NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS

Right of Way and Real Estate IT System Services
Contract #C037711

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

- RFP Release Date: March 14, 2018
- Pre-Proposal Webinar: March 21, 2018
- Question Submittal Deadline\(^1\): April 2, 2018
- Answers/RFP Modification #1 Due: April 6, 2018
- Proposals Due: April 17, 2018 by 2:00PM Eastern Time
- Proposal Evaluation: April 18-24, 2018
- Demonstrations/Interviews: April 26-27, 2018
- Recommendation & Designation: May 1, 2018
- Contract Finalizing: Late May 2018
- Contract Award: August/September 2018

\(^1\): Note: NYSDOT may open a second Q&A round, with possible extension of the scheduled proposal due date.

Inquiries and Information/ Designated Contact Person
Potential responders are advised that under New York State’s procurement lobbying law (state finance law section 139-j), communications regarding NYSDOT’s RFP #C037711 can be made only to the following sole designated contact person:
Al Hasenkopf, Contract Mgt Specialist II
New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232, USA
E-mail: alfred.hasenkopf@dot.ny.gov
Phone: 518-457-1560

All questions concerning this solicitation must be directed only to the RFP’s designated Contact Person. The last date to submit questions for this solicitation is April 2, 2018. NYSDOT is not obligated to respond to any late questions (questions submitted after the question submittal deadline). However, NYSDOT may chose to respond to late questions should doing such be in the best interest of the state. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT web site.
Pre-Proposal Webinar:
NYSDOT will hold a Pre-Proposal Webinar, where remote participation is optional yet recommended. The agenda shall be going over the RFP and its attachments, and highlighting what’s changes since the RFP was first issued. Questions can be submitted in advance as well as electronically via the webinar. The Pre-Proposal Webinar shall be held on March 21, 2018 at 10:00 AM. **To register for the webinar, please contact:** alfred.hasenkopf@dot.ny.gov.

NYSDOT will record the webinar. Answers provided at the webinar shall be recorded; some questions may have to be deferred. Answers to all substantive questions shall be publically posted onto NYSDOT’s website under this solicitation, and all parties notified via announcement. E-mail notices shall be sent to the e-mail addresses of all parties who officially register their interest in NYSDOT’s RFP #C037711. Only written answers posted on the NYSDOT website will be official. Questions that address possible conflicting information in this RFP will be resolved via formal Modification to this RFP and posted on the NYSDOT website, with all firms expressing interest being notified via e-mail. To be deemed responsive, all firms offering proposals are required to acknowledged receipt of any and all RFP Modifications in writing (by submitting the one-page acknowledgement response form included in the RFP Modification document).

RFP Modifications:
NYSDOT will issue at least one modification to this RFP to release answers to questions and release the list of interested parties. NYSDOT reserves the right to modify conditions or requirements of this RFP with sufficient notice to all potentially interested parties. All public information releases regarding NYSDOT RFP #C037711 shall be posted to the NYSDOT web site (https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities). Firms who express interest in this RFP shall receive an e-mail alerting them to each new RFP information release. Firms are advised to also regularly to check for releases of new RFP information. The final Modification will be posted on NYSDOT’s web site not later than ten business days prior to the proposal due date – acknowledgement of receipt of any and all RFP modifications is a mandatory requirement. If any additional modification is required within that ten-day window, the Proposal due date shall be revised such that there will be seven days from the final Modification to the Proposal due date and all parties shall be notified.

Minority and Women-Owned Business Enterprise Participation:
NYSDOT has established an **30% combined MWBE participation goal** for Contract #C037711. Please visit the Empire State Development MWBE Directory for certified MBEs and WBEs via: https://ny.newnycontracts.com/?TN. See RFP Section 4 for more information.

Service-Disabled Veteran-Owned Business (SDVOB) Participation:
NYSDOT has established an **6% SDVOB participation goal** for Contract #C037711. A listing of current certified SVDOBs and how a firm can become certified as a SDVOB, please visit the New York State Office of General Services SDVOB website: http://ogs.ny.gov/core/sdvoba.asp. See RFP Section 4 for more information.

NYSDOT has e Equal Employment Opportunity – Pay Equity:

In Accordance with New York State Executive Order 162, issued on January 9, 2017, the selected Consultant shall provide workforce utilization reports in accordance with Article 49 in Attachment 17 RFP Draft Contract.
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 NYSDOT 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.
RFP RESPONSE FORM

RFP #C037711 for Right of Way and Real Estate IT System Services

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 (Attachment 8) before questions or other communications with the Department regarding this solicitation can be initiated.

___________ WE DO INTEND TO SUBMIT A PROPOSAL

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

_____________________________________________________________________

_____________________________________________________________________

Name and Address of Organization (Include Zip Code):
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

Date: ______________

Typed Name and Title: _________________________________________________

Telephone: ______________________ Fax: ______________________________

E-Mail Address: _______________________________________________________

If you are interested in this opportunity, please complete this RFP response back form and e-mail to: alfred.hasenkopf@dot.ny.gov. Thank you.
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1 INTRODUCTION

1.1 Purpose
The New York State Department of Transportation (NYSDOT; the Department) is seeking responsive proposals to select a responsible Consultant to install and implement a modern Right of Way and Real Estate IT system for the Office of Right of Way under a three-plus-two year contract via a currently available commercial off-the-shelf product (COTS).

1.2 Background: General
The New York State Department of Transportation (NYSDOT) is responsible for ensuring that those who live, work and travel in New York State have a safe, efficient, balanced and environmentally sound transportation system. The NYSDOT Office of Right of Way supports this by acquiring real estate in a timely manner for transportation purposes and managing or disposing of transportation property on terms beneficial to the people of the State of New York. To support these responsibilities, the Office of Right of Way (OROW) currently uses the Sesame software application. This application is old and incapable of meeting data management, work production, or reporting needs for Main Office and Regional Office OROW staff across New York. A solution must be identified to replace the existing Sesame application which experiences regular outages and requires manual activities that are evolving to become increasingly difficult to manage with staffing level reductions across the State.

NYSDOT’s Office of Right-of-Way (OROW) maintains information on right of way (ROW) assets including Use and Occupancy Leases, Signs, Surplus Property, and ROW acquisitions. This is partially accomplished in OROW’s current software environment by manual entry (via SESAME application) of the data collected from various sources, but does not include all available and/or necessary sources nor is the information easily shared among all users.

The current product used by OROW, SESAME, is not a relational data base and therefore does not “talk” between various modules within the application. The SESAME software also does not leverage NYSDOT’s ESRI GIS capabilities or fully incorporate geospatial information across the platform and, therefore, does not adequately provide map based views of OROW assets or allow NYSDOT staff to spatially locate or query the data. The Sesame software needs to be replaced with a more modern, more efficient, COTS web-based application. NYSDOT seeks a modern solution to replace SESAME.

1.3 Background: Existing NYSDOT Office of Right of Way Processes
The following presents an overview of NYSDOT’s Office of Right of Way processes to be supported by a more modern solution:

Program and Liaison
Program and Liaison coordinates with the Office of Design to manage the Initial Project Proposal (IPP) and acquire an Abstract Request Map (ARM). Using this map, information about the location of the proposed project, and a Site Inspection, expected ROW-related costs are
estimated. Consultant services are usually used for Title Searches and the associated Consultant bidding, engagement, payment, and performance reviews are conducted for each project.

**Acquisition**

Acquisitions is responsible for planning and coordination of activities required for executing the acquisition of the necessary ROW properties to meet capital project and other operational needs. Staff participate in finalizing the properties to be acquired, coordinating Title search requests and Consultants, defining scope for ownership procurements, performing initial property inspections, and work product planning throughout the entire ROW processes. Regional staff interface directly with citizens and businesses where property is to be acquired and ensure that legal certification of owning interest(s) and transfer of property ownership is executed.

The Negotiation Section has the responsibility of providing overall policy and direction for the acquisition activities in the Office of Right of Way, including:

1. The receipt, review and approval of all agreements,
2. All record-keeping and payment processing relating to right-of-way acquisition,
3. Deposits and backlogs (unsettled Claims), and
4. The Office’s role in the railroad preferential right of acquisition process.

**Appraisal**

Appraisals are performed for acquisitions of ROW project properties and other purposes (e.g., establishing market value for sales of Surplus properties) where the property value must be determined. The OROW often uses Consultants who are certified to perform appraisals in addition to NYSDOT appraisal staff.

A staff Appraiser and/or Consultant Appraiser may be used to perform the required Appraisal(s). The Appraiser(s) collect the information necessary to complete the Appraisal reports, including sales research information regarding comparable properties. Staff Appraisers perform a Math and Compliance check on submitted Appraisal reports to verify all calculations are correct and all required elements are present. Appraisal unit managers then perform an Appraisal Review; appraisal reviews may be performed at both the Regional and Main Office levels. For any approved Appraisal reports that are completed by Consultants, payments for those services are coordinated with the NYSDOT Office of Finance. All Consultants are rated for their performance in preparing Appraisal reports.

**Relocation**

When a property to be acquired is occupied, the NYSDOT Relocation unit prepares a Conceptual Relocation plan that forms the foundation for a plan to relocate the occupants. Information for costs to be disbursed to those who are relocated, or to vendors who are providing relocation services, is captured as the ROW project Appraisals and Design packages are completed. The unit identifies properties that may be used to replace the acquired properties. A final Relocation Plan will be completed for a ROW project and submitted with the Appraisals and Acquisition Plans for inclusion in the completed ROW package.

**Claims**

When property owners reject an offer for the purchase of property, or the agreement is categorized as an Agreement with Advance Payment, the original owners may file a Claim with the NYS Court of Claims to seek additional Just Compensation. The Claims Manager maintains all information about a Claim: Attorneys, Pre-trial activity tracking, Court Award, and Post-
Award activities. Activities are closely coordinated with the NYSDOT Office of Legal Affairs and the Real Property Bureau of the NYS Attorneys General Office.

Property Management

The Property Management unit manages the surplus ROW property, ROW airspace rentals and leases, and signs along Federal and State roadways in NY. Surplus property results primarily from ROW acquisitions where the land is no longer needed for construction or other DOT purposes, or may result from uneconomic remainder properties identified at the time of a capital project ROW acquisition. Airspace rentals and leases result from requests from citizens or businesses for full or partial use of either existing ROW properties or NYS Transportation properties that are not included in the existing captured ROW properties. The Sign program permits and monitors signs used for advertising, informational, and directional purposes across New York state.

Surplus property may be identified during the ROW acquisition process or at the end of the capital project. Three types of dispositions must be managed: requests for, transfers to, and surplus sales. If the property has never been captured, it must be recorded with map attachments. Sales are variations of disposition involving responses to citizen and business requests, coordination with another State or Local entity, and offers for sale. Dispositions are reviewed and approved by NYSDOT executive management, NYS Office of the State Comptroller (OSC), and FHWA.

Surplus properties may be retained beyond the scope of the original purposes behind the acquisition. These properties are managed and may be used to generate revenue in the form of Rentals and Leases. Use and Occupancy rights may be requested and rented/leased unless they are disposed or needed for other transportation purposes. Agreements and other legal documents are generated, reviewed, approved, and implemented. Initial payments are managed and coordinated with NYSDOT Finance and OSC and this unit assists Finance with arrearage resolutions.

The NYSDOT Sign Control Unit, under the Federal Highway Beautification Act, controls the placement of outdoor advertising signs and devices along the Interstate and Federal-aid primary systems. Advertising signs, including variable messaging signs, are required to be permitted and conform to standards. Citizens and businesses request sign permits for advertising purposes and must provide information about each permitted sign. There is also a Directional Sign Program and Tourist-Oriented Directional Sign Program for motorist information signs within NYSDOT right-of-way. The unit generates permit paperwork that the requestor must submit for review/approval along with supporting documentation and final, approved permit agreements. Initial payments are managed and coordinated with NYSDOT Finance and this unit assists Finance with arrearage resolutions. A regional inventory must be performed each year to identify unregistered signs and verify permitted signs.

Administration

The Administrative Unit facilitates and maintains the Regional Office of Right of Way’s files, maps, records, staffing requirements, and office operational expenditures.
1.4 Background: Current SESAME System Description
NYSDOT’s current Sesame application is described below. The SESEME system will be replaced by the selected solution resulting from this RFP. NYSDOT requires that the current data be retained forever, be searchable and reportable.

1. NYS DOT Regional (01-11) and Main Office users connect to the Sesame application using a thick client executable.
2. Based on Lat/Lon coordinates stored in the Sesame data, users can view specific locations by clicking on a link that opens the location in a Google Maps browser instance on the client machines.
3. The Sesame application resides on a Windows 2008 application server.
4. Shared document and image files are stored on a shared network file server; there is limited ability to retrieve some documents from within the Sesame application.
5. The Numetric Summit tool resides on a FedRamp certified cloud instance where data cleansing for the legacy Sesame data is being performed.
6. The Sesame application has the capability to initiate Crystal Reports to query Capital Project data from the PSS data warehouse.

The following table provides additional information describing the current SESAME system. Additional background can be found in Attachment 20 Use Cases.

<table>
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<tr>
<th>Entity/System</th>
<th>Programming Technology</th>
<th>Data Storage</th>
<th>Entity Explanation/Purpose of System</th>
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4
Sesame is New York State Department of Transportation’s Statewide Office of Right of Way Application. The mission of the Office of Right of Way is to acquire real estate in a timely manner for transportation purposes and to manage or dispose of transportation property on terms beneficial to the people of the state of New York. Sesame runs on NYSDOT Windows application server, and was developed using C Basic. It requires Client software installation (Thick Client) at the user’s desktop and communication is through a Client-Server standard TCP Connection. There are multiple database files used to store the data. A limited number of documents stored on the shared network file storage drive are accessible through the Sesame interface; most users access to these files by navigating to the documents directly using Windows Explorer. The hardware components are installed and located at CNSE Datacenter. Sesame data is stored in multiple proprietary database files; the data format is not relational. Internal users are granted access at varying levels depending on their responsibilities to one or more of these databases. The data is not relational and is not conformed programmatically, necessitating an interim solution to stage data for migration to a new ROW application.

The Numetric Summit tool is currently connected to the Sesame application server. Data is in the process of being extracted from Sesame data files and staged in a cloud-based Oracle instance. Data extract reporting is made available to Sesame users engaged in data cleansing efforts for review. As this effort progresses, users are correcting and conforming data within Sesame. The extract will be performed periodically to check the progress of the cleansing efforts. In addition, business rules for the Summit tool extract process are being built to migrate cleansed data into a relational format for migration to a new solution.

The PSS data warehouse contains data extracted from the Project Planning application on a nightly basis. This information is available to multiple NYS DOT applications, containing data about the Capital Project program such as Project Names, Descriptions, Schedules, etc. Users currently may view this information by clicking a button from one or two screens within the Sesame application. The capability to generate a report constructed using the Crystal Reports application sourced from this data store is integrated with Sesame to a limited extent.

1.5 Background: List of Terms and Acronyms

**Abstract Request Map (ARM):** A drawing that represents multiple proposed properties that may need to be acquired as part of a right of way acquisition project.

**AC 340:** State of New York standard Contract Encumbrance Request used to authorize payments to Claimants, Vendors, and Consultants.

**Acquisition Map:** A drawing that represents one or more properties that must be acquired as part of a right of way acquisition project.

**Administrative Settlement:** An administrative settlement is any settlement made or authorized to be made by the responsible acquiring official, which is in excess of the agencies approved value.
**Agreement of Adjustment**: This type of agreement settles the acquisition, plus applicable interest, with the right to file a Claim in the NYS Court of Claims waived.

**Agreement (Advanced Payment)**: This type of agreement allows the Claimant to collect the offered amount plus interest and provides the Claimant to negotiate for additional compensation if warranted and justified. If the Claimant does not agree to the acquisition following negotiation, they may choose to file a Claim in the NYS Court of Claims for up to three years following the vesting of the property.

**Airspace Occupant**: Any person, business, farm, religious, not-for-profit organization, quasi-governmental or governmental agency occupying space located above, at, or below the highway's established grade line which is within the approved right of way.

**Approaches to Valuation**: Supporting justification for valuations presented in Appraisal Reports: Sales Comparison, Income, or Cost

**Appropriation Map**: An acquisition map which, upon its filing in the Office of the Clerk for the county in which the property is situated, vests title in the People of the State of New York.

**Backlog**: Unsettled owner claims to be adjudicated by the NYS Court of Claims. Also refers to any unpaid Claims remaining past one year beyond the Letting Date of the associated Capital Project.

**CEVMS**: Commercial Electronic Variable Message Sign

**Claimant**: Any individual, business, or municipality that is eligible for compensation due to their ownership interest in properties that are acquired by NYS DOT.

**CNSE**: College of Nanoscale, Science and Engineering; NYS’ Primary Data Center which hosts applications and data for all NYS Agencies.

**Contract**: Agreements to obtain consultant appraisal services from $15,001 to $50,000; require public bidding and advertisement in the State's Contract Reporter

**Conveyance Map ("C-map")**: A map depicting and describing the real property interest conveyed by the Department. The "C" map should include reference as to how and when the Department acquired its interest.

**COTS**: Commercial off-the-shelf; general reference to products available in the marketplace which require minimal configuration and/or customization for implementation and use.

**CWOFP**: Closed Without Further Payment

**CWOP**: Closed Without Payment

**Damages**: Monetary compensation paid to owners of property interest(s) in the execution of property interest takes relating to Federal and State Eminent Domain Law.

**DBE/MWBE**: Disadvantaged Business Enterprise, Minority and Women-Owned Business Enterprise; receive procurement preferences when doing business with NYS.

**D#**: Contract number used by NYSDOT to advertise/let Capital Project work that will be performed by contractors.

**DDR**: Draft Design Report - initial report detailing alternatives for the design.

**Directional Sign Program**: Manages the permitting for Tourist-Oriented Directional and Logo signs located in the NYS ROW along state roads and highways.
DOL: Department of Law

EDPL 701: NYS Eminent Domain Public Law §701 supports reimbursement for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees actually incurred, when the awarded value of a Claim is substantially higher than the value offered for the property taken.

Esri ArcGIS: New York State’s GIS platform which provides capability to share and discover geographic information, create and manage state geographic assets, visualize and analyze geospatial information, and collaborate geographic data in real-time.

FDR: Final Design Report - approved Design for Project execution; this report is required before any outreach to current occupants regarding relocation is made.

Fee Interest: Owner interest having complete control rights to a parcel of property

Fee Proposal: The solicited submission for bids to supply Appraisal Report(s) for OROW activities.

FHWA: Federal Highway Administration

FIN 400: State of New York Standard Voucher used to report receipt of monies for sales and fees to Agency Finance groups.

FOIL: New York State’s “Freedom of Information Law”

FPN: Federal Project Number assigned to Federally funded projects

GIS: Geographic Information System

IPP: Initial Project Proposal

IT: Information Technology

ITS: The New York State Office of Information Technology Services

LOGO Sign Structures: Display specific business services; found at highway exits; multiple LOGOs may appear per sign and each LOGO must be permitted. Specific Service signs, intended for rural areas and are not available in urbanized areas, including Long Island, New York City and other large cities. These signs provide directional information to the traveling public along Interstate Highways and Limited-Access Primary Highways covering specific services. These services are gas, food, lodging, camping, and attractions. Attraction signing is permitted in some urban areas, including Long Island.

