Initial Information for Submittal

A. Please note the following dates and deadlines:

   March 27, 2019: Deadline for the submission of proposals at 12:00 PM (Eastern Time)

   March 6, 2019: Deadline for questions about the RFP at 12:00 PM (Eastern Time)

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

RFP RESPONSE FORM: C037714 – COMMERCIAL VEHICLE ELECTRONIC SCREENING MAINTENANCE SERVICES FOR NYSDOT

Please review this RFP, complete the following information, and e-mail to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see Section 5.2.2(c)) before questions or other communications with the Department regarding this solicitation can be initiated.

__________  WE DO INTEND TO SUBMIT A PROPOSAL

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

_______________________________________________________________________

_______________________________________________________________________

Name and Address of Organization (Include Zip Code):

_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

Date: ________________

Typed Name and Title: ________________________________________________

Telephone: ______________________ Fax: _______________________________

E-Mail Address: _______________________________________________________

Please e-mail to: Micheleen.Gregware@dot.ny.gov
CONSULTANT CHECKLIST FOR PROPOSAL SUBMISSION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
COMMERCIAL VEHICLE ELECTRONIC SCREENING MAINTENANCE SERVICES
FOR NYS DOT
Contract #C037714

Part I - Technical and Management Submittal

- Five (5) printed and bound (three-ring binder) hard copies of Part I plus one copy of Part I on Thumb-drive in MS Office 2013 compatible format.
- Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the title “Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT RFP Part I — Technical and Management Proposal (C037714)”
- Signed Cover Letter on official business letterhead
- Table of Contents identifying each major section and page numbers
- Executive Summary of proposed approach
- Narrative Description
- Approach, Scope of Services and Schedule
- Organization and Staffing
- Experience
- Complete and submit Attachment #15: Key Personnel Resume and References

Part II – Cost and Administrative Submittal

- Three (3) printed and bound (3-ring binder) hard copies of Part II plus one copy of Part II on Thumb-drive, in MS Excel 2013 compatible format
- Securely sealed and clearly labeled with the title “Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT RFP, Part II — Cost and Administrative Proposal (C037714)”
- Required Cost information (complete and submit Attachment 17, Cost Proposal Workbook)
- Complete and submit Attachment 2: Consultant Information and Certifications (sign both Sections II and III)
- Complete and submit the Attachment 3: Form AOR Acknowledgement of Receipt
- Complete and submit Attachment 4: Procurement Lobbying Law Forms
- Complete and Submit Attachment 6: Non-Collusive Bidding Certification
- Complete and submit Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
- Complete and submit Attachment 10a: DBE Participation Information Form
- Complete and submit (if applicable) Attachment 10a: DBE Subconsultant Participation Solicitation Log AND Goal Attainment Explanation Letter
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
COMMERCIAL VEHICLE ELECTRONIC SCREENING MAINTENANCE SERVICES
FOR NYSDOT
Contract #C037714

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1 INTRODUCTION

1.1 Purpose
The New York State Department of Transportation ("NYSDOT" or the "Department") seeks to procure services via the RFP process and enter into an agreement with a Consultant to support and maintain five electronic screening (E-Screening) systems located in New York, Orange, Rensselaer, and Saratoga Counties. As part of this agreement, the Consultant will be responsible for all parts, equipment materials, labor and technical expertise required to successfully maintain and repair the E-Screening sites as outlined in the RFP document. Maintaining the Department’s E-Screening systems in a state of good repair is a vital element in support of commercial vehicle safety and enforcement operations, and it also provides a critical tool for infrastructure preservation and asset management purposes throughout NY State, while concurrently advancing the health and safety of the general (traveling) public.

1.2 Background
For the past decade, NYSDOT’s Office of Modal Safety and Security (OMSS) has been advancing an effort to improve commercial vehicle safety, security, weight, and credential compliance along key corridors throughout NY State via the strategic deployment of Intelligent Transportation Systems (ITS) technology, known as electronic screening systems. These systems are being deployed for automated safety, security as well as infrastructure preservation and asset management purposes in support of commercial vehicle enforcement operations in NY State. Components of an E-Screening system include Weigh-In-Motion (WIM) devices, License Plate Recognition (LPR) and overview camera systems, Automated Vehicle Identification (AVI) systems consisting of 915 MHz and 5.9 GHz Dedicated Short Range Communications (DSRC) transponder readers, as well as the required supporting electronics, hardware, software, and infrastructure providing vehicle information for traffic monitoring and data collection in real-time over a Statewide network connection. Operationally, commercial vehicles traveling along the highway are screened for weight compliance and credential status. The pre-screening information provided by such systems assists roadside enforcement personnel in making more informed decisions concerning which vehicles should be allowed to bypass an inspection site and which vehicles should be retained for further inspection/enforcement activities.

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

1. Part I of the Proposal – Technical and Management submission
2. Part II of the Proposal – Cost and Contract submission
3. Completion of all applicable attachments:
Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department’s Designated Contact for this procurement is:

Primary Contact:

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

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

1.4 RFP Modifications

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT web site (https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities) regularly to check for Modifications. The final Modification will be posted on NYSDOT’s web site not later than seven (7) calendar days prior to the Proposal due date. If an additional Modification is required within seven (7) days of the Proposal due date, the Proposal due date shall be revised such that there will be seven (7) days from the final Modification to the Proposal due date.
2 CIVIL RIGHTS REQUIREMENTS

2.1 Disadvantaged Business Enterprise Participation

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

For this specific procurement, NYSDOT has established a DBE participation goal of 2 percent for this solicitation. Meaningful participation by either a prime consultant who is certified as a NYSUCP DBE or inclusion of subconsultant (s) who is/are certified as a NYSUCP DBE count toward the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

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

Interested proposers should verify their attainment of the above established DBE participation goal by completing Attachment 10: DBE Participation Information. To count towards the Department’s DBE goal, a firm offering DBE participation must be currently certified per the NYSUCP DBE Directory. If the proposal does not meet or exceed the 2 percent DBE participation goal, the firm must provide evidence of a good faith effort by completing Attachment 10a: Participation Solicitation Log. Additionally, if the firm does not meet the specified goal, the firm must include in its submission a Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or if partially), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

Additionally, prime consultants certified as a DBE who propose to meet the Department’s DBE participation goal via their meaningful participation are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that unless DBE outreach efforts by the prime result in proposed DBE subconsultants, the prime consultant will provide evidence of a good faith effort by completing Attachment 10a: Subconsultant Participation Solicitation Log.
The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section 6.2 for the procedure the Department will follow in evaluating a firm’s proposed DBE participation.

2.2 Minority and Women-owned Business Enterprise Participation – Not Applicable

2.3 Service-Disabled Veteran-Owned Business Program (SDVOB) – Not Applicable

2.4 Diversity Practices – Not Applicable

2.5 Title VI Assurance

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

2.6 Equal Employment Opportunity – Pay Equity

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

3.1 Project Objectives

NYSDOT is seeking a responsive and responsible Consultant to support, maintain and repair, as needed, five (5) existing commercial vehicle electronic screening (E-Screening) sites located in New York, Orange, Rensselaer and Saratoga Counties.

For these sites, the Consultant shall provide end-to-end support and maintenance for all existing equipment including annual inspection and preventative maintenance; re-configuration and testing of any repaired equipment; and, network connectivity from the E-Screening site to the NYS-NYX network and NYS Primary Data Center. Service Level Agreements outlined in Section 4.4.2 of this RFP shall be met by the Consultant. NYS ITS Security Policies, Procedures and Guidelines as outlined in Section 4.9 of this RFP shall be met or exceeded.

3.2 Contract Objectives

1. Consulting Arrangements: To hire one responsive, responsible, experienced, knowledgeable and qualified Prime Consultant under Contract #C037714. NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant. Sub-consulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.

2. For all offerors to accept the RFP’s Draft Contract Terms and Conditions (Attachment 1 as is, after haven been given ample opportunity to review and ask questions regarding the RFP’s draft contract’s terms and conditions prior to the submission of proposals.

3. DBE Participation: Via this solicitation, the selected Consultant shall meet or exceed the DBE participation goals established for the resulting contract over its full term; to provide a utilization opportunity for certified DBE firms to participate in the awarded contract.

4. Contract Term: The base term of the contract shall be three (3) years with two (2) optional one-year extensions.

5. Method of Payment: Payment will be made biannually, based on the acceptance of completed deliverables as identified in RFP Section 4, Scope of Services and upon receipt, by NYSDOT, of a complete and accurate billing invoice.

6. Best Value Selection: To select a responsive and responsible Consultant using NYSDOT’s Best Value method based on a thorough examination of proposals submitted in response to the RFP (See SFL Sec. 163 (1)(i)).

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

3.3 Definitions and Acronyms

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<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASTM</td>
<td>American Society for Testing and Materials</td>
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<tr>
<td>DSRC</td>
<td>Dedicated Short-Range Communication</td>
</tr>
<tr>
<td>FHWA</td>
<td>Federal Highway Administration</td>
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<tr>
<td>FMCSA</td>
<td>Federal Motor Carrier Safety Administration</td>
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<tr>
<td>ITD</td>
<td>Innovative Technology Deployment</td>
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<tr>
<td>LPR</td>
<td>License Plate Recognition</td>
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<tr>
<td>MUTCD</td>
<td>Manual on Uniform Traffic Control Devices</td>
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<tr>
<td>NORPASS</td>
<td>North American Preclearance and Safety System</td>
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</table>
3.4 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence on August 1, 2019. The base term or duration for the contract is three (3) years. The contract may be extended for up to two (2) additional one-year periods upon written agreement of both parties and approval by the Office of the State Comptroller and FHWA.

If the contract is extended for the optional years, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, 2%, whichever is lower, will be used as a basis for adjusting the lump sum deliverable amounts. The rate adjustment will be effective on August 1 and calculated using the previous April Index, using Series ID PCU5413--5413-- (Architectural, engineering, and related services [http://data.bls.gov/timeseries/PCU5413--5413--?data_tool=XGtable]. If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.

