NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
NYSDOT STATE SAFETY OVERSIGHT
PROGRAM FOR RAIL TRANSIT AGENCIES
Contract #C037706

Initial Information for Submittal

A. Please note the following RFP dates and deadlines:

- **October 13, 2017**: RFP Release Date
- **October 20, 2017**: Deadline for questions about the RFP at 12:00 PM (EST)
- **October 25, 2017**: Questions/Answers about the RFP released by COB
- **November 10, 2017**: Deadline for the submission of proposals at 12:00 PM (EST)
- **Mid-November 2017**: Evaluations
- **End-November 2017**: Technical Interviews
- **December 2017**: Approximate Recommendation & Designation
- **Two Weeks**: Contract Finalizing
- **2-3 Months after completion of contract finalizing**: Contract Award

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

RFP RESPONSE FORM: C037706 – NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR RAIL TRANSIT AGENCIES

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. Due to the accelerated schedule of this project, the RFP Response Form return is a mandatory requirement.

______________ 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: Shalina.Mallory@dot.ny.gov

* Regular Mail:
  New York State Department of Transportation
  Contract Management Bureau, 6th Floor
  50 Wolf Road
  Albany, New York 12232
  ATTN: Contract #C037706

* Fax: 518-457-8475
Table 1. Part I - Technical and Management Submittal

- 5 Printed bound complete hard copies of Part I (each in separate three-ring binders with labeled and tabbed sections) plus one complete copy of Part I on CD in a PDF.
- Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “NYSDOT State Safety Oversight Program for Rail Transit Agencies RFP Part I — Technical and Management Proposal (C037706)”
- Signed Cover Letter on official business letterhead
- Table of Contents identifying each major section and page numbers
- Executive Summary of proposed approach
- Narrative Description
- Approach, Scope of Services and Schedule
- Organization and Staffing
- Experience
- Task 1: Sample SSOPS with associated documentation
- Complete and submit Attachment 15: KEY PERSONNEL RESUME AND REFERENCES
- Complete and submit Attachment 24: LEVEL OF EFFORT

Table 2. Part II - Cost and Administrative Submittal

- Two Printed and bound complete hard copies of Part II (in three-ring binders with labeled and tabbed sections) plus one complete copy of Part II on CD, in MS Excel 2007 compatible format and a PDF.
- Securely sealed and clearly labeled with the words “NYSDOT State Safety Oversight Program for Rail Transit Agencies RFP, Part II — Cost and Administrative Proposal (C037622)”

COST PROPOSAL SECTION:
- Required Cost information (complete and submit Attachment 16, Cost Proposal)

ADMINISTRATIVE SECTION:
- Complete and submit Attachment 2: Consultant Information and Certifications (sign both Sections II and III)
- Complete and submit Attachment 3: Form AOR Acknowledgement of Receipt
- Complete and submit the Attachment 4: Procurement Lobbying Law Compliance Forms
- Complete and submit Attachment 6: Non-Collusive Bidding Certification
- Complete and submit Attachment 7: DBE Participation Information Form
- Complete and submit (if applicable) Attachment 7a: DBE Sub-consultant Participation Solicitation Log AND Goal Attainment Explanation Letter
- Complete and submit Attachment 12: New York Business Reporting
- Complete and submit Attachment 23: List of Past & Current Oversight Contracts
- Complete and submit Attachment 26: Vendor Assurance of No Conflict of Interest or Detrimental Effect.
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS

NYSDOT STATE SAFETY OVERSIGHT PROGRAM
FOR RAIL TRANSIT AGENCIES
Contract #C037622

1 INTRODUCTION .................................................................................................................. 1
1.1 Purpose of this RFP ........................................................................................................... 1
1.2 Background ......................................................................................................................... 1
1.3 Minimum RFP Responsiveness Requirements .................................................................. 2
1.4 Designated Contact .......................................................................................................... 2
1.5 RFP Modifications ............................................................................................................. 2

2 CIVIL RIGHTS REQUIREMENTS .................................................................................. 2
2.1 Disadvantaged Business Enterprise Participation .......................................................... 2
2.2 Service-Disabled Veteran-Owned Business Program (SDVOB)........................................ 3
2.3 Title VI Assurance ............................................................................................................ 3
2.4 Equal Employment Opportunity – Pay Equity ................................................................. 3

3 PROJECT AND CONTRACT OBJECTIVES ................................................................... 3
3.1 Project Objectives ............................................................................................................. 3
3.2 Contract Objectives .......................................................................................................... 4
3.3 Definitions and Acronyms ................................................................................................. 5
3.4 Contract Terms and Rate Adjustments ............................................................................. 7

4 SCOPE OF SERVICES ................................................................................................... 8
4.1 Project Overview .............................................................................................................. 8
4.2 Categorization of Work ................................................................................................... 8
4.3 Tasks ................................................................................................................................ 8
General Conditions: ............................................................................................................. 8
4.3.1 Task 1: Development and Implementation of State Safety Oversight Program Standard (SSOPS) ................................................................................................................. 9
4.3.2 Task 2: Three-Year Safety and Security Reviews ......................................................... 10
4.3.3 Task 3: Annual and Periodic Reports ......................................................................... 11
4.3.4 Task 4: Investigations & Corrective Action Plans ....................................................... 12
Scenarios are for proposal submission and evaluation only. They depict the types of services needed under this RFP. During contract finalization, any on-call services and real-time event services and budget estimates will be discussed. Contractor must assess the services needed and provide initial estimates to the Project Manager.......................... 12
4.3.5 Task 5: Supplemental Safety Activities .................................................................... 13

5 PROPOSAL SUBMISSION FORMAT AND CONTENTS ........................................... 14
6.1 Part I: Technical and Management Submittal ................................................................. 14
5.2 Part II: Cost and Administrative Submittal ................................................................... 19
5.2.1 Cost Proposal Section ............................................................................................... 20
5.2.2 Administrative Submission Section ........................................................................ 21
5.2.2.7 Vendor Assurance of No Conflict of Interest or Detrimental Effect ................... 23

6 Proposal Evaluation Process .......................................................................................... 23
6.1 Pre-Screening of Proposals ............................................................................................ 23
6.1.1 Evaluation Category Weight Distribution ............................................................... 24
6.2 Technical and Management Evaluation ......................................................................... 24
6.2.1 General ....................................................................................................................... 24
6.2.2 Written Proposal Evaluation Criteria (up to 70 Points) ........................................... 25
6.2.3 Reference Checks ...................................................................................................... 26
7 ADMINISTRATIVE SPECIFICATIONS ......................................................... 30
7.1 Proposal Submission ............................................................................ 30
7.2 State’s Rights ..................................................................................... 30
7.3 Consultant Responsibility when Proposing Former NYSDOT Employees ........................................................................................................ 31
7.4 Method of Payment ............................................................................ 32
7.5 Information for the Selected Consultant .............................................. 32
7.5.1 Vendor Responsibility ...................................................................... 32
7.5.2 Registration with NYSDOT .................................................................. 32
7.5.3 Registration with Statewide Financial System (SFS) ......................... 33
7.5.4 Consultant Employment Disclosure Requirements of this Project .... 33
7.5.5 Insurance Requirements of this Project* .......................................... 33
7.5.6 Contractor (Consultant) Tax Certification ......................................... 33
7.6 Inquiries and Information .................................................................... 34
7.7 Protest Procedure ................................................................................ 34
7.8 Tentative Schedule of Key Events ....................................................... 34
ATTACHMENT 1: DRAFT CONTRACT .................................................. 35
ATTACHMENT 2 - CONSULTANT INFORMATION AND CERTIFICATIONS .... 81
ATTACHMENT 3 - FORM AOR .................................................................. 84
ATTACHMENT 4 - PROCUREMENT LOBBYING LAW COMPLIANCE FORMS .... 85
ATTACHMENT 5 - CONSULTANT DISCLOSURE LEGISLATION FORMS A & B .... 87
ATTACHMENT 6 - NON-COLLUSIVE BIDDING CERTIFICATION .............. 89
ATTACHMENT 7 - DBE PARTICIPATION INFORMATION ............................... 92
ATTACHMENT 7a - DBE SUB-CONTRACTOR (CONSULTANT) PARTICIPATION SOLICITATION LOG ............................................................... 93
ATTACHMENT 8 - DIVERSITY PRACTICES QUESTIONNAIRE ................... 94
ATTACHMENT 9 - M/WBE PARTICIPATION INFORMATION ......................... 95
ATTACHMENT 10 - M/WBE SUBCONTRACTOR (CONSULTANT) PARTICIPATION SOLICITATION LOG ................................................................. 96
ATTACHMENT 11 - SOLICITATION LOG INSTRUCTIONS .......................... 97
ATTACHMENT 12 - NEW YORK BUSINESS REPORTING ............................ 100
ATTACHMENT 13 - SDVOB PARTICIPATION INFORMATION .......................... 102
ATTACHMENT 14 - SDVOB SUB-CONTRACTOR (CONSULTANT) PARTICIPATION SOLICITATION LOG ............................................................... 103
ATTACHMENT 15 - KEY PERSONNEL RESUME AND REFERENCES .................. 104
ATTACHMENT 16 - COST PROPOSAL .................................................. 106
ATTACHMENT 17 - 49 CFR PART 659 ..................................................... 107
ATTACHMENT 18 - 49 CFR PART 670 ..................................................... 123
(SEE ON-LINE SEPARATE PDF) ................................................................. 123
ATTACHMENT 19 - 49 CFR PART 672 ..................................................... 124
(SEE ON-LINE SEPARATE PDF) ................................................................. 124
ATTACHMENT 20 - 49 CFR PART 673 ..................................................... 125
(SEE ON-LINE SEPARATE PDF) ................................................................. 125
ATTACHMENT 21 - 49 CFR PART 674 ..................................................... 126
(SEE ON-LINE SEPARATE PDF) ................................................................. 126
ATTACHMENT 22 ..................................................................................... 127
1 INTRODUCTION

1.1 Purpose of this RFP
The New York State Department of Transportation (NYSDOT) is releasing this Request for Proposals (RFP) to seek responsive proposals to competitively select one qualified and responsible consultant team to: provide technical assistance, administrative services and oversight activities for the New York State Rail Fixed Guideway System Safety and Security Oversight Program (the Program; see Attachment 17). This Program shall be in accordance with regulations issued by the Federal Transit Administration (FTA) in 49 CFR, Part 659 (the Rule) and all new requirements for FTA’s SSO program in the current surface transportation authorization, Moving Ahead for Progress in the 21st Century (MAP-21), in 49 United States Code (U.S.C.) Section 5329, Public Transportation Safety program.

The New York State Department of Transportation (NYSDOT) conducts and staffs an advisory organization known as the Public Transportation Safety Board (PTSB). The PTSB is the designated State Safety Oversight Agency pursuant to regulations issued by the Federal Transit Administration through 49 CFR Part 659 and new enhanced requirement codified in Section 5329 of the Moving Ahead for Progress in the 21st Century (MAP-21). The PTSB oversees the heavy rail system operated by the MTA New York City Transit (NYCT) and the light rail system operated by the Niagara Frontier Transportation Authority (NFTA). For purposes of this RFP, PTSB and SSOA will be interchangeable.

1.1 The designated Consultant will assist NYSDOT’s Public Transportation Safety Board’s (PTSB) to continue to meet SSO requirements under Part 659 and to lead the development of a revised State Safety Program Standard (SSPS) and State regulations that meet the enhanced requirements for State Safety Oversight under MAP-21. This includes the development of risk assessments and hazard management related to the Rail Fixed Guideway System. The designated Consultant will also provide reports, reviews, hazard and accident investigations as needed and additional supplemental safety activities.

1.2 Background
NYSDOT developed a System Safety and Security Oversight Program Standard (SSOPS) (See Attachment 25), which describes the Program and defines the respective roles and responsibilities of NYSDOT, transit agencies and the FTA in its implementation. Currently, the MTA New York City Transit (MTA NYCT) and the Niagara Frontier Transportation Authority (NFTA) are the only public transit systems in New York State covered by the Program. The MTA New York City Transit subway system has 469 stations, over 6,400 subway cars, and 660 mainline track miles. The Niagara Frontier Transportation Authority Metro Rail system has 16 stations over 6.2 miles of track operated on a fleet of 27 cars. The Program also requires MTA NYCT and NFTA to submit a System Safety Program Plan (SSPP) and System Security Plan (SSP) to NYSDOT that complies with the requirements of the SSPS.

NYSDOT does not expect any other rail transit system to initiate service in the state during the period covered by the contract awarded as a result of this solicitation.
1.3 Minimum RFP Responsiveness Requirements
Any Firm that does not provide all of the following by the RFP deadline may be deemed non-responsive. All proposals deemed to be non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals):
1. Complete Part I of the Proposal – Technical and Management submission, per Table 1
2. Complete Part II of the Proposal – Cost and Administrative submission, per Table 2
3. Completed Procurement Lobbying Law Compliance Forms, per Table 2
4. Meeting or exceeding C037706’s 11% DBE Subcontracting goal or should this goal not be met, submission of acceptable good faith effort documentation, including DBE Participation Explanation Letter, per Table 2

1.4 Designated Contact
Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department’s Designated Contact for this procurement is:
Shalina Mallory
New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232, USA
Email: Shalina.Mallory@dot.ny.gov
The above-named person, as the Department’s Designated Contact Person for this procurement, shall be the Department’s only point of contact and source of information for this procurement.

1.5 RFP Modifications
If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Interested parties who inform the designated NYSDOT Contact Person shall receive an e-mail alerting them to the release of new RFP information. Proposers are also 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. The final Modification to this RFP will be posted on NYSDOT’s web site not later than ten business days prior to the Proposal due date. If an additional Modification is required within final time period, then the Proposal due date shall be revised such that there will again be ten business days from release of the RFP’s final Modification to the Proposal due date.

2 CIVIL RIGHTS REQUIREMENTS

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

NYSDOT has established a DBE participation goal of eleven percent (11%) for this solicitation. Meaningful participation by the inclusion of a sub-consultant who is certified as a NYSUCP DBE counts toward the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:
Interested proposers should verify their attainment of the above established DBE participation goal by completing **Attachment 7 DBE Sub-consultant Participation Information**. To count towards the DBE sub-consultant Participation goal, a firm offered for DBE participation must be certified per the NYSUCP DBE Directory before the proposal due date. If the proposal does not meet the 11% DBE sub-consultant participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 7a 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 participation 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 the sub-Contractor (Sub-Consultant).

The above form and letter must be included in Administrative Section of your Part II submission. Firms are advised to refer to RFP Section 6.2 for the procedure the Department will follow in evaluating a firm’s proposed DBE participation. **Proposers are encouraged to submit questions before the Question Deadline referenced in this RFP.**

### 2.2 Service-Disabled Veteran-Owned Business Program (SDVOB)

Not Applicable.