LRH: Last Resort Housing costs represent payments made above normal reimbursement costs due to the inability to find exact replacement properties which results in harm to Relocatees.

Meaningful Contact: Communications between NYS DOT ROW staff and Claimants and/or their representative(s).


NYS Data Center: State-wide network headquarters for applications and databases used throughout NYS Agencies and organizations; located in the CNSE building on the SUNYA campus in Albany, NY.

NYSDOT: New York State Department of Transportation

NYS DTF: New York State Department of Tax and Finance
NYS AG or OAG: New York State Office of Attorney General
NYS OGS: New York State Office of General Services
NYS OSC: New York State Office of the State Comptroller
OA: Outdoor Advertising signs controlled under the Federal Highway Beautification Act of 1965
Open NY: NYS Open data site where government organizations may share their data with the public; https://data.ny.gov
OROW: Office of Right of Way
Permanent Easement (PE): a limited, specific use of real property and of indefinite duration
PIN: Unique Project Identification Number
Preferential Rights: Rights held by NYSDOT over Rail properties; Railroads are required to gain NYSDOT agreement before disposing of these properties to other parties.
Property Executive Review Group (PERG): DOT governance group; establishes criteria for decision-making on the sale or lease of property by the Department of Transportation, adopts rules and procedures consistent with governing the Group’s operations, and makes such rules and criteria available to the public.
Property Use: Current use of property - Vacant (Residential, Commercial, Agricultural, Industrial, or unidentified) or Improved (Residential, Commercial, Agricultural, or Industrial)
Protected, Personal, or Sensitive Information (PPSI): Any information where unauthorized access, disclosure, modification, destruction or disruption of access to or use of such information could severely impact the SE, its critical functions, its employees, its customers, third parties, or citizens of New York.
PS&E: Plans, Specifications, & Estimates
PSS/OPPM: NYS Project Planning applications used by the NYS DOT Project Management group to capture information about potential and executed projects. Project information is extracted from these applications and stored in a data warehouse for access by multiple applications across the NYS DOT.
Reference Marker: NYS DOT permanent designations for points along NYS Roadways.
Regional Office/Main Office: Regional offices contain NYSDOT staff located throughout the State performing distributed functions; the Main Office contain NYSDOT staff who perform centralized functions.
Report of Physical Inspection (RPI): Outcome of physical inspection of property to be acquired; includes: property description, occupants, water supply, water waste disposal, and property components.
ROW: Right of Way
RP-5217: NYS DTF Real Property Transfer Report/Sales Reporting required for all NYS Real Property Transfers/Sales
Section 18: Section 18 of the New York Transportation Law, ("Acquisition of Abandoned Railroad Transportation Property") is a relatively complex procedure by which the State and its
local instrumentalities have right of first refusal at acquiring certain abandoned railroad properties before such property is disposed of in some other fashion.

**Sesame Application:** The OROW software application used to capture information in support of the Office's activities.

**SFS:** The New York State’s State Financial System

**SGPIPA:** Smart Growth Public Infrastructure Policy Act - ensures all public infrastructure projects undergo a consistency evaluation and attestation.

**SH:** State Highway

**T Contract:** Agreements to obtain Consultant Services from $5,001 to $15,000; competitive proposals must be solicited from five Consultants

**TA #:** Term Assignment number assigned to a consultant for specific Appraisal services delivery

**Take Line:** The perimeter boundary of ROW properties to be acquired.

**Take Type:** The type of ownership interest in properties needed to support a project; includes: Fee Interest, Permanent Easement, Temporary Easement, and Temporary Occupancy.

**Taking Line Review meeting:** Meetings held with involve the OROW, the designer, the regional surveyor, and others as needed. At the meeting, the actual taking lines on the Abstract Map parcels are determined and the type of interest that is needed identified (Totality, Fee, TE, PE).

**Temporary Easement (TE):** A limited, specific use of real property for a defined time period

**Temporary Occupancy (TO):** Temporary Occupancy

**Temporary Reference Number (TRN):** A unique temporary reference number assigned by Project Engineers identifying property parcels on ARMs/Acquisition Maps; this number is used at DOT and at the DOL AG's Office to track the work that is done regarding Title Searches/Certifications.

**Title Search:** Performed typically by Consultants or AG Office staff to establish current ownership of properties to be acquired for a project; may be Simple Title Search - current owner (<10K), 20 Years Title Search - ownership interests covering the last 20 years (between $10k and $40k), Abstract Title Search - full recorded property history of ownership (>40k).

**Tourist-Oriented Directional ("TOD") Sign:** Intended for rural areas and not available in urbanized areas, including Long Island, New York City and other large cities. Provides tourist-oriented directional information to the traveling public to public places such as natural phenomena, historic, cultural, scientific, educational and religious sites, places for camping, lodging, eating and vehicle service and repair, as well as signs advertising services, activities, arts, crafts or products that are generally and commonly accepted to be of specific interest to the traveling public for the particular geographic region and which do not relate to nationally-advertised products, trade-marks or brand names. These signs are located within the State right of way and require a permit.

**TP-584:** NYS DTF Combined Real Estate Transfer Tax Return required for all NYS Real Property transfers

**Transfer Map (T-Map):** Map used to transfer the Department's jurisdiction over a parcel to another State agency or State authority.
Use and Occupancy Leases (U&O): Individuals and businesses may, on request, lease OROW properties for direct occupancy of the property or for private use.

USPAP: Uniform Standards of Professional Appraisals Practice - standards authorized by Congress as the minimal appraisal practices required to protect the public and to promote the public trust.

2 PROJECT AND CONTRACT OBJECTIVES

2.1 Project Objectives

NYSDOT’s Office of Right of Way, in conjunction with the NYS Office of Information Technology Services, is seeking a comprehensive COTS solution to replace the legacy Sesame system for the appraisal, acquisition, and management of property acquired for public projects fulfill capital projects. The new system shall:

1. Manage ROW acquisition, relocation, appraisal, offer, and purchase settlement requirements
2. Manage the disposition and use of NYSDOT ROW properties
3. Manage permitting for highway advertising and informational signs
4. Manage the processing of payments and revenue associated with ROW properties and highway signs
5. Support all existing NYSDOT OROW processes (see RFP Section 1.3)
6. Consultant Contract Management

NYSDOT desires a solution that has been implemented on a large scale in a state similar to New York in size and population. NYSDOT is interested in a solution that includes options for vendor support throughout all regions of the state. Support may be delivered by contractor employees or partner relationships with regional or local service providers. Also, virtual remote support will be considered. Both the primary contractor and any subcontractors must have the necessary training and corresponding vendor certification to adequately support the solution.

Successful implementation of an envisioned solution will not only support NYSDOT goals and departmental missions, but will seek to achieve the following business objectives:

1. Eliminate the use of obsolete office applications and tools.
2. Integrate Capital Project information with associated OROW projects.
3. Enable the use of NYS spatial information for OROW activities.
4. Eliminate wasteful, redundant data entry.
5. Increase efficiencies and security in producing and storing OROW forms and other images/documents.
6. Provide access to Consultants to enter and submit their work product into the system.
7. Enable support for citizens to request and manage their Use and Occupancy leases/Sign permits on-line.
8. Support an interface to enable the capture of information gathered in the field on mobile devices.
9. Implement a web-based system to allow users to submit and view information.

10. Standardize the OROW processes through minimal workflows enforced by business rules as customized by NYSDOT.

11. Reduce analysis time with additional data available in a centralized system.

12. Centralize reporting and monitoring abilities while maintaining regional monitoring and reporting capabilities.

13. Improve the ability to respond quickly and accurately to NYSDOT Management.

14. Eliminate the disparate data silos and associated data integrity issues between existing legacy systems.

15. Modernize antiquated systems with newer technologies to allow for future-looking web-based access and integration with mobile devices using a mobile application. The web application should be fully mobile-responsive.

16. Enterprise licensing that allows all users to freely access the system.

2.2 Contract Objectives

The Contract Objective for this solicitation is to select a responsive and responsible consultant (or team of consultants) via a fair and equitable Best Value Request for Proposal process. It is NYSDOT’s goal to achieve the SESAME replacement system objectives stated above within this RFP as soon as possible after the contract has been awarded.

CONTRACT TERM: The base term of this contract will be for three (3) contract years commencing from the contract start date, with two (2) optional 12-month contract term extensions, depending on performance, project need and funding availability.

COMPLEXITY: NYSDOT’s Right of Way and Real Estate IT System Services will be a mission critical application that will be used daily by many internal and external entities.

OWNERSHIP OF DATA SOURCES: All data provided to the Consultant for development of NYSDOT’s Right of Way and Real Estate IT System shall remain the property of NYSDOT (or other Project Stakeholders), and the Consultant will be prohibited from re-distributing the data, for any purpose, to any organization without the prior written approval of NYSDOT. All reports or data generated by the System shall be NYSDOT property.

CONSULTANT ARRANGEMENTS: The resulting contract shall be between NYSDOT and the selected Prime Consultant. The Prime Consultant shall be responsible for completion of all agreed-upon services. NYSDOT will only contract with one (1) responsive and responsible Prime Consultant, who will be the sole contact with regard to all provisions of delivering the System project under Contract #C037711. If the Consultant’s selected solution includes subconsultants, the Consultant under contract will be the Prime Consultant who must assume full responsibility for all aspects of the project, including performance and completion of all subconsultant work. All necessary communications will be directed from NYSDOT to the Prime Consultant (Project Manager). The Prime Consultant is responsible for offering qualified subconsultants with competitive rates/costs. NYSDOT seeks a total solution, and consultants are encouraged to partner to provide the required services and to meet the contract’s 30% combined MWBE participation goal and 6% DSVOB goal. Proposers must name a lead firm as the Prime Consultant that will serve as the legal contracting entity for the project period. If the proposal
includes products or services from any other participating vendors, it is understood that those vendors will serve as subconsultants to the Prime Consultant. **Joint ventures are not allowed.** For the purpose of evaluating proposals and developing the resulting agreement between NYSDOT and the Prime Consultant, all contributions to the project by the Prime Consultant and subconsultants, including skills, attributes, and products, will be considered as a total solution put forth by a single proposer.

MWBE GOAL: Meet or exceed the combined 30% MWBE participation goal over the life of the contract by the firm being awarded a contract via this RFP or receipt of acceptable good faith effort documentation should the goal not be met.

DSVOB GOAL: Meet or exceed the 6% percent Service Disabled Veteran-Owned Business Program participation goal over the life of the contract by the firm being awarded a contract via this RFP or receipt of acceptable good faith effort documentation should the goal not be met.

### 2.3 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence during late Summer 2018. The base term or duration for the contract is three years. The contract may be extended for up to two additional one-year periods upon written agreement of both parties and approval by the Office of the State Comptroller and FHWA.

Rates are to be offered for Year One only. If the contract is extended for the optional years, or if any Extra Work is to be added to the contract, or if any material changes must be made to the agreement’s scope schedule and budget after award, then the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%, whichever is lower, will be used as a basis for adjusting the proposed Year One fully-loaded hourly rates to calculate rates for Contract Years Two through Five, then applied as applicable. The rate adjustment will be effective on the Effective Start Date of the Contract or January 1st (which ever is in the State’s best interest) and calculated using the previous available final (usually September) Index, using Series ID PCU5413--5413--(Architectural, engineering, and related services [http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable](http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable)). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

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

| QAT-2 Auditor 1/1/12 - 12/31/12 Billing Rate | $9.00/Hour |
| October 2012 PPI Index (PCU5413--5413--) | 132.1 |
| October 2011 PPI Index (PCU5413--5413--) | 130.0 |
| Index Point Change | 2.1 |
| Divided by previous Index | 130.0 |
| Percent change, rounded to nearest tenth | 1.6% |
| QAT-2 Auditor 1/1/13 – 12/31/13 Billing Rate ($9 x 1.016) | $9.14/Hour |

If the actual start of the contract is substantially different than the contract’s effective start date, then the effective date for the rate adjustment will be identified and agreed-upon by both parties.

The State reserves the right to request zero percent rate increases for the two additional two-year
extensions, depending upon current market conditions.

3 SCOPE OF SERVICES

3.1 Future State OROW System Context Diagrams

This section provides a high-level description of what NYSDOT envisions a possible ROW system (or business model) depicting user and system interfaces to satisfy ROW business goals. Figure 1 presents required Right of Way and Real Estate IT System stakeholders - those who are expected either to interface directly with a future NYSDOT ROW/Real Estate IT System or those who will share information with the System.

Figure 1 Required ROW/RE IT System Stakeholders

The following context diagram identifies the planned interfaces to and from the proposed future NYSDOT ROW/Real Estate Management IT System are shown in Figure 2. A high-level functional diagram envisions the future state of the OROW System. Figure 2 presents high-level functional requirements of the envisioned NYSDOT ROW/Real Estate IT System. It is important to note that as technologies evolve, other integrations with other data sources and applications are expected to be supported by the System. More detailed descriptions of the required entities and systems in which the ROW System shall interface with, as well as how, are contained in Attachment 1A, Interface Requirements. Proposers will find this diagram and accompanying descriptions of the entities and systems in which the ROW and Real Estate IT System will need to interface with in Attachment 1A.
Figure 2 Required Solution Integrations

3.2 General Requirements

Through this procurement, NYSDOT seeks to acquire an industry leading Right of Way and Real Estate IT System solution with Consultant support. The successful Consultant must have an organization capable of supporting this System throughout the term of the Contract. The State’s intent is to make use of the standard functionality within a COTS software solution to the maximum degree possible.

The proposed Right of Way and Real Estate IT System solution must fit into the overall infrastructure and architecture requirements of NYS IT systems defined in this RFP (see Attachment 3A) deployed at New York State’s Data Center, and provide a scalable design to allow for future growth. Each proposer needs to present a succinct description regarding how each of Attachment 3A’s requirement shall be met or acceptably substituted.

Under the resulting contract, the selected Consultant must provide the following services/functions, as applicable:

1. Project Planning
2. Project Management, Execution and Control
3. MWBE & SDVOB Participation Management Plan
5. Detailed Requirements Definition
7. System Construction: Configuration/Programming/Development/Integration/Data Migration

8. System Testing and Acceptance Test Planning

9. Product Implementation and Deployment

10. Communications

11. Change Management

12. Training and Knowledge Transfer

13. Post Implementation Warranty, Maintenance and Support

3.3 NYSDOT/ITS Technical Environments

The NYSDOT technical environment is managed by the Office of Information Technology Services (ITS) at the NYS Data Center, College of Nanoscale, Science and Engineering (CNSE) building located in the NYS University Campus in Albany. The computer hardware and databases used in support of the Right of Way/Real Estate IT System shall be configured to support multiple processing environments that are logically separated by Stealth COIs (Community of Interest), and in some cases, physically, separated. The logical separation is required for security as the NYS Data Center is a shared services environment, and multiple tiers are required to prevent ongoing development and testing activities from conflicting with one another, or with the production system, and allows the controlled implementation of new functionality and software patches. The NYSDOT/ITS technical environment consists of four logical and physical tiers: Development, Test, Quality Assurance (Staging), and Production.

3.3.1 NYSDOT/ITS Technical Environment Access Rules

Applications that require configuration and/or customization shall be installed, customized, and tested in the Development Tier. The selected Consultant shall develop and provide fully tested installation and data-migration scripts (Release Packages) to move applications and data to the Test, Quality Assurance, and Production Tiers.

Applications that do not require configuration and/or customization can be installed in the Test Tier. The selected Consultant shall develop fully tested installation and data migration scripts (Release Packages) to move applications and data to the Quality Assurance and Production Tiers.

3.3.2 Installation (Release) Packages

NYSDOT/ITS employs the Information Technology Infrastructure Library (ITIL) framework using ServiceNow as the tool. NYSDOT/ITS requires generic, repeatable installation packages or scripts (Release Packages) which contain all necessary application, data-migration scripts that can be run with little or no modification on any web, application server or database instance. The migration of Release Packages through the tiers will be managed via the RT DOT Release and Deployment process (as described in Attachment 19) and procedures established in the ServiceNow module. Neither developers nor vendors are granted permission or access to tiers other than Development.
3.4 Functional Requirements
NYSDOT envisions that the delivered **Right of Way and Real Estate IT System** solution will be highly configurable (i.e., can be adapted to meet changing business needs with minimal custom changes to the underlying software programming code) so that NYSDOT staff can create or configure System forms, workflows, business processes, business rules, and reports without impacting the underlying software code. The System will enable the replacement of current obsolete systems and shall provide functionality per Attachment 1.

3.5 Project and Technical Requirements
The proposed solution must employ proven hardware and software technology via an appropriately experienced Consultant providing software and services which meet all RFP objectives and requirements, meet all data and system security requirements, meets defined performance standards, is supportable for the term of resulting Contract #C037711, and is cost effective to procure, maintain and operate. The proposed solution must address the following areas:

- NYS Standards
- System Interfaces
- System Administration
- System Security
- Storage Archival and Retrieval
- System Performance
- Database Requirements
- GIS

The proposed solution must use the supported enterprise shared service platforms and components as defined in Attachment 3A. ITS Enterprise Technologies are available for the selected Consultant to build and configure a solution that meets business requirements defined by the New York State customer agency (e.g., NYSDOT). Using NYS ITS Enterprise shared services and components for on premise solutions is the preferred architecture, however, other products may be proposed based on potential integration advantages and/or alignment with the ITS Enterprise strategic direction and with approval by the New York State Chief Technology Officer.

All builds and configurations must comply with NYS Information Technology Policies, Standards, and Best Practice Guidelines. These guidelines can be found on the ITS website at [https://www.its.ny.gov/tables/technologypolicyindex](https://www.its.ny.gov/tables/technologypolicyindex).

3.6 NYSDOT Responsibilities
NYSDOT will appoint a Project Manager who will serve as the single point of contact for the Consultant. The NYSDOT Project manager will lead and coordinate the effort for NYSDOT and manage the Consultant’s service delivery to NYSDOT. The NYSDOT Project Manager will be solely responsible for decisions related to the acceptance and approval of all deliverables provided by the Consultant and for ensuring required NYSDOT resources are available when
called for in the Project Plan. NYSDOT will attempt to make its resources available in a timely manner, which is subject to changing priorities.

The New York State Office of Information Technology Services (ITS) will also appoint its own Project Manager, who will oversee all IT aspects regarding delivery of the Right of Way and Real Estate IT System solution. Once the System has been accepted and is in implementation, ITS will also be responsible for day-to-day IT operations of the System.

The ITS mission is to establish the strategic technology direction for the State of New York, through innovative information technology (IT) solutions and services, to enable New York State government to improve the lives of citizens, foster economic development, and welcome visitors to New York State.