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

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

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

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

4.1 Project Overview

The New York State Department of Transportation (NYSDOT) is seeking to retain the services of a qualified, responsive and responsible Consultant to support, maintain and repair, as needed, five (5) existing commercial vehicle electronic screening (E-Screening) sites located in New York, Orange, Rensselaer and Saratoga Counties. The Consultant shall be responsible for all parts, equipment, materials, requisite work zone/lane closure permits, labor and technical expertise required to effectively repair and maintain the five (5) E-Screening sites as outlined in Section 4.2 - Project Site Information. This involves acquiring all necessary highway work permits and sourcing/supplying all provisions necessary for maintenance and calibrations, repair, and work zone safety/traffic lane closures, including all vehicles needed to perform said work as outlined. The winning Proposer must be prepared to maintain and repair the E-Screening sites, within thirty (30) days from the date of contract award.

NYSDOT reserves the right to remove a site(s) from the overall system either temporarily or permanently at any time during the term of this contract. If this occurs, the Consultant shall no longer be paid for maintenance at this site. Any annual maintenance previously performed shall be paid for on a pro-rated basis.

4.2 Project Site Information

The five sites are described as follows:

Site 1: I-90 Westbound (Lat=42.495394, Long=-73.683491) Schodack Rest Area, Mainline E-Screening System, Town of Schodack, Rensselaer County; NYSDOT Region 1

Site 1 is an existing one lane mainline (westbound) E-Screening site which also serves as a bi-directional highway data collection system and a real-time traffic monitoring data site supplying information to the regional Transportation Management Center (TMC). The site is instrumented with three weigh-in-motion (WIM) devices (Single Load Cell, Quartz piezoelectric, and Class I piezoelectric) in the westbound travel lane (MP19.1):

- Single Load Cell scale (westbound travel lane)
- Quartz Piezoelectric sensors (westbound travel lane)
- Class I Piezoelectric sensors (westbound & eastbound travel and westbound & eastbound passing lanes)

The site is equipped with over the road and roadside equipment used in Commercial Vehicle E-Screening applications. The westbound travel lane at the advance location is equipped with:

- Front and rear License Plate Recognition (LPR) camera system
- Overview camera
- USDOT Number Reader system
- Overheight vehicle detection system
• Federal Motor Carrier Safety Administration (FMCSA) Innovative Technology Deployment (ITD)/North American Preclearance and Safety System (NORPASS) compliant 915 MHz Dedicated Short-Range Communication (DSRC) transponder reader system
• 5.9 GHz USDOT ‘Connected Vehicle’ compliant device

The notification location (MP 18.9) is equipped in the westbound travel lane with:

• FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader system
• 5.9 GHz USDOT ‘Connected Vehicle’ compliant device

Additional support equipment at this site includes a local WiFi network that connects the Advance, Notification, and Inspection locations along with light activation at the roadside inspection signs.

Please Note: NYSDOT does not intend to replace the quartz sensors currently installed at Site 1. However, maintenance shall be needed to ensure that degradation of the pavement surrounding the sensors and associated loops is minimized until they are permanently removed.

Server and Network Connectivity Equipment at this location consists of:

• A Win8 Embedded Appliance
• Juniper Firewall (Head End Device)
• DSL Modem

For this site:
1. Consultant shall replace the existing Head End Device with a SDWAN Device or similar. The Consultant shall provision, install and configure said device as well as the Head End device to connect the site to the NYS-NYX network in Albany. Details of Network Connectivity are detailed under Section 4.8 of this RFP and on Attachment 16.
2. Consultant shall upgrade the OS to most the current version on the server device.

Site 2: I-95 NB (Lat=40.846245, Long=-73.931673) Alexander Hamilton Bridge, Virtual Weigh Station, City of New York, Borough of Manhattan, New York County; NYSDOT Region 11

Site 2 is an existing two lane virtual weigh station also serving as a bi-directional highway data collection site and has the ability to provide real-time traffic monitoring data to the regional TMC.

Site 2 is equipped with:

• Single Load Cell WIM scales (northbound travel & passing lanes)
• Class I piezoelectric sensors (southbound travel & passing lanes)
Site 2 is equipped with over the road and roadside equipment used in Commercial Vehicle E-Screening applications. The northbound travel and passing lanes are each equipped with:

- Front & Rear LPR camera system
- Overview camera
- Overheight Detection System
- FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader systems
- 5.9 GHz USDOT ‘Connected Vehicle’ compliant reader

Server and Network Connectivity Equipment at this location consists of:

- A Windows 2008R2 32bit server
- Juniper Firewall (Head End Device)
- DSL Modem

For this site:

1. Consultant shall replace the existing Head End Device with a SDWAN Device or similar. The Consultant shall provision, install and configure said device as well as the Head End device to connect the site to the NYS-NYX network in Albany. Details of Network Connectivity are detailed under Section 4.8 of this RFP and on Attachment 16.
2. Consultant shall upgrade the OS to the most current version on the server device.

Site 3: I-87 Northbound (Lat=42.852831, Long=-73.773484) Clifton Park Rest Area, Mainline E-Screening System, Town of Clifton Park, Saratoga County; NYSDOT Region 1

Site 3 is an existing two lane mainline (northbound) E-Screening site which also serves as a bi-directional highway data collection system and a real-time traffic monitoring data site. At the advance location (MP12.6), Site 3 is equipped with:

- Single Load Cell WIM scales (two northbound travel lanes)
- Class I piezoelectric sensors (northbound & southbound travel and northbound & southbound passing lanes)

Site 3 is equipped with over the road and roadside equipment used in Commercial Vehicle E-Screening applications at the advance location. The two northbound travel lanes are each equipped with:

- Front LPR camera system
- Overview camera
- FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader systems

The notification location (MP 13.3) is equipped in the two northbound travel lanes with:

- FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader system

Server and Network Connectivity Equipment at this location consists of:
• A Win10 Pro Device
• Juniper Firewall (Head End Device)
• DSL Modem

For this site:

1. Consultant shall replace the existing Head End Device and DSL Modem with a SDWAN Device or similar. The Consultant shall provision, install and configure said device as well as the Head End device to connect the field office to the NYS-NYX network in Albany. Details of Network Connectivity are detailed under Section 4.8 of this RFP and on Attachment 16.

Site 4: I-84 Westbound (Lat=41.483900, Long=-74.284421) Wallkill Rest Area Mainline E-Screening System, Town of Wallkill, Orange County; NYSDOT Region 8

Site 4 is an existing two lane mainline (westbound) E-Screening site. At the advance location (MP23.5), Site 4 is equipped with:

• Single Load Cell WIM scales (westbound travel & passing lanes)
• Class I piezoelectric sensors (westbound travel & passing lanes)

Site 4 is equipped with over the road and roadside equipment used in Commercial Vehicle E-Screening applications at the advance location. The westbound travel & passing lanes are each equipped with:

• Front LPR camera system
• Overview camera
• FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader systems

The notification location (MP 24.0) is equipped in the westbound travel & passing lanes with:

• FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader system

Server and Network Connectivity Equipment at this location consists of:

• A Win10 Pro Device
• Juniper Firewall (Head End Device)
• DSL Modem

For this site:

1. Consultant shall replace the existing Head End Device with a SDWAN Device or similar. The Consultant shall provision, install and configure said device as well as the Head End device to connect the field office to the NYS-NYX network in Albany. Details of Network Connectivity are detailed under Section 4.8 of this RFP and on Attachment 16.
Site 5: I-84 Eastbound (Lat=41.518707, Long=-74.033561) Newburgh-Beacon Bridge Virtual Weigh Station, Town of Newburgh, Orange County; NYSDOT Region 8

Site 5 is an existing two lane virtual weigh station also serving as a bi-directional highway data collection site. It also has the ability to provide real-time traffic monitoring data to the regional TMC. Site 5 is equipped with:

- Bending plate weigh pad scales (eastbound travel & passing lanes)
- Class I piezoelectric sensors (eastbound & westbound travel and eastbound & westbound passing lanes)

Site 5 is equipped with over the road and roadside equipment used in Commercial Vehicle E-Screening applications. The eastbound travel and passing lanes are each equipped with:

- Front LPR camera system
- Overview camera
- FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader systems

Server and Network Connectivity Equipment at this location consists of:

- A Win8 Embedded Appliance
- Juniper Firewall (Head End Device)
- DSL Modem

For this site:

1. Consultant shall replace the existing Head End Device with a SDWAN Device or similar. The Consultant shall provision, install and configure said device as well as the Head End device to connect the site to the NYS-NYX network in Albany. Details of Network Connectivity are detailed under Section 4.8 of this RFP and on Attachment 16.
2. Consultant shall upgrade the OS to the most current version on the server device.

4.3 Categorization of Work

Project work is divided into the following Sections:

- Maintenance of E-Screening Sites, Requirements and Conditions
  - Vendor Provided Material, Labor and Equipment
  - Work Zone Safety/Traffic Lane Closure
  - Pricing Schedule
- Repair of E-Screening Sites, Requirements and Conditions
  - Vendor Provided Material, Labor and Equipment
  - Work Zone Safety/Traffic Lane Closure
  - Pricing Schedule
- Status Reports
  - Monthly Status Reports
  - Quarterly Status Reports
4.4 Tasks

4.4.1 Task 1: Maintenance of E-Screening Sites; Requirements and Conditions

The purpose of this effort is to ensure that the five E-Screening sites outlined under Section 4.2 above are operating as necessary. The Proposer shall propose an annual maintenance firm fixed price per site to ensure that this level of service is achieved and sustained. The price quoted for maintenance shall include the cost of two (2) site inspection/preventive maintenance visits per site with at least four (4) months between consecutive visits and at least one (1) calibration per year (based on the most current version of ASTM standard E1318), per site performed. A minimum of one calibration per site is required annually. The calibration shall be performed in the spring timeframe unless otherwise approved by NYSDOT. More than one calibration shall be performed at a given site if WIM performance is found to be drifting, at the discretion of the NYSDOT Project Manager. If more than one calibration is required, a live traffic method may be used to carry out the second calibration to correct any drifting/discrepancy. The price per site shall include work zone traffic control and all vehicles and equipment/materials needed to perform the maintenance and calibration.