### 2.3 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.

### 2.4 Equal Employment Opportunity – Pay Equity

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

### 3 PROJECT AND CONTRACT OBJECTIVES

#### 3.1 Project Objectives

The objectives of this project are to assist NYSDOT’s Public Transportation Safety Board’s...
(PTSB) to continue to meet SSO requirements under Part 659 and to lead the development of a revised state safety oversight program standard (SSOPS) and State regulations that meet the enhanced requirements for state safety oversight under MAP-21. The selected Consultant shall also provide reports, reviews, hazard and accident investigations as needed and additional supplemental safety activities. Specifically, the selected Consultant shall:

1. Develop and Submit the State Safety Oversight Program Standard (SSOPS; Task 1) to FTA by April 15, 2018
2. Implement FTA-approved State Safety Oversight Program Standard
3. Perform One 3-Year Safety and Security Review
4. Provide Annual and Periodic Reports
5. Perform Investigations
6. Perform Supplemental Safety Activities

Note: Task 1 may be independently awarded and it may be possible that the vendor selected under the C037706 RFP may be required to work with the vendor who developed NYSDOT’s SSOP.

3.2 Contract Objectives

1. Consulting Arrangements: To hire one responsive, responsible, experienced, knowledgeable and qualified Prime Consultant under Contract #C037706. NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant. Sub-consulting and teaming arrangements are encouraged; however, if a contractor, sub-contractor, and/or sub-consultant does not comply with 5.2.2.6(a) at the time of proposal, a conflict of interest is present. The State shall not issue a preliminary award to any proposer if such conflict of interest is present under section 5.2.2.6(a) at the time of proposal, or during any contract performance as proposed at the time of proposal. Notwithstanding the foregoing, if a conflict of interest—which was not present, nor reasonably foreseeable, at the time of proposal – shall arise after April 15, 2019, such conflict of interest shall be governed by 49 CFR 674.41. Joint ventures are NOT allowed.

2. For all offerors to accept the RFP’s Draft Contract Terms and Conditions (Attachment 1) as is.

3. 11% DBE Participation Goal: Via this solicitation, the awarded contract shall meet or exceed the 11% DBE sub-consultant participation goal; to provide a utilization opportunity for certified DBE firms to participate in this contracts (see RFP Section 2.3 below).

4. Contract Term: The base term of the contract will be three years with two optional one year extensions.

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

6. Best Value Selection: To select the Best Value offered to NYSDOT from the responsive and responsible firms which respond to this RFP and compete for contract award.

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

### 3.3 Definitions and Acronyms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Accident</td>
<td>An event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.</td>
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<tr>
<td>Accountable Executive</td>
<td>A single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the Agency’s Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency’s Public Transportation Agency Safety Plan and the agency’s Transit Asset Management Plan.</td>
</tr>
<tr>
<td>APTA</td>
<td>American Public Transportation Association</td>
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<tr>
<td>ATC</td>
<td>Automatic Train Control</td>
</tr>
<tr>
<td>CAP</td>
<td>Corrective Action Plan: A plan developed by a rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing those actions.</td>
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<tr>
<td>CBTC</td>
<td>Communication based train control</td>
</tr>
<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>Contractor (Sub-Consultant)</td>
<td>An entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or a Rail Transit Agency, through contract or other agreement.</td>
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<tr>
<td>CWP</td>
<td>Certification Work Plan: the document submitted by States to the Federal Transit Administration detailing specific actions, steps, and timelines the State will to take achieve compliance with MAP-21 and 49 CFR Part 674.</td>
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<tr>
<td>Emergency</td>
<td>A condition, situation or occurrence of a serious nature, developing suddenly and unexpectedly, and requiring immediate action.</td>
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<tr>
<td>Evacuation</td>
<td>Organized, phased, and supervised withdrawal, dispersal, or removal of civilians from dangerous or potentially dangerous areas, and their reception and care in safe areas.</td>
</tr>
<tr>
<td>Event</td>
<td>Means an accident, incident or occurrence.</td>
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<tr>
<td>FAST Act</td>
<td>Fixing America’s Surface Transportation Act</td>
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<tr>
<td>FRA</td>
<td>Federal Railroad Administration</td>
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<tr>
<td>FTA</td>
<td>Federal Transportation Administration</td>
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<td>Hazard</td>
<td>Any real or potential condition (as defined in the rail transit agency’s hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment.</td>
</tr>
<tr>
<td>Incident</td>
<td>An event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency.</td>
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<tr>
<td>Investigation</td>
<td>The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.</td>
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<td>MAP-21</td>
<td>Moving Ahead for Progress in the 21st Century</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td><strong>Mitigation</strong></td>
<td>The activities designed to reduce or eliminate risks to persons or property or to lessen the actual or potential effects or consequences of an incident. Mitigation measures may be implemented prior to, during, or after an incident. Mitigation measures are often informed by lessons learned from prior incidents. Mitigation involves ongoing actions to reduce exposure to, probability of, or potential loss from hazards.</td>
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<tr>
<td><strong>MPO</strong></td>
<td>Metropolitan planning organization</td>
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<tr>
<td><strong>New Starts Project</strong></td>
<td>Any Rail Fixed Guideway System funded under FTA’s 49 U.S.C. 5309 discretionary construction program.</td>
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<td><strong>NFTA</strong></td>
<td>Niagara Frontier Transportation Authority</td>
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<tr>
<td><strong>NPRM</strong></td>
<td>Notice of proposed rule making</td>
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<tr>
<td><strong>NTD</strong></td>
<td>National Transit Database</td>
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<tr>
<td><strong>NTSB</strong></td>
<td>National Transportation Safety Board</td>
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<tr>
<td><strong>NYCT</strong></td>
<td>MTA New York City Transit</td>
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<tr>
<td><strong>NYSDOT</strong></td>
<td>New York State Department of Transportation</td>
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<tr>
<td><strong>Occurrence</strong></td>
<td>An event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail transit agency.</td>
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<tr>
<td><strong>Person</strong></td>
<td>A passenger, employee, Contractor (Consultant), pedestrian, trespasser, or any individual on the property of a Rail Fixed Guideway Public Transportation System.</td>
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<tr>
<td><strong>PTASP</strong></td>
<td>Public Transportation Agency Safety Plan means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d) and based on a Safety Management System.</td>
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<td><strong>PTSB</strong></td>
<td>Public Transportation Safety Board</td>
</tr>
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<td><strong>RFGPTS</strong></td>
<td>Rail Fixed Guideway Public Transportation System means any Fixed Guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction.</td>
</tr>
<tr>
<td><strong>Risk</strong></td>
<td>The composite of predicted severity and likelihood of the potential effect of a hazard.</td>
</tr>
<tr>
<td><strong>Risk Mitigation</strong></td>
<td>A method or methods to eliminate or reduce the effects of hazards.</td>
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<tr>
<td><strong>RTA</strong></td>
<td>Rail Transit Agency means any entity that provides services on a rail Fixed Guideway Public Transportation System.</td>
</tr>
<tr>
<td><strong>RWP</strong></td>
<td>Roadway worker protection</td>
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<tr>
<td><strong>Safety Risk Management</strong></td>
<td>A process within a Rail Transit Agency’s Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.</td>
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<tr>
<td><strong>Serious Injury</strong></td>
<td>Any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.</td>
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</table>
3.4 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant shall commence Spring 2017. The initial base term of the contract is three years. All Specific Hourly Rates from the selected proposal shall remain fixed for C037706’s base term. There is a 2% limit to rate increases from year one to year two; there is a 2% limit to rate increases from year two to year three. In addition, the contract’s base term may be extended for up to two additional one-year periods subject to an adjusted rate based on market conditions but not exceeding a 2% increase. This is upon written agreement of both parties and approval by the Office of the State Comptroller.

If the contract is extended for the optional years, then the Specific Hourly Rates of pay shown in Schedule B may be adjusted by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413--5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 2%, 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.

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

4.1 Project Overview
The New York State Department of Transportation (NYSDOT) staffs an advisory organization known as the Public Transportation Safety Board (PTSB). The PTSB is the designated State Safety Oversight Agency pursuant to regulations issued by the Federal Transit Administration through 49 CFR Part 659 and new enhanced requirements codified in Section 5329 of the Moving Ahead for Progress in the 21st Century (MAP-21). The PTSB oversees the heavy rail system operated by the MTA New York City Transit (NYCT) and the light rail system operated by the Niagara Frontier Transportation Authority (NFTA). The Consultant shall assist the PTSB to continue to meet SSO requirements under Part 659 and to lead the development of a revised State Safety Oversight Program Standard (SSPS) and state regulations that meet the enhanced requirements for State Safety Oversight under MAP-21.

4.2 Categorization of Work
The major work components under this contract shall include, but not be limited to:
1. Development and submittal to FTA NYSDOT’s State Safety Oversight Program Standard (SSOPS) directed towards the NYCT and NFTA.
2. Implementation of FTA approved SSOPS.
3. Three-year Safety and Security Reviews as currently required under Part 659 and similar requirements to be determined under MAP-21 proposed and final rulemaking.
4. Annual Reporting requirements to FTA as required under Part 659 and similar requirements to be determined under MAP-21 proposed and final rulemaking.
5. Accident and hazard investigation as currently required under Part 659 and similar requirements to be determined under MAP-21 proposed and final rulemaking. Tracking to closure all corrective action plans developed by NYCT and NFTA that enhance or address safety or other risk issues identified during the course investigations and analysis.
6. Supplemental safety activities and analysis that arise from investigations described above, and safety advisories issued by the Federal Transit Administration.

4.3 Tasks
General Conditions:

The selected Consultant (Contractor) shall develop, with NYSDOT’s concurrence, a SSOPS under Part 659 and MAP-21 Section 5329 requirements and requisite proposed and final rules promulgated and the respective roles and responsibilities of NYSDOT, MTA NYCT and NFTA. The Consultant shall continue to meet the requirements set forth under Part 659 and assist NYSDOT to meet certification requirements for the enhanced SSO program under Part 674 (See Attachment 21) by April 14, 2019. FTA has developed guidelines for the NYSDOT to follow when applying for the required certification (49 CFR Part 674 Certification Toolkit). The Certification Application shall consist of documentation which address the following:
   o Financial and legal independence from a rail transit agency;
   o Does not directly provide overlapping public transportation services in an area with a rail transit agency;
   o Does not employ any individual responsible for administering a rail transit agency;
   o Has the authority to review, approve, oversee, and enforce a public transportation agency safety plan for a rail transit agency;
   o Has investigative and enforcement authority with respect to rail transit agency safety, including the authority to investigate accidents, incidents and occurrences at the respective properties, and to require, approve, track, and verify implementation of corrective action to ensure rail transit agency safety;
   o Has the authority to adopt and enforce Federal and State laws affecting rail transit safety;
   o At least once every three years, audits each rail transit agency in its jurisdiction for
compliance with safety plan requirements;
  o At least once a year, in the interest of accountability and transparency, reports the status of the safety of each rail transit agency to the Governor, FTA, and the rail transit agency (RTA) board of directors or equivalent agency;
  o Develops and updates a Program Standard to communicate the SSO agency’s oversight authorities, activities and requirements for each RFGPTS in the State;
  o Has sufficient staff resources and expertise to oversee the number, size, and complexity of the RTAs that operate within the State; and
  o Addresses the FTA’s safety certification and training requirements for all staff resources, including Contractor (Consultant)s, who conduct audits, examinations, investigations or inspections for the SSO agency.

Under the direction of the NYSDOT project manager the Consultant shall be responsible for completing the following tasks:

4.3.1 Task 1: Development and Implementation of State Safety Oversight Program Standard (SSOPS)

The consultant shall have a thorough understanding of the requirements for a SSOPS under Part 659.15 and the transition that will be required for the SSOPS under the enhanced SSOPS requirements detailed in Part 674.27. The enhanced SSOPS shall include all of the following elements:

1. Program policy and objectives
2. General program standard development
3. Management of the State Safety Oversight Program
4. Oversight of RTA Safety Plans and their respective internal safety reviews
5. Triennial SSO Audits of RTA Safety Plans
6. Accident Notification
7. Accident Investigations
8. Corrective Actions
9. Annual Reporting

The Federal Transit Administration has mandated a pre-certification deadline of April 15, 2018 to submit a SSOPS with associated documentation for the FTA’s initial review and comment. If a proposing consultant has created standards on behalf of states who oversee heavy rail operations similar to MTA New York City Transit and light rail operations similar to Niagara Frontier Transportation Authority must submit samples of such documents for review in their proposal by NYSDOT. These documents must demonstrate comprehensive understanding of the program standard requirements with an efficient use of resources to implement these standards. Accommodations will be made for confidential and sensitive data to be shared with NYSDOT.

It is anticipated that the enhanced SSO program will be impacted by final and proposed rulemaking authorized under MAP-21 and guidelines to be developed by the Federal Transit Administration. The rulemaking will include the following that will impact the Consultant’s development of the SSOPS:

a. Part 670 - Public Transportation Safety Program [Final Rule issued August 11, 2016] (See Attachment 18)
d. Part 674 - State Safety Oversight [Final Rule issued March 6, 2016] - A final SSOPS that meets the Part 674 Requirements must be completed for submission with other required supporting documentation to FTA as part of the certification process by April 14, 2018. (See Attachment 21)

4.3.2 Task 2: Three-Year Safety and Security Reviews
Pursuant to Part 659 requirements, the Consultant shall follow NYSDOT’s present SSOPS (New York State Safety and Security Oversight Program Standard and Referenced Procedures for Rail Fixed Guideway Heavy and Light Rail Transportation Systems: Revised November 2015). NYSDOT is required by Section 659.29 to perform safety and security reviews of NYCT and NFTA in person over a three-year period. FTA has submitted a draft report of their triennial audit of the PTSB’s SSO Program. One of their findings/recommendations is that PTSB has not completed or initiated a three-year review of NYCT or NFTA for the period of 2015-2017 and recommends that PTSB develop a plan to complete this requirement under Part 659. This is to be completed as a precondition for being certified for enhanced SSO program under Part 674.

The present three-year period is to be completed by April 1, 2019 under Part 659. Section 659.29 also provides that this function can be completed in a continuous manner over a three-year period. This shall be the preferable approach when conducting this activity at MTA NYCT. Consultants will need to provide a level of effort commensurate with this accelerated schedule.

The proposing Consultants are encouraged to combine like-elements in an effort to complete the accelerated schedule when working on the NYCT SSPP and SSP requirements such as suggested below:

- Elements 1-5 (Policy, Goals, and Management Structure, SSPP control and Distribution)
- Elements 6, 9, 10, 11 (Hazard Management, Safety Data Collection, Accident Investigation, Emergency Management)
- Elements 14, 15 (Facilities and Equipment Inspections, Maintenance Audits and Inspections)
- Elements 7, 8, 17, 19, 21 (System Modification, Safety Certification, Configuration Management, Hazardous Materials, Procurement)
- Elements 12, 13, 16, 18 (Internal Audit, Rules Compliance, Training and certification for employees and contractors, Local/State/Federal Requirements)
- Element 20 (Drug and Alcohol program)

Elements 1-5 of NYCT Security Plan
During this same period the Consultant will also need to complete the triennial requirement at NFTA.

Due to NFTA’s size, the triennial safety and security review can be completed in shorter time period.

1. Review planning and information gathering
Develop a schedule and review plan to be followed that sets milestones and objectives to be met when conducting these activities at MTA NYCT and NFTA. When a plan is accepted by the NYSDOT project manager, the consultant shall notify MTA NYCT and NFTA within 30 days of the plan and the milestones of the respective reviews.