In the fall of 2012, ITS was created to consolidate IT service delivery to New York State agencies; creating a single agency of more than 4,000 professionals to handle the delivery of the full range of IT services for NYS executive agencies. With this landmark IT Transformation initiative, the State hopes to achieve enhanced IT capabilities to improve government services and enable it to build an IT environment that: maximizes existing resource; meets agency business needs with world class-customer services; creates a talented, innovative IT workforce; increases accountability; and provides cost savings for the State. As part of the State’s IT Transformation process, IT customer agencies are grouped into clusters. A cluster is a grouping of agencies that have similar challenges, customers, data, business processes, and common IT needs. NYSDOT is part of the Revenue and Transportation Cluster.

3.7 Consultant Responsibilities

While under Contract #C037711, the selected Consultant shall be responsible for providing a total Right of Way and Real Estate IT System solution that meets the objectives and requirements as stated in this RFP. The selected Consultant shall provide the requested services to produce all of the contractually-required deliverables (and meet the requirements) specified in the RFP and all its referenced attachments to deliver a total Right of Way and Real Estate IT System solution. The Consultant shall perform all activities and tasks required to achieve the objectives, functions, and outputs in a manner that meets all project and contract objectives and performance criteria.

All proposed systems and services provided under the resulting contract shall be consistent with State and Federal laws and regulations and shall be appropriate and acceptable to NYSDOT’s management.

Each interested Consultant must become familiar with all RFP’s requirements. The main body of the RFP as well as its attachments provide details on specific requirements, consultant requirements and responsibilities, and other critical information needed for Consultants to submit responsive proposals to this RFP. Consultants are solely responsible for meeting all the requirements in this RFP prior to proposal submission. The asking of written questions before the deadline for submitting proposals is encouraged.

Submission of a proposal is an affirmation by the Consultant that its organization complies with all requirements and specifications set forth in this RFP and that its organization can deliver the Right of Way and Real Estate IT System and performing the services required in a manner consistent with the requirements and terms of this RFP and under the resulting contract.
To ensure production viability and a smooth transition of a new **Right of Way and Real Estate IT System** to the NYSDOT production environment and system use, the Consultant will commit fully qualified professional resources to all phases of the project. NYSDOT reserves the right to approve the replacement of key personnel (project leadership; who may have responsibility with the project) as well as all proposed Consultant personnel. The Consultant is required to adhere to the New York State Project Management Guidebook Release 2 for its project management methodology. The New York State Project Management Guidebook Release 2 can be obtained from: http://www.cio.ny.gov/pmmp/guidebook2/index.htm

The Consultant is required to assign a single Project Manager to the project. The Consultant’s Project Manager will act as the single point of contact with NYSDOT and will have full authority over all vendor resources assigned to the project. On-site attendance by the Project Manager and key personnel is required when called for by the Consultant’s project plan. Off-site participation is allowed as long as service delivery is not impaired.

In its performance of the project, the selected Consultant shall be responsible for complying with New York State Enterprise Information Security Office (EISO). In addition, the work of the selected Consultant must be compliant with the following:

1. NYS ITS Policies: https://its.ny.gov/tables/technologypolicyindex

During the life of the project, NYSDOT management will review deliverables and evaluate them for completeness, clarity, adherence to generally recognized standards, and compliance with NYSDOT’s intent as conveyed in this RFP and contained in the resulting contract. A deliverable, phase, or milestone will not be considered complete until sign-off has been given by NYSDOT. NYSDOT will only render payment for services and deliverables it accepts.

NYSDOT will contract with a single Prime Consultant to provide a total **Right of Way and Real Estate IT System** solution that will provide the required functionality and workflow process capabilities as detailed in this RFP. The System will be located at the NYSDOT Main Office (50 Wolf Road, Albany NY) and at NYS Data Center. The Consultant shall recommend an approach to the design, development, configuration, implementation, and/or maintenance of the System to ensure that a comprehensive and expandable System is implemented and fully controlled to account for full cost of the proposed total solution. The exact approach, solution and methodologies proposed to fulfill the RFP’s requirements should be presented via completed RFP Attachments 1 through 7. The proposer must address the categories of requested services in their project plan but can organize and plan for the accomplishment of the work based on their experience and expertise with projects of similar scale and scope. The complete System requirements, which identify the required functionality, are provided in Attachment 1.

The proposer should recommend an implementation approach for delivering the **Right of Way and Real Estate IT System** solution based on their best practices, expertise and experience and should fully describe that approach within the Technical Proposal. The proposer must respond to all functional requirements defined in Attachment 1, regardless of the proposed approach. However, NYSDOT is granting consultants flexibility regarding how to respond to the RFP’s
many requirements, as grouping is allowed to give vendors flexibility to offer a solution which could be beneficial to both parties.

The selected Consultant shall be responsible for delivering all Systems functional requirements specified in Attachment 1 via the approach detailed in the RFP’s attachments. Questions (prior to the submission of proposals) seeking clarification regarding these requirements are encouraged.

3.8 Deliverable Submittal, Review and Acceptance Process

The selected Consultant and NYSDOT will follow the following deliverable submittal, review and acceptance process for all deliverables except for software.

Submittal Process: The Consultant shall submit the deliverable to the assigned NYSDOT Project Manager(s) (PMs). An electronic copy is preferred.

Review Process

1. The PM(s) consults with Program Area to develop lists of reviewers and approvers.
2. Electronic copies of the deliverable are distributed to reviewers and approvers.
3. The Consultant will schedule a meeting with designated reviewers and approvers to provide a high-level walkthrough of the document to facilitate review.
4. The PM will schedule a review meeting with reviewers and approvers. They are notified of the importance of reviewing the deliverable and that it is essential for them to have read and developed comments before the meeting.
5. The Review Meeting will be held. At the meeting, the document is reviewed page-by-page. Minor in-line changes will be made using Word’s ‘Track Changes’ feature. Comments will be inserted into the document where appropriate. The originator of each comment will be noted. (This will be done on a Pilot basis. The effectiveness of the process will be evaluated and a decision made regarding process refinement.)
6. NYSDOT will make every reasonable effort to provide the review comments to the Consultant within 10 business days from submittal. It should be noted that all submittals not received before noon will be considered to have been submitted the following day.
7. It is expected that NYSDOT will receive the revised documents addressing all comments within 5 business days of the return of the original submittal to the Consultant.
8. NYSDOT will review the revised submittal and return comments to the Consultant within 5 business days. No new comments will be made unless either the original comments have not been adequately addressed or modifications made in response to the original comments have raised new issues or concerns.
9. The Consultant will address all comments and resubmit within 3 business days.
10. NYSDOT will complete the “Final Review” within 2 business days. If there are outstanding issues that remain, NYSDOT and the Consultant will immediately escalate them to the Sponsors and, if necessary, the Steering Committee for resolution.

Acceptance Process
1. When the deliverable has been accepted, the Consultant will be so notified and they will submit an invoice via email to NYSDOT Project Manager(s). Signed invoice to follow in regular mail.

2. NYSDOT Project Manager(s) will forward the invoice to designated NYSDOT payment person along with a statement indicating that the deliverable fulfills contract requirements and has been accepted.

3. Designated NYSDOT payment person will then forward the invoice to Accounting for payment.

4. For all proposed software-related deliverables, Attachment 5 System Testing and Acceptance requirements will govern the Acceptance Process.

4 PROPOSAL FORMAT AND CONTENTS

4.1 General

For the purposes of evaluation, each proposal must be submitted in two parts, bound separately. The first part shall consist of the Technical and Management Proposal, and the second part is the Cost and Administrative Proposal. Each part of the proposal must be complete in order that the evaluation of both parts can be accomplished independently and concurrently. The Technical proposal shall be evaluated strictly on the basis of its merits. Cost information is not to be included in your technical proposal. Technical and Management information is not to be included in your cost proposal.

Web links are only allowed if sufficient information is provided to specifically access the referenced information. General or non-specific web links are not acceptable.

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law, if properly designated by an offeror. If an offerer believes information included in their proposal is confidential and proprietary, the proposer shall identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter. Labeling each page of your proposal as confidential is not acceptable.

4.2 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:

1. 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.
2. A copy of this opinion must be on file in the consultant’s office and available for review by NYSDOT if requested.

3. 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.

4.3 Proposal Submission

Your proposal must be received by NYSDOT in Contract Management Bureau’s 50 Wolf Road, 6th floor, Albany, New York 12232 address by 2:00 PM on April 17, 2018. Access to the building requires clearance through First Floor Security. NYSDOT is not responsible for late proposals due to shipping delays. However, should your proposal be on its way with a possible delay in its physical delivery, please as soon as practicable contact the designated RFP contact person.

4.4 Proposal Formatting

Questions regarding proposal formatting are encouraged. Please ensure the following proposal formatting rules are followed:

1. Proposals shall be submitted in three-ring binders. Do not submit proposals bound in any other way (e.g., stapled, spiral- or cloth-bound are not permitted).

2. Clearly label any attachment with the proposer’s name on a cover sheet that is firmly attached to the document. Also add the RFP name and contract number.

3. Clearly label any unattached documents with the proposer’s name on the cover page of the document. Also add the RFP name and contract number. It is preferred that that each response section be separated by a labeled tab page.

4. Electronic or fax submission of proposals is not allowed

5. Proposals must be printed on standard 8½ by 11-inch white paper. Pages can be printed double-sided. Color printing is allowed. Larger sized 11 by 17-inch ‘fold-outs’ are permitted (provided the binding does not prevent folding out).

6. Proposals must be organized in accordance with the format set forth in the RFP document (Tables 1 and 2, which NYSDOT shall use to pre-screen proposals for completeness and initial RFP responsiveness).

7. Proposal text should be 11-point font or larger, except where necessitated for readability of tables, figures, schedules, or special graphics. Twelve (12) point font is preferred. Please avoid printing schedules using fonts smaller than 8 point.

8. Proposals must be self-contained and not reference web-links. If it is necessary to include web links, it is a response requirement that specific directions be provided regarding how to navigate within the website to access the referenced information. Failure to do this may result in a lowered technical score.

9. Illustrations that support the text must be simple and direct and be either sized to fit on 8½ by 11-inch paper or printed on 11 by 17-inch paper as long as the pages are folded to the 8½ by 11-inch size, and can be folded out from the bound spine of the document. Color illustrations and photographs must be reproducible in black and white without obscuring their distinctive information.

4.5 Technical Proposal Submission

Your technical proposal should follow the format listed below.
Table 1 - Technical and Management Submittal

- Seven (7) Printed and bound complete hardcopies plus one complete PDF copy plus all constituent components in native MS Office 2007 compatible formats
- Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and a label saying: RFP #C037711 ‘Right of Way and Real Estate IT System’ Technical and Management Proposal
- Signed Cover Letter: Include the name, address and phone number of the proposer, and the names, titles, address, emails, and telephone number of person(s) with authority to negotiate the resulting contract. Identify those who prepared the response as well as those persons who may be contacted during the procurement process. Must be on official company letter head. Identify specific confidential and proprietary information. Two-page limit.
- Table of Contents: Identify the page numbers of all sections. Each section shall be divided or separated by labeled raised tabs. Submittal of documents external to your technical proposal are allowed (ie, work samples) and such shall be references in your table of contents
- Complete and submit Attachment 1 Functional Requirements
- Complete and submit Attachment 1A Interface Requirements
- Complete and submit Attachment 2 Firm Experience
- Complete and submit Attachment 3 Project Plan & Staffing
- Complete and submit Attachment 3A NYS Office of Information Technology Services Technology Service Standards Overview
- Complete and submit Attachment 4 Data Conversion
- Complete and submit Attachment 5 System Testing and Acceptance
- Complete and submit Attachment 6 Support and Maintenance

4.6 Cost and Administrative Proposal Submittal

Your cost proposal should follow the format listed below:

Table 2 – Cost and Administrative Proposal Submittal

- Two (2) Printed and bound complete hardcopies plus one complete electronic PDF copy plus each cost proposal section in native MS Excel 2007 compatible formats
- Securely sealed and clearly labeled with the words: RFP #C037711 ‘Right of Way and Real Estate IT System’ Cost and Administrative Proposal

Cost Proposal:
- Complete and submit Attachment 7 Cost Proposal

Administrative Section:
- Complete and submit the Attachment 8: Procurement Lobbying Law Compliance Forms
- Complete and submit Attachment 9: Consultant Information and Certifications (sign both Sections II and III): PRIME CONSULTANT ONLY
- Complete and submit Section I of Attachment 9: Consultant Information and Certifications for EACH SUBCONSULTANT
- Complete and submit Attachment 10: Diversity Practices Questionnaire
- Complete and submit Attachment 11: MWBE Participation Information Form
4.6.1 Cost Proposal Submittal

NYSDOT requires that cost information be presented using the Microsoft Excel spreadsheet included in RFP Attachment 7 Cost Proposal. (Proposers must provide both a hard copy for recordation purposes and an electronic copy of each of the worksheets within this spreadsheet as part of their response. PDF is not acceptable.). The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the proposer. 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.

The proposer shall include the cost for all software, third-party products, labor/services, and/or data needed to support its proposed design for a complete Right of Way and Real Estate IT System solution. Necessary hardware is to be recommended (do not submit hardware costs). These recommendations must comply with all requirements and specifications described in this RFP. The State reserves the right to purchase hardware, software, third-party products, services, or data specified by the vendor from established State purchasing contracts if it is deemed to be in the best financial interest of the State. The State reserves the right to add any software, hardware, third-party products and/or data costs associated with a firm’s Technical Proposal recommendation to a firm’s cost offer which are required to support its proposed design and implement its solution but are not included in a proposer’s Cost Proposal cost submission. NYSDOT shall notify any proposer in writing should additional costs be added to their Cost proposal.

Your Cost Proposal shall:

1. Include an explanation of the pricing structure and assumptions used in determining costs. The assumptions and the cost basis of estimate must be included in the Cost Proposal, as indicated in Attachment 7

2. Include an explanation of the pricing structure and the assumptions used in determining its costs, as well as how those assumptions relate to the project staffing plan and schedule. Rates are required for the titles or consultant-proposed like titles.

3. Submit all costs using the instructions and forms provided in Attachment 7. Costs must be specified for all services.

4. Affirm that the proposed cost for all System development and support services (as set forth in Attachment 7) will remain fixed.
5. Provide the number of labor hours per labor category that form the basis for its proposed cost for System development and support.

When completing Attachment 7’s spreadsheet, proposers must follow the following instructions:

1. Calculate and enter the Year One fully-loaded, not-too-exceed billing rates for each job title identified in the RFP. Additional subcategories are allowed (i.e., BA I, BA II, BA III, etc., with rates commensurate with higher levels of experience and expertise [add rows as required]). Rates must be fully loaded (i.e., all inclusive of all direct and indirect costs, including but not limited to direct salary costs, overhead, fees, travel, and profit margins).

2. Rates for contract year 2 through 5 rates are not to be proposed. Rates for years 2 through 5 of the contract may be adjusted per Article 6.3 Specific Hourly Rates of the draft Contract (Attachment 17).

3. If the Offeror has additional labor category (roles) proposed for their solution, they should add rows to the bottom of the table in this worksheet along with a detailed description of the labor category (roles). Again, additional subcategories are allowed (i.e., BA I, BA II, BA III, etc., with rates commensurate with higher levels of experience and expertise [add rows as required]).

4. All proposed Rates for each Labor Category/Subcategory shall remain fixed for each contract year. A contract year shall be defined during contract negotiations with the selected Consultant.

5. Proposed hourly rates shall be used for the development of the detailed cost for Contingency Services work orders (or for project change requests). For proposal evaluation purposes only, one not-to-exceed rate shall be presented for each role (this rule assumes per person per role. Requirements for actual Contingency Service work delivery may require more than one person by title (actual rates can be equal to or lower than the contract’s not-to-exceed rate).

Additional Attachment 7’s spreadsheet completion instructions are as follows:

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:

   a. All direct and indirect costs must be itemized, as well as all overhead, fees, and profit, including but not limited to:

      i. Labor, parts, shipping, material and equipment cost
      ii. Software license costs, including software escrow costs
      iii. Maintenance services as specified herein
      iv. Administrative, reporting, or other requirements, overhead costs, and profit
      v. Travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc. for all contract services. Reasonable reimbursement for all travel and travel-related expenses shall be limited to current NYSDOT allowances. (Travel necessary to deliver proposed scope of service items must be clearly described in the Technical proposal.)
      vi. Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.
2. If a proposer indicates compliance with a requirement in Attachment 1 as well as all proposed scope of service items detailed in Attachments 2 through 6, the costs related to that requirement must be included and explained in the Cost Proposal.

3. 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 Attachment 7 must be completed in order for the response to be considered complete.

5. Proposer should not make entries in colored cells in Attachment 7’s Excel spreadsheets.

6. Changes should not be made to the spreadsheet format or formulas, but the proposer may attach additional worksheets or pages to explain and detail its pricing (including any assumptions).

The Cost Proposal shall be presented as one total fixed cost, with a separate Year One rate table, and shall include, at a minimum, detailed information defining and explaining the elements and metrics of the Cost Proposal by phase/activity or by task/subtask and by labor. Additionally, proposers should provide their standard pricing information (product licenses, daily rates, overhead, fees, etc.). NYSDOT may request a “Best and Final Offer” from any or all proposers during the final stages of proposal evaluation, after conclusion of Technical Presentations.

Method of Payment:

Method of payment will depend upon the agreed-upon payment schedule in the contract (unless changed by an executed supplemental agreement), which is a direct reflection of the RFP’s project requirements and the selected Consultant’s proposal. Payment will be based on the acceptance of completed deliverables per the contract’s compensation schedule to deliver the contract’s Scope of Services. A proposed payment schedule shall be offered and included in your proposal via completed Attachment 7. Any Extra Work (added to the contract after its original approval) shall be paid for via: 1) lump-sim milestone payment schedule; or 2) agreed-upon scope of service task budgets arrived at via the rates proposed in Attachment 7 with reasonable reimbursement for agreed-upon out-of-pocket expenses (subject to New York State reimbursement limitations); or 3) a combination of 1) and 2). License fees shall be paid via: 1) a down payment percentage after successful initial installation of all proposed COTS software (usually 40%); and 2) the remaining balance percentage after testing has been successfully completed and NYSDOT has formally accepted the system (installation, testing and acceptance of any additional software for meeting the RFP’s contingencies may add some complications to this schedule). The selected Consultant shall designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Contract. The cost for any Extra Work services shall be negotiated and agreed upon by both parties using the Agreement’s fixed labor rates and added to the agreement via formal supplemental agreement.

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: Electronic submission of an advance draft billing to NYSDOT’s assigned Project Manager is recommended. NYSDOT has provided electronic billing information which is available via: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become
due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS FIN 421 payment request forms.

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

4.6.2 Administrative Proposal Section Submittal Requirements

ATTACHMENT 8. Complete and submit Attachment 8 Procurement Lobbying Law Compliance Forms. Filing the two required forms is mandatory for all consultants in order to be considered for contract award. Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award. Please call or e-mail the individuals identified as the Designated Contacts of this RFP if you have any questions regarding how to complete this required form. For additional information, please see Attachment 8.