Site inspection/preventive maintenance visits shall consist of but are not limited to the following:

1. In-Road Equipment
   A. Road condition (cracks, depressions, heaving, potholes)
   B. Visual inspection and repair of loop and sensor sealant
   C. Visual inspection and repair of grout
   D. Test loops (measure resistance, inductance, etc.)
   E. Test WIM sensors (measure resistance, voltage deflection, etc.)
   F. Visual inspection and repair of load cell and associated equipment (load cell condition, transducer resistance, seals, etc.)

2. Electronics
   A. Visual inspection and cleaning of surfaces within cabinet
   B. Visual inspection of SDWAN device at the E-Screening site
   C. Visual inspection of the Head-End device located in Albany
   D. Consultant shall upgrade the OS to most current version on network and server devices, and perform routine security patching, at a minimum monthly, or as released.
   E. Visual inspection of terminal strips, WIM cables, Loop cables, camera cables, AVI connections
   F. Verify in-road equipment and electronics are in working order (correct LEDs flash on interface cards, software processes signal properly, etc.)
   G. Surge protection equipment condition check
   H. Manual traffic count to verify performance and data collection accuracy in all lanes

3. Roadside/Over the Road Equipment
   A. Visual inspection of cables
   B. Visual inspection of terminal strips
   C. Verify antennas are in proper working order (Antenna is at correct angle, synchronized correctly, read tags properly, etc.)
D. Visual inspection of camera system (cable connections, hinge points, camera casing, etc.)
E. Clean lens of camera
F. Verify camera is in proper working order (color during day, black & white at night, vehicles in frame)
G. Clean cabinet and solar panel (If applicable)
H. Communication system condition and operation check
I. Power system condition check
J. Battery condition check (If applicable)
K. Repair conduit-sealing material

In order to carry out Task 1, allowances shall be made for scheduling lane closures with the appropriate transportation agency (NYSDOT - Regional Traffic Engineer and/or local Resident Engineer, New York City Department of Transportation [New York City DOT] – Central Permits Office, and Port Authority of New York & New Jersey [PANYNJ] – Construction Coordinator found in the Work Zone Safety/Traffic Lane Closure Section) for holidays where lane closures will not be allowed, for weather conditions which do not permit traffic obstructions (rain, snow, and fog), and for weather conditions that do not allow for the proper curing of chemicals. The Consultant shall be responsible to report such delays, with proper documentation (Traffic and Safety Engineer’s, the local Resident Engineer’s schedule, weather report, holiday calendar, etc.), for recognition by NYSDOT. Any work performed at the Alexander Hamilton Bridge site shall be coordinated with New York City DOT and the PANYNJ for permitting and scheduling found in the Work Zone Safety/Traffic Lane Closure Section of this document.

**Subtask 1A: Vendor Provided Material, Labor and Equipment**

All materials, services and equipment required to carry out this task (including tools and vehicles), shall be provided by the Consultant. This includes, but is not limited to: road sensors, electronics, lightning arresters, surge protection, WIM controllers, camera system, transponder reader system, cabinets, conduit, wiring, sealant material, and equipment needed for calibration materials including a calibration vehicle, a bucket truck, as well as work zone traffic control materials including any additional specially required vehicles. Additionally:

1) The Consultant may select any equipment vendor or combination of vendors to satisfy the requirements of the resulting contract and NYSDOT specifications, subject to approval by appropriate NYSDOT staff. The Consultant shall be responsible to pay subconsultants within seven (7) days of receipt of payment from the State.

2) NYSDOT will not provide any equipment to the Consultant. All equipment and materials installed as part of the resulting contract will be considered to be permanently installed and will become the property of NYSDOT. All equipment serial numbers must be reported to NYSDOT after installation. The Consultant shall be responsible for warranty and contract maintenance for all equipment per the terms of this document. Equipment and material that will become the property of NYSDOT includes, but is not limited to, the following:

   - WIM Controller
• Inductive loop wires
• Cabinets
• Cabinet Bases
• Conduits
• WIM Sensors or Scales
• Wire and conduit as necessary to connect the system
• Lightning/surge protection for both power and communications
• Poles
• Junction boxes
• Sensor Lead-in cables
• Camera system
• Transponder reader systems
• SDWAN Devices located at the E-Screening site
• Head End Devices located in Albany, NY

All equipment and material used in conjunction with the contract must comply with the most current New York State Standard Specifications for Construction and Materials, and Special Specifications contained in Attachment B.

3) The Consultant shall be responsible for obtaining all necessary highway work permits, providing all work zone traffic control materials per approved Work Zone Traffic Control Plans and notifying the proper transportation authorities for all lane closures. Restrictions shall be indicated during the permit application process.

4) When performing maintenance, the Consultant shall follow manufacturing recommendations. The Consultant shall provide documentation to the NYSDOT Project Manager depicting the manufacturing recommendations. When maintenance is performed on the single load cells, the Consultant shall provide for a manufacturer’s representative to be present.

5) The Consultant shall be responsible for ensuring that any installed LPR camera system is optimized for the highest performance possible. This includes, but is not limited to, firmware upgrades, latest industry standards, and proper physical state.

6) NYSDOT utilizes “Smart Roadside Inspection System” (SRIS) software as the established application of its Statewide network based E-Screening system, and such software/system is hosted in the NYS Data Center located at the College of Nanoscale Science and Engineering, University of Albany Campus, Albany, NY. NYSDOT will not accept any substitutions for this foundational software.

Subtask 1B: Work Zone Safety/Traffic Lane Closure

The Consultant shall be required to obtain all highway work permits from the appropriate transportation agencies. The Proposal shall include the company’s Work Zone Traffic Control Plan. This Plan shall include proof that the company has adequate resources and experience in arranging for work zone traffic control. Work Zone Traffic Control Plans along with all required
paperwork shall be submitted by the Consultant to the appropriate NYSDOT regional office for review in accordance with:

1) NYSDOT’s Work Zone Control Manual (Revised February 2015 or newer)
2) The latest versions of FHWA’s Manual on Uniform Traffic Control Devices
3) New York State Supplement to the MUTCD
4) NYSDOT Safety Guidelines for Traffic Count Field Work, Section 619 of the NYSDOT Standard Specifications for Construction and Materials
5) Consultation with the appropriate NYSDOT Regional Permit Coordinator in the respective Regional Office and/or Residency:
   - Region 1 (Saratoga & Rensselaer Cos.) (518) 457-6989
   - Region 8 (Orange Co.) (845) 562-8368
   - Region 11 (New York Co.) (718) 482-4516

The Consultant shall be required to furnish all necessary equipment, including any auxiliary/specialized vehicles required for all work zone safety/traffic lane closures.

Work Zone Traffic Control Plans developed for the Alexander Hamilton Bridge site shall be required to obtain additional permits once the NYSDOT highway work permit is obtained. The Consultant shall be required to secure work permits from the New York City DOT Office of Construction Mitigation and Coordination (OCMC). Information on the work permit process can be found at the following: [http://streetworksmanual.nyc/](http://streetworksmanual.nyc/). The Consultant shall also be required to obtain a Right of Entry Agreement from the Port Authority of New York and New Jersey (PANYNJ), Tunnels Bridges and Terminals Department by contacting them at (212) 435-2121. In addition to the documents listed above, the Alexander Hamilton Bridge Work Zone Traffic Control Plans shall be in accordance with:

1) New York City DOT Highway Rules and the NYC Street Works Manual Chapters 3.0 Permits and Approvals and 4.0 Executing Work in the Street
2) Consultation with New York City DOT and PANYNJ personnel

Once approved, all Work Zone Traffic Control Plans must be submitted to the NYSDOT Project Manager prior to work.

**NOTE:** Proposers must provide an annual firm fixed price for maintenance of E-Screening sites. Proposers are to include all labor, materials, equipment (including any required vehicles), mobilization, calibrations, per diem and mileage costs. The per site cost must be fixed and guaranteed for each year of the contract up to five years.

**4.4.2 Task 2: Repair of E-Screening Sites; Requirements and Conditions**
Under this task, defective or inoperative WIM controllers, commercial vehicle enforcement electronics, camera systems that provide license plate and overview images and related equipment, transponder reader systems, in-road equipment and sensors (including WIM sensors or scales, sealants, and all other sensors installed in the pavement), lightning protection devices, electrical components and supporting infrastructure, roadside servers and network connectivity equipment must be repaired and/or replaced and be restored to functionality. Software support
shall be fixed for the life of the contract. The Consultant shall respond to service a malfunctioning E-Screening site within three (3) business days for issues that can be addressed remotely and five (5) business days in cases where onsite attention is required. The Consultant shall then determine a course of action, upon approval from the NYSDOT Project Manager, if the issue(s) cannot be immediately resolved. Please note:

A. Deficiencies existing prior to contract award shall be repaired, at the Project Manager’s discretion, based on prices listed in the proposal for the Equipment and Repair Price Schedule (specified under Subtask 2C).
B. A maintenance/repair log shall be kept at each site in a 3-ring binder or bound notebook.
C. Additionally, a log shall be maintained every time a site is contacted remotely including the date, time, person and reason.
   a. The remote log shall be kept electronically and must be sent to the NYSDOT Project Manager on a monthly basis or as requested.

Repair and damage resulting from NYSDOT’s road maintenance (milling), vandalism or traffic accidents shall be considered beyond the scope of work and shall be reimbursed based on the prices listed in the Equipment and Repair Price Schedule submitted as part of the resulting contract. The Consultant is not responsible for damage caused by direct hits. Proof of a direct hit must be provided to the Project Manager.

