extended for up to two one-year periods based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

**ARTICLE 5. MAXIMUM AMOUNT.**

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

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

**ARTICLE 6. PROVISION FOR PAYMENT.**

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

Item I Specific Hourly rates of pay shown in SCHEDULE B (EXHIBIT __) for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit,
however, the number of hours charged is subject to audit. If the AGREEMENT is extended beyond (end date in Article 4), then all of the Specific Hourly Rates of pay shown in EXHIBIT ___ are eligible for rate adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413--5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 2.0%, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item II 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.

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 under its contract during its prosecution and until the final acceptance thereof. 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 the:

New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, Sixth Floor
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon ten (10) days’ prior written notice to the Department by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the Department, the Consultant shall deliver to the Department within ten (10) work days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

a. Be in a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.

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

c. Disclose any deductible, self-insured retention, aggregate limit.

d. Refer to this Contract by number on the face of the certificate.

If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:

a. Direct the Consultant to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or

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

c. Treat such failure as a breach or default of the contract.

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

5. Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the Department for any claim arising
from the Consultant’s Work under this contract, or as a result of the Consultant’s activities.

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

7. Policy Renewal/Expiration. At least ten (10) calendar days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Paragraph A.3. Certificates of Insurance/Notices above.

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

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

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

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

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

2. Commercial General Liability Insurance. The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than $1,000,000.00 per occurrence and not less than $2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
   a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).
   b. All insurance policies required by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to “the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees” using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
   c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
   d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.
   e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

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

4. **Umbrella or Excess Liability Insurance.** The Consultant shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Consultants, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than $5,000,000 per occurrence/aggregate.

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

6. **Professional Liability/ Errors and Omissions.** 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.
ARTICLE 13. INTERCHANGE OF DATA.

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

ARTICLE 14. DISPOSITION OF DATA.

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

ARTICLE 15. DAMAGES AND DELAYS.

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

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

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

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

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

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this contract.
ARTICLE 17. TERMINATION.

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

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

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

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

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.

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

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

ARTICLE 19. 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, APPENDIX C and APPENDIX D;
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. 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 #C037703
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 31. 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
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 nondiscrimi-
ation 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 32. 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 33. ENSURING PAY EQUITY BY STATE CONSULTANTS/CONTRACTORS.

In accordance with Executive Order 162, issued on January 9, 2017, when the prime contract is in excess of $25,000, 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.
period. This provision is in effect for the quarterly reporting period ending December 31, 2017, or 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 NYSDOT Consultant Instruction 17-01.

The CONSULTANT shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant.

ARTICLE 34. CONFLICTS OF INTEREST.

A. 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.

B. 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.

C. 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 subcontractor/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.

D. 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. C037703 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK

___________________________________________________________
CONTRACT MANAGEMENT
DATE: __________________________

___________________________________________________________
DEPARTMENT OF TRANSPORTATION
DATE: __________________________

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

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

___________________________________________________________
FIRM
DATE: __________________________

Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT

APPROVALS

ATTORNEY GENERAL

___________________________________________________________
DATE: __________________________

THOMAS P. DI Napoli

STATE COMPTROLLER

___________________________________________________________
DATE: __________________________
Acknowledgement for Contract #C037703

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

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by
any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been
informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165
State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive.
Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the
approval of the State.
19. MACBRIE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
c orporate name: 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
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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
APPENDIX A-1
SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

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

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

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

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

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

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

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

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

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

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

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

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

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

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

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDAb), 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

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/
acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

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

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

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

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

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, NYS Executive Order 45, issued on January 4, 1977, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and such reporting as required 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 subcontractor.

(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 of the Consultant and all of their subconsultants, as required per contract language.

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 subconsultant – or subcontractor – 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, national 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 offices, 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 this Agreement.