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 RFP’s designated contact person. 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.

ATTACHMENT 9. The Prime Consultant must complete all sections and submit Attachment 9 Consultant Information and Certifications. All signatures on each copy must be an original.

Acceptance of Agreement Terms and Conditions: Offerors shall include as Attachment 9 to this RFP, to indicate their acceptance of all terms and conditions contained in the draft Agreement (Attachment 17). Attachment 9 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 365 days, a statement that the firm accepts the RFP’s Scope of Services ‘as-is’, and a statement that, if awarded the contract, the offeror will comply with all requirements of the RFP, including all of its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. No exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive.

In addition, complete and submit Section I of Attachment 9 for each proposed subconsultant.

ATTACHMENT 10. Complete and submit Attachment 10. It is required that all firms report diversity practices information by completing the RFP’s Diversity Practices Questionnaire. NYSDOT evaluates the diversity practices of primes to ensure that certified minority and women-owned businesses are given the opportunity for maximum participation in state contracts. Diversity practices are a legal requirement and may include past, present or future actions and policies which show interaction in developing M/WBE firms. Interested proposers should complete Attachment 10 Diversity Practices Questionnaire which will be evaluated during the procurement process.
ATTACHMENT 11 and ATTACHMENT 11A. Complete and submit Attachment 11 MWBE Participation Form. Provide the legal names of all certified MBE and WBE consultants (prime and/or subconsultant).

While not indicative of a proposer’s individual merit (technical excellence, proposer’s ability, experience, etc.), NYSDOT encourages the participation of certified Minority Business Enterprises (MBE) and certified Women-owned Business Enterprises (WBE) in its solicitations. The level of MWBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. Please visit the Empire State Development’s MWBE Directory to identify and reach out to certified MBEs and WBEs via: https://nysucp.newnycontracts.com/.

For this specific procurement, NYSDOT has established a **combined 30% MWBE participation goal** for Contract #C037711. Meaningful participation by qualified subconsultants **who are certified** as a MBE and/or a WBE (prior to the receipt of proposal) count toward the combined 30 percent goal. Any combination of MBE and WBE participation is allowed (thus the intent behind a ‘combined goal’).

Meaningful participation is defined as providing commercially useful functions or services. These services should:

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

Interested proposers should verify their attainment of the above established MWBE participation goal by completing Attachment 11 MWBE Participation Information. To count towards the contract’s 30% combined MWBE goal, a firm offering MBE and/or WBE participation must be currently certified per Empire State Development’s MWBE Directory. Participation by prime MBEs and participation by prime WBEs counts towards meeting the goal.

If the proposal does not meet the 30 percent MWBE participation goal, the firm must provide evidence of a good faith effort by completing Attachment 11A MWBE Participation Solicitation Log. Additionally, if the firm does not meet the specified goal, the firm must include in its Attachment 11A submission a Goal Attainment Explanation Letter explaining why the firm was unable to meet the MWBE goal (in full or if partially), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

Additionally, **prime consultants who are certified as a WBE or prime consultants who are certified as a WBE** count towards meeting the contract’s MWBE participation goal.
ATTACHMENT 12 and ATTACHMENT 12A. Complete and Submit Attachment 12
Service-Disabled Veteran-Owned Business Program (SDVOB) information.

New York State has established participation goal of 6% for this solicitation. Only meaningful participation by either a prime contractor who is certified as an SDVOB or inclusion of subcontractor(s) who is/are certified as an SDVOB counts toward the SDVOB participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

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

A listing of current certified SVDOBs and how a firm can become certified as a SDVOB, please visit the New York State Office of General Services: http://ogs.ny.gov/core/sdvoba.asp.

Interested proposers should verify their attainment of the above established SDVOB participation goal by completing Attachment 12: SDVOB Participation Information. For participation to count towards the SDVOB goal set for this solicitation, the offered SDVOB participating firm must be currently certified by Empire State Development. If the proposal does not meet the 6% percent SDVOB participation goal, the firm must provide evidence of a good faith effort by completing Attachment 12A: SDVOB Subcontractor 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 applicable SDVOB (in full or if partially), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime contractor or via subcontract.

A prime contractor that is an SDVOB still must make a good faith effort to include SDVOB subcontractors in their proposal. Only participation by certified SDVOB subcontractors may count towards the contract participation goal. Participation by a certified SDVOB prime contractor does not count towards meeting the contract goal (participation by a certified SDVOB prime contractor helps to meet the State’s corporate SDVOB goal).

The above forms and letter must be included in Cost and Administrative Proposal submittal. Firms are advised to refer to RFP Section 5 for the procedure the Department will follow in evaluating a firm’s proposed SDVOB participation.

ATTACHMENT 13. Complete and submit Attachment 13. It is required that all firms report use of firms located within New York state by completing the RFP’s Diversity Practices Questionnaire.

ATTACHMENT 15. Complete and submit Attachment 15 Vendor Assurance of No Conflict of Interest or detrimental Effect.

ATTACHMENT 16. Complete and submit Attachment 16 Form OAR: Acknowledgement of Receipt. Each firm must acknowledge receipt of the RFP and all RFP Modifications. There is no requirement to acknowledge any RFP Announcements.

5 PROPOSAL EVALUATION PROCESS

5.1 Minimum RFP Responsiveness Requirements
Any Firm that does not provide all of the following by the RFP deadline may be deemed to be non-responsive. Any proposal deemed to be non-responsive will be removed from further consideration (prior to the technical evaluation of proposals):
1. Complete Technical and Management proposal (Table 1)
2. Complete Cost and Administrative proposal (Table 2)
3. Submission of completed Procurement Lobbying Law forms

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

Proposal Due Date. All proposals must be delivered to NYSDOT Contract Management in hard copy by 2:00 PM on April 17, 2018. Any proposals received after that time/date shall not be evaluated further. Late proposals shall become property of NYSDOT.

Proposal Opening, Log-in and Certification. Proposals received on or prior to the due date and time will be opened, inventoried for completeness, certified, and logged-in (per RFP Tables 1 and 2). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT by COB that same day.

Minimum Proposal Requirements. Per RFP Section 4, any proposal which does not include all of the following by the RFP deadline may be determined to be non-responsive. Any proposals deemed non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals):
1. Complete Technical and Management proposal
2. Complete Cost and Administrative proposal
3. A proposal which either meets/exceeds the 30% MWBE contract goal or offers acceptable Good Faith Effort documentation and Letter of Explanation
4. A proposal which either meets/exceeds the 6% SDVOB contract goal or offers acceptable Good Faith Effort documentation and Letter of Explanation
5. Submission of completed Attachment 8 Procurement Lobbying Law Compliance Forms
6. Failure to acknowledge any formally-released RFP Modifications (Attachment 16)

**MWBE Goal Attainment/GFE Acceptance Review.** The proposed MWBE participation percentages offered for NYS ESD certified MWBEs will be reviewed (RFP Attachment 11). Each offered MBE and/or WBE must be currently listed in the NYS ESD Directory to count towards meeting the Department’s 30% MWBE participation goal. If the proposed MWBE participation is less than the established 30% goal, the firm’s evidence of a Good Faith Effort (RFP Attachment 11A) to achieve the goal will be reviewed along with the firm’s letter of explanation as to why it was unable to meet the goal. If a proposer submits a proposal which meets or exceeds the MWBE goal, then the certification registration status of all offered MWBE participants will be verified by NYSDOT, and if certified, the proposed MWBE goal accepted.

If a proposer submits a proposal which does not meet the 30% MWBE goal for Contract #C037711, then the submitted good faith log will be reviewed for acceptability and verification of the robustness of effort. Blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and have their proposal removed from further consideration. Such proposers will be contacted to request clarification of their submitted good faith effort log. Offered clarifications will be considered by NYSDOT. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

**SDVOB Goal Attainment/GFE Acceptance Review.** The proposed SDVOB participation percentages offered for NYS OGS certified Service Disabled Veteran-Owned Businesses will be reviewed (RFP Attachment 12). Each offered SDVOB must be currently listed in the NYS OGS Directory to count towards meeting the Department’s 6% SDVOB participation goal. If the proposed SDVOB participation is less than the established 6% goal, the firm’s evidence of a Good Faith Effort (RFP Attachment 12A) to achieve the goal will be reviewed along with the firm’s letter of explanation as to why it was unable to meet the goal. If a proposer submits a proposal which meets or exceeds the SDVOB goal, then the certification registration status of all offered SDVOB participants will be verified by NYSDOT, and if certified, the proposed SDVOB goal accepted.

If a proposer submits a proposal which does not meet the 6% SDVOB goal for Contract #C037711, then the submitted good faith log will be reviewed for acceptability and verification of the robustness of effort. Blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and have their proposal removed from further consideration. Such proposers will be contacted to request clarification of their submitted good faith effort log. Offered clarifications will be considered by NYSDOT. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

**5.3 Evaluation Category Weight Distribution**

Proposals will be evaluated using the NYSDOT’s Best Value method based upon a 1450 total point scale. The Technical and Management portion will be point scored and will represent 1000 points of the total Best Value score for the proposal. The cost section of the Cost and Administrative proposal will be evaluated and point scored and will represent 450 points of the
total Best Value score for the proposal. A more detailed breakdown of the RFP’s proposal evaluation category weights is as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functional Requirements</td>
<td>300</td>
</tr>
<tr>
<td>Firm Experience</td>
<td>100</td>
</tr>
<tr>
<td>Project Plan and Staffing</td>
<td>150</td>
</tr>
<tr>
<td>Data Conversion</td>
<td>50</td>
</tr>
<tr>
<td>System Testing and Acceptance</td>
<td>100</td>
</tr>
<tr>
<td>System Training</td>
<td>150</td>
</tr>
<tr>
<td>System Support and Maintenance</td>
<td>100</td>
</tr>
<tr>
<td>Technical Presentation</td>
<td>ReScore</td>
</tr>
<tr>
<td>Cost</td>
<td>450</td>
</tr>
<tr>
<td><strong>TOTAL POINTS</strong></td>
<td><strong>1450</strong></td>
</tr>
</tbody>
</table>

5.4 Technical & Management Proposal Evaluation (Up to 950 Points)

**General**

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

Members of the Committee will evaluate and score each proposal individually (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 proposal evaluation factors, 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, 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 based on the committee discussions. Reasons for score changes will be documented on the TEC member’s scoresheet 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 demonstrations). 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 score by firm are kept by each TEC member (on their respective scoresheets) 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.
Technical and Management Written Proposal Evaluation (Up to 1000 Points)
The technical evaluation criteria listed below, per the RFP, shall be used by the TEC. Each factor’s respective weight is identified in parenthesis. Some of the above major evaluation categories are further divided into subcategories with no assigned subweights, as the one higher-level category weight covers all subcategories. These are detailed below:

A. Functional Requirement 300 Points:
1. Program and Liaison 30 points
2. Acquisition 30 points
3. Appraisal 25 points
4. Relocation 10 points
5. Claims 20 points
6. Consultant Mgt 20 points
7. Document Mgt 20 points
8. GIS 20 points
9. Mobile Access 10 points
10. Portal 10 points
11. Reports 20 points
12. Signs 20 points
13. Surplus Property 20 points
14. Use and Occupancy 20 points
15. Workflow 5 points
16. General 20 points

B. Firm Experience 100 points:
1. Quality, extent and relevance of current and prior experience of the firm. 80 points
2. Quality of plan for maintaining and phasing key personnel into project. 15 points
3. Ability of Reference Checks to verify quality of firm. 5 points

C. Project Plan and Staffing 150 Points:
 a. Degree to which proposal reflects understanding of, comprehension of, and accomplishment of project scope and objectives. 20 points
 b. Quality and ability of Project Management; ability to implement all requirement management plans. 25 points
 c. Quality, extent and relevance of experience, education and training of key personnel. 40 points
 d. Ability to meet all Information Technology requirements. 20 points
 e. Quality of proposer’s resources relative to the needs of the project; Quality of project organization; quality of project plans; reasonableness of staff/task allocations for each task and total effort. 20 points
 f. Initiative and creativity of proposer. 5 points
 g. Completeness and reasonableness of schedule. 20 points

D. Technical Architecture Requirements ___50 Points

E. System Training 150 points
F. Data Conversion  50 Points
G. System Testing and Acceptance  100 points
H. System Support and Maintenance  100 points

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 scoresheets as well in electronic form.

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.

Cost Proposal Evaluation (Up to 450 Points)
Cost proposals shall be reviewed, evaluated and scored for all proposals once they have cleared Mandatory requirements checks. Cost proposals shall be point scored with up to 450 best value points available out of the 1450 best value points total. 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 fixed cost to deliver a complete Right of Way and Real Estate IT System solution (labor and software licenses) shall receive a perfected cost score of 450 points. Proposals with higher relative total fixed costs shall receive proportionately lower cost proposal scores.

All proposed Consultant hourly labor rates shall be evaluated for reasonableness. NYSDOT may address rates after consultant selection and prior to contract award.

Cost scores (which are relative to the field of consultants competing for contract award) are subject to change depending upon whether or not cost proposal clarifications responses (or Best and Final Offer responses or proposal withdrawals 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.

**Initial Best Value Determination**

Perfected cost scoring results will be added to the initial raw technical 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).

**Proposal Shortlisting**

The shortlisting rule for this solicitation shall be: The Top Three Initial Best Value Ranked Proposals, plus any proposal with an initial best value score just below the cut-off line. 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 shortlisting 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. Firms which submit proposals which meet the RFP’s shortlist shall be invited to attend the interview and product demonstrations.

**Technical Interview/Demonstration Evaluation**

The Technical Interview portion (only available for firms mathematically subject to contract award; ie, shortlisted) of the Technical and Management proposal will be evaluated with results leading to a re-score opportunity to rescore the written technical proposal. Technical Interviews will be held for firms offering proposals which are deemed to have a mathematical chance of being susceptible to contract award and have made the short-list after completion of initial Best Value considerations.

Short-listed firms shall receive a Technical Interview invitation package, which shall include instructions, areas which NYSDOT is seeking further clarifications, and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend 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 scoresheet as well as in Contract Management’s electronic composite scoresheet. Once scoring of each Technical Interview has concluded, TEC members shall sign/date and surrender their scoresheets to Contract Management.
The RFP’s additional technical interview/demo evaluation criteria are as follows:

1. Further insight and understanding of the consultant’s proposed experience (firm and all key personnel)

2. To what extent has the vendor demonstrated a commercial off the shelf (COTS) readily available solution which meets the RFP’s functional requirements (Attachment 1).

3. Adequacy of demonstration; adequacy of approach; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver successful System solution; 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.

4. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarification questions.

5. Clarity and quality of presentation; team chemistry.

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 scores/findings based upon the additional clarification information garnered from the Technical Interviews. TEC members shall revisit their original hardcopy scoresheets 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 scoresheet as well as in Contract Management’s electronic composite scoresheet. Once the re-scoring of written technical proposals has concluded, TEC members shall sign/date and surrender their scoresheets to Contract Management.

Best & Final Offers (BAFO; Optional)

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 scoresheets). If changes to a firm’s technical proposal lead to corresponding, necessary revisions to their cost proposal (or should a firm opt to clarify their cost proposal) or should the Department opt to request cost-only BAFOs, the Department’s Contract Management representative shall make the necessary, appropriate adjustments to that firm’s cost proposal evaluation.

Should any firm withdraw their proposal after a possible BAFO request, NYSDOT will remove that firm’s technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field’s technical and cost scores (without the withdrawn firm’s information).
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 technical scores so that the highest-rated raw written technical proposal score gets changed and assigned a perfect score of 1000 points for this solicitation with the other technical scores adjusted proportionately downward. Cost proposals have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule (lowest total cost gets 450 points). Perfected cost scoring results will be added to the perfected written technical proposal score plus the perfected Technical Interview score to generate a tentative final best value score. 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 twenty 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 #C037711.

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 Contract #C037711 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 #C037711 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 #C037711.

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.

6 ADMINISTRATIVE SPECIFICATIONS

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

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

6.3 Information for the Selected Consultant

6.3.1 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 subconsultant providing services valued at $100,000 or more is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

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

Consultant Firm Registration instructions are available at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions. 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.

6.3.3 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.

6.3.4 Consultant Employment Disclosure Requirements of this Project
Go to Office of the State Comptroller’s Web site (http://www.osc.state.ny.us/procurement/consultantdisclosure.doc) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 18) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 18) 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.

6.3.5 Insurance Requirements of this Project
Please carefully read the terms and conditions of the Draft Contract appended as Attachment 17 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 9 of the Draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

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


7 RFP ATTACHMENTS

1. Functional Requirements
1A. Interface Requirements
2. Firm Experience
3. Project Plan and Staffing
3A. NYS Office of ITS Technical Services Standards Overview
4. Data Conversion
5. System Testing and Acceptance
6. Support and Maintenance
7. Cost Proposal
8. Procurement Lobbying Law Compliance Forms
9. Consultant Information and Certifications
10. Diversity Practices Questionnaire
11. MWBE Participation Information
11A. MWBE Participation Solicitation Log (GFE)
12. DSVOB Participation Information
12A. DSVOB Participation Solicitation Log (GFE)
13. New York Business Reporting
14. Non-Collusive Bidding Certificate
15. Vendor Assurance of No Conflict of Interest or Detrimental Effect 57
16. Form AOR: Acknowledgement of Receipt 59

INFORMATION ATTACHMENTS:
17. Draft Contract (with Appendix E) 60
18. Consultant Employment Disclosure Forms A & B 122
19. NYS Office of ITS RT Cluster: Release Management Overview 124
20. Use Cases OnLine
ATTACHMENT 1
Functional Requirements
<OnLine>

ATTACHMENT 1A
Interface Requirements
<OnLine>

ATTACHMENT 2
Firm Experience
<OnLine>

ATTACHMENT 3
Project Plan and Staffing
<OnLine>

ATTACHMENT 3A
NYS Office of ITS Technical Services Standards Overview
<OnLine>

ATTACHMENT 4
Data Conversion
<OnLine>

ATTACHMENT 5
System Testing and Acceptance
<OnLine>

ATTACHMENT 6
Support and Maintenance
<OnLine>

ATTACHMENT 7
Cost Proposal>
ATTACHMENT 8

PROCUREMENT LOBBYING LAW COMPLIANCE FORMS

Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

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

Contract No. C037711

By: ___________________________ Date: ___________________________

Name: ___________________________

Title: ___________________________

Contractor Name: ___________________________

Contractor Address: ___________________________
# Offerer Disclosure of Prior Non-Responsibility Determinations

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

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<tr>
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<th>Options</th>
<th>Details Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?</td>
<td>Yes/No</td>
<td>Yes: Details</td>
</tr>
<tr>
<td>If yes, please provide details below.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governmental Entity:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of Finding of Non-responsibility:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basis of Finding of Non-responsibility:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Add additional pages as necessary.)

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

By: ___________________________ Date: ________________

Signature

Name: ___________________________ Title: ___________________________
ATTACHMENT 8 (Continued)

PROCUREMENT LOBBYING LAW COMPLIANCE FORM INFORMATION

1. **Required Forms**: The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant’s proposal.

   - Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) [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 offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

   **b) Contacts after designation**
   NYSDOT identifies its primary negotiation contacts. The designated contacts include:
   - The Contract Management Designation Contract Analyst
The Contract Management Designation Analyst Supervisor
The Contract Management Civil Rights Unit Supervisor
The Contract Management Assistant Directors
The Contract Management Director
The Consultant Management Bureau consultant job manager
The Consultant Management Bureau consultant job manager’s immediate supervisor

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

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

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

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

[Contract Specialist Name]
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: contract.specialist@dot.ny.gov
Tele: (518) 457-2600
I. CONSULTANT INFORMATION

FIRM NAME: ________________________________________________________________
ADDRESS: __________________________________________________________________
CITY: ___________________________ STATE: __________
ZIP CODE: __ __ __ __ - __ __ __ __
TELEPHONE: (_____) _____ - _________ FAX: (_____) _____ - _________
E-MAIL ADDRESS: ____________________________________________________________
CONTACT PERSON: ____________________________________________________________

Consultant’s Federal Identification Number (FIN): ________________________________
Consultant’s NYSDOT Consultant Identification Number (CIN): _____________________

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

Preparer’s Name/Title: __________________________________________________________
Address: ___________________________________________________________________
Telephone: (_____) _____ - _________ FAX: (_____) _____ - _________

Other Authorized Individual(s):
Name/Title: __________________________________________________________________
Address: ___________________________________________________________________
Telephone: (_____) _____ - _________ FAX: (_____) _____ - _________
II. PROPOSER CERTIFICATIONS

By signing below, I, ________________________________, authorized individual

(Name)

of ______________________________ make the following

(Firm)

certifications regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day period from the date of submission.
- The firm has read and will follow the procedure outlined in Section 6.6 of the RFP if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10 days of notification of designation. (http://www.osc.state.ny.us/vendrep/forms_vendor.htm)
- ST-220: If selected for contract award greater than $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
  http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
  http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Signature: ________________________________

III. ACCEPTANCE OF CONTRACT

By signing below, I, ________________________________, authorized individual

(Name)

of ______________________________ hereby certify that I have read and

(Firm)

accept all terms and conditions contained in the draft Contract, including

Appendix A, which is included as Attachment 17 to this Request for Proposals.

Signature: ________________________________

(Name of Acceptor)
ATTACHMENT 10

DIVERSITY PRACTICES QUESTIONNAIRE

I, ___________________, as ____________________ (title) of _______________firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives?  Yes or No

   If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company’s gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company’s clients or customers?

3. What percentage of your company’s overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company’s clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?

4. Does your company provide technical training\(^2\) to minority- and women-owned business enterprises? Yes or No

   If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

   If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company’s commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

   If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

---

1 Do not include onsite project overhead.
2 Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.
7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

   If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

   If Yes, complete the attached Utilization Plan.

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

________________________
Owner/Official

Signature of
Owner/Official

________________________
Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip

STATE OF _______________________________
COUNTY OF                             )  ss:

On the ______ day of __________, 201_, before me, the undersigned, a Notary Public in and for the State of __________, personally appeared ________________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

________________________
Notary Public

My Commission Expires: ____________________________
ATTACHMENT 11

MWBE PARTICIPATION INFORMATION

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm’s legal name, checking if they are an Empire State Development (ESD) certified MBE and/or a ESD certified WBE, and indicating each firm’s percentage of the total salary for the contract. Please keep in mind that only ESD certified MBE and/or certified WBE prime consultants and/or ESD certified MBE and/or certified WBE subconsultants are eligible to participate toward attainment of this state-funded procurement.

Further, participation by a certified MBE and/or WBE prime consultant as well as certified MBE and/or WBE subconsultants may count towards the Combined 30% MWBE participation goal.

If the combined percentage of total salary for all certified MBEs and/or all certified WBEs proposed is less than the M/WBE participation goal, then the proposing prime firm is required to fill out and submit the Participation Solicitation Log (Attachment 11A), and is required to submit a MWBE Goal Attainment Explanation Letter.

Contract#: C037711: Right of Way and Real Estate IT System Services

<table>
<thead>
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<th>NYS ESD Certified MBE/WBE</th>
<th>% of Total Contract Value</th>
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<tbody>
<tr>
<td></td>
<td>MBE</td>
<td>WBE</td>
</tr>
<tr>
<td>A. Prime Consultant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Sub-Consultants</td>
<td></td>
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<tr>
<td>Total</td>
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## ATTACHMENT 11A:

**MWBE PARTICIPATION SOLICITATION LOG**  
*(Good Faith Effort Documentation)*

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<tr>
<th>CONTRACT NO. C037711</th>
<th>COMBINED 30% MWBE PARTICIPATION GOAL</th>
<th>PAGE NUMBER ___ OF ___</th>
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<table>
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<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
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</table>

<table>
<thead>
<tr>
<th>SOLICITED COMPANY NAME AND CONTACT PERSON</th>
<th>TELEPHONE (WITH AREA CODE)</th>
<th>FEDERAL EMPLOYER ID #</th>
<th>WORK TYPES BEING SOLICITED (enter work types or CUF)</th>
<th>TYPES AND DATES OF CONTACTS</th>
<th>CONTACT RESULT(S) CODE*</th>
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</table>

*See Solicitation Log Instructions listed on Page 50.*
**ATTACHMENT 12**

**SDVOB PARTICIPATION INFORMATION FORM**

Please complete the following table for the prime firm and all subcontractors (Contractor team composition): Please identify each firm’s legal name, checking if they are a NYS Office of General Services Certified SDVOB, and indicating each firm’s percentage of the total salary for the contract. Please keep in mind that only certified SDVOB prime Contractors are eligible to participate toward attainment of this state-funded procurement.

**Further, participation by a certified SDVOB Contractor may count towards the 6% SDVOB participation goal.**

If the combined percentage of total salary for all certified SDVOBs proposed is less than the 6% SDVOB participation goal, then the proposing prime firm is required to fill out and submit the Participation Solicitation Log, Attachment 12A and is required to submit a SDVOB Goal Attainment Explanation Letter.

Contract#: C037711: Right of Way and Real Estate IT System Services

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYS Office of General Services Certified SDVOB</th>
<th>% of Total Contract Value</th>
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<td>A. Prime Contractor</td>
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<td>B. Subcontractors</td>
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# ATTACHMENT 12A

## SDVOB SUBCONTRACTOR PARTICIPATION SOLICITATION LOG

*(Good Faith Effort Documentation)*

<table>
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<tr>
<th>CONTRACT NO. C037711</th>
<th>6% SDVOB PARTICIPATION GOAL</th>
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<tr>
<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
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<th>TELEPHONE (WITH AREA CODE)</th>
<th>FEDERAL EMPLOYER ID #</th>
<th>WORK TYPES BEING SOLICITED</th>
<th>TYPES AND DATES OF CONTACTS</th>
<th>CONTACT RESULT(S)</th>
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MWBE SOLICITATION LOG INSTRUCTIONS

(Good Faith Effort Documentation)

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

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

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

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

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

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

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

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

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

MBE/WBE/DBE CONSULTANTS SOLICITED:

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

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

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

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

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

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

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

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

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

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

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

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

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

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

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

- Making efforts to assist interested MWBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

- Effectively using the services of available minority/women community organizations; minority/women contractors’ groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MWBEs.
ATTACHMENT 13

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 subcontractors, 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 and its New York State business partners. New York State businesses will promote the contractor’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 contractors. 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 consultant and all subconsultants) 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.
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 Consultant</td>
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<td>B. Sub-Consultants</td>
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Total Proposed Contract Cost: $
ATTACHMENT 14

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:
NAMES OF PARTNERS OR PRINCIPALS       LEGAL RESIDENCE
____________________________________________
____________________________________________
____________________________________________
____________________________________________

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME               LEGAL RESIDENCE
President:          ________________________________
Secretary:          ________________________________
Treasurer:          ________________________________
President:          ________________________________
Secretary:          ________________________________
Treasurer:          ________________________________
NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY 
SECTION 139-D OF THE STATE FINANCE LAW 

Identifying Data 

Potential Contractor: ________________________________________________________________________

Address: ________________________________________________________________________________

__________________________________________________________________________________________

City, Town, etc.

Telephone:__________________________ Title________________________________________

If applicable, Responsible Corporate Officer

Name:______________________________ Title________________________________________

Signature: ______________________________________________________________________________

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

________________________________________________________________________________________

Legal name of person, firm or corporation Legal name of person, firm or corporation

By

Name________________________________________ Name________________________________________

Title________________________________________ Title________________________________________

Address: ___________________________________ Address: ___________________________________

______________________________________________________________________________

City State ___________________________________________________________________________ City State


Vendor Assurance of No Conflict of Interest or Detrimental Effect

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

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

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

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

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

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

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

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

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

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

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

Name, Title:

Signature: Date:

This form must be signed by an authorized executive or legal representative.
ATTACHMENT 16
FORM AOR

ACKNOWLEDGMENT OF RECEIPT OF
RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

<table>
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<th>NAME OF PROPOSER</th>
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We hereby acknowledge receipt of the <NAME> System Services Request for Proposals #C037711, dated March 14, 2018 and subsequent responses to questions and Modifications issued by the Department, as listed below.

Add additional lines in tables below, if needed.

<table>
<thead>
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<th>RFP Received</th>
<th>Date Issued by NYSDOT:</th>
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<th>RFP Modification Number:</th>
<th>Date Issued by NYSDOT:</th>
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SIGNED

DATE

NAME
(printed or typed)

TITLE

59
ATTACHMENT 17
DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C037711

PROJECT: Right of Way and Real Estate IT System Services

This Agreement dated <MMDDYYYY> pursuant to Transportation Law 14 is by and between the New York State Department of Transportation ("NYSDOT" and/or the “STATE”), with its Main Office located at 50 Wolf Road, Albany, New York 12232, and <Consultant>, with its principal office and place of business located at <Address> (the "Consultant").

W I T N E S S E T H

WHEREAS, pursuant to a request for proposals dated <MMDDYYYY>, the STATE has selected the Consultant via a best value competitive RFP process to perform the scope of services and provide the work and system more particularly described in the C037711 RFP, the Consultant’s proposal and Schedule A, Scope of Work Clarifications, annexed hereto, and Consultant agrees to provide the required work, licenses, and system pursuant to the terms hereof.

NOW, THEREFORE, the parties agree as follows:

1. Documents Forming the Agreement. This Agreement entitled ‘Right of Way and Real Estate IT System Services’ for NYSDOT consists of the following component documents:
   - This Agreement, including signature and notary pages and Exhibit A (Consultant Employment Disclosure Form B)
   - Appendix A, Appendix A-1, Appendix B, Appendix C, Appendix D and Appendix E
   - Schedule A: Scope of Work Clarifications
   - Schedule B: Deliverables Schedule and Compensation, also referred to as the “PaymentSchedule”
   - Exhibit B: NYSDOT’s Request for Proposals (dated MONTH DD YEAR), as Modified, added to the Agreement via reference
   - Exhibit C: The Consultant’s Proposal, dated MONTH DD YEAR, including clarification and possible Best and Final Offer, added to the Agreement via reference
   - Exhibit D: Staffing Plan
   - Exhibit E: System Requirements Traceability Matrix
   - Exhibit F: Other Requirements
   - Exhibit G: Glossary

2. Order of Precedence. In the event of any conflict, uncertainty or inconsistency in content, language or requirements within this Agreement, the meaning or interpretation of the Agreement shall be in accordance with following order of precedence:

   1) Appendix A
2) Appendix A-1, Appendix B, Appendix C, Appendix D and Appendix E
3) This Agreement
4) Schedule A
5) Schedule B
6) Exhibit B
7) Exhibit C
8) Exhibit D
9) Exhibit E
10) Exhibit F
11) Exhibit G

Any conflict in quality or rigor related to the obligations of the Consultant hereunder shall be resolved in favor of the higher quality or more rigorous requirement.

3. Definitions. As used in any of the documents forming this Agreement, the following terms shall have the following meanings (bold font added here only for emphasis):

"Consultant-Owned Software" and/or “Proprietary Software” means Software developed and owned by the Consultant or its subcontractors which either pre-exists, or whose development is not funded by this Agreement.

"Commissioner" means the Commissioner of Transportation of the State of New York or their duly authorized representative.

"Developed Software" means any and all Software and associated documentation that are specific to the Project Scope of Services and Deliverables developed under this Agreement.

"Enhancement" shall mean any changes or additions to Software, other than Maintenance Releases, New Versions, or modifications, tailoring and/or customizations resulting from Integration Services that improve features or functions, add new features or functions, or improve performance.

"Equipment" for Commercial-Off-the-Shelf Software or Consultant-Owned Software, Equipment consists of any computer or computer system on which such software may be used pursuant to the relevant license; for Developed Software, Equipment consists of any computer or computer system.

“Error” shall mean any error, problem, or defect resulting from: (i) incorrect coding, or (ii) any failure of a deliverable to meet specifications.

"FHWA" means the Federal Highway Administration, an operating administration of the U.S. Department of Transportation.

"Licensed Software" means any Consultant-Owned Software and any Third-Party Software provided by the Consultant pursuant to this Agreement.

"Government" means the U.S. Government acting through FHWA.

"Integration Services" shall mean the programming and technical support provided by the Consultant to develop modifications to the Software, including services to tailor and customize Software to the Project, as such services may be set forth in the Scope of Services.

"Intellectual Property" means all tangible and intangible property rights, including, but not limited to copyrights, patents, trademarks, trade secrets and any other form of intellectual property rights covering the source code, any databases, software, inventions, training manuals, content, menu structure, speech or sound files, vocabulary, HTML pages/code, graphics, data, look-and-feel,
passwords, passwords, encryptions, phone numbers, domain names, systems design, formulas, methods, or other proprietary information in any form or medium.

"Maintenance Release" shall mean an error correction, maintenance or emergency release of Software, including any modifications or revisions to Software which correct errors in Software.

"New Version" shall mean a new release of Software, other than Enhancements, Maintenance Releases or modifications, tailoring and/or customization resulting from Integration Services, or a new option not previously available which add to Software significant new features, functions or capabilities or significant improvements in performance. Such new Release/option shall be deemed a New Version rather than a Maintenance Release only if and so long as Consultant continues to maintain, enhance and market the Software without such new Release/option and generally charges its maintenance clients an additional charge.

"Open Source Software" shall mean any software obtained under a license that permits unrestricted use, modification, and redistribution in modified or unmodified form. A subset of open source licenses also require that redistribution (in modified or unmodified form) be accompanied by corresponding source code. Any Open Source Software and the license applicable to it shall be subject to the State’s review and approval prior to use.

"Payment Schedule" means the items, amounts associated therewith and the compensation method and compensation schedule set forth in Schedule B.

“Piggyback Contract” means a Contract let by any department, agency or instrumentality of the United States government, or any department, agency, authority, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

"Project" means the provision or development of, testing, evaluation, deployment, maintenance and support of the Consultant-supplied Software hereunder for the New York Department of Transportation, inclusive of (unit price books, technical specifications, all software, services, training, and support) to be provided or developed by Consultant, as more fully described in the Scope of Services, together with the Licensed Software described in this Agreement.

"Production System" means an automated application or process that is used by NYSDOT to conduct day-to-day business.

"Scope of Services" means Exhibit A – Scope of Service Clarifications, followed by NYSDOT’s RFP for C037711 (includes the RFP itself, the RFP Modifications, the written RFP evaluation clarification question requests, the Technical Demonstration instructions and clarification questions, and the Best and Final Offer [BAFO] request), followed by the Consultant’s Proposal (includes Part I - Technical and Management Proposal, Part II - Cost Proposal, written RFP evaluation clarification question responses, Technical Demonstration clarification question responses and presentation, and any Consultant’s BAFO response).

"Software" means the computer programs (including any security devices) in object (and, in the case of Developed Software, also source code) form, in whole or part, provided by the Consultant under this Agreement, regardless of media type, including all or any portions of the Software incorporated in another program. Software shall, as appropriate, include Documentation and Maintenance Releases. This includes any software provided by NYSDOT for modification by the Consultant while under this Agreement per this Agreement’s Scope of Services.

"Software Modification" shall mean any products resulting from Integration Services, modification, tailoring, and or customization of Software excluding Maintenance Releases,
Enhancements or New Versions, performed to Software by or on behalf of the Consultant for the Project as set forth in the Scope of Services.

"Software Documentation" means the manuals, installation instructions and other materials which are provided with the Software whether in printed form or otherwise.

"Subsystem" means an automated application or process that incorporates the capabilities, features, data and/or reporting required of a specific business function or process and that may or may not integrate with other subsystems to serve an enterprise need. For example: General Ledger, Purchasing, Accounts Payable, Accounts Receivable, Inventory Accounting, etc., are all subsystems of an enterprise Finance Information System.

"System Documentation" means any manuals, reports, instructions and other materials for design specifications, programming specifications operating and maintenance instructions acquired or developed by the Consultant for the Project.

"Support Services" shall mean the support services provided by the Consultant per the Project’s Scope of Services in respect to the Software and may include any support services provided in respect to Maintenance Releases, enhancements and/or new versions made to the Software.

"Third-Party Commercial-Off-The-Shelf Software" means Software that is ready-made and available for sale, lease, or license to the general public, with functionality and complexity defined by market need and which is not developed by the Consultant or its subcontractors for the Project, but which is acquired commercially and provided by the Consultant.

“Third-Party Software” means any Software provided by the Consultant as part of this Project which is not Consultant-Owned or Developed Software, including but not limited to, Third-Party Commercial-Off-The-Shelf software or Open Source Software.

"User Documentation" means manuals, instructions and other materials acquired, provided or developed by the Consultant for the Project per the Scope of Services.

4. Performance of Work. The Consultant shall assume responsibility for the cost and timely accomplishment of all obligations and duties required by this Agreement in an efficient, expeditious and competent manner, whether or not such obligations or duties are performed by the Consultant or its subconsultant(s). The Consultant shall be responsible for acceptable delivery of all subconsultant work under this Agreement.

4.1 Notice to Proceed. Consultant will commence the work of the Project upon NYSDOT’s issuance of a Notice to Proceed, but in no event later than 14 work days from the approval of this Agreement by the State Comptroller and, if necessary, by the Federal Highway Administration.

4.2 Consultant Project Management. Consultant shall appoint a Project Manager who will be responsible for the overall management of Consultant’s responsibilities hereunder.

4.3 NYSDOT Project Management. The work of the Project shall be performed under the direction and contract administration of NYSDOT and in accordance with the New York State Project Management Methodology, as defined in the New York State Project Management Guidebook. NYSDOT will have a Project Manager serving as the representative of NYSDOT. The Project Manager is the consultant's day-to-day contact for ensuring performance of the work within the Scope of Services and the Payment Schedule; processing payment requisitions; and the initiation and coordination of review of any changes to the Contract Documents. The Project Manager is not the NYSDOT contracting officer, and any amendment to the Contract Documents requires an amended or supplemental agreement signed by the NYSDOT contract officer and any necessary State officials and, if required, the Federal Highway Administration.
4.4 Performance of Scope of Services. Consultant shall perform all of the work required by and associated with the Scope of Services in this Agreement in an efficient and expeditious manner and in accordance with all of the terms and conditions 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 the work of the type described in this Agreement. The consultant shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items, technology, and intellectual property as may reasonably be necessary or appropriate to perform the work in accordance with this Agreement.