Typical documents that may be requested include:
  - a. System Safety Program Plan (SSPP)
  - b. System Security Plan (SSP)
  - c. Organizational Chart
  - d. Safety and Security Policy Statements
  - e. Operating Rulebooks
f. Emergency Response Procedures

The selected Consultant shall develop, in conference with the NYSDOT Project Manager, the criteria by which MTA, NYCT, and NFTA shall be reviewed and evaluated. The Consultant shall assess the materials provided by MTA, NYCT, and NFTA against the established evaluation criteria and determine which areas require more extensive review during the actual audit.

2. Conduct On-Site Review

The purpose of the review shall be to assess how MTA NYCT and NFTA’s written system safety program work in practice and to determine if the MTA NYCT and NFTA’s written system safety program comply with the present SSOPS. At a minimum, the review shall provide an assessment of the following:

- System Safety Policies and Procedures – Review MTA NYCT and NFTA’s safety and security policies and plans and the extent to which they are understood and implemented by all operating elements throughout the organization.
- Corrective Action Plan Implementation - Review a sample of closed corrective action items to verify and validate that approved action plans have been appropriately implemented.
- Management – Examine management’s commitment (i.e., policy, culture, organization, support to operating functions, etc.) to safety and security;
- Spot Checks – Conduct “spot checks” of selected areas to determine if the system safety and security program is working in practice. Areas and/or facilities to be examined may include operations, training, maintenance, substance abuse, track, trains, signals, emergency response, communications systems, dispatching and other areas.

3. Prepare Report For Three-Year Safety & Security Reviews

Once the review has been completed, the Consultant shall issue an initial draft report to the NYSDOT Program Manager for review and comment. After such review, the Consultant shall issue a final report complete with recommendations and findings for improving MTA NYCT and NFTA’s safety and security programs.

4.3.3 Task 3: Annual and Periodic Reports

The Consultant must demonstrate a thorough understanding of SSO program including the requirements under Part 659.39(c) and MAP-21 Section 5329 requirements. Under the direction of the NYSDOT program manager, the consultant shall be responsible for, including but not limited to, completing all of the following tasks:

1. An annual report, due to FTA before March 15 of each calendar year, summarizing the Department’s safety oversight activities for the preceding twelve months, including but not limited to a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to MTA NYCT and NFTA program documentation, and the level of effort used by the oversight agency to carry out its oversight activities. A draft of the report shall be submitted to NYSDOT for review and comment. After edits are completed and NYSDOT has approved the final report (prepared by the Consultant), the Department will submit the final report to the Governor, the executive management of the respective RTAs, FTA and make the final report publicly available through Department interfaces for electronic distribution.

2. A report documenting and tracking findings from three (3) year safety and security review activities. The report shall also indicate the timeline for completing these activities (e.g. ongoing, completed).

3. A summary of state safety oversight program standard and supporting procedures that
have changed or modified during the preceding year.
4. Certification that any changes or modifications to MTA NYCT or NFTA’s SSPP or SSP have been reviewed and approved by the oversight agency.
5. Periodic Submissions: The Consultant shall prepare periodic program information reports in response to inquiries from FTA and NYSDOT management. Such reports shall include but are not limited to: accident investigation status, identified hazardous conditions, and CAPs as periodically requested by FTA and Department officials. For example, the Consultant shall be required to respond to Safety Advisories issued by FTA for recent topics related to Roadway Worker Protection, Tunnel Emergency Ventilation assessments, Stop Signal Overrun, and Third Rail Cable connections.

4.3.4 Task 4: Investigations & Corrective Action Plans

Scenarios are for proposal submission and evaluation only. They depict the types of services needed under this RFP. During contract finalization, any on-call services and real-time event services and budget estimates will be discussed. Contractor must assess the services needed and provide initial estimates to the Project Manager.

1. Accident Investigations: NYSDOT is required to investigate, or direct the investigation of, reportable accidents as defined under Section 659.33 and Section 674.33 of the enhanced SSO program. The Consultant may be requested to provide both partial and full investigation assistance, such as subject matter expertise, to the NYSDOT/PTSB staff when investigating certain accidents and provide analysis of accident trends experienced at MTA NYCT and NFTA or fully lead an investigation on behalf of the NYSDOT/PTSB. All final accident reports are submitted to the New York Public Transportation Safety Board by NYSDOT during meetings held every two months. The Consultant shall be required to observe these meetings either in person or via web cast and provide presentations to the full board upon request by the NYSDOT program manager.

Significant events are considered to be mainline and yard derailments or mainline collisions (NYCT and NFTA) or grade crossing collisions (NFTA). Based on this description, NYCT experienced an average of three significant annual events over a ten-year period (2007-2016) and two similar events annually at NFTA for the same period. An example of significant events where the proposer may be required to provide both partial and full investigation assistance in investigating an FTA reportable accident is:

a. In 2014, a southbound MTA New York City Transit “F” train (interval 0957) derailed after the train struck a broken section of express track D3, on a curve located approximately 770 feet south of the 65th Street Station. The investigation determined that the lead wheel of the lead car had hammered the end of newly installed piece of rail that caused the rail to split at the web and tear up track leading to the derailment of five cars. The ensuing follow-up investigation to this event included review of the following:
   - Track maintenance history at this location included review of Sperry Rail Services Ultrasonic Testing, track geometry testing, NYCT new rail installation protocols and post-installation inspection procedures.
   - Analysis of similar rail (batch procurement) installed in other areas of system.
   - Metallurgic testing and analysis of the fractured rail.
   - Analysis of current bolted rail joints usage.

2. Hazard Investigations: NYSDOT is required to ensure that NYCT and NFTA maintain a hazard management program and that NYCT and NFTA notify NYSDOT when a hazardous condition arises that adversely impacts the safe operations of the rail transit
system or potentially presents an imminent condition that may have catastrophic implications. The Consultant shall be responsible for conducting the following activities:

a. Serve as the initial contact for notification of hazardous conditions by MTA NYCT and NFTA;

b. Receive and review reports of hazardous conditions, gather data and information necessary to characterize any reported condition and provide the initial briefing to NYSDOT according to the procedures established in the SSOPS for reporting hazardous conditions;

c. Monitor and review hazardous condition investigation activities conducted by MTA NYCT and NFTA;

d. When directed by NYSDOT, conduct on-site hazardous condition investigation activities (i.e., perform physical inspections/examinations, review relevant data and records, interview individuals responsible for reporting hazardous conditions, etc.), prepare both interim investigation status reports and a final hazard investigation report; and

e. Provide additional assistance, as directed by NYSDOT, to fulfill the investigation requirements for hazardous conditions, as outlined in the SSOPS.

3. Correction Action Plans (CAPs); The Rule requires transit agencies covered by the Program to prepare and submit Corrective Action Plans (CAPs) to minimize, control, correct, or eliminate any safety deficiencies or hazardous conditions, which contribute to or may cause an accident. During its review of reported accidents and hazardous conditions, the Consultant shall be responsible, for approving and monitoring the implementation of recommended corrective actions submitted by MTA NYCT and NFTA. In the event that the NTSB conducts an investigation, MTA NYCT/ NFTA and NYSDOT shall review the NTSB findings and recommendations to determine whether or not a CAP should be developed by MTA NYCT AND NFTA.

4. NYSDOT’s procedures for accident investigations, hazardous condition investigations and corrective actions are described in Chapters 6 through 9 of the current SSOPS. Additionally, in fulfilling the requirements for investigating accidents and hazardous conditions and monitoring corrective actions, the Consultant shall be required to meet jointly with NYSDOT and MTA NYCT/ NFTA at least quarterly in MTA NYCT and NFTA offices to review open investigations, corrective action activities and other open or unresolved issues.

4.3.5 Task 5: Supplemental Safety Activities

The following activities will occur under this task.

The Consultant shall prepare quarterly program information including status reports of accidents, identified hazardous conditions, and CAPs as requested by FTA and Department officials. Such examples include: responses to FTA Safety Advisories related to Roadway Worker Protection, Emergency Tunnel Ventilation assessments, Stop Signal Overruns, and Third Rail Feeder cable assessment. The proposing Consultant shall submit a level of effort and cost estimate related to the Safety Advisories previously listed by FTA that reflect the systems maintained by MTA New York City Subway and Niagara Frontier Transportation Authority Metro Rail:

FTA Safety Advisory 15-1 – Tunnel Ventilation Fans Assessment

Other supplemental safety activities shall include, but are not limited to, extended study and analysis of factors related to accident and hazard investigations. Similar activities for
Department officials shall include, but not be limited to: responding to inquiries about the Program, preparing briefing materials, and assisting NYSDOT, MTA NYCT and NFTA with issues related to the implementation of the Program.

Under Part 674 FTA will be conducting three-year audit of NYSDOT’s enhanced State Safety Oversight Program during the contract period, once NYSDOT has been certified. The Consultant shall gather information requested by FTA and prepare for audit and develop a response to FTA’s report of findings and recommendations. The Consultant shall prepare a draft report for NYSDOT’s review and approval prior to responding to FTA.

5 PROPOSAL SUBMISSION FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two separate parts with each part in three-ring binders. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Administrative submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is not to be included in the Part I submittal. Web links, photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required in this section. Your proposal should follow the format listed below.

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 a proposer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Labeling all pages as “confidential” or “proprietary” is unacceptable – such proposals will not be accepted unless the proposer re-labels their proposal to only identify what specific material to shield from public scrutiny. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal. Additionally, offerors need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL.

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

6.1 Part I: Technical and Management Submittal

A complete Part I proposal shall contain the following:

<table>
<thead>
<tr>
<th>Table 1. Part I - Technical and Management Submittal</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ 5 Printed bound complete hard copies of Part I (each in separate three-ring binders with labeled and tabbed sections) plus one complete copy of Part I on CD in a PDF.</td>
</tr>
<tr>
<td>↑ Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “NYSDOT State Safety Oversight Program for Rail Transit Agencies RFP Part I — Technical and Management Proposal (C037706)”</td>
</tr>
<tr>
<td>□ Signed Cover Letter on official business letterhead</td>
</tr>
<tr>
<td>□ Table of Contents identifying each major section and page numbers</td>
</tr>
<tr>
<td>□ Executive Summary of proposed approach</td>
</tr>
<tr>
<td>□ Narrative Description</td>
</tr>
<tr>
<td>□ Approach, Scope of Services and Schedule</td>
</tr>
<tr>
<td>□ Organization and Staffing</td>
</tr>
<tr>
<td>□ Experience</td>
</tr>
<tr>
<td>□ Task 1: Sample SSOPS with associated documentation</td>
</tr>
</tbody>
</table>
To assist you to prepare responsive proposals, the RFP offers the following additional information regarding each Part I Section:

5.1.1 Title Page and Cover Letter
Title Page lists 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. The title page should also list the RFP Title and Contract #C037706 and also identify Part I Technical Proposal.

The Cover Letter shall include following information regarding the consultant’s official representative for its proposal:
- Name of consultant’s official representative
- Title
- Name of company
- Address
- Telephone number
- FAX number
- E-mail address of the consultant’s representative

The signed Cover Letter must be on official business letterhead and accompany each volume. In addition to the information listed on the title page, the cover letter should 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 one double-sided page. The cover letter should also include the following:

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

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

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

If there are multiple offices of the consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.

The full, legal names of all Sub-consultants involved in your response.

5.1.2 A Table of Contents
The Table of Contents which should identify each major section of the consultant’s proposal, along with its initial-page number.

5.1.3 Narrative Description
Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, etc. **This narrative should be no longer than five single-sided pages. If more than five pages of narrative are submitted, then only the first five pages of the narrative will be evaluated.** Include a brief discussion of how attainment of the 11% DBE goal for contract #C037706 shall be met/exceeded and managed over the life of the contract.
5.1.4 Approach, Scope of Services and Schedule
Describe the approach for performing the work and accomplishing project objectives. Provide a detailed scope of services which describes how tasks 1-5 in Section 4 of this RFP and any additional tasks will be done, by whom and schedule. Include enough substantive discussion to demonstrate an understanding of NYSDOT’s project objectives and familiarity with applicable State and Federal laws, rules, practices, procedural requirements, risks, etc. Highlight how the DBE goals will be met. Refer to the general scope of services outlined under RFP Section 4. Also, include a schedule for completion of the project showing the duration of each task and all major milestones.

The draft Program Standard is due to the Project Manager for review on approximately March 15, 2018. The final draft Program Standard is due to the Project Manager for review on approximately April 6, 2018.

Proposers shall describe all activities necessary for conducting a rail fixed Guideway safety and security program in general and in specific. The proposers should add scope (activities, descriptions) that they deem necessary for the successful implementation of the SSO project. The description shall enable NYSDOT to determine the proposer’s knowledge of the difference between the rail fixed Guideway service to be reviewed under this program and rail service regulated by FRA (which is exempt from this program). Proposers shall submit a technical narrative supporting recommendations for conducting the work specified in the RFP, and include a detailed step-by-step methodology for accomplishing the activities to be performed.

Include a discussion on the important issues involved with delivering the requested services. Identify potential complications or difficulties that might be encountered in the implementation of required services along with suggested resolutions for each. Include discussion of quality control procedures. Tailor each discussion to the individual NYSDOT Regions 5, Buffalo and Region 11, New York City.

The general scope of services and technical approach requirements are outlined under RFP Section 4. Describe the approach and response to each task in the scope of services. This includes a detailed description, itemized by RFP Subsection numbers 4.3.1 through 4.3.5 of Section 4.3, Tasks. The response shall utilize the same naming and numbering system used by the RFP.

The Proposer shall include an example of each accident investigation, hazard investigation, and corrective actions derived from each form of investigation or compliance review activity as described in the RFP Subsection 4.3.4.1. The Proposer shall provide a separate response to each of the four scenarios described in Attachment 22, utilizing the same naming and numbering system used in that section.

Your scope of services may be based on the service requirements as described by this RFP. However, alternative tasks which could improve the ability of the project to meet the RFP’s objectives may be suggested. NYSDOT wants to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify your approach, however, if it significantly departs from the general scope of services, there is grave risk that such may not be considered.

Your Part II Cost Proposal must include all costs associated with all proposed scope of services activities presented in your Part I Technical Proposal.
5.1.5 Organization and Staffing
Provide a complete organizational chart for the project which provides the names and titles of the Consultant’s Project Manager, all Key Personnel and identifies all other proposed consultant personnel (by firm). Include an estimate of total effort hours contributed by all proposed consultant staff (including all key personnel) to each task and an estimate of total effort hours for each task – to do this, complete and submit Attachment 24 Labor Table/Level of Effort Tables. The instructions for completing the tables are included on the attachment. Present and discuss your management plan to ensure effective and efficient delivery of services while meeting the project objectives, including attainment of the contract’s 11% DBE participation goal. If sub-consultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for maintaining and if necessary, 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. After work begins, all changes in key Consultant personnel shall be subject to NYSDOT review and approval, and shall have equal or greater qualifications and shall be at same or lessor rates of pay.

5.1.6 Experience
The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct, prior experience in State Safety Oversight of rail transit systems is highly desirable. Provide a list of projects currently in progress and those completed within the last three years which are relevant to this effort (up to five years is allowable if relevant).