In order to carry out Task 2, allowances shall be made for scheduling lane closures with the appropriate transportation agency (NYSDOT - Regional Traffic Engineer and/or local Resident Engineer, New York City Department of Transportation [New York City DOT] – Central Permits Office, and Port Authority of New York & New Jersey [PANYNJ] – Construction Coordinator found in the Work Zone Safety/Traffic Lane Closure Section) for holidays where lane closures will not be allowed, for weather conditions which do not permit traffic obstructions (rain, snow, and fog), and for weather conditions that do not allow for the proper curing of chemicals. It is the responsibility of the Consultant to report such delays with proper documentation (Traffic and Safety Engineer’s, the local Resident Engineer’s schedule, weather report, holiday calendar, etc.) for recognition by NYSDOT. Any work performed at the Alexander Hamilton Bridge site shall be coordinated with New York City DOT and the PANYNJ for permitting and scheduling found in the Work Zone Safety/Traffic Lane Closure Section of this document.

Subtask 2A: Vendor Provided Material, Labor and Equipment

All materials, services and equipment required to carry out this task (including tools and vehicles), shall be provided by the Consultant. This includes, but is not limited to: road sensors, electronics, lightning arresters, surge protection, WIM controllers, camera system, transponder reader system, cabinets, conduit, wiring, sealant material, and equipment needed for calibration materials including a calibration vehicle, a bucket truck as well as work zone traffic control materials including any additional specially required vehicles. Additionally:

1) The Consultant may select any equipment vendor or combination of vendors to satisfy the requirements of the resulting contract and NYSDOT specifications subject to approval by
appropriate NYSDOT staff. It is the Consultant’s responsibility to pay subconsultants within seven (7) days of receipt of payment from the State.

2) NYSDOT will not provide any equipment to the Consultant. All equipment and materials installed as part of the resulting contract shall be considered to be permanently installed and shall become the property of NYSDOT. All equipment serial numbers must be reported to NYSDOT after installation. The Consultant shall be responsible for warranty and contract maintenance for all equipment per the terms of this document. Equipment and material that will become the property of NYSDOT includes, but is not limited to, the following:

- WIM Controller
- Inductive loop wires
- Cabinets
- Cabinet Bases
- Conduits
- WIM Sensors or Scales
- Wire and conduit as necessary to connect the system
- Lightning/surge protection for both power and communications
- Poles
- Junction boxes
- Sensor Lead-in cables
- Camera system
- Transponder reader systems
- SDWAN Devices at the E-Screening site
- Head End Devices located in Albany, NY

All equipment and material used in conjunction with the contract must comply with the most current New York State Standard Specifications for Construction and Materials, and Special Specifications contained in Attachment B.

3) The Consultant shall be required to respond to service a malfunctioning E-Screening site within three (3) business days for issues that can be addressed remotely and five (5) business days in cases where on-site attention is needed.

4) The Consultant shall be responsible for obtaining all necessary highway work permits, providing all work zone traffic control materials per approved Work Zone Traffic Control Plans and notifying the proper transportation authorities for all lane closures. Restrictions shall be indicated during the permit application process.

5) When E-Screening equipment (WIM, cameras, antennas, E-Screening electronics, etc.,) is replaced, the Consultant shall have a manufacturing representative on site to ensure proper installation.
6) The Consultant shall be responsible for ensuring that any installed LPR camera system is optimized for the highest performance possible. This includes, but is not limited to, firmware upgrades, latest industry standards, and proper physical state.

7) NYSDOT utilizes “Smart Roadside Inspection System” (SRIS) software as the established application of its Statewide network based E-Screening system, and such software/system is hosted in the NYS Data Center located at the College of Nanoscale Science and Engineering, University of Albany Campus, Albany, NY. NYSDOT will not accept any substitutions for this foundational software.

**Equipment Guarantee**

Equipment offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice. The Consultant further warrants that components or deliverables specified and furnished by or through the Consultant shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the manufacturer’s warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer.

During the warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through the Consultant shall be repaired or replaced by the Consultant at no cost or expense to NYSDOT. The Consultant shall extend the warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Consultant, its agents, officers, subcontractors, distributors, resellers or employees.

**Subtask 2B: Work Zone Safety/Traffic Lane Closure**

The Consultant shall be required to obtain all highway work permits from the appropriate transportation agencies. The Proposal shall include the company’s Work Zone Traffic Control Plan. This Plan shall include proof that the company has adequate resources and experience in arranging for work zone traffic control. Work Zone Traffic Control Plans along with all required paperwork shall be submitted by the Consultant to the appropriate NYSDOT regional office for review in accordance with:

1) NYSDOT’s Work Zone Control Manual (Revised February 2015 or newer)
2) The latest versions of FHWA’s Manual on Uniform Traffic Control Devices
3) New York State Supplement to the MUTCD
4) NYSDOT Safety Guidelines for Traffic Count Field Work, Section 619 of the NYSDOT Standard Specifications for Construction and Materials
5) Consultation with the appropriate NYSDOT Regional Permit Coordinator in the respective Regional Office and/or Residency:
Region 1 (Saratoga & Rensselaer Cos.) (518) 457-6989  
Region 8 (Orange Co.) (845) 562-8368  
Region 11 (New York Co.) (718) 482-4516

The Consultant shall be required to furnish all necessary equipment, including any auxiliary/specialized vehicles required for all work zone safety/traffic lane closures.

Work Zone Traffic Control Plans developed for the Alexander Hamilton Bridge site shall be required to obtain additional permits once the NYSDOT highway work permit is obtained. The Consultant shall be required to secure work permits from the New York City DOT Office of Construction Mitigation and Coordination (OCMC). Information on the work permit process can be found at the following: http://streetworksmanual.nyc/. The Consultant shall also be required to obtain a Right of Entry Agreement from the Port Authority of New York and New Jersey (PANYNJ), Tunnels Bridges and Terminals Department by contacting them at (212) 435-2121. In addition to the documents listed above, the Alexander Hamilton Bridge Work Zone Traffic Control Plans shall be in accordance with:

1) New York City DOT Highway Rules and the NYC Street Works Manual Chapters 3.0 Permits and Approvals and 4.0 Executing Work in the Street  
2) Consultation with New York City DOT and PANYNJ personnel

Once approved, all Work Zone Traffic Control Plans must be submitted to the NYSDOT Project Manager prior to work.

NOTE: Proposers must provide a firm fixed price for repair of E-Screening sites as outlined below. Proposers are to include all labor, materials, equipment (including any required vehicles), mobilization, work zone traffic control, per diem and mileage costs.

**Equipment and Repair Price Schedule Requirements**

Firm fixed prices must be proposed for specific upgrade/repair services. These prices are intended for work that is ‘above and beyond’ the scope of the maintenance requirements as described in Task 1 (Maintenance of E-Screening Sites, Requirements and Conditions). For this Task, the Consultant shall supply NYSDOT with an “Equipment and Repair Price Schedule,” or a listing of standard equipment and services commonly used to uphold E-Screening sites in a state of good repair, to be based on the Consultant’s E-Screening experience (please see RFP Section 4.6). The consultant shall provide the listing of equipment and services as well as a fixed price associated with each item. The prices proposed by the Consultant in the Equipment and Repair Price Schedule must be valid for the life of the contract.

Work associated with the Equipment and Repair Price Schedule shall take precedence over all other work when directed by the NYSDOT Project Manager. All attempts will be made by NYSDOT to minimize the impact on the regular maintenance schedule. Complete sites installed under the Equipment and Repair Price Schedule provisions of this document shall carry a standard one-year warranty. Prior to commencing work, the Consultant shall provide a written estimate of the cost of the site installation, upgrade or repair.
In all instances, the basis of the estimate provided by the Consultant shall reflect the prices contained in the Equipment and Repair Price Schedule submitted as part of the resulting contract. In certain situations, repair actions in the Equipment and Repair Price Schedule will not adequately describe the complete job to be performed. In this case the Consultant shall include the estimated additional costs and include the justification in the estimate. At NYSDOT’s discretion, the NYSDOT Project Manager will direct the Consultant when to conduct work, and the Consultant shall be expected to conduct work in a timely manner upon receiving this direction.

4.4.3 Task 3: Status Reports
The selected Consultant shall provide the NYSDOT Program Manager with mandatory Status Reports on a quarterly basis. At a minimum, the reports shall include:

**Monthly Status Reports** to include:

- All Security Patches applied during the previous month
- Any Out-of-Cycle Patches applied during the previous month, if any.

**Quarterly Status Reports**

- General Status of all Five Sites, Including:
  - Overall Health of the Network System
  - Significant Downtimes/Anomalies/Outstanding Items (if any) and Resolutions

- Site Inspection/Preventative Maintenance Visits Completed during Reporting Period
  - On a Per Site basis:
    - Detailing Dates, Activities/Action Items Completed and Accomplishments, Including:
      - Calibrations with Results/Findings
      - Repairs Performed
      - Lingering, Pending and Overdue Items/Issues

- Proposed Plan of Action for Following Quarter, Including:
  - Site Inspection/Preventative Maintenance Visits Scheduled
  - Calibrations Scheduled
  - Suggested (Preventative) Actions/Repairs to Consider (if any)

The quarterly Status Reports shall document dates, activities and accomplishments conducted during site visits, covering routine maintenance and unscheduled visits for repair. Reports shall include a detailed description and schedule for all completed and anticipated activities, and is due 30 days after the end of each quarter (based on the commencement of the subject contract).

All records/reports must be in Word, Excel, PDF or another format acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format via e-mail or managed file transfer (for larger sized documents). All records/data produced under this contract are property of NYSDOT.
4.5 **Contingency Services**

NYSDOT has determined that an additional site located in the Town of Champlain, Clinton County, may be deployed during the term of the contract. The Project Site Information for this location is as follows:

**Site 6: I-87 Southbound (Lat=45.002730, Long=-73.453854) Champlain Highway Safety Patrol and Commercial Vehicle Inspection Facility, On-ramp E-Screening System, Town of Champlain, Clinton County; NYSDOT Region 7**

Currently in construction, Site 6 is programmed to be a single lane (southbound) E-Screening site located along an on-ramp exiting the US Customs and Border Protection (US CBP) Champlain Port of Entry and leading to I-87 Southbound. Construction of this site is projected to be complete and the site fully operational during the fourth quarter of 2019. Site 6 will be equipped with:

- Single Load Cell scale (southbound on-ramp)
- Class I Piezoelectric sensors (southbound on-ramp)

Site 6 will be equipped with over the road and roadside equipment used in Commercial Vehicle E-Screening applications. The southbound on-ramp will be equipped with:

- Front License Plate Recognition (LPR) camera system
- Overview camera
- Overheight vehicle detection system
- FMCSA ITD/NORPASS compliant 915 MHz DSRC transponder reader system

NYSDOT reserves the right/option to add this planned E-Screening site located at the I-87 Southbound Champlain Highway Safety Patrol and Commercial Vehicle Inspection Facility, to this contract, subsequent to its deployment (estimated fall 2019/winter of 2020) and following the warranty period for the site.