4.4.1. Scope Changes. NYSDOT reserves the right, unilaterally, to require, by written order, changes by altering, adding to, or deducting from the Scope of Services, such changes to be within the general scope of the Contract. NYSDOT may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance.

4.4.2. Consultant Personnel Changes. Any change of Consultant personnel by the CONSULTANT shall be subject to the prior written approval of the STATE and are subject to NYSDOT's Consultant personnel change process.

4.5 Extra Work. If the consultant believes that any work is or may be beyond the scope of the Agreement (extra work), the consultant shall notify the STATE, in writing, via a Project Change Request, of this fact prior to beginning any of the work. The Project Change Request shall contain all the information required by NYSDOT, including but not limited to the following: 1) a short description of the proposed change, 2) a short description of the proposed solution, and 3) the estimated hours to complete the change. The total cost of the change shall include both labor and material costs. The labor cost shall not exceed an amount calculated by multiplying the number of labor hours by the currently applicable hourly rate for each labor category as defined in the Agreement. The consultant shall provide the appropriate documentation to support all material costs stated in the Project Change Request. Detailed estimates for the Project Change Request may need to be developed through Joint Application Development sessions attended by both the consultant and NYSDOT before such a request for approval for extra work can be considered by the STATE.

No extra work shall be started prior to written authorization from the STATE. 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. If the STATE determines that extra work is warranted, and additional funds are needed, a Supplemental Agreement providing for compensation and describing the work authorized shall be issued by the STATE to the Consultant for execution after approvals have been obtained from NYSDOT, the NYS Attorney General office, the NYS Office of the State Comptroller and, if required, the Federal Highway Administration. The STATE shall determine the proper method and scheduling of payments for such approved extra work. Upon approval of extra work, the consultant will deliver the Project Change Request at the agreed-upon cost within reasonably close conformance with projected extra work delivery timeframes. The STATE shall be under no obligation to reimburse the Consultant for any extra work performed without the prescribed notification and authorization.

4.5.1 In the event of any claims being made or any actions being brought in connection with the PROJECT, the Consultant agrees to render to the STATE all assistance required by the STATE. Work that the Consultant is obligated to perform in accordance with the Scope of Services shall be performed without cost to the STATE. Compensation
for other work performed and costs incurred by the Consultant in connection with this requirement shall be made in a fair and equitable manner in accordance with Article 4.5, Extra Work.

4.6 Disputed Work. If Consultant is of the opinion that any work ordered by NYSDOT to be done as contract work is extra work and not contract work, or that any order of NYSDOT exceeds the work requirements of this Agreement, Consultant shall promptly, within ten (10) work days of receipt of the order or direction, so notify NYSDOT's Project Manager, in writing, explaining Consultant's contention. Consultant must progress the work as required and ordered. In the meantime, Consultant, if it considers the issue unresolved, shall promptly, within ten (10) work days of receipt of NYSDOT's written decision, notify the Commissioner, in writing with copies to the Project Manager, of its contentions relative to the dispute, indicating the substance of previous communication with the Project Manager on the issue and its rebuttal of the previous findings. The Commissioner or his/her designated representative shall make a finding thereon and notify Consultant of same in writing in a timely manner. If such work is determined by the Commissioner or his/her designee to be extra work pursuant to the provisions of this Article, NYSDOT will initiate a Supplemental Agreement.

If the Commissioner or his/her designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct Consultant to continue the disputed work, and Consultant must promptly comply. Consultant's right to pursue a dispute under this Article for extra compensation will not be affected in any way by Consultant's complying with the directions of the Commissioner or the Project Manager to proceed with the work, provided Consultant continues to keep and furnish documentation of the extra work claimed.

4.7 Coordination with Other Consultants. As required or directed by NYSDOT, Consultant shall cooperate with, and coordinate its work with, any other consultants that may be involved with the PROJECT.

4.8 Damages and Delays. The Consultant agrees that no charges or claim for damages shall be made by the Consultant for any delays or hindrances from any cause whatsoever during the progress of any portion of the work required by this Agreement. Such delays or hindrances, if any, shall be compensated for by an amendment to the Project Schedule and, as applicable, the Budget, subject to the procedures otherwise applicable herein for changes to the Project Schedule and Budget.

5. Project Deliverables, Compensation, and Payment Schedule. A Schedule of Project Deliverables and Compensation for the entire Project is attached hereto as Schedule B (together with applicable sub schedules, supporting documentation, or requirements for such documentation, which may be collectively referred to herein as the “Payment Schedule”). Consultant shall maintain, and perform within, such Payment Schedule. If at any time the Payment Schedule is exceeded or likely to be exceeded, Consultant shall immediately inform NYSDOT’s designated representative. NYSDOT shall determine whether a modification of the work or Payment Schedule may be made and, if not, whether NYSDOT will seek a modification of this Agreement in accordance with paragraphs 4.4.1 and 4.5, which may require a Supplemental Agreement that requires further reviews and approvals, including by NYSDOT, the NYS Attorney General's office, the NYS Office of the State Comptroller and, if required, the Federal Highway Administration.

6. Project Cost Compensation Methods. Compensation under this Agreement shall be paid in the following manner, as applied to this Project by, within, and according to the Payment Schedule (Schedule B):
6.1 One-Time Costs. A total fixed lump-sum cost for One-Time Costs as set forth and accordingly to the billing milestones identified in Schedule B.

6.2 Annual Maintenance & Support. Annual costs for maintenance and optional maintenance renewals are calculated based on the number of such items called for under this Agreement and the applicable item-based pricing level thereunder, to be paid for according to the schedule set forth in Schedule B.

6.3 Specific Hourly Rates. Item I. Specific Hourly Rates of pay for Contract Year One shown in Schedule B for employees assigned to this PROJECT for the commission of Extra Work (per Article 4.5). The Specific Hourly Rates are not subject to audit; however, the number of hours charged is subject to audit. If any Extra Work is required during Contract Years Two and/or Three, or if any Extra Work is required if the Agreement is extended beyond the Agreement’s base three-year term, then all of the Specific Hourly Rates of pay shown in Schedule B may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering, and Related Services (Series ID: PCU5413--5413--) for the most recent 12-month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 2%, subject to current market conditions. If the above Index Series ID is discontinued or becomes unavailable at any time, 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. For future Extra Work, such costs are to be included in the Agreement via formal Supplemental Agreement. All reimbursement for travel, meals, and lodging shall be reasonably reimbursed, and such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller.

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

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

7. Payment Process; Record Keeping; Audit.

7.1 Payment Requisitions. Consultant shall submit to NYSDOT’s representative Project payment requisitions for the work performed by or through Consultant, in accordance with the Payment Schedule (Schedule B). Requests to NYSDOT for payment shall contain a complete summary statement of charges and costs and billing invoices for the Project.

7.2 Payment. The STATE shall pay the Consultant in accordance with Article 11-A of the State Finance Law (Prompt Payment Statute), subject to a maximum NYSDOT obligation reflected in the Payment Schedule (Schedule B), the availability of funds, the approval of NYSDOT, and audit by the State Comptroller. The maximum aggregate amount payable by the State to the Consultant hereunder for the performance and completion of the work under this Agreement is $_______ unless increased by a supplemental agreement.

7.3 Estimated Quantity Contracts. All quantities or ranges of quantities for provision of goods and services under this Agreement are expressly agreed and understood to be estimates or projections. Payments under this estimated quantity contract are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Agreement term. No guarantee of any quantity(ies) is implied or given.
7.4 **Periodic Payment.** Payment to the Consultant for the One-time Cost portions of the Project will be made for work performed by Consultant upon acceptance by NYSDOT of deliverables in accordance with the payment milestones referenced in **Schedule B.** For recurring costs for specified items, payment to Consultant will be made on a pre-paid annual basis upon approved requisitions for items actually required by NYSDOT during the upcoming year, less any applicable credits. Additional payments for work added to this Agreement may be paid on a lump-sum basis or on a time and materials basis.

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

7.6 **Maintenance of Records.** The Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost, charges, and fees incurred and make such materials available at its office at all reasonable times during the period of the AGREEMENT and for six years from the date of final payment under the AGREEMENT for inspection by NYSDOT or any authorized representative of the STATE. During the course of the Project, and for three (3) years thereafter, Consultant agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the STATE or FHWA may require and to comply with the audit requirements of 49 C.F.R. 18.26, OMB Circular A-128, and any revision or supplement thereto.

7.7 **Audit: Completion Procedures.**

7.7.1 **State’s Right to Audit.** Upon reasonable notice, Consultant shall permit the Commissioner of Transportation, the State Comptroller, or any other duly authorized agent of the State or Federal Government to inspect all books, records, and accounts relating to the Project.

7.7.2 **Inspection by Federal Officials.** Consultant agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Consultant and its contractors pertaining to the Project. Consultant agrees to require each third-party contractor to allow the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

7.7.3 The application of the audit provisions herein to fixed-price work are not for the purposes of price adjustment to such fixed-price work, nor shall Consultant’s cost information for such work be required to be reported. The STATE may, however, examine unpriced records related to such work for the purposes of verifying performance.

8. **Consultant’s Liability; Indemnification.**

8.1 **Consultant’s Liability.** Consultant shall be responsible for all damage to life and property due to intentional acts, negligent acts, errors or omissions of the Consultant, its subcontractors, agents, or employees in the performance of its service under this Agreement. Further, it is expressly understood that the Consultant shall indemnify and save harmless the STATE from claims, suits, actions, damages, and costs of every name and description to the extent resulting from
the negligent performance of the services or activities performed by or on behalf of Consultant under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided.

Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Consultant’s responsibility and indemnity shall also include but not be limited to liability resulting from any infringement violation by Consultant of proprietary rights, copyrights, trademarks, or right of privacy arising out of the intellectual property furnished by Consultant under this Agreement, except when attributable to the fault or negligence of the STATE, its officers, employees or agents.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against Consultant or the STATE beyond such as may legally exist irrespective of this Article or this Agreement.

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 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.

8.2 Indemnification. In case an action shall at any time be brought against the State, asserting a allegation or cause of action for which Consultant is putatively liable, the Consultant shall, at its own cost and expense, and without any cost or expense whatever to the STATE, defend such suit and indemnify and save harmless such parties against all costs and expenses thereof, including reasonable attorney fees and expenses, and promptly pay or cause to be paid any final judgment recovered against the STATE; provided, however, that the STATE gives notice to Consultant and thereafter provide all such information as may from time to time be requested by Consultant or its representatives. The STATE shall furnish to Consultant all such information relating to claims made for injuries, deaths, losses, damages, or destruction of the type covered by this Article as Consultant may from time to time request. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.

8.3 Third Party Claims. If a third-party claim causes NYSDOT's quiet enjoyment and use of the Right of Way and Real Estate IT System, including any aspect, functionality or component thereof (hereinafter, the “System”), to be to be seriously endangered or disrupted, and that claim is based on acts or omissions of the Consultant, its subcontractors, or the respective employees of agents of the aforesaid, the Consultant shall: 1) replace such System, without additional charge, by a compatible, functionally equivalent and non-infringing product; 2) modify such System to avoid the infringement; 3) obtain a license for NYSDOT to continue use of such System for the term of this Agreement and pay for any additional reasonable fee required for such license; or, 4) if none of the foregoing alternatives are possible even after the Consultant's best efforts, the Consultant shall refund a pro rata portion of the entire license fee based on five years, according to the schedule set forth below, and discharge NYSDOT from its obligation to pay any further license or other fees under this Agreement.

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8.4 Copyright and Patent Indemnity. The Consultant shall defend, indemnify and shall hold harmless (including reasonable attorneys' fees) the State, NYSDOT, and any employee or agent thereof (each of the foregoing being hereinafter referred to as the "Indemnified Party") against all liability to third parties (other than liability solely the fault of the Indemnified Party) arising from or attributable to a breach of warranty, negligent or intentional act or omission of the Consultant, its subcontractors, or the respective employees or agents of the aforesaid, or the possession or use by NYSDOT, of the System, including (but not limited to) for the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with such System. A party requesting such indemnification shall give the Consultant prompt notice of such a claim. Consultant shall conduct the defense in any such third party action arising as described herein and NYSDOT shall fully cooperate with such defense. This indemnification is limited to the
System including modifications thereto made by the Consultant or with the Consultant's knowledge and consent and does not cover third party claims arising from modifications not authorized by or performed with the knowledge of the Consultant or the use of the System in a combination or manner not specified by the Consultant. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.

9. Insurance. The Consultant shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract, including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract, whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of A minus or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the Consultant, accompanied by the documentation required by 11 NYCRR §27.0 et seq., provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Consultant shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect. 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 subarticle B 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 NYSDOT Contract Number C037711 and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov. Certificates shall be mailed to the:

   Contract Management Bureau, 6th Floor
   New York State Department of Transportation
   50 Wolf Rd.
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 Partial Payments, Section §109-04 of the Standard Specifications, or
c. Treat such failure as a breach or default of the contract.

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

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

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

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

Certificates of Insurance/Notices above.

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

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

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

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

1. Workers’ Compensation and Disability Insurance. As required by State Finance Law §142, the Consultant shall maintain in force workers’ compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of Consultant’s employees. Consultant shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.
2. Commercial General Liability Insurance. The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than $1,000,000.00 per occurrence and not less than $2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
   a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).
   b. All insurance policies required by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to “the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees” using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
   c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
   d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.
   e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
   f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

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

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

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

10. Intellectual Property Rights to Licensed Software. Intellectual property rights to Software other than that governed by Article 11 hereof are as follows:

10.1 Third-Party Software. Third-Party Software utilized under this project will be provided on a royalty-free basis to NYSDOT with, as applicable, such other license terms as negotiated between the Consultant and the third-party or for Commercial-Off-The-Shelf (COTS) software with such terms as provided under the relevant shrink-wrap license.

10.2 Consultant-Owned Software. This Software is provided by Consultant to NYSDOT, in accordance with the following terms:

10.2.1 Consultant grants a royalty-free, perpetual, transferable, nonexclusive and irrevocable license for all Intellectual Property related to the Licensed Consultant-owned Software for authorized users of the System (including entities outside of NYSDOT).

10.2.2 Such Software licenses shall include in their meaning: 1) any Maintenance Releases, enhancements or New Versions of such Software developed by Consultant or its subcontractors during the term of this Agreement within the Scope of Services or otherwise provided by Consultant or its subcontractors to the System and Enhancements related thereto; and 2) all materials, including but not limited to training materials, documentation, and technical information provided to NYSDOT in written form and for use in connection with such Software.

10.2.3 Consultant warrants that it has full power and authority to grant the rights granted by this subarticle to NYSDOT with respect to such Software without the consent of any other person and that neither the performance of services by Consultant nor the license to and use by NYSDOT of the Software, Software Modification, and Software documentation (including the copying and modifying thereof, exclusive of modifications not made by Consultant) will in any way constitute an infringement or violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, contract or any other rights of any third party.

10.2.4 Consultant warrants such Software, Software Modification, its license as described herein, and the performance by Consultant of services, to be in compliance with all applicable laws, rules and regulations.

11. Intellectual Property Developed Under This Agreement. Rights to intellectual property developed under this Agreement shall be allocated and owned in accordance with the following:
11.1 Federal Law. The applicable provisions of Federal Law and regulation provide for the non-Federal parties of an agreement to retain all intellectual property rights developed under this Agreement, subject further to the provisions defining, identifying, allocating, or restricting such rights otherwise set forth herein.

11.2 Identification of Intellectual Property. Consultant is responsible for identifying and segregating, in advance, intellectual property that was or will be developed by Consultant or its subcontractors under this Agreement, solely with non-federal funding.

11.3 Trade Secrets. The parties shall not publicly disclose information they obtain as a result of this Agreement where such information is marked and identified as proprietary or confidential, and which consists of information such as trade secrets or commercial or financial information that is privileged or confidential within the meaning of '552(b)(4) of Title 5, U.S.C.

11.4 FHWA License. Under the FHWA Grant Agreement, the FHWA has reserved a royalty-free, perpetual, transferable, nonexclusive, and irrevocable license to reproduce, publish, modify, or otherwise use in any media which exists currently or in the future, and to authorize others to use any such copyrightable work produced under this Agreement with Federal funds, for Federal Government purposes.

11.5 Patents. Rights to inventions made under this Agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. Section 401.14, as modified below, is hereby incorporated by reference.

(i) The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g)(1) of the clause;

(ii) Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and

(iii) Paragraph (1) of the clause, entitled "Communications" shall read as follows: 
"(1) Communications. All notifications required by this clause shall be submitted to the FHWA Division Office."

11.6 (Reserved) Ownership.

11.7 Backups. Consultant shall maintain weekly backups of source code developed, content, and files free from passwords, encryption, or malicious or time-triggered code, and make such backups available upon NYSDOT request.

12. Escrow and Modification of Source Code. Consultant shall place a copy of the source codes of the Consultant-Owned Software and any proprietary or custom-developed software (for the Project) -- or subcontractor-Owned Software into escrow with a licensed escrow agent subject to approval by NYSDOT. NYSDOT approval shall not be unreasonably withheld.

12.1 Delivery of Developed Software. All source and object codes for the Developed Software, i.e., all software custom developed for any System application, shall be provided to NYSDOT during System Implementation to support the maintenance of the System. This will include the software, documentation of the customization, and training materials for the maintenance of the customized software.

13. Training, Support and Maintenance. Consultant shall offer training in the use and implementation of the System and any COTS, Developed or Consultant-Owned Software, to NYSDOT staff, consultant, and other structure owners, including but not limited to municipalities, state and local authorities, commissions, and railroads that will be using the System, in accordance with the RFP and any other part of this Agreement.
13.1 Scope and Duration of Consultant Maintenance and Support of Proprietary, Developed, and/or Licensed Third-Party Software and Systems. Following initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing maintenance and support during the term of this Agreement for such software and systems. Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance and support for Consultant’s proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

13.1.1 Terms and Conditions of Maintenance. The maintenance to be provided by Consultant under §13.1 shall include, but not be limited to, providing new releases or updates if issued, and/or patches or bypasses, to address any known problem, i.e., any substantial deviation of unmodified software or systems from their then applicable specifications. Consultant shall provide access to the current version of such software and systems. Consultant’s obligation to provide ongoing maintenance shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same for a period of twelve (12) months after it is first superseded. Subject to such additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance for Consultant’s proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

13.2 Scope and Duration of Consultant Support for NYSDOT Usage of Proprietary, Developed, and/or Licensed Third-Party Software. The Consultant shall provide technical support during NYSDOT’s installation and implementation of the Developed or Consultant-Owned Software and Systems as set forth in Requirements of the RFP, and any other part of this Agreement. Following the initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing technical support during the term of this Agreement for NYSDOT usage of such software and systems, which shall cover the software and systems, be of the scope and duration, include the types of support, and be conducted in accordance with the requirements set forth in Requirements of the RFP and any other part of this Agreement.