The Consultant shall be knowledgeable of the Technical Training requirements as published in the Federal Register under Interim Safety Certification Training Program Provisions Part 672. Pursuant to the interim certification requirements (Part 672) (See Attachment 19), the proposer is required to demonstrate that all personnel who will be working on this NYSDOT contract have successfully completed or are in the process of completing the core courses (based on course offerings) as listed in the interim requirements prior to the proposal submission which are as follows:

- One (1) Hour course on Safety Management System (SMS) Awareness – e-learning delivery (all required participants)
- Two (2) hour course on SMS Safety Assurance – e-learning delivery (all required participants).
- Two (2) hour SMS Gap course (e-learning for existing Transit Safety and Security Program (TSSP) Certificate holders)
- SMS Principles for Rail Transit (2 days—all required participants)
- SMS Principles for SSO Programs (2 days—FTA/SSOA/Contractor (Consultant) support personnel only)
- Revised TSSP with SMS Principles Integration (not required of current TSSP Certificate holders—17.5 days for all other covered personnel)
- Rail System Safety
- Effectively Managing Transit Emergencies
- Transit System Security
- Rail Incident Investigation

The successful consultant must provide copies of completed course work and a schedule of course work to be completed pursuant to the interim certification requirements. Such evidence of schedule may include a technical training plan.
Key Personnel should have the following experiences in addition to the technical training requirements listed above:

- Project Manager: Minimum of 10 years of relevant rail transit experience including but not limited to accident and hazard investigations, program standards development and documentation, consultation to certification and modification of rail operating systems, auditing of safety systems,
- Engineer: Minimum of 5 years of relevant rail transit experience including but not limited to subject specific operations including but not limited to car equipment operations, signal systems, track installation and maintenance, and all aspects of hazard analysis related to each operation. Individual should be able to provide an engineering perspective for addressing risk and removing hazards throughout the program.
- Inspectors: Minimum of 5 years of relevant rail transit system specific operations related to car equipment operations, track installation and maintenance, signal installation and maintenance, operations communications
- Principal Analyst: Minimum of 3 years of relevant rail transit experience including but not limited to conducting safety and security audits, analyzing accident and hazard data derived from rail transit experiences (events and operations).

Provide Consultant Key Personnel Resume and Reference form in Attachment 15. Include names, addresses, e-mail and phone numbers of contact points with the listed clients. There may be up to 3 levels for each title (example: Assistant Principal Analyst). NYSDOT reserves the right to request information from any source so named as well as contact additional relevant references.

List each individual’s relevant qualifications; availability for the term of the contract; familiarity with and understanding of FTA and NYSDOT programs, policies and procedures; list previous relevant experience on similar projects. In addition, the proposal must clearly identify each individual assigned to this project, including those working for any sub-consultants. Experience that is not directly related or comparable to the RFP’s objectives and/or Scope of Services will not be evaluated.

The Key Personnel (as identified in Attachment 15) proposed by the 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. If at any time during the contract term a key personnel position must be replaced, the new personnel must be qualified and have at least the same qualifications as the person being replaced. The replacement must first be approved by NYSDOT. The determination that a Candidate is “qualified” is the sole decision of NYSDOT. A requirement of the winning proposer must be having qualified substitutes ready if a key personnel position must be replaced. **The key personnel that is being replaced must stay on duty for 90 days to train the new key personnel.** There must not be a diminution of service if any key personnel are being replaced.

### 5.1.7 Technical Scenarios
The technical proposal must include responses to the four scenarios, stated in Attachment 22. The responses must explain how the situation would be approached while including all RFP requirements and considerations, e.g. what difficulties each situation poses and how they would be resolved; what resources and/or expertise would be used to respond to each scenario, etc. All personnel used and Level of Effort Table 4 (Attachment 24) should be included. Explain, in detail, all assumptions made to respond to each of these scenarios.
Part II of the proposal consists of two sections: a Cost Proposal Section and an Administrative Section. A complete Part II proposal shall contain the following:

<table>
<thead>
<tr>
<th>Table 2. Part II - Cost and Administrative Submittal</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Two Printed and bound complete hard copies of Part II (in three-ring binders with labeled and tabbed sections) plus one complete copy of Part II on CD, in MS Excel 2007 compatible format and a PDF.</td>
</tr>
<tr>
<td>☐ Securely sealed and clearly labeled with the words “NYSDOT State Safety Oversight Program for Rail Transit Agencies RFP, Part II — Cost and Administrative Proposal (C037706)”</td>
</tr>
</tbody>
</table>

COST PROPOSAL SECTION:

☐ Required Cost information (complete and submit Attachment 16, Cost Proposal)

ADMINISTRATIVE SECTION:

☐ Complete and submit Attachment 2: Consultant Information and Certifications (sign both Sections II and III)

☐ Complete and submit Attachment 3: Form AOR Acknowledgement of Receipt

☐ Complete and submit the Attachment 4: Procurement Lobbying Law Compliance Forms

☐ Complete and submit Attachment 6: Non-Collusive Bidding Certification

☐ Complete and submit Attachment 7: DBE Participation Information Form

☐ Complete and submit (if applicable) Attachment 7a: DBE Sub-consultant Participation Solicitation Log AND Goal Attainment Explanation Letter

☐ Complete and submit Attachment 12: New York Business Reporting

☐ Complete and submit Attachment 23: List of Past & Current Oversight Contracts

☐ Complete and submit Attachment 26: Vendor Assurance of No Conflict of Interest or Detrimental Effect.
To assist you to prepare responsive proposals, the RFP offers the following additional information regarding each Part II Section:

5.2.1 Cost Proposal Section
Your Cost Proposal Section shall set specific hourly rates (SHR) for all proposed personnel for all five tasks in the Scope of Services over the life of the Agreement times Level of Effort (by task) plus all anticipated estimates of any direct non-salary costs (by task; specific to task/as allowed) for performing all the work pursuant to the proposed scope of services. Your cost proposal shall propose a total contract budget for Tasks 1-5, with total budget by each task.

1. Salaries: Present a salary schedule for the base term (3 years) and a list of descriptive job titles for all staff (by firm) to be assigned to this project and their present hourly rates. If additional titles are used but are not assigned, they should be listed. The schedule should be prepared to distinguish anticipated assignment by project section/task. NYSDOT defines its fully loaded specific hourly rate using the following formula:

\[
\text{Direct Labor or Direct Salary Cost component (A), the Indirect Cost component, also known as Overhead Cost component (B), and the Fee component (C), such that SHR = A + B + C.}
\]

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

2. Direct Non-Salary Costs: Present a schedule of all estimated necessary direct non-salary expenses by task and by firm. Sub-consultant direct non-salary expenses (if any) should be shown in the schedule. On separate sheets, explain each direct non-salary expense item with all factors leading to the derivations of the cost. Travel/lodging/meals reimbursements may occur for Tasks 2, 4 and 5. Tasks 1 and 3 will not include any travel/lodging/meals reimbursements. For Tasks 2, 4 and 5: reasonable reimbursement for directed travel, (mileage, allowed meals, allowed lodging, etc) 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/).

3. Total Budget

NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel spreadsheets (see Attachment 16, ‘Cost Proposal Workbook’) in both a hardcopy Part II response and an electronic copy on CD, securely presented in the Part II response. When completing the Excel cost worksheets included in Attachment 16, offerors shall follow all the following general instructions. More specific instructions are listed in Attachment 16).

The level of effort hours on Attachment 16 must equal the hours on Attachment 24.

Lodging and meal reimbursement is limited to the General Services Administration (GSA) Rates for the County in which the work is being performed ([http://www.gsa.gov/portal/category/100120](http://www.gsa.gov/portal/category/100120)).
Mileage reimbursement is limited to the New York State Office of The State Comptroller Mileage Rates (http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XIII/4/C.htm).

General Instructions:
1. The one-time and recurring costs the proposer provides within the Cost Proposal must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the contract, including but not limited to:
   a. All direct and indirect costs, all overhead, fees, profit
   b. Shipping, material and equipment cost
   c. Software licensing
   d. Administrative, reporting or other requirements
   e. Travel cost, parking fees, as applicable.

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

4. All worksheets included in Attachments 16 must be completed in order for the response to be considered complete.

5. Proposer must not make entries in colored cells in Attachments 16’s Excel spreadsheets. Changes must not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.

Should any questions arise pertaining to this form and its instructions, please submit them to the designated NYSDOT Contact Person before the Question & Answer deadline.

5.2.2 Administrative Submission Section
All signatures on each copy must be an original.

5.2.2.1 Acceptance of Terms and Conditions:
Offerors shall complete and submit the “Consultant Information and Certifications Form,” included as Attachment 2 to this RFP, to indicate their acceptance of all of the terms and conditions contained in the RFP’s draft Contract (Attachment 1). Attachment 2 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 180 days, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP including its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. No exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive.

5.2.2.2 DBE Participation:
Complete and submit Attachment 7 DBE Participation Information. Provide the legal names of all certified DBE consultants (prime and/or sub-consultant).

Should the total proposed DBE participation be less than C037706’s established DBE sub-consulting 11% goal, complete and submit Attachment 7a: Solicitation Log And submit a Goal
**Attainment Explanation Letter.** Provide robust documentation regarding all good faith efforts to obtain the services of qualified, available DBEs.

5.2.2.3 Modification Acknowledgement Forms
Complete and submit **Attachment 3**: Form AOR, acknowledging receipt of any RFP Modifications issued by the Department. Make sure all dates are accurate. Do not list any RFP Announcements released; only list RFP Modifications.

5.2.2.4 Non-Collusion Bidding Certification
All Proposers shall submit a completed **Attachment 6**: Non-Collusive Bidding Certificate.

5.2.2.5 Procurement Lobbying Law Compliance Forms
Complete and submit **Attachment 4**. Filing the two required forms is mandatory for all consultants in order to be considered for contract award. These Forms are: Offeror’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) Offeror 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. 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](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf)

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

Please call or e-mail the individuals identified as the Designated Contacts in RFP Section 1.4 of this RFP if you have any questions regarding how to complete these MANDATORY forms.

5.2.2.6 No Conflict of Interest
(a) For purposes of section 5.2.2.6, a contractor, sub-contractor, and/or sub-consultant may not concurrently provide services to both a State Safety Oversight Agency and a rail fixed guideway public transportation system (1) under the oversight of that State Safety Oversight Agency, and (2) not under the jurisdiction of the Federal Railroad Administration (FRA). The term “provide services” shall include any contract with the rail fixed guideway public transportation system (NYCT or Niagara Frontier). Accordingly, a contractor, sub-contractor and/or sub-consultant may not maintain any contractual relationship with Niagara Frontier or NYCTT when submitting a proposal related to this project. NYSDOT reserves the right to request contract termination documentation, closeout documentation, certification, or other documentation as necessary, that such prior contractual relationship ceased at that time of contract proposal.

(b) For purposes of section 5.2.2.6, if a contractor, sub-contractor, and/or sub-consultant does not comply with 5.2.2.6(a) at the time of proposal, a conflict of interest is present. The State shall not issue a preliminary award to any proposer if such conflict of interest is present under section 5.2.2.6(a) at the time of proposal, or during any contract performance as proposed at the time of proposal. Notwithstanding the foregoing, if a conflict of interest –which was not present, nor reasonably foreseeable, at the time of proposal – shall arise after April 15, 2019, such conflict of interest shall be governed by 49 CFR 674.41.
5.2.2.7 Vendor Assurance of No Conflict of Interest or Detrimental Effect
All Proposers and proposed Sub-Contractors/Sub-Consultants shall submit a completed 
Attachment 26 – 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. Proposals which do not meet the RFP’s Minimum Responsiveness requirements (as per Section 1.3) may be deemed incomplete and non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

Proposal Due Date. All proposals must be delivered to NYSDOT Contract Management in hard copy by 2:00 PM on November 6, 2017. Any proposals received after that time/date shall not be evaluated further.

Proposal Opening, Log-in and Certification. Proposals received on or prior to the due date and time will be opened, inventoried for completeness, certified, and logged-in (per criteria listed in the tables listed in RFP Section 5). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT in the timeliest manner possible.

Minimum Proposal Requirements. Per RFP Section 5, any proposal which does not include all of the following by the RFP deadline may be determined to be non-responsive. Any proposals deemed non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals):

1. Complete Technical and Management proposal submission.
2. Complete Cost and Administrative proposal submission.
3. A proposal which either meets/exceeds the 11\% DBE contract goal for C037706 or offers acceptable Good Faith Effort documentation and Letter of Explanation.
4. Acknowledged receipt of any RFP Modifications.

DBE Goal Attainment/GFE Acceptance Review. As part of the pre-screening process, the proposed DBE participation percentages offered for NYSUCP certified prime consultants and/or NYSUCP certified sub-consultants will be reviewed (Attachment 7 DBE Participation Information). To count towards the Department’s DBE participation goal, each firm must be currently listed in the NYSUCP Directory at the time of proposal submission (no exceptions) and be proposed to provide meaningful and useful services (commercial useful function). If the proposed DBE participation is less than the established 11\% goal, the firm’s evidence of a Good Faith Effort (Attachment 7a Sub-consultant Participation Solicitation Log) to achieve the goal will be reviewed, along with the firm’s letter of explanation (Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include verification of a firm’s Good Faith Effort evidence, if it is determined by the Department that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive. Any proposal deemed non-responsive shall be removed from further
consideration. A prime consultant’s participation for a prime who is certified as a DBE shall count towards the 11% DBE subcontracting goal.

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 sub-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 meet the 11% DBE goal for C037706, then the submitted good faith log will be reviewed for robustness and acceptability with 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 Contract Management. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

**Conflict of Interest Check.** As part of the pre-screening process, NYSDOT will review and certify that no conflict of interest exists with all proposers and any proposed sub-contractors.

### 6.1.1 Evaluation Category Weight Distribution

Proposals will be evaluated using the NYSDOT’s Best Value method based upon a 100 total point scale. The Technical and Management portion will be evaluated and point scored and will represent 70 points of the total Best Value score for the proposal (up to 60 points for written technical proposal review; up to 10 points for technical interview). The cost proposal section portion of the Part II 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 factors and weights follows.

#### 6.2 Technical and Management Evaluation

### 6.2.1 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 Technical Evaluation Committee will evaluate and score each proposal individually (may ask initial clarification questions). Each evaluator shall measure the degree of responsiveness of each proposal’s responses to the specifications and requirements contained in the RFP against the RFP’s evaluation factors (RFP Section 6), looking for quality, reasonableness and professionalism. The quality of a firm’s approach shall be evaluated as an integral part of each functional and non-functional requirement response (as applicable). Members of the TEC shall document their responsiveness findings (using the scoring instrument
provided in Eval-Pak; separate document, which is part of the proposal evaluation process), and record a whole number numerical score (using the zero-to-ten scoring instrument with grade definitions). The TEC shall convene as a group to discuss the proposals, firm by firm, factor by factor. Evaluators will be allowed to revise scores on the basis of the committee discussions. Reasons for score changes will be documented on the TEC member’s score sheet as well as electronically by Contract Management. Clarification questions may be formulated during group discussion, and forwarded to firms for responding (either for further TEC group discussion or for technical interviews). Clarification responses shall be forwarded to the TEC for additional consideration. Scoring of written proposals shall remain open until after conclusion of evaluating and scoring the Technical Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier scores/findings based upon the additional clarification information garnered from the Technical Interviews.