4.5.1 **Contingency Services Work Order Process**

NYSDOT will inform the Consultant of its need to add the additional site. The Consultant, following discussions with NYSDOT, shall include this site to the tasks outlined in Section 4.4 of this RFP, on a predetermined date approved by NYSDOT. The Contingency services shall be invoiced up to the maximum budgeted amount for such category of services as set forth in Schedule B of **Attachment 1, Draft Contract**. For RFP evaluation purposes, the cost of adding the additional site will be based on the Consultant’s proposed cost established in **Attachment 17, Cost Proposal Workbook**.

4.5.2 **Unanticipated Site Repairs (Not covered under Tasks 1 & 2)**

For the purposes of soliciting for proposals, only the total cost of the project proposed shall be evaluated. Since there may be additional costs that are unknown at this time (such as emergency repairs, system failures, major component failures, etc.) that are not covered under Tasks 1 & 2, NYSDOT will add a 10% allowance to the final contract to cover such unknown expenses. This contingency amount will be added to the maximum amount payable under the resulting contract, however, NYSDOT makes no guarantee these funds will be utilized. Use of this contingency amount may only occur via supplemental agreement.
Organization, Staffing and Qualification of Proposers

The qualifications and prior experience of the proposer are of great importance to NYSDOT. The Consultant shall provide an organization chart that describes reporting relationships of all key personnel identified in this section. The Consultant shall be responsible for demonstrating that the key personnel possess the necessary skills and experience level to satisfy the requirements of the contract. The Consultant shall be responsible for providing, at a minimum, the following key personnel:

**Project Manager:** The Project Manager shall have at least five (5) years of experience successfully developing, managing and delivering contracts/projects similar in breadth and scope and shall have a strong professional background in the various equipment and technologies associated with this contract.

**Project Engineer:** The Project Engineer shall have at least five (5) years of experience carrying out contracts/projects of this nature, and shall have an extensive background in the various equipment and technologies associated with this contract.

**Lead Field Technician(s):** The Lead Field Technician(s) shall have at least two (2) years of experience each as technical specialists supervising or performing in-the-field evaluations (trouble shooting and analyzing) and installations of equipment and technologies associated with and/or similar to this contract.

**Software Engineer:** The Software Engineer shall possess at least four (4) years of experience in professional software engineering.

**Account Manager:** The Account Manager shall have at least two (2) years of experience administering all aspects of contract accounts.

**Understanding of E-Screening equipment by the Consultant’s Project Manager and Technicians:**

The Proposal shall include a Statement of Experience identifying past work experience (jobs/employers/dates/scopes) that specifically addresses the following; Mainline E-Screening maintenance and repair including installation and maintenance of inductance loops, piezoelectric sensors, quartz piezoelectric sensors, weigh pad scales, and single load cells; installation and maintenance of Automatic Vehicle Identification (AVI) equipment such as License Plate Recognition (LPR) systems, transponder readers, and USDOT Number Reader systems; installation and maintenance of overheight detection sensors; ability to integrate multiple E-Screening components; installation and maintenance of E-Screening computer hardware and software; installation and maintenance of communications networks; and operating and maintaining class count sites that meet Federal Highway Administration (FHWA) standards as outlined in Attachment A.

The Proposal shall also include a report detailing the financial and personnel resources of the vendor available to support the requirements of the contract.
4.7 Deliverables

E-Screening Data
The Consultant shall be prepared to supply data extractions (or “data dumps”) generated and collected by the E-Screening systems, including WIM data, as requested on occasion by the NYSDOT Project Manager. Such requests shall be furnished in electronic format via e-mail or managed file transfer for larger sized documents. The Consultant shall be required to fulfill any request for data extracts within twenty (20) business days. If the Consultant cannot satisfy a specific request within twenty (20) business days due to extenuating (including technical) circumstances or is unable to fulfill the request full stop, the Consultant shall notify the NYSDOT Program Manager as soon as practicable and provide an explanation and/or a realistic alternate date in which the information can be furnished.

4.8 Software and Network Considerations and Requirements

The current roadside system operates on an integrated network based platform in which each site transfers data both to and from the existing central server located in the NYS Data Center in Albany. The E-Screening software and system was developed by Intelligent Imaging Systems (IIS) on the Smart Roadside platform. No substitutions shall be allowed for the IIS system if maintenance requires a replacement of E-Screening software or system (either roadside or central server). A basic diagram of the integrated system is detailed in Attachment C.

Network connectivity from the E-Screening sites back to the NYS-NYX Network located in Albany, NY shall be via Consultant-provided SDWAN Devices to a Vendor Head End Device in – see Attachment 16. Required details include:

- Consultant shall provide secure encrypted connection over the internet to Albany with the latest NIST encryption standards.
- Consultant shall provide cable DEMARC from their Head End device into NYS-NYX network.
- Consultant shall provide secure segmentation from the remote side and guarantee internet can’t get into the NYS-NYX network.
- Consultant shall keep network equipment to code levels compliant with maintaining secure segmentation from threats.
- Consultant shall keep server software patched and up to date. This includes both Operating System and SQL Server and should be performed monthly to ensure security of the devices. Consultant is not permitted to install additional connectivity into the sites (e.g. cell modems) without a security review and permission from the NYS OITS to ensure the security of the NYS-NYX network.

4.9 Information Security Requirements

The selected Consultant shall be responsible for complying with the 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](https://its.ny.gov/tables/technologypolicyindex)

The Consultant shall also be responsible for notifying NYSDOT of any security breaches. Details about the NYS Information Security Breach and Notification Act are available at:


NYSDOT Information Security Policies are available upon request to the selected Consultant.

4.10 Schedule
The Consultant shall be prepared to begin maintaining and repairing the E-Screening sites in accordance with Section 4.4 above within thirty (30) days from the date of contract approval.

4.11 Contract Transition
This task shall only be required (1) if the Consultant is not designated for award of a contract to replace this contract and (2) at the discretion of the NYSDOT Project Manager. To ensure a seamless transition between the Consultant and a future designated Consultant, NYSDOT will establish a transition period during which the Consultant shall work with the future designated Consultant to provide the necessary coordination and services without interruption during the transition.

The selected consultant shall develop a 30-day Transition Plan, ready to execute prior to completion of the contract period (or extension(s), if any). The Plan shall ensure a transfer of the Maintenance and Repair of E-Screening Sites without interruption of service if the Consultant is not designated for award of a replacement contract. The Plan shall be submitted to the NYSDOT Project Manager for approval.

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

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

The Plan shall include the process to transfer all physical and intellectual assets. The Consultant shall return, to the NYSDOT Project Manager, all NYSDOT property including any data. At the end of the contract, the Consultant shall remove such data from any electronic equipment owned by the consultant.
5 PROPOSAL FORMAT AND CONTENTS

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

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

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If an offerer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

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

5.1 Part I: Technical and Management Submittal

Part I shall include the following sections:

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

2. A Table of Contents.

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

4. Approach, Scope of Services and Schedule
   Describe the approach for performing the work and accomplishing project objectives as outlined in Section 4 of this RFP. Provide a detailed scope of services which describes by task what will be done. You may base your scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYSDOT wants to allow maximum flexibility for the inclusion and consideration of ideas,
initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify your approach, however, if it significantly departs from the general scope of services or if the general scope of services requires clarification or re-working. Also, include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions.

5. Organization and Staffing
Provide an organizational chart for the project showing the names of the Consultant’s Project Manager and Key Personnel. Include an estimate of total effort hours contributed by each of the key personnel to each task and an estimate of total effort hours for each task (see Attachment 18). Discuss management plan to ensure effective and efficient delivery of services while meeting the project objectives. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. The Consultant’s Project Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant’s Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as contractual matters on the Consultant’s side. Describe the level and type of interaction with NYSDOT.

6. Experience
The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct, prior experience in the maintenance and repair of E-screening equipment is highly desirable. Provide a list of projects currently in progress and those completed within the last three years which are relevant to this effort. Provide a Consultant Key Personnel Resume and Reference Form (Attachment 15) for each key personnel proposed as required in Section 4.6 of this RFP. Indicate proposed key personnel who are, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients. NYSDOT reserves the right to request information from any source so named.

The Key Personnel (as identified in Section 4.6 of the RFP) proposed by the designated Consultant are an important factor in the evaluation of its proposal. Thus, the Department expects that the personnel proposed will be available at the start of the contract term. As a result, any personnel proposed by the designated Consultant that does not perform the required work under the contract for the initial 30 calendar days after the effective date of the Notice to Proceed will, at NYSDOT’s discretion, result in a $10,000 charge per personnel title as Liquidated Damages.

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

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

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

5.2 **Part II: Cost and Administrative Submittal**

Part II of the proposal consists of two general sections:

- A Cost Proposal, which shall set forth the lump sum amount for performing the work in the scope of services; and
- The Administration Section, which shall specify the proposer’s acceptance of the terms and conditions contained in the draft Contract enclosed as **Attachment 1** to this solicitation, as well as host several other administrative items.

The above general sections shall include the following:

1. **Cost Proposal**

NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel spreadsheets (see **Attachment 17 “Cost Proposal Workbook”**) in both a hardcopy Part II response and an electronic copy on thumb drive, securely presented in the Part II response. The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the offeror.

When completing the Excel cost worksheets included in **Attachment 17**, offerors shall follow these instructions:

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

3. All worksheets included in Attachment 17 must be completed in order for the response to be considered complete.

4. Proposer should not make entries in colored cells in the Excel spreadsheets in Attachment 17. Changes should not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.