13.2.1 Terms and Conditions of Support.

(a) Subject to such different or additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall, at a minimum, provide support though a toll-free "800" telephone number connection to Consultant’s technical support staff, and through an Internet website though which NYSDOT staff may contact Consultant’s technical support staff, at least during the business hours of 7:30 am to 5:00 pm Eastern Standard Time, Monday through Friday, excluding state holidays, in order to present inquiries and/or requests for support and technical assistance, and to obtain such assistance.

(b) In accordance with the provisions of the Requirements of the RFP, and any other part of this Agreement providing NYSDOT with access to the current version of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant’s obligation to provide ongoing support shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same, for a period of twelve (12) months after it is first superseded.

14 System Acceptance. If NYSDOT determines that the System has not successfully completed the requirements of the system acceptance during the System Implementation, NYSDOT shall promptly notify Consultant, in writing (hereinafter referred to as "notice of failure"), and shall specify with as much detail as possible in which respects the System does not perform properly. The Consultant shall respond within ten (10) business days with an action plan and schedule to address all issues related to the failure(s). NYSDOT may approve, require changes to, or reject the plan. If NYSDOT rejects the action plan provided by the Consultant in response to the notice of failure, NYSDOT may determine that such rejection means that the Consultant is in material default under this Agreement for the purposes of the default and termination provisions of this Agreement or may, at its sole discretion, afford the Consultant with additional opportunity to cure the default.
14.1 Repeated Failure Constituting Material Breach. If the System fails to perform properly in accordance with the system acceptance for a second time, NYSDOT may determine that such failure constitutes a material default under this Agreement for the purposes of the default and termination provisions of this Agreement or may afford the Consultant with additional opportunity to cure the default.

14.2 Correction Costs. The Consultant’s correction of the product deficiency shall be at no additional cost to NYSDOT, unless the system acceptance failure(s) are the results of Disputed Work within the meaning of Article 4.6 of this Agreement (in which case the remedy within such section applies). The Consultant shall, however, bear sole responsibility for the costs of correction of product deficiencies revealed by such testing, including all previously unanticipated and unscheduled time and effort required for the development of corrective measures.

15. Warranty Provisions. Consultant warrants that, for 18 months from the acceptance of the system per the successful completion of the system acceptance, all System Software and Systems, including all Service Components, Developed Software, and Consultant-Owned Software furnished hereunder, both as to each individual element and for the overall System, shall be free from significant programming and operational errors which shall prevent it from operating in conformity with the standards set forth in this Agreement.

15.1 If NYSDOT notifies Consultant that any Software, System, or Service fails to conform to the requirements of this agreement during the Warranty period, Consultant shall remedy such failure at no cost to NYSDOT.

15.2 Exclusive Warranty for Third-Party Software. Consultant's warranties do not apply to Third-Party Software or Third-Party Commercial-Off-The-Shelf Software. Third-Party Software or Third-Party Commercial-Off-The-Shelf Software manufacturer and any Third-Party warranties shall, to the extent permissible, be passed through to NYSDOT. However, Consultant shall provide a work-around solution to any Third-Party Software, to allow the system to function to the highest extent reasonably possible within a reasonable time frame.

15.3 Correction of Defects. If at any time during the Warranty Period Consultant or NYSDOT discovers one or more defects or errors in the Software and Systems or any other respect in which such Software and Systems fail to conform to the provision of any warranty contained in the Agreement, Consultant shall, entirely at its own expense, correct such defect, error, or non-conformity by, among other things, supplying NYSDOT with such corrective codes and making such additions, modifications, or adjustments to the Software as may be necessary to keep all Software in operating order.

15.4 Warranty Disclaimer. Consultant disclaims any and all other promises, representations, or warranties not expressly provided for elsewhere in this Agreement, and its attachments and exhibits, to the maximum extent allowable by law, with respect to the software and systems, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a specific purpose, and any warranties that the operation of the software will be uninterrupted or error free.

16. Suspension and Termination; Bankruptcy.

16.1 Suspension or Termination for Convenience of NYSDOT. NYSDOT may, without cause and for its convenience, upon not less than seven (7) days' written notice to Consultant, suspend Consultant's performance under this Agreement or terminate this Agreement.

16.1.1 Contracts between Consultant and its subconsultants shall provide for their suspension or termination, without cause and for the convenience of Consultant, upon not less than
seven (7) days' written notice by Consultant to its contractor, and for closeout compensation in such event for work in progress and materials on order prior to termination, work performed, materials delivered, but not lost profit on the balance of contract work. NYSDOT may, without cause and for its convenience, upon not less than seven (7) days' written notice to Consultant, require Consultant to suspend or terminate any or all of its contracts pursuant to such provisions.

16.2 Suspension or Termination for Cause. NYSDOT may for cause and, unless in NYSDOT's judgment the public interest requires earlier action, upon not less than seven (7) days' written notice to Consultant, suspend Consultant's performance under this Agreement or terminate this Agreement if Consultant breaches or is in default of any obligation hereunder, including those instances enumerated in the Escrow Agreement, which default is incapable of cure or which, being capable of cure, has not been cured within twenty (20) days after receipt of notice of such default from NYSDOT or within such additional cure period as NYSDOT may authorize. Consultant shall also be deemed in default if: 1) it fails to make reasonable progress as defined by NYSDOT on the Services Project in accordance with this Agreement; 2) the System does not perform in accordance with the requirements of this Agreement, notwithstanding Consultant’s remedial or maintenance efforts; or 3) other material violation of this Agreement that significantly endangers substantial performance of the Project.

16.2.1 In the event of the termination of this Agreement for failure of a Project element or component, or in the performance of the Software or Services during the Warranty Period as stated in Article 15.1 above, NYSDOT may: 1) recover from Consultant all costs, fees, and expenses incurred by NYSDOT to remedy such failure, including for elements which are rendered substantially useless as a result of such failure, up to the amount paid to Consultant for the Project element that has so failed; and 2) if such failure is integral to the entire Software and Systems, all money paid for the Software and System, as well as associated services.

16.2.2 In the event of the failure of a Project element or component, or in the performance of the Software, Systems, or Services during the Warranty Period as stated in 15.1 above, NYSDOT may suspend Consultant's performance, in whole or in part, without terminating this Agreement, and contractually or otherwise remedy the failure at costs to be charged to Consultant or offset against Consultant's compensation under this Agreement. In the event of such suspension or other remedy, Consultant’s aggregate liability shall not exceed two hundred percent (200%) of the amount stated in 16.2.1 above.

16.2.3 If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the Consultant, final payment shall be made based on the percentage of work satisfactorily completed by the Consultant, as determined by the STATE.

16.2.4 The New York State Department of Transportation reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Law Sections 139j & 139k was intentionally false or intentionally incomplete. Upon such finding, the New York State Department of Transportation may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

16.3 Delivery of Documentation. In the event of suspension or termination pursuant to this Article, Consultant shall secure for and deliver to NYSDOT all documentation relating to the contracts terminated thereby, including but not limited to any designs, plans or specifications, contract and subcontract documents, tapes or discs, or software.
16.4 *Impact on Project Schedule.* In the event such suspension or termination affects project duration, the impact will be reflected in the project schedule.

16.5 *Suspension or Termination Payments.* In general, suspension of performance or termination of any financial assistance under this Agreement will not invalidate the State's obligation to reimburse Consultant for costs and expenses properly incurred by Consultant and concurred in by the State before the suspension or termination date, to the extent those obligations cannot be canceled. However, if the State determines that Consultant has willfully misused State or Federal assistance funds by the gross negligence or willful failure to make adequate progress; make reasonable use of the Project property, facilities, or equipment; or adhere to the terms of this Agreement, the State reserves the right to require Consultant to refund the entire amount of State funding received by Consultant under this Agreement.

16.6. *Bankruptcy.* Should a petition for bankruptcy be filed by Consultant pursuant to Title 11 USC or its successor statute:

16.6.1 Consultant shall comply with all requirements set forth in 11 USC 365 or any successor statute regarding the assumption, assignment, or rejection of this Agreement. Consultant shall either cure all defaults, compensate actual losses, give adequate assurance of future performance and fulfill all obligations pursuant to 11 USC 365(b)(1) or other applicable law and assume the obligation; or shall reject this Agreement as provided by Bankruptcy Law. If this Agreement is rejected, possession of or rights to contract property, including subcontracts required for the performance of the Project (which is in the public interest), equipment, and deliverables, shall be immediately returned to or transferred and assigned to the State. No sale or assignment of this Agreement shall be permitted without the consent of the State or without compliance with the assumption and assignment provisions under Bankruptcy Law pursuant to 11 USC 365 or its successor statute.

16.6.2 The Debtor may not assume or assign this Agreement if it has been terminated pursuant to the terms hereof prior to the filing for a petition for relief in bankruptcy.

16.7 *Reserved.*

16.8 *Consultant Warranties Surviving Suspension, Termination, or Bankruptcy.* Following a suspension or termination of this Agreement, and/or a Chapter 11 reorganization bankruptcy of Consultant, Consultant’s obligations to have provided properly performing software and/or systems as required under this Agreement, and the warranties provided by Consultant to NYSDOT under this Agreement, shall continue in effect for the remainder of the term of this Agreement, without regard to such suspension or termination, and to the fullest extent allowed by federal bankruptcy statutes and case law. Consultant shall not avoid responsibility for failure to provide properly performing software and/or systems as required under this Agreement by asserting that the suspension or termination of this Agreement, or Consultant’s Chapter 11 bankruptcy, has voided the obligations of Consultant’s contractual warranties under this Agreement.

16.9 *Limitation of Liability/Exclusion of Damages.* Except for Licensee’s breach of confidentiality obligations hereunder, in no event shall either party be liable to the other for any incidental, indirect, special, consequential or punitive damages related to the software that is not expressly provided for elsewhere in this Agreement and its attachments and exhibits, including without limitation lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from the software’s use, even if the party from which such damages are sought has been advised of the possibility of such damages.
17. Reserved (Title to Equipment).

18. Independent Contractors.

18.1 Purpose. The purpose of this Agreement is to promote economic and technical cooperation and efficiency among the Government, State, Consultant, and private entities in pursuing mutually advantageous goals. The relationship of the parties to the Agreement is that of independent contractors and not joint venturers, partners, or agents.

18.2 Officer or Employee of State. Consultant agrees that it will neither hold itself out as nor claim to be an officer or employee of the State and that it will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State, including but not limited to Worker's Compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

19. Taxes. The following paragraph 60 of General Specifications by the New York State Office of General Services applies:

19.1. Tax Provisions. Purchases made by the State of New York are not subject to State or Local taxes or Federal Excise taxes. To satisfy the requirements of the New York State sales tax, either the purchase order issued by an agency or institution of New York State for supplies or equipment, or the voucher forwarded to authorize payment for such supplies and equipment, will be sufficient evidence that the sale by a contractor or Consultant was made to the State of New York, an exempt organization under Section 1116(a)(1) of the Tax Law. Exemption certificates for Federal Excise taxes will be furnished upon request by the Office of General Services, Standards and Purchase. No person, firm or corporation is, however, exempt from paying New York State Truck Mileage and Unemployment Insurance or Federal Social Security Taxes.

The address of the Office of General Services, Standards and Purchases is:
   Tower Building
   38th Floor
   Empire State Plaza
   Albany, New York 12242

In lieu of NYSDOT furnishing an exemption certificate for excise taxes, Consultant is advised that New York Registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

20. Entire Agreement. This Agreement, together with the Appendices and Exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter covered, and all prior representations or agreements have been merged into this document and superseded by it.

21. Amendments. Amendments to this Agreement, and amended or Supplemental Exhibits, may be made only in writing, signed by both parties and specifically referred to as an amendment to this Agreement or Supplemental Exhibit.

22. Required Clauses. Attached hereto and made part of this Agreement, as if set forth fully herein as Appendix A, are the standard clauses for all New York State contracts.

23. Executory Clause. It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent that moneys available to the State, and no liability on account thereof, shall be incurred by the State beyond moneys available for the purposes hereof.

24. Effective Date. This Agreement takes effect on the ___ day of ______________, 201__.
25. Successors and Assigns. All the covenants and obligations of the parties hereunder shall bind their successors and assigns, whether or not expressly assumed by such successors and assigns.

26. Interpretation. All Article headings utilized in this Agreement are for convenience only and shall not affect the construction hereof. All Appendices attached hereto are integral parts of this Agreement, and the provisions set forth therein shall bind the parties hereto to the same extent as if such provision had been set forth in its entirety in the main body of this Agreement. Nothing expressed or implied herein shall give, or be construed to give, any person, firm, or corporation, other than the State or Consultant, any legal or equitable right, remedy, or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waivered or modified orally. Any supplement or amendment to this Agreement shall be in writing.

27. Severability. If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original.

29. Term of Agreement. The base term of this Agreement, including development, implementation, training, support, and maintenance, will be five (5) years or sixty (60) months, starting from MONTH DD, YEAR to MONTH DD, YEAR, inclusive. In addition, there are two (2) 12-month optional term extensions, depending on performance, need and availability of funds, subject to NYSDOT, Attorney General and Office of the State Comptroller approvals, and the Consultant shall be notified of the extension by the State via e-mail before the end of the existing contract term.

30. Assignment or Transfer of Agreement

30.1 Consent Required. As required by the State Finance Law, Section 138, Consultant shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or its right, title, or interest therein, or its power to execute such Agreement, to any other person, company, or corporation, without the previous consent, in writing, of NYSDOT.

30.2 Violation. If this restriction is violated, NYSDOT may revoke and annul the Agreement and, in that event, 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.

31. Certification Required by 49CFR, Part 29. The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

1) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency

2) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years

3) Does not have a proposed debarment pending
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

32. Certification for Federal-Aid Contracts. The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

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

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

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

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

33. Application of Federal, State, and Local Laws and Regulations. To achieve compliance with changing Federal requirements, Consultant agrees to include in all its subcontracts, and shall require its subcontractors to further contractually provide specific notice, that Federal and State requirements may change and that the changed requirements will apply to the Project as required.

34. Subawards to Debarred Parties. Consultant acknowledges that it must not make any award, or permit award of any contract or subcontract at any tier for work covered by this Agreement, to any party which is debarred or suspended or otherwise excluded from participation in Federal assistance programs under E.O. 12549, "Debarment and Suspension".

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 into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Consultant also shall require that the language of this certification be included in all subcontract and lower tier subcontracts which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

35. Governing Law. The parties hereto agree that this Agreement shall be governed by the Laws of the State of New York.
36. **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 Subcontractors/Subconsultants regarding the obligations arising under this clause to ensure 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, under no circumstance, shall communicate with the public or news media without prior authorization from the State’s designee. Neither shall the Consultant disclose information deemed confidential by the State nor 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.

The Consultant shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section 889-aa and State Technology Law Section 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.

36.1 **Non-Disclosure or Confidentiality Agreements.** Consultant shall agree to execute and be bound by any non-disclosure or confidentiality agreements that NYSDOT or any other agency, consortia, corporation, or other entity which requires such non-disclosure or confidentiality agreement to be executed before data, software, code, or other information shall be provided to the System. The Consultant’s acceptance and execution of such agreements shall not be unreasonably withheld.

37. **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.

38. Compliance with Consultant Disclosure Laws. The Consultant shall timely, accurately, and properly comply with the reporting requirements of State Finance Law Subdivision 17 of Section 8 and Subdivision 14 of Section 163, as amended by Chapter 10 of the Laws of 2006, by submitting the New York State Office of the Comptroller’s “Form A - State Consultant Services – Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term” and “Form B - State Consultant Services – Contractor’s Annual Employment Report” (available through the NYSDOT website under Consultant Contract Reporting Requirements at: https://www.nysdot.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions).

Annual employment reports should be submitted to the following addresses. 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

**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.

39. Contract Migration. In the event the Consultant is awarded a NYS Centralized Contract for the same products or services, NYSDOT shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter, or eliminate any right that NYSDOT otherwise had under the terms and conditions of this Agreement.

39.1 Extension of Use (Piggybacking). Any Contract resulting from this bid solicitation may be extended to additional State or governmental jurisdictions or authority upon mutual written agreement between New York State (the lead contracting State) and the Consultant. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

40. Notices.
40.1 All notices permitted or required under this agreement 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
(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:

For the New York State Department of Transportation:

Contact Person’s Name: William A. Howe, Contract C037711
Title: Director
Address: NYSDOT Contract Management Bureau, 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

For the Consultant: __________________________ (Name)

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

40.2 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 e-mail, upon receipt.

40.3 The parties may, from time to time, specify any new or different address in the United States as their address for purposes 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 purpose 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.

41. Reserved.

42. 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:

42.1 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.
42.2 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.

42.3 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.

42.4 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.

42.5 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.

42.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 42.1 through 42.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

42.7 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.

43. 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 The Office of the State Comptroller’s ‘Guidelines to Financial Operations’, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

43.1 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.
43.2 Suspension or Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

43.3 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.

44. 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.

45. 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.

46. Code of Ethics. The CONSULTANT specifically agrees that this AGREEMENT may be canceled or terminated if any work under this AGREEMENT is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for State officers and employees. The CONSULTANT shall not engage, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this AGREEMENT in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

47. 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.

48. *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. 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.

49. *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 NYSDOT 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.

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

The CONSULTANT hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.
In conjunction with any subcontract under this AGREEMENT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

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

51. 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.

52. 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 #C037711 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the Consultant, by signature below, has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK

________________________________________ ______________________________
CONTRACT MANAGEMENT DATE DEPARTMENT OF TRANSPORTATION DATE

Consultant Certifications: I certify that all the information with respect to the “Proposer Responsibility Questionnaire” submitted by <FIRM NAME> on the <DATE> pursuant to the requirements set forth in OSC’s ‘Financial Guide to Operations’ is complete true and accurate. I additionally certify that 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 “Proposer Responsibility Questionnaire” submitted that date.

In addition to the acceptance of this Agreement, I certify that all information provided to NYSDOT with respect to the requirements contained in State Finance Law Sections 139j & 139k is complete, true, and accurate.

By ____________________________________ Title: _____________________________________

<FIRM NAME>.

Date: ________________________________

Right of Way and Real Estate IT System Services for NYSDOT

APPROVALS

ATTORNEY GENERAL THOMAS P. DiNAPOLI
STATE COMPTROLLER

By: ________________________________

Date: ________________________________
Acknowledgement for Contract #C037711 Original Agreement

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(s) on behalf of whom 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) and that by his/her/their signature(s) on the instrument, the individual(s), or the person(s) on behalf of whom the individual(s) acted, executed the instrument and that such individual made such appearance before the undersigned in ___________________________________________ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

___________________________________________

NOTARY PUBLIC

(Signature and office of individual taking acknowledgement.)