As the TEC evaluates and scores each technical and management proposal, the resulting raw average written technical proposal score by firm are kept by each TEC member (on their respective score sheets) as well as by Contract Management on an electronic composite best value spreadsheet. Contract Management may initially list firms in alphabetic order and later on by initial and final best value rank order.

6.2.2 Written Proposal Evaluation Criteria (up to 70 Points)

The technical and management proposal will be scored and will represent 70% of the total Best Value score for a proposal. The technical and management written proposal will be scored and will represent 60% of the total score while the technical interview will be scored and will represent 10% of the total score for a proposal.

The Technical Evaluation Committee shall use the following factors to guide evaluation of submitted technical proposals:

1. Experience (up to 25 points)
   a. Quality, extent and relevance of current and prior experience of the firm. (Up to 15 Points)
   b. Quality, extent and relevance of experience, education and training of active key personnel. (Up to 10 Points)

2. Quality of Proposal (up to 15 points)
   a. Quality of Proposer’s understanding of applicable federal and state guidelines. (Up to 6 Points)
   b. Quality, organization and clarity of the Proposal including proposed scope of services; completeness of discussions, attention to detail and responsiveness to requirements. (Up to 5 Points)
   c. Degree to which proposal reflects understanding and comprehension of project scope and objectives. (Up to 4 Points)

3. Approach, Scope of Services and Schedule (up to 10 points)
   a. Quality of approach and scope of services for accomplishing project objectives; proposer. (Up to 3 Points)
   b. Understanding of general issues impacting project (Up to 3 Points)
c. Completeness and reasonableness of schedule. (Up to 2 Points)
d. Quality of project organization; (Up to 2 Points)

4. Organization and Staffing (up to 10 points)
   a. Quality of proposer’s resources relative to the needs of the project. Quality of plan for phasing key personnel into project (Up to 4 Points)
   b. Ability to manage the Project quality plan for interacting with NYSDOT and with sub-consultants including DBE sub-consultants (Up to 2 Points)
   c. Capacity of the firm to respond to hazard/accident investigations (Up to 2 Points)
   d. Quality and robustness of project staffing, including any sub-consultant arrangements; (Up to 1 Points)
   e. Extent and quality of interaction with key participants (Up to 1 Point)

6.2.3 Reference Checks
Reference checks (to verify offered experience) may be required to complete the evaluation of technical proposals. In cases where TEC members are unfamiliar with a firm’s work or NYSDOT does not have prior consultant performance documentation, the TEC may request verification of a firm’s offered references. Subject references shall be contacted by Contract Management using its standard reference check questionnaire, adjusting that per the RFP. Reference check feedback will be forwarded to the TEC for their considerations during the after-group discussion phase. The TEC may meet to consider reference check information. Evaluators will be allowed to revise their technical scores based on consideration of this additional information and their follow-up discussions. Changes to scores and their reasons shall be recorded on written score sheets as well in electronic form.

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

6.3 Cost Proposal Evaluation (Up to 30 Points)
Cost proposals shall be reviewed, evaluated and scored for all proposals once they have cleared meeting the RFP’s minimum response requirements checks. Cost proposals shall be evaluated and point scored with up to 30 best value points available. Initial cost scores shall be developed and used to identify initial Best Value scores. Cost proposal clarification questions may be asked at this time.

The cost proposal with the lowest total proposed budget to deliver all proposed NYSDOT State Safety Oversight Program for Rail Transit Agencies services shall receive a perfected cost score
of 30 points. Proposals with higher total proposed total budgets cost shall receive proportionately lower cost proposal scores.

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

6.4 **Initial Best Value Determination**

Perfected cost scoring results will be added to the initial, average raw written technical proposal scores, generating an initial best value score by firm. Firms shall be ranked in initial best value score order (highest to lowest).

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

6.5 **Proposal Short Listing**

The short listing rule for this solicitation shall be: Any proposal within 10 points of the top initial Best Value ranked proposal (plus any ‘cluster’ of initial best value proposal scores surrounding the cut-off line will be short-listed). Cost evaluation results shall be considered along with the initial raw after-group discussion written technical proposal score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined short listing of firms (determined to be mathematically susceptible for contract award).

Firms submitting proposals which do not make the shortlist shall not be included in the remaining best value evaluation process steps (not included in subsequent proposal scoring process). Such a firm’s proposal shall be classified as ‘Did Not Finish’ in the procurement record.

6.6 **Technical Interview Evaluation (10 points)**

The Technical Interview portion (only available for firms mathematically subject to contract award; ie, shortlisted) of the Technical and Management proposal will be technically evaluated and point scored for firms which have made the RFP’s short-list after completion of initial Best Value considerations. Technical Interview evaluation shall account for a separate block of up to 10 points of the total best value score for a proposal.

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

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

Technical Interview Evaluation (up to 10 points; for shortlisted firms only).

1. Further insight and understanding of the consultant’s proposed experience (firm and all key personnel); Clarity and quality of presentation; team chemistry. (up to 7 points)

2. Further insight and understanding of the consultant’s proposed approach and scope of services; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver contract; 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; (up to 2 points)

3. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarification questions; (up to 1 point)

6.7 Final Written Technical Proposal Evaluation (Re-Scoring)

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

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

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

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

6.9 Final Best Value Evaluation

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), NYSDOT will perfect (curve) the written technical proposal scores so that the highest-rated, average raw written technical proposal score gets changed and assigned a perfect score of 60 points for this solicitation with the other technical scores adjusted proportionately upward. NYSDOT will also perfect (curve) the Technical Interview scores so that the highest-rated, average raw Technical Interview score gets changed and assigned a perfect score of 10 points for this solicitation with the other Technical Interview scores adjusted proportionately upward. Cost proposals have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule (lowest total cost gets a perfect cost score of 30 points). Perfected cost scoring results will be added to the perfected written technical proposal score plus the perfected Technical Interview score by firm to generate a tentative final best value scores by firm. Firms shall be ranked in Final Best Value score order (highest to lowest).

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

Once all possible score ties have cleared, NYSDOT will determine the Final Best Value Score, where after the proposal with the highest Final Best Value score shall be recommended to NYSDOT Executive Management for contract award for contract #C037706.

6.10 Consultant Selection Recommendation & Tentative Contract Award

A consultant selection and designation memo shall be prepared and forwarded to the applicable NYSDOT Executive Manager(s) with an accompanying proposal evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award of C037706 to NYSDOT Executive Management. The Executive Manager will be asked to concur with the final conclusion of the proposal evaluation process - a recommendation for the tentative contract awards for the Department - and designate the top-Best Value rated consultant based upon the above results.

Should negotiations with the top-ranked Best Value Consultant fail to produce agreed-upon contracts, then NYSDOT Executive Management will designate and award contract #C037706 to the next highest-ranked Best Value Consultant. The Department will then enter into negotiations with the second-highest rated Consultant. This process may repeat itself until acceptable contracts are consummated. The consultant designation becomes final after the NYS Office of the State Comptroller approves Contract #C037706.

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

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

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

### 7 ADMINISTRATIVE SPECIFICATIONS

#### 7.1 Proposal Submission

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

Proposers shall submit 5 copies of Part I and two copies of Part II.

Your proposal must be received by NYSDOT by **2pm on December 7, 2016.**

The proposal must be addressed to:

Shalina Mallory, Contract Management Bureau  
NYS Department of Transportation  
50 Wolf Road, 6th floor  
Albany, New York 12232  
Attention: #C037706

#### 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 mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;
5. To adopt any or all of a successful offeror proposal;
6. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;

7. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;

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

9. To eliminate any requirement that is found to be unmet by all offerors;

10. To make inquiries, by means it may choose, into the offeror’s background or statements made in the proposal to determine the truth and accuracy of all statements made therein;

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

12. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;

13. 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, municipality and/or state authority. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

### 7.3 Consultant Responsibility when Proposing Former NYSDOT Employees

It is the consultant’s responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual’s responsibility to comply with the Public Officer’s Law. The following procedure applies if either of the following criteria is met.

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

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

#### Procedure

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

- A copy of this opinion must be on file in the consultant’s office and available for review by NYSDOT if requested.
Failure to obtain New York State Joint Commission on Public Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.

7.4 Method of Payment

The Consultant shall designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Contract.

Payment for services provided under the project shall be reimbursement via the Contract’s specific hourly rates plus reasonable reimbursement for directed actual non-salary costs, as applicable, incurred in the performance of the scope of services, subject to the limits of Schedule B’s task budgets.

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

7.5 Information for the Selected Consultant

7.5.1 Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All 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 sub-consultant providing services valued at $100,000 or more over the entire life of the Agreement is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

7.5.2 Registration with NYSDOT

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


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

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

7.5.4 Consultant Employment Disclosure Requirements of this Project
Go to Office of the State Comptroller’s Web site located at http://www.osc.state.ny.us/procurement/consultantdisclosure.doc to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor (Consultant)’s Planned Employment” (Form A, Attachment 4) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor (Consultant)’s Annual Employment Report” (Form B, Attachment 4) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

7.5.5 Insurance Requirements of this Project*
Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 12 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

7.5.6 Contractor (Consultant) 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 (Consultant) 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) and  
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf  (Form ST-220-TD)

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

7.7 Protest Procedure
The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via:  

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

- **October 13, 2017**: RFP Release Date
- **October 20, 2017**: Deadline for questions about the RFP at 12:00 PM (EST)
- **October 25, 2017**: Questions/Answers about the RFP released by COB
- **November 10, 2017**: Deadline for the submission of proposals at 12:00 PM (EST)
- **Mid-November 2017**: Evaluations
- **End-November 2017**: Technical Interviews
- **December 2017**: Approximate Recommendation & Designation
- **Two Weeks**: Contract Finalizing
- **2-3 Months after completion of contract finalizing**: Contract Award
ATTACHMENT 1: DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C________

PROJECT: __________________________

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

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

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

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

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

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

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

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

ARTICLE 5. MAXIMUM AMOUNT.

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

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

ARTICLE 6. PROVISION FOR PAYMENT.

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

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

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

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

ARTICLE 7. CONTRACT PAYMENT.

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

ARTICLE 8. PARTIAL PAYMENTS.

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

The CONSULTANT shall inform the STATE and all Subcontractors and Subconsultants of the Consultants schedule for submitting monthly vouchers to the STATE, said schedule shall be strictly adhered to by the CONSULTANT.

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

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

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

ARTICLE 9. FINAL PAYMENT.

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

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

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

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

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE’s directions shall be exercised by the issuance of a separate Agreement, if necessary.
ARTICLE 11. CONSULTANT LIABILITY.

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

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

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

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

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Consultant are specified in Paragraph B, Insurance Requirements, below. General liability insurance shall apply separately on a per-job or per-project basis.

2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable. Policy forms must be provided to the Department upon request.

3. Certificates of Insurance/Notices. Consultant shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract Number. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing the Contract
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. Special Protective and Highway Liability Policy. (applicable to any project where Consultant is required to conduct field work where Consultant controls the field location for the work). The Consultant shall maintain, separate and apart from its umbrella policy, a policy issued to and covering the liability of the People of the State of New York, The State of New York, the Commissioner of Transportation, all employees of the Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, against damages that the insureds may be held legally liable to pay for property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by Consultant, including at the location of any of the work. This should be ISO form CG 00 14 12 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than $1,000,000 per occurrence and at least $2,000,000 for each aggregate limit.

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

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

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

7. Professional Liability/Errors and Omissions. N/A

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

9. Marine Protection & Indemnity. (*applicable to any consulting work that necessitates the consultant’s use of barges or other watercraft independent of a construction contract*). Anytime the activity involves work on navigable water or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Consultant shall obtain Protective and Indemnity Liability insurance for all marine operations under the Agreement, with a minimum ($1,000,000) limit. The policy shall be endorsed to add the Department as an Additional Insured.
ARTICLE 13. INTERCHANGE OF DATA.

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

ARTICLE 14. DISPOSITION OF DATA.

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

ARTICLE 15. DAMAGES AND DELAYS.

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

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this contract shall be treated as an executory contract under 11 USC 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, and APPENDIX C;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’s Request for Proposals; and
7. The CONSULTANT’s Proposal.

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

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

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
3. Does not have a proposed debarment pending; and
4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS -

ARTICLE 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 28. SECURITY AND CONFIDENTIALITY OF INFORMATION.

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

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

ARTICLE 29. VENDOR RESPONSIBILITY.

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

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

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

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

ARTICLE 30. 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:

3.1.1.1.1 New York State Department of Transportation:
   Contact Person’s Name:  William A. Howe, Contract #C0_______  
   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

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

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

ARTICLE 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 of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

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

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

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

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

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

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
ARTICLE 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, the consultant shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant – or subcontractor – that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

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

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

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

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

ARTICLE 34. CONFLICTS OF INTEREST.

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 subconsultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

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. _________ 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 By____________________
DEPARTMENT OF TRANSPORTATION _______________

DATE: _______________ DATE: _______________

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

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

By _______________________________ Date:
______________________________
FIRM

_------------------Project name-----------------

APPROVALS

ATTORNEY GENERAL THOMAS P. DI NAPOLI
STATE COMPTROLLER
By ________________     By ____________________________

Date ____________________________  Date ____________________________

Acknowledgement for Contract #______________

For contracts signed in New York State

State of New York  )

County of  ) ss.:

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

______________________________________

NOTARY PUBLIC

My Commission Expires: ____________________________

For contracts signed outside New York State

State of  )

County of  ) ss.:

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

______________________________________

NOTARY PUBLIC
(Signature and office of individual taking acknowledgement.)

My Commission Expires: ___________________
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this 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 works contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law Section 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

Updated January 2014
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, 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 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 selection for training, including apprenticeship; and selection for training; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

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

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation’s DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the
FEDERAL SINGLE AUDIT REQUIREMENTS
Non-Federal entities that expend $500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations”. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than $500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B—Audits, records must be available for review or audit by appropriate officials of the cognizant Federal 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 (CFDA2), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

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

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

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

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

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

(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.

1 The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.
2 www.cfda.gov/
(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

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

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

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

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

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

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

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

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

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

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

April 2016
APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, by Executive Order 162, issued on January 9, 2017 and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

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

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

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

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

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

B. In performing the contract, the Consultant shall:

1. Ensure that each Consultant and sub-consultant – 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 sub-consultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or sub-consultant to adopt a model statement consistent with item B.4.a through d of this section.