Note: Any necessary travel costs will be limited to the prevailing maximum rates based on the Federal rate schedules and the New York State travel guidelines. Both Federal rate schedules and NYS travel guidelines can be referenced by accessing the links provided below:

- Federal Travel Rate Schedules
  http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0
- New York State Travel Guidelines:
  http://www.osc.state.ny.us/agencies/travel/travel.htm

Cost Proposal Instructions

Use Attachment 17 to complete the Cost Proposal response form. This attachment contains instructions to guide completion of this form. Should any questions arise pertaining to this form and its instructions, please submit them to the designated NYSDOT contact person before the Question & Answer deadline.

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

a) Acceptance of Agreement Terms and Conditions
Offerors shall complete and submit Attachment 2 “Consultant Information and Certifications Form” included as Attachment 2 to this RFP, to indicate their acceptance of all of the terms and conditions contained in Attachment 1 “Draft Contract”. Attachment 2 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 365 days, a statement that the firm accepts the RFP’s Scope of Services ‘as-is’, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP, including all of its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. No exceptions to any of the draft contract’s terms and conditions will be entertained by NYSDOT. Conditional bids will be deemed non-responsive.

b) Modification Acknowledgement Forms
The Proposer shall include a completed Attachment 3 “Form AOR”, acknowledging receipt of any Modifications issued by the Department.
c) Procurement Lobbying Law
Filing the two required forms is mandatory for all consultants in order to be considered for contract award. These Forms are:

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

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

For additional information, refer to Attachment 4 “Procurement Lobbying Law Compliance”.

d) Non-Collusion Bidding Certification
All Proposers shall submit a completed Attachment 6 “Non-Collusive Bidding Certificate”.

e) Vendor Assurance of No Conflict or Detrimental Effect
All Proposers shall submit a completed Attachment 7 “Vendor Assurance of No Conflict or Detrimental Effect”.

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

i. Complete and submit Attachment 10 “DBE Participation Information” and, if applicable, Attachment 10a “DBE Subconsultant Participation Solicitation Log and Goal Attainment Letter”. Provide the legal names of all certified DBE consultants (prime and/or subconsultant).

Use Contract Number C037714 wherever requested in the forms. Please call or e-mail the individual(s) identified as the Designated Contacts in Section 1.4 of this RFP if you have any questions regarding how to complete this required form.

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

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

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

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

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

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

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

**Note:** In the event two or more proposals are found to be “substantially equivalent”, the Department reserves the right to award the contract under the terms of State Finance Law §163 (10)(a).
6.2 Pre-Screening of Proposals

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

As part of the pre-screening process, the proposed DBE participation percentages offered for NYSUCP certified prime consultants and/or NYSUCP certified subconsultants will be reviewed (Attachment 10: DBE Participation Information). To count towards the Department’s DBE participation goal, each firm must be currently listed in the NYSUCP Directory. If the proposed DBE participation is less than the established 2 percent goal (or where a prime consultant, certified as a DBE, proposes to meet the Department’s DBE participation goal via their meaningful participation), the firm’s evidence of a Good Faith Effort (Attachment 10a: Subconsultant Participation Solicitation Log) to achieve the goal will be reviewed, along with the firm’s letter of explanation (Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include verification of a firm’s Good Faith Effort evidence, if it is determined by the Department that the firm did not provide an acceptable Good Faith Effort, then the proposal will be deemed non-responsive and will be removed from further consideration.

6.3 Technical and Management

The technical and management proposal will be scored and will represent 60% of the total score for a proposal. The major evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

The proposal with the highest final weighted technical score will receive a perfected score of 60 points. Other technically acceptable proposals will have their score perfected as well and will receive a proportionately lower final technical score.

The major evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

1. Approach, Scope of Services and Schedule (Up to 30 Points)

   a. Degree to which the firms’ proposed approach for accomplishing the scope of services, reflects an understanding of the project scope; depicts an ability to react/respond to technical failures and issues; and the ability/availability to respond to impacted sites for triage in a timely manner. (Up to 15 Points)

   b. Degree to which the proposing firms’ understanding of the NYS ITS Policies, Standards, and Best Practice Guidelines, including, but not limited to, network devices and connectivity to the Colleges of Nanoscale Science and Engineering (CNSE) Data Center in Albany, the NYS Information Security Policy and the NYS Information Security Breach and Notification Act. (Up to 10 Points)
c. Degree and frequency to which the firm exhibits the ability to communicate effectively with the Department (relating to site/system issues/outages and demonstrates the ability to deliver quality Status Reports (Task 3) on a timely basis. (Up to 5 Points)

2. Experience (Up to 15 Points)

   a. Overall quality, extent and relevance of experience of the Firm and Key Personnel during the past five (5) years supporting, maintaining and repairing commercial electronic screening (E-Screening) sites.
      1. Experience of the Firm (Up to 10 Points)
      2. Experience of Key Personnel (Up to 5 Points)

3. Organization and Staffing (Up to 15 Points)

   a. Reasonableness or staff/task allocations and level of effort. Take into consideration, the reasonableness of the hours/task coverage by Contract Job Title as proposed in Attachment 18 “Level of Effort Tables. (Up to 10 Points)

   b. Reasonableness of organization’s structure as it relates to carrying out tasks required by the contract, including the proposed plan for the use and coordination of subconsultants, if any. (Up to 5 Points)

6.4 Written Technical Proposal Clarifications
The Department reserves the right to seek written clarifications from firms submitting Proposals to assure a full understanding of their responsiveness to the technical requirements. A Proposer may be required to provide written clarifications at any time during the Proposal evaluation process. Evaluators will be allowed to revise their technical Proposal scores based on receipt and consideration of this additional clarifying information and follow-up TEC discussions. Reasons for any score changes shall be documented.

6.5 Cost
The cost portion of the cost and contract proposal will be point scored and will represent 40% of the total score for a proposal. The calculation of a cost score will be determined by the following method:

   1. The lowest cost Proposal will be perfected to receive the full amount of points.
   2. Proposals with higher cost Proposal will receive proportionally lower cost Proposal scores.
   3. This point total will be calculated by dividing the lowest proposed price by the total price of each Proposal, multiplied by the maximum weight for the cost Proposal (40%).

6.6 Best & Final Offer (BAFO; Optional) & Proposal Withdrawal
The Department reserves the right to request Best and Final Offers from firms which make the shortlist. Any Best and Final Offer request may ask additional further clarifying technical and/or
cost Proposal questions of Proposers to further clarify their submitted Proposals. The Department also may request a cost only BAFO. Should the Department opt to request BAFOs, all shortlisted Proposers will receive a BAFO request. Responding Proposers will be allowed to submit a Best and Final Offer (technical and/or cost); Proposers may opt to not submit a BAFO. TEC members will be allowed to revise the technical scores for the written technical Proposal based on considerations of any new or changed technical Proposal information contained in any Best and Final Offer (TEC members will re-sign and date the score sheets). If changes to a Proposer’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 Designated Representative shall make the necessary, appropriate adjustments to that Proposer’s cost Proposal evaluation.

Should any firm withdraw their Proposal after a possible BAFO request, the Department will remove that Proposal’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 Proposer’s information).

6.7 Final Best Value Evaluation
After evaluation of all technical information submitted by competing Proposers (i.e., initial written technical Proposals, written clarifications, and possible Best and Final Offers), the Department will perfect (curve) the weighted written technical Proposal scores so that the highest weighted written technical Proposal score will be assigned a perfect score of 70 points with the other lower weighted written technical Proposal scores adjusted proportionately downward. Perfect cost scoring results (up to 30 points) will be added to the perfected technical Proposal score to generate a tentative final best value score by Proposer. Proposers 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 lie within 2 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, the Department will determine the Final Best Value Score, where after the Proposal with the highest Final Best Value score shall be recommended to the Department’s Executive Management for contract award.

6.8 Consultant Selection Recommendation & Tentative Contract Award
A consultant selection and designation memo shall be prepared and forwarded to the applicable Department’s Executive Manager(s) with an accompanying evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award. The Executive Manager(s) will be asked to concur with the final conclusion of the Proposal evaluation process and designate the Best Value consultant based upon the above results.

Should negotiations with the Best Value Consultant fail to produce an agreed upon contract(s), then the Department’s Executive Management will designate the tentative contract award to the next highest ranked Best Value Consultant. The Department will then enter into negotiations...
with the second-ranked Best Value Consultant. This process may repeat itself until acceptable contracts are consummated.

At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on the Department website. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Debriefing request should be made to the Department’s Designated Contact within 5 calendar days of the designation notice. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a Proposal to this request, or to procure or contract any services or supplies. Further, the Department shall have no obligation or liability whatsoever to the Consultant selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the Consultant and all necessary State officials.
7 ADMINISTRATIVE SPECIFICATIONS

7.1 Proposal Submission

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

Proposers shall submit five (5) copies of Part I and three copies of Part II.

Your proposal must be received by NYSDOT by Noon on Mach 27, 2019. The proposal must be addressed to:

    Micheleen Gregware
    NYS Department of Transportation
    50 Wolf Road, 6th floor
    Albany, New York 12232
    Attention: #C037714 - Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT

7.2 State’s Rights

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

a. To accept or reject any or all proposals;

b. To correct any arithmetic errors in any or all proposals;

c. To change the proposal’s due date upon appropriate notification to interested firms;

d. To eliminate any mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;

e. To adopt any or all of a successful offeror’s proposal;

f. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;

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

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

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

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

k. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
1. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;

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

7.3 Consultant Responsibility When Proposing Former NYSDOT Employees

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

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

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

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

Procedure

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

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

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

7.4 Method of Payment

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

This project shall be a Lump Sum Payment based project. Lump Sum Payment will be based on the acceptance of completed deliverables, by phase, identified in the RFP.