My Commission Expires: ______________________

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessee, 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, prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

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

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

7. NON-COLLABORATIVE 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 MacBrick 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 MacBrick Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Updated January 2014
APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

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

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

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

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

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

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

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

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

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

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

FEDERAL SINGLE AUDIT REQUIREMENTS

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

The New York State Department of Transportation, the New York State Comptroller’s Office and the U.S. Governmental Accountability Office (GAO).

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE
The Catalog of Federal Domestic Assistance (CFDA4), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

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

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

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

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

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

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

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

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

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

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

(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.

3 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.
4 www.cfda.gov/
(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.

March 2013
APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL  (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

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

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

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

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

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

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

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

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

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

(1) Notices and posters setting forth the CONSULTANT’S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

5. RECRUITMENT  

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

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

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

6. PERSONNEL ACTIONS  

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

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

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

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

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

7. TRAINING AND PROMOTION  

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT shall 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 (10 in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

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

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

II. MWBE Utilization Plan

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

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

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

III. Waivers Post Contract Execution

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

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

IV. Liquidated Damages – MWBE Participation

A. Where NYSDOT determines that the Consultant is not in compliance with the requirements of this Appendix and the Consultant refuses to comply with such requirements, or if the Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Consultant shall be obligated to pay to NYSDOT liquidated damages.
B. Such liquidated damages shall be calculated as an amount equaling the difference between:
   1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
   2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

INFORMATION TECHNOLOGY INFRASTRUCTURE REQUIREMENTS

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

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

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

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

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

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

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

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

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

6.3 Transfer of Data; Charges: Transfer of Data shall be done at no additional charge to NYSDOT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

December 2015
State Consultant Services  
Contractor's Annual Employment Report  

Report Period: April 1, to March 31,  

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<td>Description of Services Being Provided:</td>
<td>Right of Way and Real Estate IT System</td>
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**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>
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Grand Total

Name of person who prepared this report:
Preparer's Signature:______________________________________________________________
Title:__________________________ Phone #:__________________________
Date Prepared: / / Use additional pages if necessary)
Schedule A

SCOPE OF SERVICE

Leave Blank

(Final Details to be Negotiated)
Schedule B

DELIVERABLES SCHEDULE AND COMPENSATION

Leave Blank

(Payment Clarifications/Details and “Best and Final Pricing” to be negotiated)
Exhibit B: NYSDOT’s Request for Proposals, dated __, as Modified (Added via Reference)

Exhibit C: The Consultant’s Proposal, Dated, as clarified (Added via Reference)
Exhibit D

Staffing Plan

<PLACEHOLDER>
Exhibit E

System Requirements Traceability Matrix

<PLACEHOLDER>
EXHIBIT F
OTHER REQUIREMENTS:

PROCUREMENT, RECORD KEEPING, ACCOUNTING, ELECTRONIC PAYMENT & BILLING, AND NOTICE REQUIREMENTS

1. Subcontractors

The work of the project shall be performed in accordance with the following Subcontract Procedures:

1.1 Without relieving it of, or in any way limiting its obligations under the Agreement, the Consultant may enter into subcontracts for the performance of the Project or for the purchase of materials and equipment. The Consultant shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. In the event that competitive bidding or multi-source price review is not feasible, the Consultant shall document an explanation for, and justification of, a sole-source selection.

1.2 The Consultant shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of work, equipment, supplies or materials sought, basis for establishing the source list, the name of each person or organization submitting or requested to submit a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies, or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, patents, copyrights, or proprietary data.

1.3 All subcontracts for the performance of work of the Project shall be in writing and subject to the prior approval of NYSDOT and shall contain provisions required by this Agreement for such subcontract, those provisions required by Appendix A, and all other provisions now or hereafter required by law to be contained therein.

2. Accounting and Record Keeping For the Cost Reimbursement Compensable Component

The following are the record-keeping requirements for State reimbursement payable under the Cost Reimbursement compensation method:

2.1 Fixed-Price (Lump Sum) Milestone Payments. Consultant may request payment for fixed-price work in accordance with approved milestone payment schedules. Milestone payments shall be subject to NYSDOT receipt and acceptance of identified deliverables. Upon the submission of invoices, NYSDOT will make payments to the Consultant in accordance with the terms of the Agreement. Consultant will submit requests for milestone payments using the form FIN 110 (NYSDOT standard state voucher or current procedure). The Consultant shall complete the FIN 110 in accordance with the form instructions and shall specify the milestone and accompanying milestone amount for which payment is being requested.

2.2 Progress Billings. In the event the Extra Work is authorized under Article 4.5 ‘Extra Work’ of Attachment 17 Draft Contract and the STATE determines such payments are to be made, the following requirements apply.

After approval of the Agreement, the Consultant may submit progress billings to NYSDOT for the Federal share, to be supported as follows:

(a) Contracts/Consultant Agreements - Separate invoices or billings are required for each subcontract, each subconsultant agreement, and for work performed by employees. Billings for payments made on contracts or consultant agreements will be made on NYSDOT’s Form FIN 421, as it may be amended, and supported by a copy of the applicable payment estimate(s) for contracts or consultant agreements.

(b) Work by Employees - Billings for employees will be on NYSDOT’s Form FIN 421, supported by an Engineer’s Payroll Abstract for the period(s) covered by the billings, copies of payroll time sheets for the applicable billing period, and copies of paid invoices or supporting documents for all non-
personal service cost items in excess of $250. Only those direct Project costs as defined in applicable Federal regulations and incurred subsequent to the date of Federal Highway Administration authorization can be included in billings. The supporting documents for personal service and non-personal service costs are to include the following:

1. **Payroll Time Sheets** - The signature of the employee and approval of the employee’s supervisor, or other verification acceptable to NYSDOT, is required on each time sheet. These signatures attest to the employee’s assignment and hours worked on the Projects indicated and demonstrate that periods of paid leave are charged to appropriate leave categories or accounts. Employee time for such leave, holidays, vacation, or other paid leave cannot be charged directly to Projects on time sheets since such costs must be allocated to Projects by using an approved percentage additive rate applied to direct payroll costs. Time sheets must correspond with applicable payroll records and amount paid for each employee based on a comprehensive payroll/labor cost distribution system.

2. **Engineer’s Payroll Abstract** - Leave and fringe benefit additives are to be calculated and charged to Projects at percentage rates previously approved by NYSDOT for provisional billing purposes, subject to final audit.

3. **Non-Personal Service Costs** - Copies of invoices or documentation showing amounts and notations as may be required to clearly identify the purpose of each item. Copies of employee reimbursement vouchers for travel or similar costs are not required with progress billings but must be retained by the Consultant for subsequent audit.

Applicable to the Cost Reimbursement compensation method, NYSDOT will reimburse personal service, fringe benefits, non-personal service, and related costs which are clearly identifiable to a specific project. Local claims for reimbursement of such expenditures utilize the same Form "FIN 421" processing procedure as is routinely used for reporting Consultant Payment Requests. Municipal claims for reimbursing preliminary engineering, construction engineering, or other approved work -- whether performed by Municipal employees or by a Consultant -- requires only the completion of a single column of Total Costs which pertain solely to eligibility for the Federal Aid component.

**Completing FIN 421**: The amounts listed on lines 1-3 of the Work Performed Section of the FIN 421, and the supporting documentation, should be for 100% of the share of participating costs eligible for federal aid. However, since the amount shown on line 3 of the FIN 421 is applicable to calculating the Federal share only, a notation after that amount is required to indicate the Total Costs reported times a "Federal Aid Percentage" (e.g., "$______X___%”). For example, "$100,000 X 80%" (with “80%” being the federal aid percent). On the other hand, lines 7 and 8 for such billings should reflect only the amounts of computed Federal Share payments, with Line 8 containing only the amount currently being claimed for reimbursement of the federal share.

2.3 **Project Detail Ledgers.** For audit purposes, a Project Detail Ledger is required as the official accounting record of the Consultant to record and accumulate all cost transactions applicable to the Project. All costs recorded on the Project Detail Ledger should be for 100% of such costs, with reduction for the non-Federal share, and for any applicable State share.

Every transaction listed on the Project Detail Ledger will be recorded in the same level of detail as the total from each supporting source document (no summarization of source documents amounts). All transactions listed on the detail ledgers will identify the source documents for the transactions by referencing contract/estimate numbers, social security numbers (for time sheets and employee reimbursements), proposer or payee numbers for vouchers, etc. The applicable accounting-system record date will also be included for each transaction; i.e., pay period dates for time sheets, voucher approval, or date paid for payments to the consultant, employee reimbursements, etc.

The ledgers for the Project will include totals for all transactions recorded during: 1) each accounting month; 2) the fiscal year of the Sponsor; and 3) the Project life to date.

2.4 **Source Documents.** The Consultant will retain an official copy of consultant estimates, payroll time sheets, employee travel claims, and all other original source documents for transactions listed on the Project Detail Ledger. These will be systematically filed in an order that will facilitate retrieval. All expenditure vouchers or other cost documents must also be traceable through the Consultant's disbursement process to copies of warrants or checks.
issued and to corresponding documentation maintained in the official accounting records of the Consultant's central finance office.

2.5 Audit/Disallowances. The Consultant shall cause a Certified Public Accountant to audit the performance of any consultant contract entered for the Project and retain the results thereof for State or federal audit of this agreement. Costs claimed or previously reimbursed that cannot be supported as outlined herein are subject to audit disallowance by NYSDOT, the State Comptroller, the Federal Highway Administration, and/or the U.S. Department of Transportation, Officer of the Inspector General. Amounts paid to the Consultant by NYSDOT that are subsequently disallowed by the Federal Government are subject to recovery by NYSDOT from the Consultant, or at the option of the State, will be offset or reduced against current or future reimbursement claims on the same or other Projects.

3.0 Contract Payment - Electronic payment requirement

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 e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. CONSULTANT acknowledges that it will not receive payment on any invoice 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.

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.

4.0 Submittal of Excel Spreadsheet with Billings

Due to a need for improved electronic tracking of consultant billings and payments, including payments to subconsultants, NYSDOT requires that all billings include an Excel spreadsheet. This can either be submitted on acceptable electronic media with the billing package, or e-mailed separately to NYSDOT’s Project Manager. A model spreadsheet is posted on NYSDOT’s website on the Consultant Forms, Publications, and Instructions page: https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions. To download the spreadsheet, scroll approximately 2/3 of the way down the page to the section titled PAYMENT AND INVOICE FORMS, and click on the link labeled Consultant Billing Spreadsheet. Consultants are welcome to customize this spreadsheet for their convenience or as requested by the Project Manager, as long as the basic functionality is maintained. Note that the spreadsheet is a supplement, not a replacement, to the hard copy billing forms and backup. The information submitted in the spreadsheet must match the hard copy exactly, with the exception of the signature block on the FIN 421. All billings must include an Excel spreadsheet, and the spreadsheet must include a completed AAP7 tab for each subconsultant. The billing will not be considered complete, and the Merchandise Invoice Received (MIR) date will not be established, until NYSDOT receives an appropriately completed spreadsheet. The file name should start with the contract number, followed by the date.
Exhibit G
Glossary
<table>
<thead>
<tr>
<th>O<em>Net Employment Category &amp; O</em>NET Employment Title</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</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) Page of
State Consultant Services
Contractor's Annual Employment Report

Report Period: April 1, to March 31,

Contracting State Agency Name: Transportation
Contract Number: C037711
Contract Term to
Contractor Name:
Contractor Address:
Description of Services Being Provided: Right of Way and Real Estate IT System Services

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 19

NYS Office of ITS RT Cluster: Release Management Overview

1 Process Mission:
The mission of the Release & Deployment Management process is to plan, schedule and control the build, test and deployment of releases, and to deliver new functionality required by the business while protecting the integrity of existing services.

2 Scope:
All new application/software development as well as updates to existing application/software must go through the RDM process. This includes new project development, bug fixes and enhancements.

3 RDM Roles & Responsibilities:
The RDM process has three execution roles -- RDM MGR, Release Specialist and Deployment Specialist -- with specific process tasks that must be assigned and worked to completion to move the Release from “Draft” to “Closed.” The management roles of RDM Analyst and RDM Process Owner provide oversight to the operation of the RDM process and identify areas of improvement.

<table>
<thead>
<tr>
<th>3.1.1 Release and Deployment Management Manager (RDM MGR)</th>
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<tr>
<td><strong>Role Summary:</strong></td>
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<tr>
<td>• The RDM Manager has primary responsibility for the overall quality of the Release and Deployment Management process and day-to-day operation of the process for their organization.</td>
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<td>• Assist the RDM Process Owner with process execution and continuous improvement activities.</td>
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<td>• The RDM Manager is the Cluster/Division focal point regarding releases and deployments.</td>
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<td>• The RDM Manager will oversee Release Specialists and Deployment Specialists while performing their RDM roles.</td>
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<tr>
<td>• The RDM Manager plans and manages support for release and deployment management tools and processes within assigned Division/Cluster.</td>
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| **Responsibilities:** |
| • Establish measurements and targets to improve process effectiveness and efficiency. |
| • Identify and manages critical success factors and KPIs. |
| • Audit Release Management process execution and provide assessments. |
• Supports and executes the release and deployment management process.
• Conducts "Lessons Learned" for process improvement.
• Works closely with other service delivery process groups, particularly Change and Configuration Management processes across ITS.
• Interfaces with other processes ensuring resources are sufficient and properly allocated.
• Deploys the processes and materials, including training and any retraining as needed.
• Responsible for the overall handling of a specific release.
• Ensures all requirements are met for proper handover to operations.
• Oversees all activities related to the assigned release and ensures the release is implemented and closed.
• Communicates the status of the assigned release to ITS Stakeholders.

### 3.1.2 Release Specialist (RDMRS)

**Role Summary:**
- The Release Specialist is responsible for designing, building, testing and distributing an assigned release package (including testing of back-out procedures when required):
- Role is played by different personnel with varying skill levels.
- The Release Specialist performs and/or coordinates specific tasks associated with releases under the direction of the RDM Manager that include:
  - Establishing the final release configuration, including knowledge, information, hardware, software and infrastructure.
  - Building the release.
  - Testing the release.
  - Establishing and reporting outstanding known errors and workarounds.

**Responsibilities:**
- Creates the initial Release Record.
- Builds the release package.
- Distributes the release package.
- Oversees the timely implementation of the installation and activation plans.
- Follows deployment plan timeframes for executing back-out procedures.
- Prepares and tests back-out procedures, in case of a failure during one of the implementation procedures.
- Attempts to resolve (with development and platform resources) any issues arising during the implementation and activation phases.
- Updates status of release ticket.
- Sends updates to Configuration Management of CI status changes.
- Creates and participates in the test of the release.
- Carrying out the test plan to its completion.
- Creates Implementation Plan using standard templates.
- Updates manuals (runbooks) and/or operating instructions when applicable.
- Notifies the RDM Manager and the Change Manager of unsuccessful release builds.
- Performs a full-fledged test of the release from a functional perspective.
- Communicates any issues detected during the functional test to the RDM Manager and RDM Analyst.

### 3.1.3 Deployment Specialist (RDMDS)

**Role Summary:**
- Assist the RDM Release Specialist in the technical planning, execution and delivery of the deployment management process.
- Deployment Specialists are those who are tasked with the actual function of deploying software.
- The Deployment Specialist is responsible for the technical requirements, design, and creation of the plan with the RDM Manager and Release Specialist that allows the deployment to be successful. This includes working closely with other groups such as Operations, Capacity, Availability, and Change Management to ensure technical requirements are met and approved for both testing and production deployment needs:
- Role is played by different personnel with varying skill levels.
- Provides IT service and business functional support from deployment to final acceptance:
  - Ensures that deployment activity has been authorized by change management prior to starting deployment.
  - Deploys Release packages.
  - Back-out Release packages when appropriate.
  - Provides Early Life Support*.
  - Provides final transition of the service to service operation and continual service improvement.

*Note: Early Life support could be dependent upon the type of deployment, especially for an application release.

**Responsibilities:**
- Supports and executes the Deployment Management process.
- Manages the tactical resource plan and skill management process during deployment activities and beyond.
- Understands the skill set of available resources throughout their assigned area.
- Documents steps for specific deployments and reviews with other deployment participants (trains them), as needed.
• Assists in the hand-over activities to ensure assist with proper resource assignment.
• Works with Asset Management to ensure all affected licenses are updated.
• Provides knowledge transfer regarding deployment and testing actions.
• Updates status of change tickets associated with the deployment of products or services.

4 Phase Records:
Currently, there are six separate phases by default. There are templates to customize this list based on the type of Release (First time to Production vs. Maintenance update). A phase is a substructure of the release record that may represent several tasks and checklists.

5 Task Records:
Each Phase has a varied number of Tasks associated with it. For example, the Quality Assurance Phase includes tasks to deploy an application to the QA environment, perform regression and functional testing, and sign-offs on security scans and open issues. A task is a sub process that must
be completed for the Release to move forward to completion, and the tasks can be customized based on the requirements of the Release.

6 Checklist Records:
Checklists reside in various phases and work in conjunction with tasks completing each phase. They too must be assigned to either RDM managers, Release Specialists or Deployment Specialists throughout the Release. A Checklist is an itemization of validation points for a particular task or phase.

An example of a Checklist is the Transition to Production (T2P) Checklist. This lists important transition tasks which are needed to help ensure a smooth move to Operational status. The T2P Checklist will have items including Design Packages and Bill of Material documentation, Knowledge Base articles, Architectural Reviews, Training, and Go Live Plans.

7 Release Phase States:
Release Phase states track where the release is in its life cycle. This tracking allows for the management and escalation of phases and tasks, beginning with "Draft" and ending with "Closed". Release records can be saved in a draft state until ready to start the Release.

Transition notifications are sent via email as the release phase states change. Additional notifications are sent when an assignment group or individual is assigned to a release record, release phase, or release task.
**Phase State**

- **Open**
- **Draft**
- **Pending Approval**
- **Working in Progress**
- **Review**
- **Closed**

**State Description**

- **Release form that is saved without all of the required information to be submitted or assigned.**

A phase in the Release has been assigned to a Release Specialist or Release Specialist Assignment group who have yet to accept responsibility for the phase or to “approve” assignment.

- **Release record that has been started and the Release Deployment Manager, Release Specialist, Deployment Specialist and technical Lead have been assigned.**

The supporting Release Tasks are closed, the Phase is in a state of Review awaiting closure by the assigned Release Specialist.

- **All of the required tasks and checklists have been completed for the Phase**
8 Release Workflow:

Simple Release Workflow Diagram

<table>
<thead>
<tr>
<th>RDM Manager</th>
<th>Release Specialist</th>
<th>Deployment Specialist</th>
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<tr>
<td>Start Release Record</td>
<td>Design &amp; Build Release Package</td>
<td>Quality Assurance</td>
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<td>Quality Assurance</td>
<td>Staging</td>
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<td>Pass QA?</td>
<td>Yes</td>
<td>Run Deployment Process in Production Environment</td>
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<td>Assign RDM Checklist</td>
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ATTACHMENT 20

Use Cases

OnLine