4. The Consultant’s EEO policy statement shall include the following language:

a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.

c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate the implementation of the Consultant’s obligation herein.

d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each sub-consultant 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 sub-consultants 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, schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

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

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

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT’s obligations under this agreement and the Regulations relative to non-discrimination.
5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. RECORDS AND REPORTS  (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:
(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Updated December 2012
APPENDIX D

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

I. General Provisions

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

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

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

II. MWBE Utilization Plan

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

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

III. Waivers Post Contract Execution

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

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

IV. Liquidated Damages – MWBE Participation

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

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

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

EXHIBIT A
CDL FORM B

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

Contracting State Agency Name: Transportation
Agency Code: 17000

Contract Number: 
Contract Term to
Contractor Name: 
Contractor Address: 
Description of Services Being Provided:

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

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<th>O<em>NET Employment Category Number and O</em>NET Job Title</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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ATTACHMENT 2 - CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with Administrative Section of your Part II Cost Proposal)

CONTRACT NUMBER:  C037706
PROJECT TITLE:  NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR RAIL
TRANSIT AGENCIES

I. CONSULTANT INFORMATION

FIRM NAME:  ______________________________________________________________

ADDRESS:  ________________________________________________________________

CITY:  ___________________________  STATE:  ___________

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

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

E-MAIL ADDRESS:  _________________________________________________________

CONTACT PERSON:  _______________________________________________________

Consultant’s Federal Identification Number (FIN):  ________________

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

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

Preparer’s Name/Title:  _____________________________

Address:  _______________________________________

Telephone:  (_____)  _____ - _________  FAX:  (_____)  _____ - _________
Other Authorized Individual(s):

Name/Title:__________________________________________________________________________

Address:____________________________________________________________________________

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

By signing below, I, _____________________________, authorized individual
(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.
- If awarded Contract #C037706, the selected Consultant shall comply with all the requirements of the RFP including all of its attachments.
- The firm has read and will follow the procedure outlined in **Section 7.3** of the RFP if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10 days of notification of designation. ([http://www.osc.state.ny.us/vendrep/forms_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm))
- ST-220: If selected for contract award greater than $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor (Consultant) 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 RFP’s draft Contract, including Appendix A, which is included as **Attachment 1** to this Request for Proposals.

**Signature:** ____________________________________________
(Name of Acceptor)
acknowledgment of receipt of
RFP, Modifications and Responses to Questions

We hereby acknowledge receipt of the **NYSDOT STATE SAFETY OVERSIGHT PROGRAM FOR RAIL TRANSIT AGENCIES** (Contract #C037706) Request for Proposals, dated October 28, 2016 and subsequent responses to questions and Modifications issued by the Department, as listed below.

<table>
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<tr>
<th>Modification number:</th>
<th>Date issued by Department:</th>
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**ATTACHMENT 4 - PROCUREMENT LOBBYING LAW COMPLIANCE FORMS**

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.

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


2. **NYSDOT Guidelines and Procedures**

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


3. **Summary of the policy and prohibitions regarding permissible contacts**
   a) **Contacts prior to designation:**

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

      - The Contract Management Designation Contract Analyst
      - The Contract Management Designation Analyst Supervisor
      - The Contract Management Civil Rights Unit Supervisor
      - The Contract Management Assistant Directors
      - The Contract Management Director

      These are some communications exempted from this restriction:

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

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

   b) **Contacts after designation**

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

      - The Contract Management Designation Contract Specialist
      - The Contract Management Designation Specialist Supervisor
      - The Contract Management Civil Rights Unit Supervisor
      - The Contract Management Assistant Directors
      - The Contract Management Director
      - The Consultant Management Bureau consultant job manager
      - The Consultant Management Bureau consultant job manager’s immediate supervisor
The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

c) **Information Required from Offerors that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:**

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

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

d) **Applicability to an executed contract:**

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

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

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

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

Name of person who prepared this report:

Title: 
Preparer’s Signature: 
Date Prepared: / /

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

Contracting State Agency Name: Transportation
Contract Number: C037706
Contract Term to
Contractor (Consultant) Name:
Contractor (Consultant) Address:
Description of Services Being Provided: NYSDOT State Safety Oversight Program for Rail Transit Agencies

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)
ATTACHMENT 6 - NON-COLLUSIVE BIDDING CERTIFICATION

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

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

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF
OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH
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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<tr>
<th>NAME</th>
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<td>President:</td>
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NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

Identifying Data

Potential Contractor (Consultant):

__________________________________________________

Address: _____________________________________________________________

____________________________________________________________

Street

____________________________________________________________

City, Town, etc.

Telephone:__________________________

Title__________________________

If applicable, Responsible Corporate Officer

Name:______________________________

Title__________________________

Signature: _______________________________________________________

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

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By

Name

Title

Address:

Street

City State

Name

Title

Address:

Street

City State
ATTACHMENT 7 - DBE PARTICIPATION INFORMATION

Please complete the following table for the prime firm and all sub-consultants (consultant team composition): please identify each firm’s full legal name, checking if they are a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm’s percentage of the total cost 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.

If the combined percentage of total salary for all proposed, certified DBE sub-consultants 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 who do not meet the Department’s DBE sub-consultant participation goal via their meaningful participation, are required to fill out and submit the Participation Solicitation Log (Attachment 7a).

Contract#: C037706 – Note: Total Dollar Value must equal the cost proposal amount.

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<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>% of Total Contract Dollar Value</th>
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<td>B. Sub-Consultants</td>
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## ATTACHMENT 7a - DBE SUB-CONTRACTOR (CONSULTANT) PARTICIPATION SOLICITATION LOG

(Good Faith Effort Documentation)

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<th>CONTRACT NO.</th>
<th>11% DBE PARTICIPATION GOAL</th>
<th>PAGE NUMBER ___ OF ___</th>
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<th>Contact Person</th>
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Not Applicable
ATTACHMENT 9 - M/WBE PARTICIPATION INFORMATION

Not Applicable”
ATTACHMENT 10 - M/WBE SUBCONTRACTOR (CONSULTANT) PARTICIPATION SOLICITATION LOG

Not Applicable
ATTACHMENT 11 - SOLICITATION LOG INSTRUCTIONS
(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed DBE sub-consultant participation does not meet the established sub-consultant 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 sub-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, 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.

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

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

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

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:

**CODE DESCRIPTION:**

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

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

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

4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left).
Guidance Concerning Good Faith Efforts in Meeting 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 it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – http://www.nysucp.net/ to obtain 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 Sub-Contractor (Consultant)s and suppliers and to select those portions of the work or material needs consistent with the available DBE Sub-Contractor (Consultant)s 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 Sub-Contractor (Consultant)s, including DBE Sub-Contractor (Consultant)s, 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 contract work 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 (Consultant)’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 (Consultant)’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.
ATTACHMENT 12 - NEW YORK BUSINESS REPORTING

Encouraging Use of New York State Businesses in Contract Performance: New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as Sub-Contractor (Consultant), suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the Contractor (Consultant) and its New York State business partners. New York State businesses will promote the Contractor (Consultant)’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its Contractor (Consultant)s. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below and if answered in the affirmative, completing and submitting the following table for all firms (Prime Contractor (Consultant) and all Sub-Contractors (Consultant)) participating in your proposal. The definition of ‘NYS Business’ is: ‘Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this contract’. Indicate whether each proposed firm is classified as a NYS Business, the total dollar amount attributable to each firm, the total proposed contract cost, and the NYS business address of each firm.
Contract Number: C037706
Will New York State Businesses be used in the performance of this contract?
Yes _____  
No _____

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYS Business? (Y or N)</th>
<th>% of Total Proposed Contract Cost</th>
<th>NYS Business Address</th>
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<tbody>
<tr>
<td>A. Prime Contractor (Consultant)</td>
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<td>B. Sub-Contractors (Consultant)</td>
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Total Proposed Contract Cost: $
ATTACHMENT 13 - SDVOB PARTICIPATION INFORMATION

Not Applicable
ATTACHMENT 14 - SDVOB SUB-CONTRACTOR (CONSULTANT) PARTICIPATION SOLICITATION LOG

Not Applicable
ATTACHMENT 15 - KEY PERSONNEL RESUME AND REFERENCES

Instructions:
1. Complete Attachment 15 for each Key Personnel title identified in the RFP.
2. Attachment 15 shall not exceed three pages for each staff member
3. Proposer’s may expand the boxes as necessary
4. The term “Client” below refers to the past project owner. “Client” is NOT a Prime Contractor (Consultant) where the proposing firm acted in the capacity as a Sub-Contractor (Consultant).

| 1. Personnel Name and Title: | |
| 2. Title Assigned for this Project: | |
| 3. Firm working for on this Project: | |
| 4. Current Employment Status: | [ ] Employed by Firm identified #3 above [ ] Employed by a different Firm [ ] Unemployed |
| 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

<p>| 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): | |</p>
<table>
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<tr>
<th>11.4 Description of person’s role and responsibilities during project:</th>
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<tr>
<td>12.1 Project Description (include contract number where appropriate):</td>
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<tr>
<td>12.2 Client Name:</td>
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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>13.3 Client Contact Information (including contact name, phone number, and e-mail address):</td>
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<tr>
<td>13.4 Description of person’s role and responsibilities during project:</td>
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ATTACHMENT 16 - COST PROPOSAL

TO BE INCLUDED IN THE
ATTACHED COST PROPOSAL WORKBOOK

For Tasks 1 through 5

The Cost Proposal must provide a fully-loaded hourly rate, including fee and overhead for each participant. Proposers must submit the following cost information:

- **Labor Costs** - Provide a roster of positions that will be available and assigned to work under the contract. List the fully loaded hourly rate for each position.
- **Overhead** - Express as a fixed percent of direct labor costs.
- **Fee** - Express as a fixed percent or rate. Fee is computed by the following formula:
  \[ C = M \times (A + B) \]
  Where \( C \) = Fixed Fee; \( M \) = the fee multiplier; \( A \) = Direct Labor Rate; \( B \) = Overhead.

The Consultant is responsible for ensuring that costs listed in the table are correct. Direct non-salary costs (only Task 2 and 4 may include DNSC for travel related costs). All travel costs are limited by the rates allowed under the applicable NYSDOT travel directives in place at the time travel is undertaken.

**For Task 4:** Because of the nature of the project, the proposer’s actual costs and the total amount of the contract are dependent upon an unknown number of accidents or determinations of unacceptable hazardous conditions for the “On-Demand” services.

Therefore, for the purpose of evaluation proposals, the four scenarios utilized in the technical attachment 22 will also be utilized in the cost proposal section to evaluate cost. In this cost section, the hours must match those listed in Attachment 24 for each task.

The contract will add a to-be-determined contingency amount to fund Task 5 assignment.

The rates proposed are the rates that will be utilized in this contract.

Proposers are encouraged to ask questions prior to the question and answer deadline. Proposers may not change any formulas.
"Rail Fixed Guideway Systems; State Safety Oversight; Final Rule"

April 29, 2005

Subpart A - General Provisions

§ 659.1 Purpose

This part implements 49 U.S.C. 5330 by requiring a state to oversee the safety and security of Rail Fixed Guideway Systems through a designated oversight agency.

§ 659.3 Scope

This part applies to a state that has within its boundaries a Rail Fixed Guideway System, as defined in this part.

§ 659.5 Definitions

Contractor (Consultant) means an entity that performs tasks required by this part on behalf of the oversight or rail transit agency. The rail transit agency may not be a Contractor (Consultant) for the oversight agency.

Corrective action plan means a plan developed by the rail transit agency that describes the actions the rail transit agency will take to minimize, control, correct, or eliminate hazards, and the schedule for implementing for those actions.

FRA means the Federal Railroad Administration, an agency within the U.S. Department of Transportation.

FTA means the Federal Transit Administration, an agency within the U.S. Department of Transportation.

Hazard means any real or potential condition (as defined in the rail transit agency's hazard management process) that can cause injury, illness, or death; damage to or loss of a system, equipment or property; or damage to the environment. Individual means a passenger; employee; Contractor (Consultant), other rail transit facility worker pedestrian; trespasser; or any person on rail transit-controlled property.

Investigation means the process used to determine the causal and contributing factors of an accident or hazard, so that actions can be identified to prevent recurrence.

New Starts Project means any Rail Fixed Guideway System funded under FTA's 49 U.S.C. 5309 discretionary construction program.
Oversight Agency means the entity, other than the rail transit agency, designated by the state or several states to implement this part.

Passenger means a person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel.

Passenger operations means the period of time when any aspect of rail transit agency operations are initiated with the intent to carry passengers.

Program standard means a written document developed and adopted by the oversight agency, that describes the policies, objectives, responsibilities, and procedures used to provide rail transit agency safety and security oversight.

Rail fixed guideway system means, as determined by FTA, any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that:

1. Is not regulated by the Federal Railroad Administration; and
2. Is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 U.S.C. 5336); or
3. Has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336).

Rail transit agency means an entity that operates a rail fixed guideway system.

Rail transit-controlled property means property that is used by the rail transit agency and may be owned, leased, or maintained by the rail transit agency.

Rail transit vehicle means the rail transit agency's rolling stock, including, but not limited to passenger and maintenance vehicles.

Safety means freedom from harm resulting from unintentional acts or circumstances.

Security means freedom from harm resulting from intentional acts or circumstances.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa and the Virgin Islands.

System safety program plan means a document developed by the rail transit agency, describing its safety policies, objectives, responsibilities, and procedures.

System security plan means a document developed by the rail transit agency describing its security policies, objectives, responsibilities, and procedures.

Subpart B-Role of the State

§ 659.7 Withholding of funds for noncompliance
(a) The Administrator of the FTA may withhold up to five percent of the amount required to be
distributed to any state or affected urbanized area in such state under FTA's formula program for
urbanized areas, if

(1) The state in the previous fiscal year has not met the requirements of this part; and (2) The
Administrator determines that the state is not making adequate efforts to comply with this part.

(b) The Administrator may agree to restore withheld formula funds, if compliance is achieved
within two years (See 49 U.S.C. 5330).

§ 659.9 Designation of oversight agency

(a) General requirement. Each state with an existing or anticipated rail fixed guideway system
regulated by this part shall designate an oversight agency consistent with the provisions of this
section. For a rail fixed guideway system that will operate in only one state, the state must
designate an agency of the state, other than the rail transit agency, as the oversight agency to
implement the requirements in this part. The state's designation or re-designation of its oversight
agency and submission of required information as specified in this section, are subject to review
by FTA.

(b) Exception. States which have designated oversight agencies for purposes of this part before
May 31, 2005 are not required to re-designate to FTA.

(c) Timing. The state designation of the oversight agency shall:

(1) Coincide with the execution of any grant agreement for a New Starts project between FTA
and a rail transit agency within the state's jurisdiction; or

(2) Occur before the application by a rail transit agency for funding under FTA's formula
program for urbanized areas (49 U.S.C. 5336).

(d) Notification to FTA. Within (60) days of designation of the oversight agency, the state must
submit to FTA the following:

(1) The name of the oversight agency designated to implement requirements in this part;

(2) Documentation of the oversight agency's authority to provide state oversight;

(3) Contact information for the representative identified by the designated oversight agency with
responsibility for oversight activities;

(4) Description of the organizational and financial relationship between the designated oversight
agency and the rail transit agency; and

(5) A schedule for the designated agency's development of its State Safety Oversight Program,
including the projected date of its initial submission, as required in § 659.39(a).
(c) **Multiple states.** In cases of a rail fixed guideway system that will operate in more than one state, each affected state must designate an agency of the state, other than the rail transit agency, as the oversight agency to implement the requirements in this part. To fulfill this requirement, the affected states:

(1) May agree to designate one agency of one state, or an agency representative of all states, to implement the requirements in this part; and

(2) In the event multiple states share oversight responsibility for a Rail Fixed Guideway System, the states must ensure that the Rail Fixed Guideway System is subject to a single program standard, adopted by all affected states.