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

7.5 **Information for the Selected Consultant**

**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](http://www.osc.state.ny.us/vendrep/index.htm) before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. In addition, any subconsultant providing services valued at $100,000 or more is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

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


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

**Registration with Statewide Financial System (SFS)**
*Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS) - if not already registered.* NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.
Consultant Employment Disclosure Requirements of this 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 5) 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 5) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Insurance Requirements of this Project

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

Contractor Tax Certification

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

Certification Form EO-177

In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Certification Form EO-177 will be provided with the contract documents. The completed and signed Certification must be returned with the firm’s executed contract agreement.

7.6 Inquiries and Information

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

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

7.7 Protest Procedure

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

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

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Release Date:</td>
<td>February 20, 2019</td>
</tr>
<tr>
<td>Question Submittal Deadline:</td>
<td>March 6, 2019</td>
</tr>
<tr>
<td>Responses to Questions:</td>
<td>On or before March 13, 2019</td>
</tr>
<tr>
<td>Proposals Due:</td>
<td>March 27, 2019, 12 noon Eastern Time</td>
</tr>
<tr>
<td>Recommendation &amp; Designation:</td>
<td>April 2019</td>
</tr>
<tr>
<td>Contract Finalizing:</td>
<td>April/May 2019</td>
</tr>
<tr>
<td>Contract Award:</td>
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ATTACHMENT 1: DRAFT CONTRACT

Draft Contract

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C037714

PROJECT: COMMERCIAL VEHICLE ELECTRONIC SCREENING MAINTENANCE SERVICES FOR NYSDOT

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

CONSULTANT FIRM NAME
CONSULTANT FIRM ADDRESS

(hereinafter referred to as "CONSULTANT")

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.
The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this AGREEMENT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this AGREEMENT. It is understood and agreed that ________________ shall serve as the CONSULTANT's Project Manager and as such shall have the responsibility for the overall supervision and conduct of the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described therein. Any change of key project personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this AGREEMENT to any other state agency in New York subject to the approval of all necessary state officials.
The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the STATE.

ARTICLE 2. DOCUMENTS FORMING THE AGREEMENT.
The contract documents shall be deemed to include this AGREEMENT (including EXHIBITS), the provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX A-I, APPENDIX B, APPENDIX C and APPENDIX D, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the STATE’s Request for Proposals (RFP; dated ____ ) incorporated by reference, and the CONSULTANT’s Proposal (dated ____ ) incorporated by reference.

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

ARTICLE 4. TERM OF THE AGREEMENT.
The CONSULTANT agrees to complete all the work of this AGREEMENT as required by this AGREEMENT within a 36-month base term for this AGREEMENT, which shall commence on _____________ and end on _____________ . The AGREEMENT may be extended for up to two (2) additional one-year periods as may be agreed upon by the parties to the AGREEMENT and as approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT
Item I - The maximum aggregate amount payable by the State to the CONSULTANT hereunder for the performance and completion of the work is $__________ unless increased by a supplemental agreement. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.

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

ARTICLE 6. PROVISION FOR PAYMENT.
Item I - The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a price of $__________ unless revised by a Supplemental Agreement.

Item II - The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose. In no event, however, will monies be deleted from this Agreement except pursuant to ARTICLE 17 hereof, titled “Termination”.

Item III - If the AGREEMENT is extended beyond 36 months then any and all salary rates shown in SCHEDULE B, EXHIBIT ___ may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12-month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, all depending upon current market conditions. If at any time the above Index
Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item IV - The number of months of training provided under Special Provision 11 in Appendix C is_____.

ARTICLE 7. PARTIAL PAYMENTS.
The CONSULTANT shall be paid in progress payments based on allowable costs incurred during the period in accordance with Article 6 of this Agreement established by the Project Manager and the CONSULTANT, as follows:

(To be Negotiated) as per Schedule B

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of the STATE's Project Manager, ______________ or their successor as identified by the STATE. Payments shall not be withheld unreasonably.

The CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A hereto.

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

ARTICLE 8. CONTRACT PAYMENT.
The CONSULTANT shall provide complete and accurate billing invoices to the STATE in order to receive payment. Billing invoices submitted to the STATE must contain all information and supporting documentation required by the Contract, the STATE and the State Comptroller. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as “COMMISSIONER”), in the COMMISSIONER’S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONSULTANT shall comply with the State Comptroller’s procedures to authorize electronic payments. Authorization forms are available at the State Comptroller’s website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. CONSULTANT acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller’s electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

ARTICLE 9. FINAL PAYMENT.
a) Section 179 of the State Finance Law requires the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of the State Finance Law has determined that the STATE will require a 60-calendar day audit period for final payments at which time the 30 calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all Sub Contractors and Sub Consultants within ten (10) calendar days of receipt of final payment from the STATE.

The CONSULTANT is required, if it is a "foreign" (Out of State) corporation or entity, to obtain and submit the required "Tax Clearance" certificate to the STATE at the time of contract signing and again
before processing the final payment. It should be noted that any time taken to satisfy or furnish this Tax Clearance certificate shall extend the required payment date by an equal period of time. The Tax Clearance certificate can be obtained by mailing a request to:

New York State Department of Taxation and Finance  
Tax Status Unit  
Building 8, Room 938  
State Office Building Campus  
Albany, NY 12227

Alternatively, it may be obtained by phoning the Corporation Tax Information Center at 1-888-698-2908 and making the request there. The certificate content is public information and the certificate is free of charge.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in ARTICLE 8(b).

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

ARTICLE 10. EXTRA WORK.

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

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Work which the CONSULTANT is obligated to perform in accordance with Article 9 hereof shall be performed without cost to the STATE. Compensation for other work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate Agreement, if necessary.
ARTICLE 11. CONSULTANT LIABILITY.

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

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

ARTICLE 12. INSURANCE.

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

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

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

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

3. **Certificates of Insurance/Notices.** Consultant shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract Number. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing the Contract Number and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov

Certificates may be mailed to the:

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

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

a. Be in a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.
b. Be signed and dated by an authorized representative of the insurance carrier or producer.
c. Disclose any deductible, self-insured retention, aggregate limit.
d. Refer to this Contract by number on the face of the certificate.

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

a. Direct the Consultant to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
b. May withhold further contract payments in accordance with 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. Special Protective and Highway Liability Policy. (applicable to any project where Consultant is required to conduct field work where Consultant controls the field location for the work). The Consultant shall maintain, separate and apart from its umbrella policy, a policy issued to and covering the liability of the People of the State of New York, The State of New York, the Commissioner of Transportation, all employees of the Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, against damages that the insureds may be held legally liable to pay for property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by Consultant, including at the location of any of the work. This should be ISO form CG 00 14 12 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than $1,000,000 per occurrence and at least $2,000,000 for each aggregate limit.

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

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

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

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

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

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

ARTICLE 13. INTERCHANGE OF DATA.
All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 14. DISPOSITION OF DATA.
At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

ARTICLE 15. DAMAGES AND DELAYS.
The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 8 of this AGREEMENT.

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS
If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this AGREEMENT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and be subject to assumption or rejection by the debtor within the time permitted by law.

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

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

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

ARTICLE 17. TERMINATION.
The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

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

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

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

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.

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

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

ARTICLE 19. INDEPENDENT CONTRACTOR.

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES.

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

ARTICLE 21. TRANSFER OF AGREEMENT.

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

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

**ARTICLE 22. PROPRIETARY RIGHTS.**
The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable, paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

**ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.**
All subcontractors and subconsultants performing work on this project shall be bound by the same required contract provisions as the prime CONSULTANT. All agreements between the prime CONSULTANT and a subcontractor or subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the State.

**ARTICLE 24. ORDER OF PRECEDENCE.**
In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A,
2. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, APPENDIX B, and APPENDIX C;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
4. SCHEDULE A (including Exhibits);
5. SCHEDULE B (including Exhibits);
6. The STATE’s Request for Proposals; and
7. The CONSULTANT’s Proposal.

**ARTICLE 25. CERTIFICATION REQUIRED BY 49CFR, PART 29.**
The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

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

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

3) does not have a proposed debarment pending; and
4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS: -

ARTICLE 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.
The prospective participant certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

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

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

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

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

ARTICLE 27. RESPONSIBILITY OF THE CONSULTANT.
(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this AGREEMENT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

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

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

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

ARTICLE 28. SECURITY AND CONFIDENTIALITY OF INFORMATION. Information received as part of this AGREEMENT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers and any SUBCONTRACTOR/SUBCONSULTANTS regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this AGREEMENT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the States designee. Neither shall the CONSULTANT disclose information deemed confidential by the State nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this AGREEMENT.

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

ARTICLE 29. VENDOR RESPONSIBILITY. The Department of Transportation has undertaken an affirmative review of the proposed consultant’s responsibility in accordance with the applicable standards outlined in Comptroller’s ‘Guide to Financial Operations’, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

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

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

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

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.
In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit ___) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

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

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

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

ARTICLE 31. NOTICES.
Item 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

   (a) via certified or registered United States mail, return receipt requested;
   (b) by facsimile transmission;
   (c) by personal delivery;
   (d) by expedited delivery service; or
   (e) by e-mail.

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

New York State Department of Transportation:
Contact Person’s Name: William A. Howe, Contract #C037714
Title: Director
Address: NYSDOT Contract Management Bur., 6th Fl., 50 Wolf Road, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2874
E-Mail Address: Bill.Howe@dot.ny.gov

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

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

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

ARTICLE 32. TITLE VI ASSURANCE.
During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
(1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

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

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

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

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

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

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

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
ARTICLE 33.  ENSURING PAY EQUITY BY STATE CONSULTANTS / CONTRACTORS.
In accordance with Executive Order 162, issued on January 9, 2017, the consultant shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant – or subcontractor – that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

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

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

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by the Department and as in accordance with Consultant Instruction 17-02.