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

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

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

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

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

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

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

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

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

Updated December 2012
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 requirement 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.
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: C037703
Contract Term to
Contractor Name:
Contractor Address:

Description of Services Being Provided: **Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT**

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

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Grand Total

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

Use additional pages if necessary)
Schedule A

SCOPE OF SERVICES

Contract #C037703
Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT

< PLACE HOLDER >
Schedule B

RATE SCHEDULES

Contract #C037703

Due Diligence Impact Studies and Project Labor Agreement Services for NYSDOT

< PLACE HOLDER >
ATTACHMENT 12

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 13

HYPOTHETICAL SCENARIOS

HYPOTHETICAL SCENARIO #1:
DUE DILIGENCE IMPACT STUDY

NOTE: The scenario included here is a hypothetical “what if” paper task assignment exercise for the purpose of evaluating proposals. NYSDOT does not intend for any proposer to undertake any actual work until a Consultant has been selected via a competitive task order assignment request.

Instructions
In response to NYSDOT’s Task Assignment order, prepare and provide a Task Assignment proposal to provide staff support and assistance for a NYSDOT Design Build Project’s Due Diligence Impact Study (DDIS).

Consultants shall prepare and submit a response to the requested hypothetical task assignments listed below. Responding Consultants shall propose discrete Task Implementation Teams and identify the proposed experience and qualifications to deliver the requested work. Only those personnel contained in Attachment 4 proposal can be used to staff each team.

The response must be in the form of a complete Task Assignment order response, which shall include the following sections:

1. Cover Letter, indicating name, address and phone number of the proposer, including a contact person, and name of the person(s) who prepared the mini-bid. Confidential and proprietary information should also be identified and addressed in this section

2. Title page.

3. Table of Contents.

4. Executive Summary, which provides a brief description of the proposed approach and work effort to performing the hypothetical task assignment.

5. A brief but substantive discussion of the significant issues involved in the task assignment.

6. A concise, inclusive scope of work.

7. A schedule for completion of the hypothetical scenario task assignment showing the duration of subtasks and all major milestones.

8. A budget, based upon the selected resources (personnel selected from Attachment 4 plus estimated direct non-salary expenses).

9. An organizational chart, with supporting narrative, which describes each scenario
team responsible for implementing the hypothetical task. If subcontractors are to be used, explain the need and how they will be incorporated into the hypothetical effort and describe the arrangements. Discuss your plan for phasing project personnel into the scenarios. Discuss the extent and quality of interaction with key participants. Discuss how each task assignment order request contributes towards meeting the contract’s 11% DBE goal.

10. For the scenario team assembled, select the resources proposed in Attachment 4, indicate the titles and hours of all key personnel assigned, indicating any proposed subcontractor(s) using Attachment 4/Exhibit 1. For each proposed implementation team, to the degree possible, provide names of individual team members having a major role. For each key personnel assigned to each hypothetical task, indicate the level of effort contributed and an estimate of total person hours for each task and the total task assignment. Use no more than two (2) pages.

**Task Assignment Order Scope of Work**
The Consultant will be requested to conduct a Due Diligence Impact Study for a federally funded highway interchange redesign project, using the Design-Build delivery method. Due to limited design work performed, only the following information is known about the project: $80 million construction estimate for a highway interchange redesign, which includes 4 ramps, and the replacement of one bridge structure. The project is scheduled to be awarded in July 2018, with a construction completion date of September 2020. The consultant should assume 35% of the construction cost will be attributed to Labor and 65% for materials (but may vary depending on the proposed solution). Shift work can be considered for 25% of the work.

**Task Assignment Tasks**
1. Collaborate with NYSDOT Project Manager to obtain project information.
2. Review collective bargaining agreements and conduct informal informational meetings with trade council representatives to determine potential savings.
3. Analyze and assess economic and non-economic benefits.
4. Prepare draft report for review by NYSDOT Office of Legal Affairs.
5. Incorporate comments and prepare Final report for review by NYSDOT Commissioner.