(f) **Change of designation.** Should a state change its designated oversight agency, it shall submit the information required under paragraph (d) of this section to FTA within (30) days of its change. In addition, the new oversight agency must submit a new initial submission, consistent with § 659.39(b), within (30) days of its designation.

§ 659.11 Confidentiality of investigation reports and security plans

(a) A state may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of the rail transit agency's security plan and any referenced procedures.

Subpart C - Role of the State Oversight Agency

§ 659.13 Overview

The state oversight agency is responsible for establishing standards for rail safety and security practices and procedures to be used by rail transit agencies within its purview. In addition, the state oversight agency must oversee the execution of these practices and procedures, to ensure compliance with the provisions of this part. This subpart identifies and describes the various requirements for the state oversight agency.

§ 659.15 System Safety Program Standard

(a) **General requirement.** Each state oversight agency shall develop and distribute a program standard. The program standard is a compilation of processes and procedures that governs the conduct of the oversight program at the state oversight agency level, and provides guidance to the regulated rail transit properties concerning processes and procedures they must have in place to be in compliance with the state safety oversight program. The program standard and any referenced program procedures must be submitted to FTA as part of the initial submission.
Subsequent revisions and updates must be submitted to FTA as part of the oversight agency's annual submission.

(b) Contents. Each oversight agency shall develop a written program standard that meets the requirements specified in this part and includes, at a minimum, the areas identified in this section.

(1) Program management section. This section shall include an explanation of the oversight agency's authority, policies, and roles and responsibilities for providing safety and security oversight of the rail transit agencies within its jurisdiction. This section shall provide an overview of planned activities to ensure on-going communication with each affected rail transit agency relating to safety and security information, as well as FTA reporting requirements, including initial, annual and periodic submissions.

(2) Program standard development section. This section shall include a description of the oversight agency's process for the development, review, and adoption of the program standard, the modification and/or update of the program standard, and the process by which the program standard and any subsequent revisions are distributed to each affected rail transit agency.

(3) Oversight of rail transit agency internal safety and security reviews. This section shall specify the role of the oversight agency in overseeing the rail transit agency internal safety and security review process. This includes a description of the process used by the oversight agency to receive rail transit agency checklists and procedures and approve the rail transit agency's annual reports on findings, which must be submitted under the signature of the rail transit agency's top management.

(4) Oversight agency safety and security review section. This section shall lay out the process and criteria to be used at least every three years in conducting a complete review of each affected rail transit agency's implementation of its system safety program plan and system security plan. This section includes the process to be used by the affected rail transit agency and the oversight agency to manage findings and recommendations from this review. This also includes procedures for notifying the oversight agency before the rail transit agency conducts an internal review.

(5) Accident notification section. This section shall include the specific requirements for the rail transit agency to notify the oversight agency of accidents. This section shall also include required timeframes, methods of notification, and the information to be submitted by the rail transit agency. Additional detail on this portion is included in §659.33 of this part.

(6) Investigations section. This section contains the oversight agency identification of the thresholds for incidents that require an oversight agency investigation. The roles and responsibilities for conducting investigations shall include: coordination with the rail transit agency investigation process, the role of the oversight agency in supporting investigations and findings conducted by the NTSB, review and concurrence of investigation report findings, and procedures for protecting the confidentiality of investigation reports.
(7) Corrective actions section. This section shall specify oversight agency criteria for the development of corrective action plan(s) and the process for the review and approval of a corrective action plan developed by the rail transit agency. This section shall also identify the oversight agency's policies for the verification and tracking of corrective action plan implementation, and its process for managing conflicts with the rail transit agency relating to investigation findings and corrective action plan development.

(8) System safety program plan section. This section shall specify the requirements to be contained in the rail transit agency's system safety program plan. The contents of the system safety plan are discussed in more detail in § 659.19 of this part. This section shall also specify information to be included in the affected rail transit agency's system safety program plan relating to the hazard management process, including requirements for ongoing communication and coordination relating to the identification, categorization, resolution, and reporting of hazards to the oversight agency. More details on the hazard management process are contained in § 659.31 of this part. This section shall also describe the process and timeframe through which the oversight agency must receive, review, and approve the rail transit agency system safety program plan.

(9) System security plan section. This section shall specify the minimum requirements to be included in the rail transit agency's system security plan. More details about the system security plan are contained in §§ 659.21 through 659.23 of this part. This section shall also describe the process by which the oversight agency will review and approve the rail transit agency system security program plan. This section also shall identify how the state will prevent the system security plan from public disclosure.

§ 659.17 System safety program plan: general requirements

(a) The oversight agency shall require the rail transit agency to develop and implement a written system safety program plan that complies with requirements in this part and the oversight agency's program standard.

(b) The oversight agency shall review and approve the rail transit agency system safety program plan.

(c) After approval, the oversight agency shall issue a formal letter of approval to the rail transit agency, including the checklist used to conduct the review.

§ 659.19 System safety program plan: contents

The system safety plan shall include, at a minimum:

(a) A policy statement signed by the agency's chief executive that endorses the safety program and describes the authority that establishes the system safety program plan.

(b) A clear definition of the goals and objectives for the safety program and stated management responsibilities to ensure they are achieved.
(c) An overview of the management structure of the rail transit agency, including:

(1) An organization chart;
(2) A description of how the safety function is integrated into the rest of the rail transit organization; and
(3) Clear identification of the lines of authority used by the rail transit agency to manage safety issues.

(d) The process used to control changes to the system safety program plan, including:

   (1) Specifying an annual assessment of whether the system safety program plan should be updated; and

   (2) Required coordination with the oversight agency, including timeframes for submission, revision, and approval.

(e) A description of the specific activities required to implement the system safety program, including:

(1) Tasks to be performed by the rail transit safety function, by position and management accountability, specified in matrices and/or narrative format; and

(2) Safety-related tasks to be performed by other rail transit departments, by position and management accountability, specified in matrices and/or narrative format.

(f) A description of the process used by the rail transit agency to implement its hazard management program, including activities for:

   (1) Hazard identification;

   (2) Hazard investigation, evaluation and analysis;

   (3) Hazard control and elimination;

   (4) Hazard tracking; and

   (5) Requirements for on-going reporting to the oversight agency relating to hazard management activities and status.

(g) A description of the process used by the rail transit agency to ensure that safety concerns are addressed in modifications to existing systems, vehicles, and equipment, which do not require formal safety certification but which may have safety impacts.

(h) A description of the safety certification process required by the rail transit agency to ensure that safety concerns and hazards are adequately addressed prior to the initiation of passenger
operations for New Starts and subsequent major projects to extend, rehabilitate, or modify an existing system, or to replace vehicles and equipment.

(i) A description of the process used to collect, maintain, analyze, and distribute safety data, to ensure that the safety function within the rail transit organization receives the necessary information to support implementation of the system safety program.

(j) A description of the process used by the rail transit agency to perform accident notification, investigation and reporting, including:

1. Notification thresholds for internal and external organizations;
2. Accident investigation process and references to procedures;
3. The process used to develop, implement, and track corrective actions that address investigation findings;
4. Reporting to internal and external organizations; and
5. Coordination with the oversight agency.

(k) A description of the process used by the rail transit agency to develop an approved, coordinated schedule for all emergency management program activities, which include:

1. Meetings with external agencies;
2. Emergency planning responsibilities and requirements;
3. Process used to evaluate emergency preparedness, such as emergency field exercises;
4. After action reports and implementation of findings;
5. Revision and distribution of emergency response procedures;
6. Familiarization training for public safety organizations; and
7. Employee training.

(l) A description of the process used by the rail transit agency to ensure that planned and scheduled internal safety reviews are performed to evaluate compliance with the system safety program plan, including:

1. Identification of departments and functions subject to review;
2. Responsibility for scheduling reviews;
(3) Process for conducting reviews, including the development of checklists and procedures and the issuing of findings;

(4) Review of reporting requirements;

(5) Tracking the status of implemented recommendations; and

(6) Coordination with the oversight agency.

(m) A description of the process used by the rail transit agency to develop, maintain, and ensure compliance with rules and procedures having a safety impact, including:

   (1) Identification of operating and maintenance rules and procedures subject to review;

   (2) Techniques used to assess the implementation of operating and maintenance rules and procedures by employees, such as performance testing;

   (3) Techniques used to assess the effectiveness of supervision relating to the implementation of operating and maintenance rules; and

   (4) Process for documenting results and incorporating them into the hazard management program.

(n) A description of the process used for facilities and equipment safety inspections, including:

   (1) Identification of the facilities and equipment subject to regular safety-related inspection and testing;

   (2) Techniques used to conduct inspections and testing;

   (3) Inspection schedules and procedures; and

   (4) Description of how results are entered into the hazard management process.

(o) A description of the maintenance audits and inspections program, including identification of the affected facilities and equipment, maintenance cycles, documentation required, and the process for integrating identified problems into the hazard management process.

(p) A description of the training and certification program for employees and Contractor (Consultant)s, including:

   (1) Categories of safety-related work requiring training and certification;

   (2) A description of the training and certification program for employees and Contractor (Consultant)s in safety-related positions;
(3) Process used to maintain and access employee and Contractor (Consultant) training records; and

(4) Process used to assess compliance with training and certification requirements.

(q) A description of the configuration management control process, including:

(1) The authority to make configuration changes;

(2) Process for making changes; and

(3) Assurances necessary for formally notifying all involved departments.

(r) A description of the safety program for employees and Contractor (Consultant)s that incorporates the applicable local, state, and federal requirements, including:

   (1) Safety requirements that employees and Contractor (Consultant)s must follow when working on, or in close proximity to, rail transit agency property; and

   (2) Processes for ensuring the employees and Contractor (Consultant)s know and follow the requirements.

(s) A description of the hazardous materials program, including the process used to ensure knowledge of and compliance with program requirements.

(t) A description of the drug and alcohol program and the process used to ensure knowledge of and compliance with program requirements.

(u) A description of the measures, controls, and assurances in place to ensure that safety principles, requirements and representatives are included in the rail transit agency's procurement process.

§ 659.21 System security plan: general requirements

(a) The oversight agency shall require the rail transit agency to implement a system security plan that, at a minimum, complies with requirements in this part and the oversight agency's program standard. The system security plan must be developed and maintained as a separate document and may not be part of the rail transit agency's system safety program plan.

(b) The oversight agency may prohibit a rail transit agency from publicly disclosing the system security plan.

(c) After approving the system security plan, the oversight agency shall issue a formal letter of approval, including the checklist used to conduct the review, to the rail transit agency.

§ 659.23 System security plan: contents
The system security plan must, at a minimum address the following:

(a) Identify the policies, goals, and objectives for the security program endorsed by the agency's chief executive.

(b) Document the rail transit agency's process for managing threats and vulnerabilities during operations, and for major projects, extensions, new vehicles and equipment, including integration with the safety certification process;

(c) Identify controls in place that address the personal security of passengers and employees;

(d) Document the rail transit agency's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the system security plan; and

(e) Document the rail transit agency's process for making its system security plan and accompanying procedures available to the oversight agency for review and approval.

§ 659.25 Annual review of system safety program plan and system security plan

(a) The oversight agency shall require the rail transit agency to conduct an annual review of its system safety program plan and system security plan.

(b) In the event the rail transit agency's system safety program plan is modified, the rail transit agency must submit the modified plan and any subsequently modified procedures to the oversight agency for review and approval. After the plan is approved, the oversight agency must issue a formal letter of approval to the rail transit agency.

(c) In the event the rail transit agency's system security plan is modified, the rail transit agency must make the modified system security plan and accompanying procedures available to the oversight agency for review, consistent with requirements specified in § 659.23(e) of this part. After the plan is approved, the oversight agency shall issue a formal letter of approval to the rail transit agency.

§ 659.27 Internal safety and security reviews

(a) The oversight agency shall require the rail transit agency to develop and document a process for the performance of on-going internal safety and security reviews in its system safety program plan.

(b) The internal safety and security review process must, at a minimum:

(1) Describe the process used by the rail transit agency to determine if all identified elements of its system safety program plan and system security plan are performing as intended; and
(2) Ensure that all elements of the system safety program plan and system security plan are reviewed in an ongoing manner and completed over a three-year cycle.

(c) The rail transit agency must notify the oversight agency at least thirty (30) days before the conduct of scheduled internal safety and security reviews.

(d) The rail transit agency shall submit to the oversight agency any checklists or procedures it will use during the safety portion of its review.

(e) The rail transit agency shall make available to the oversight agency any checklists or procedures subject to the security portion of its review, consistent with § 659.23(e).

(f) The oversight agency shall require the rail transit agency to annually submit a report documenting internal safety and security review activities and the status of subsequent findings and corrective actions. The security part of this report must be made available for oversight agency review, consistent with § 659.23(e).

(g) The annual report must be accompanied by a formal letter of certification signed by the rail transit agency's chief executive, indicating that the rail transit agency is in compliance with its system safety program plan and system security plan.

(h) If the rail transit agency determines that findings from its internal safety and security reviews indicate that the rail transit agency is not in compliance with its system safety program plan or system security plan, the chief executive must identify the activities the rail transit agency will take to achieve compliance.

(i) The oversight agency must formally review and approve the annual report.

§ 659.29 Oversight agency safety and security reviews

At least every three (3) years, beginning with the initiation of rail transit agency passenger operations, the oversight agency must conduct an onsite review of the rail transit agency's implementation of its system safety program plan and system security plan. Alternatively, the on-site review may be conducted in an on-going manner over the three year timeframe. At the conclusion of the review cycle, the oversight agency must prepare and issue a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the effectiveness of the system safety program plan and the security plan and a determination of whether either should be updated.

§ 659.31 Hazard management process

(a) The oversight agency must require the rail transit agency to develop and document in its system safety program plan a process to identify and resolve hazards during its operation, including any hazards resulting
from subsequent system extensions or modifications, operational changes, or other changes within the rail transit environment.

(b) The hazard management process must, at a minimum:

(1) Define the rail transit agency's approach to hazard management and the implementation of an integrated system-wide hazard resolution process;

(2) Specify the sources of, and the mechanisms to support, the on-going identification of hazards;

(3) Define the process by which identified hazards will be evaluated and prioritized for elimination or control;

(4) Identify the mechanism used to track through resolution the identified hazard(s);

(5) Define minimum thresholds for the notification and reporting of hazard(s) to oversight agencies; and

(6) Specify the process by which the rail transit agency will provide on-going reporting of hazard resolution activities to the oversight agency.

§ 659.33 Accident notification

(a) The oversight agency must require the rail transit agency to notify the oversight agency within two (2) hours of any incident involving a rail transit vehicle or taking place on rail transit controlled property where one or more of the following occurs:

(1) A fatality at the scene; or where an individual is confirmed dead within thirty (30) days of a rail transit-related incident;

(2) Injuries requiring immediate medical attention away from the scene for two or more individuals;

(3) Property damage to rail transit vehicles, non-rail transit vehicles, other rail transit property or facilities and non-transit property that equals or exceeds $25,000;

(4) An evacuation due to life safety reasons;

(5) A collision at a grade crossing;

(6) A main-line derailment;

(7) A collision with an individual on a rail right of way; or

(8) A collision between a rail transit vehicle and a second rail transit vehicle, or a rail transit non-revenue vehicle.
(b) The oversight agency shall require rail transit agencies that share track with the general railroad system and are subject to the Federal Railroad Administration notification requirements, to notify the oversight agency within two (2) hours of an incident for which the rail transit agency must also notify the Federal Railroad Administration.