**Hypothetical Scenario Deliverables**
1. Draft Due Diligence Study with supporting documentation.
2. Final Due Diligence Study with supporting documentation.
## HYPOTHETICAL SCENARIO #1:
DUE DILIGENCE IMPACT STUDY

### Table of Direct Non-Salary Estimates

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Direct Non-Salary Estimates (itemize):

TOTAL

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HYPOTHETICAL SCENARIO #2:
PROJECT LABOR AGREEMENT

NOTE: The scenario included here is a hypothetical “what if” paper task assignment exercise for the purpose of evaluating proposals. NYSDOT does not intend for any proposer to undertake any actual work until a Consultant has been selected via a competitive task assignment request.

Instructions
In response to NYSDOT’s Task Assignment order, prepare and provide a Task Assignment proposal to provide staff support and assistance to draft, negotiate and execute a Project Labor Agreement based on NYSDOT’s review of the previously submitted Due Diligence Impact Study (DDIS), where the Commissioner has determined a PLA will provide benefits to the project.

Consultants shall prepare and submit a response to the requested hypothetical task assignments listed below. Responding Consultants shall propose discrete Task Implementation Teams and identify the proposed experience and qualifications to deliver the requested work. Only those personnel contained in your Attachment 4 proposal can be used to staff each team.

The response must be in the form of a complete Task Assignment order response, which shall include the following sections:
1. Cover Letter, indicating name, address and phone number of the proposer, including a contact person, and name of the person(s) who prepared the mini-bid. Confidential and proprietary information should also be identified and addressed in this section
2. Title page.
3. Table of Contents.
4. Executive Summary, which provides a brief description of the proposed approach and work effort to performing the hypothetical task assignment.
5. A brief but substantive discussion of the significant issues involved in the task assignment.
6. A concise, inclusive scope of work.
7. A schedule for completion of the hypothetical scenario task assignment showing the duration of subtasks and all major milestones.
8. A budget, based upon the selected resources (personnel selected from Attachment 4 plus estimated direct non-salary expenses).
9. An organizational chart, with supporting narrative, which describes each scenario team responsible for implementing the hypothetical task. If subcontractors are to be used, explain the need and how they will be incorporated into the hypothetical effort and describe the arrangements. Discuss your plan for phasing project personnel into the scenarios. Discuss the extent and quality of interaction with key participants.
10. For the scenario team assembled, select the resources proposed in Attachment 4, indicate the titles and hours of all key personnel assigned, indicating any proposed subcontractor(s) using Attachment 4/Exhibit 1. For each proposed implementation team, to the degree possible, provide names of individual team
members having a major role. For each key personnel assigned to each hypothetical task, indicate the level of effort contributed and an estimate of total person hours for each task and the total task assignment. Use no more than two (2) pages.

**Task Assignment Order Scope of Work**
The consultant will be requested to prepare a draft Project Labor Agreement (PLA) for review by the Department. Once approved, the consultant will be required to negotiate with the appropriate unions on the Department’s behalf, to execute the agreement. Any substantial changes to the PLA language will be reviewed by the Department prior to final execution. The consultant should provide a timeline for completion with interim milestones identified, keeping in mind that the Federal Highway Administration NY Division and FHWA Headquarters will need to concur with the Commissioner’s Decision, and review and approve the language in the Agreement prior to execution.

**Task Assignment Tasks**
1. Collaborate with NYSDOT Office of Legal Affairs to draft the Project Labor Agreement.
2. Prepare draft Agreement for review by NYSDOT Office of Legal Affairs and the Project Management Office
3. If necessary, incorporate comments and prepare Draft Final Agreement for review by FHWA NY Division and FHWA Headquarters
4. If necessary, incorporate comments and prepare Final Agreement for execution by the Unions and NYSDOT’s Design Builder or Contractor
5. Execute Agreement with all necessary Union signatures

**Hypothetical Scenario Deliverables**
1. Draft Project Labor Agreement
2. Executed Final Project Labor Agreement
## HYPOTHETICAL SCENARIO #2: PROJECT LABOR AGREEMENT

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Direct Non-Salary Estimates (itemize):

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