(c) The oversight agency shall identify in its program standard the method of notification and the information to be provided by the rail transit agency.

§ 654.35 Investigations

(a) The oversight agency must investigate, or cause to be investigated, at a minimum, any incident involving a rail transit vehicle or taking place on rail transit-controlled property meeting the notification thresholds identified in § 654.33(a).

(b) The oversight agency must use its own investigation procedures or those that have been formally adopted from the rail transit agency and that have been submitted to FTA.

(c) In the event the oversight agency authorizes the rail transit agency to conduct investigations on its behalf, it must do so formally and require the rail transit agency to use investigation procedures that have been formally approved by the oversight agency.

(d) Each investigation must be documented in a final report that includes a description of investigation activities, identified causal and contributing factors, and a corrective action plan.

(e) A final investigation report must be formally adopted by the oversight agency for each accident investigation.

(1) If the oversight agency has conducted the investigation, it must formally transmit final investigation report to the rail transit agency.

(2) If the oversight agency has authorized an entity other than itself (including the rail transit agency) to conduct the accident investigation on its behalf, the oversight agency must review and adopt the final investigation report.

(3) If the oversight agency does not concur with the findings of the rail transit agency investigation report, it must either:

(i) Conduct its own investigation according to paragraphs (b),(d) and (e)(1) of this section; or

(ii) Formally transmit its dissent to the findings of the accident investigation, report its dissent to the rail transit agency, and negotiate with the rail transit agency until a resolution on the findings is reached.

(f) The oversight agency shall have the authority to require periodic status reports that document investigation activities and findings in a time frame determined by the oversight agency.
§ 659.37 Corrective action plans

(a) The oversight agency must, at a minimum, require the development of a corrective action plan for the following:

(1) Results from investigations, in which identified causal and contributing factors are determined by the rail transit agency or oversight agency as requiring corrective actions; and

(2) Findings from safety and security reviews performed by the oversight agency.

(b) Each corrective action plan should identify the action to be taken by the rail transit agency, an implementation schedule, and the individual or department responsible for the implementation.

(c) The corrective action plan must be reviewed and formally approved by the oversight agency.

(d) The oversight agency must establish a process to resolve disputes between itself and the rail transit agency resulting from the implementation of a corrective action plan.

(e) The oversight agency must identify the process by which findings from an NTSB accident investigation will be evaluated to determine whether or not a corrective action plan should be developed by either the oversight agency or rail transit agency to address NTSB findings.

(f) The rail transit agency must provide the oversight agency:

(1) Verification that the corrective action(s) has been implemented as described in the corrective action plan, or that a proposed alternate action(s) has been implemented subject to oversight agency review and approval; and

(2) Periodic reports requested by the oversight agency, describing the status of each corrective action(s) not completely implemented, as described in the corrective action plan.

(g) The oversight agency must monitor and track the implementation of each approved corrective action plan.

§ 659.39 Oversight agency reporting to the Federal Transit Administration

(a) Initial submission. Each designated oversight agency with a rail fixed guideway system that is in passenger operations as of April 29, 2005 or will begin passenger operations by May 1, 2006, must make its initial submission to FTA by May 1, 2006. In states with rail fixed guideway systems initiating passenger operations after May 1, 2006, the designated oversight agency must make its initial submission within the time frame specified by the state in its designation submission, but not later than at least sixty (60) days prior to initiation of passenger operations. Any time a state changes its designated oversight agency to carry out the requirements identified in this part, the new oversight agency must make a new initial submission to FTA within thirty (30) days of the designation.
(b) An initial submission must include the following:

(1) Oversight agency program standard and referenced procedures; and

(2) Certification that the system safety program plan and the system security plan have been developed, reviewed, and approved.

(c) Annual submission. Before March 15 of each year, the oversight agency must submit the following to FTA:

(1) A publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the causal factors of investigated accidents, status of corrective actions, updates and modifications to rail transit agency program documentation, and the level of effort used by the oversight agency to carry out its oversight activities.

(2) A report documenting and tracking findings from three-year safety review activities and whether a three-year safety review has been completed since the last annual report was submitted.

(3) Program standard and supporting procedures that have changed during the preceding year.

(4) Certification that any changes or modifications to the rail transit agency system safety program plan or system security plan have been reviewed and approved by the oversight agency.

(d) Periodic submission. FTA retains the authority to periodically request program information.

(e) Electronic reporting. All submissions to FTA required in this part must be submitted electronically using a reporting system specified by FTA.

§ 659.41 Conflict of interest

The oversight agency shall prohibit a party or entity from providing services to both the oversight agency and rail transit agency when there is a conflict of interest, as defined by the state.

§ 659.43 Certification of compliance

(a) Annually, the oversight agency must certify to the FTA that it has complied with the requirements of this part.

(b) The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA.

(c) The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.
ATTACHMENT 18 - 49 CFR PART 670

(SEE ON-LINE SEPARATE PDF)
ATTACHMENT 19 - 49 CFR PART 672

(SEE ON-LINE SEPARATE PDF)
ATTACHMENT 20 - 49 CFR PART 673

(SEE ON-LINE SEPARATE PDF)
ATTACHMENT 21 - 49 CFR PART 674

(SEE ON-LINE SEPARATE PDF)
ATTACHMENT 22

TASK 4: INVESTIGATION SCENARIOS

TASK 5: SUPPLEMENTAL SAFETY ACTIVITIES SCENARIO

NOTE: The proposed response to the scenarios included here are hypothetical “what if” paper task assignment exercises 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 this RFP. The proposers should develop the narratives and cost assumptions utilizing their experience and responding to the scenarios in the tasks below. Use attachment 24 to show level of hours. Use attachment 16 for the cost estimates.

Overview:
Task 4a1 Scenario - Accident: Niagara Frontier Transportation Authority – Derailment Yard, assume one incident on one year.
Task 4a2 Scenario – Accident: NFTA – Collision Mainline, assume two incidents on one year.
Task 4a3 – MTA New York City Transit – Derailment Mainline, assume two incidents on one year.
Task 4a4 – MTA New York City Transit – Collision Mainline, assume two incidents on one year.
Task 4b1 Scenario – Hazard Investigation: Niagara Frontier Transportation Authority, assume one incident in one year.
Task 4b2 – Hazard Investigation: MTA New York City Transit, assume one incident in one year.
Task 5 - Supplemental Safety Activities

Response Instructions
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 hypothetical scenario response. Confidential and proprietary information (if any) 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 Services.

7. A Schedule for completion of the hypothetical scenario showing the duration of subtasks and all major milestones.
8. A Total Budget, based upon the selected resources (personnel selected from Attachment 4 plus estimates of all required 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.

   SCENARIO #Task 4a1
   NFTA ACCIDENT INVESTIGATION
   DERAILMENT - YARD

   Accident: Niagara Frontier Transportation Authority
   NFTA experience a derailment in the South Park Yard. As the train was moving across switches, one switch failed to hold it is setting and snapped back causing the rear truck set of the second car (of a three-car consist) to divert, resulting in the wheel set to climb the running rail and derail to the field side of the track. The lead truck of the third car derailed as well.

   SCENARIO #Task 4a2
   NFTA ACCIDENT INVESTIGATION
   COLLISION - MAINLINE

   Accident: Niagara Frontier Transportation Authority
   NFTA experienced an event where an automobile driver mistakenly entered the portal to the underground portion of the Metro rail system and travelled approximately 1600 feet before becoming stuck on the track. In an effort to back out of the tunnel, the automobile driver spun the wheels of the stuck vehicle and resulted in a spoke condition. A subsequent train entered the tunnel section after departing Theater Station and struck the trespassing automobile stuck in the tunnel. The train operator had not been informed of the smoke condition NYSDOT requires expertise and potential recommendations related to reducing the likelihood of similar future events. communication procedures from the control center when notified of smoke conditions, unauthorized intrusions via the tunnel portal.
SCENARIO #Task 4a3
MTA NYCT ACCIDENT INVESTIGATION
DERAILMENT - MAINLINE

**Accident: MTA New York City Transit**

NYCT has been experienced a derailment where a significant amount of track was torn away from the roadbed where six cars derailed, colliding with support pillars in the event tunnel. The rail in question was recently installed by MOW Division of Track. NYSDOT requires expertise during the investigation related to track configuration, track maintenance procedures, manufacture the process of rail, and car equipment manufacture and operating dynamics.

SCENARIO #Task 4a4
MTA NYCT ACCIDENT INVESTIGATION
COLLISION - MAINLINE

**Accident: MTA New York City Transit**

NYCT experienced a collision with a bumper block at the at the Staten Island Railway Tottenville Station Terminal. The bumper block dislodged and resulted in lead truck of the lead car to derail. The general cause of the event was failure to follow operating procedures when entering terminal stations.

SCENARIO #Task 4b1
NFTA HAZARD INVESTIGATION

**Hazard Investigation: Niagara Frontier Transportation Authority**

NFTA experienced rail failure at a single location (Humboldt Station) where rail was not being held in place by tie plates as the concrete ties were deteriorating and reported the occurrence to NYSDOT (PTSB). NYSDOT requires expertise in roadbed construction and rehab of existing to roadbed to return to state of good repair.

SCENARIO #Task 4b2
MTA NYCT HAZARD INVESTIGATION

**Hazard Investigation: MTA New York City Transit**

NYCT has been experienced a derailment where a concrete retaining wall (catwalk) has collapsed from the tunnel structure after fouling the dynamic envelop of the roadway, resulting in a collision with the concrete and leading to the derailment of the first set of wheels of the lead car. NYSDOT requires expertise in tunnel roadbed dynamics and concrete applications related to a tunnel environment, and concrete maintenance practices.
SCENARIO #Task 5
SUPPLEMENTAL SAFETY ACTIVITIES

FTA issued Safety Advisory 15-1 requesting that NYSDOT Contractor (Consultant) conduct a full assessment of all tunnel emergency ventilation systems operated by MTA New York City Transit and Niagara Frontier Transportation Authority in their respective rail systems. The assessment includes a visit to each fan plant in operations accompanied by the RTA maintenance personnel charged with ensuring proper operation of each plant. This advisory requires an assessment of maintenance and inspections procedures, inspection records associated the inspection and maintenance program in the previous year, assessment of the operability, condition and capability to be operated remotely and locally, and completion of checklist required by FTA. The Contractor (Consultant) is responsible for the final submission to the FTA, which includes completed forms utilized for the assessment, summary report of actions taken to complete tasks required for the advisory and all supporting documentation requested in the advisory. There are 193 operations fan plants in the NYCT system and eight similar plants in the NFTA system.

When PTSB staff conducted the Assessment in 2015, we used all four staff members working over the three shifts (AM, PM, Overnight) to assess all 193 fan plants for NYCT. Each staff member was to assess 3-5 plants per shift assigned. If a plant was out of service, a return visit needed to be subsequently rescheduled. All assessment checklists (with hand written entries) were collected by NYCT’s Maintenance staff and stored at their primary reporting location. The assessments were completed over a four-week period. One staff member with assistance by NYCT Maintenance staff then entered the field data into a spreadsheet format which took approximately one week. All maintenance records for each fan plant were collected and reviewed from the previous 12 months. This took approximately one week. The draft and final executive summary report was completed over 3 days by one staff member. Final report and accompanying assessments for each fan plant for NYCT and NFTA consisted of over 600 pages to be submitted electronically to FTA.
ATTACHMENT 23 – LIST OF PAST & CURRENT CONTRACTS

Reporting for Special Conflict of Interest Restrictions

The State Safety Oversight Agency shall prohibit a party or entity from providing services to both the oversight agency and rail transit agency (New York City Transit (NYCT) or Niagara Frontier Transportation Authority (NFTA) Metro Rail) or MTA Transit operation service contracts on behalf of NYCT. Therefore, NYSDOT requests that any Prime and Sub-Consultant proposers to this RFP submit a list of contracts for services provided to New York City Transit, and/or Niagara Frontier Transportation Authority Metro Rail or MTA Transit operation service contracts on behalf of NYCT, for the calendar years of 2011-present. Prime and Sub-Consultants must include the contract completion date. If no such contracts for services have been awarded during the referenced interval, please provide a statement attesting to such.

Reporting for other Potential conflicts of Interest

Any other actual, potential or perceived conflict of interest, not previously addressed within this attachment, associated contractual documents, or the RFP, shall be determined at the sole discretion of NYSDOT. In addition, the Prime and Sub-consultant proposals shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety (i.e. perceived conflict of interest), relating to other clients/customers of the Consultant or former or current employees of the State or Agencies and their Affiliates, in connection with your rendering services detailed in this RFP. If an actual, potential or preconceived conflict does or may exist, please describe how the proposer would eliminate or prevent such conflict. Indicate what procedures will be followed to detect, notify the State of, and resolve any such conflicts.

While NYSDOT reserves the right to not include a Sub-Consultant, this does not mean that a Sub-Consultant will be excluded; however, NYSDOT will review the relationship and may request additional information about the proposer’s plan to avoid such actual, or appearance of a, Conflict of Interest(s).

The Contractor (Consultant) must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics, or its predecessor State entities (collectively, “the Commission”), and, if so, a brief description indicating how any matter before the Commission was resolved or whether it remains unresolved.
**Attachment 24 - Level of Effort**

**TO BE INCLUDED IN THE PART I TECHNICAL PROPOSAL**

**For Tasks 1 through 5**

- List all titles and names of personnel to be used during the term of the resulting agreement. Offerors must group titles by firm (prime consultant plus any sub-consultants that are being proposed), adding lines as necessary.
- Firms must provide **total** labor hours for the project as well as total labor hours for the prime and each sub.
- Hours listed much match the hours listed in the cost proposal.
- For Task 4: Address the six (6) scenarios. Explain your approach, how to address problems that may arise.

**Use a separate table for each sub-consultant**

**LABOR TABLE LEVEL OF EFFORT**

Task 1 – Development and Implementation of State Safety Oversight Program Standard (SSOPS)

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Task 2 – Three (3) Year Safety and Security Reviews

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Task 3 – Annual and Periodic Reports

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Task 4a1 – NFTA Accident Investigation Scenario
Derailment - Yard

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Task 4a2 – NFTA Accident Investigation Scenario
Collision - Mainline

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### Task 4a3 – NYCT Accident Investigation Scenario
#### Derailment - Mainline

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### Task 4a4 – NYCT Accident Investigation Scenario
#### Collision - Mainline

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### Task 4b1 – NFTA Hazard Investigation

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### Task 4b2 – NYCT Hazard Investigation

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## Task 5 – Supplemental Safety Activities

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ATTACHMENT 25 - SYSTEM SAFETY & SECURITY OVERSIGHT PROGRAM STANDARD (SSOPS)

(SEE ON-LINE SEPARATE PDF)
ATTACHMENT 26 – 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 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 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 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 contract 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 conflict 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

__________________________________________  Date
Signature

This firm must be signed by an authorized executive or legal representative.