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

ARTICLE 34.  CONFLICTS OF INTEREST.
The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT’S performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

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

In conjunction with any subcontract under this AGREEMENT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.
The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

ARTICLE 35. ETHICS REQUIREMENTS.
The Consultant and its Subconsultants/Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the ‘Ethics Requirements’). The Consultant certifies that all of its employees and those of its Subconsultants/Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Consultant or its Subconsultants/Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Consultant or its Subconsultants/Subcontractors derived from this Contract. The Consultant shall identify and provide the State with notice of those employees of the Consultant and its Subconsultants/Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Consultant provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subconsultant/Subcontractor if utilizing such Subconsultant/Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

ARTICLE 36. SUBCONTRACTING.
The CONSULTANT agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the STATE. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

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

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

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

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

If at any time during performance under this AGREEMENT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed $100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.
IN WITNESS WHEREOF, this Contract No. C037714 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

__________________________________________  By: ____________________________
CONTRACT MANAGEMENT  DEPARTMENT OF TRANSPORTATION

DATE: _______________________________ DATE: _______________________________

Consultant Certifications: I certify that all the information with respect to the “Vendor Responsibility Questionnaire: submitted by

__________________________________________
(CONSULTANT FIRM NAME)

on the __________ day of ________________, 20___ pursuant to the requirements set forth in OSC’s Guide to Financial Operations is complete, true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the “Vendor Responsibility Questionnaire” submitted that date.

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

By: _______________________________ Date: _______________________________
FIRM

-----Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT-----

APPROVALS

ATTORNEY GENERAL THOMAS P. DINAPOLI

STATE COMPTROLLER

By: _______________________________ By: _______________________________
Date: _______________________________ Date: _______________________________
Acknowledgement for Contract #C037714

For contracts signed in New York State

State of New York )

County of ) ss.:

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

_________________________________

NOTARY PUBLIC

My Commission Expires:

For contracts signed outside New York State

State of )

County of ) ss.:

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

__________________________________________

(insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

__________________________________________

NOTARY PUBLIC

_________________________ _____________________

(Signature and office of individual taking acknowledgement.)

My Commission Expires:
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments 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. (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.
Information on the availability of New York State subcontractors and suppliers is available from:

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. 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](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
(June 2016)

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 (NYS DOT) is responsible for the administration of transportation projects in New York State to which NYS DOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYS DOT 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.

NYS DOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYS DOT’s web site at: http://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 NYS DOT or electronically at: http://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/Sponsors 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 $750,000 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 the amount above 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 Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

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

THE CFDA IDENTIFICATION NUMBER

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

a The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

b http://www.cfda.gov/
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.

(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.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

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

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

(c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.
APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

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

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

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

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

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

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

B. In performing the contract, the Consultant shall:

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

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

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

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

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

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

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

      d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.
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 to furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

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

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

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).
(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Updated July 2017
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 § 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, except for the cost detailed for Task 11 in Attachment 8.

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

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

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

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

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

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

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

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

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

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

14. CONSULTANT PERFORMANCE AUDIT
14.1 The Consultant shall allow NYSDOT to assess Consultant's performance by providing any materials requested in the Contract (e.g., page load times, response times, uptime, fail over time). NYSDOT may perform this Consultant performance audit with a third party at its discretion.

14.2 The Consultant shall perform an independent audit of their Data Centers, at least annually, at Consultant expense. The Consultant will provide a full version of the audit report upon request by NYSDOT. The Consultant shall identify any confidential, trade secret, or proprietary information in accordance with Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law.

14.3 The Office of the State Comptroller reserves its right conduct an audit of the Consultant.

15. PERSONNEL
15.1 Background Checks: NYSDOT may require the Consultant to conduct background checks on certain Consultant staff at no charge to NYSDOT.

15.2 Separation of Duties: NYSDOT may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

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

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

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

19. MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION WITHIN AN AUTHORIZED USER AGREEMENT
19.1 As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. NYSDOT requires notification of any such changes to ensure security and business needs are met.

19.2 Any changes to the description, type of service(s), or SKU (e.g., PaaS to LaaS) 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,**

Contracting State Agency Name: NYS Dept. of Transportation  
Contract Number: C037714  
Contract Term to  
Contractor Name:  
Contractor Address:  
Description of Services Being Provided: Commercial Vehicle Electronic Screening Maintenance Services to NYSDOT

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

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Grand Total

Name of person who prepared this report:  
Preparer’s Signature: ____________________________
Title: ____________________________  
Phone #: ____________________________

Date Prepared: / /  
Use additional pages if necessary)
ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS
(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBERS: C037714
PROJECT TITLE: Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT

I. CONSULTANT INFORMATION

FIRM NAME: _____________________________________________________________

ADDRESS:________________________________________________________________

CITY:_________________________________________  STATE: ______________

ZIP CODE:  _ _ _ _ _ - _ _ _ _

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

E-MAIL ADDRESS: ________________________________________________

CONTACT PERSON: ________________________________________________

Consultant’s Federal Identification Number (FIN):________________________

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

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

Preparer’s Name/Title: ________________________________________________

Address:    ____________________________________________________________

Telephone: (_____) _____ - _________    FAX: (_____) _____ - _________

Other Authorized Individual(s):

Name/Title:____________________________________________________________

Address: _____________________________________________________________

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

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

- 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 7.3 of the RFP if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10 days of notification of designation: (http://www.osc.state.ny.us/vendrep/forms_vendor.htm)
- ST-220: If selected for contract award greater 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 Websites: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- 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 agency, a Member of Congress, and 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 the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- As of January 1, 2019, bidders on New York State procurements subject to competitive bidding are required to submit a Certification on Sexual Harassment in bids. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace, and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants...
and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Signature: ________________________________

III. ACCEPTANCE OF CONTRACT

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

Signature: ________________________________ (Name of Acceptor)
ATTACHMENT 3: FORM AOR

ACKNOWLEDGMENT OF RECEIPT OF
RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

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<th>NAME OF PROPOSER</th>
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We hereby acknowledge receipt of the Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT (contract #G037714) Request for Proposals, dated **Month Date, Year** and subsequent responses to questions and Modifications issued by the Department, as listed below.

Add additional lines in tables below, if needed.

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ATTACHMENT 4: PROCUREMENT LOBBYING LAW COMPLIANCE

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

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

Micheleen Gregware
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Micheleen.Gregware@dot.ny.gov
Tele: (518) 457-2600
**ATTACHMENT 5: CONSULTANT DISCLOSURE LEGISLATION FORMS A & B**

**OSC Use Only:**
- Reporting Code:
- Category Code:
- Date Contract Approved:

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**FORM A**

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

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<th>O*Net Employment Category</th>
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Name of person who prepared this report:

Title:                      Phone #:

Preparer’s Signature:

Date Prepared: / /

(Use additional pages, if necessary)
STATE CONSULTANT SERVICES
Contractor's Annual Employment Report
Report Period: April 1, 2016, to March 31, 2016

Contracting State Agency Name: NYS Dept of Transportation
Agency Code: 3900283
Contract Number: C037714
Contract Term: to
Contractor Name:
Contractor Address:
Description of Services Being Provided: Commercial Vehicle Electronic Screening Maintenance Services for NYSDOT

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

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Name of person who prepared this report:
Preparer's Signature: ____________________________________________
Title: __________________________________ Phone #:____________________
Date Prepared: / / 
(Use additional pages if necessary)
ATTACHMENT 6: NON-COLLUSIVE BIDDING CERTIFICATION

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

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

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

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

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

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

Subscribed to under penalty of perjury under the laws of the State of New York, this _______ day of ____________, 20____ as the act and deed of said corporation of partnership.
NON-COLLABORATIVE 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: ______________________________________________________________

___________________________________________________________

Street

City, Town, etc.

Telephone:__________________________ Title__________________________

If applicable, Responsible Corporate Officer

Name:______________________________ Title__________________________

Signature: _____________________________________________________________

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

____________________________________ ______________________________

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By

Name

Title

Name

Title

Address: ______________________________________________________________

___________________________________________________________

Street

City State

Address: ______________________________________________________________

___________________________________________________________

Street

City State
ATTACHMENT 7: VENDOR ASSURANCE OF NO CONFLICT 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 8: EXECUTIVE ORDER 177 CERTIFICATION
This Certification must be completed and returned with the executed contract documents.

Executive Order 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposer/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Vendor: ________________________________

By [signature]: ________________________________

Name [print]: ________________________________

Title: ________________________________

Date: _________________, 20__
ATTACHMENT 9: FORM M/WBE EEO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Not Applicable
ATTACHMENT 10: DBE PARTICIPATION INFORMATION

In accordance with the Code of Federal Regulations (CFR), Title 49, Part 26, NYSDOT is required to encourage Proposers to utilize DBE firms in procurements that receive federal funds.

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

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

If the combined percentage of total contract value for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the Participation Solicitation Log (Attachment 10a), and the Goal Attainment Explanation Letter. Further, prime consultants certified as a DBE who propose to meet the Department’s DBE participation goal via their meaningful participation, are required to fill out and submit the Participation Solicitation Log (Attachment 10a) if their outreach efforts result in proposed DBE subconsultant(s).

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

Contract #C037714

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYSUCP Certified DBE</th>
<th>2% of Total Contract Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Prime Consultant</td>
<td>DBE</td>
<td>None</td>
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<tr>
<td>B. Sub-Consultants</td>
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<tr>
<td>Total</td>
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<td>100%</td>
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</table>
ATTACHMENT 10a: DBE SUBCONSULTANT PARTICIPATION SOLICITATION LOG

(Good Faith Effort Documentation)

<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>C037714</th>
<th>PARTICIPATION GOALS</th>
<th>(SELECT ONE)</th>
<th>PAGE NUMBER ___ OF ___</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>DBE%: 2</td>
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<table>
<thead>
<tr>
<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
<th>E-MAIL</th>
</tr>
</thead>
</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>
</tr>
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<tbody>
<tr>
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*See Solicitation Log Instructions listed in Attachment 12: Solicitation Log Instructions
ATTACHMENT 11: M/WBE/SDVOB PARTICIPATION INFORMATION

Not Applicable
ATTACHMENT 11a: SUBCONSULTANT PARTICIPATION SOLICITATION LOG

Not Applicable
ATTACHMENT 12: SOLICITATION LOG INSTRUCTIONS
(Good Faith Effort Documentation)

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

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

Guidance concerning Good Faith Efforts in meeting D/M/WBE/SDVOB participation goals is located at the end of this section.

The log is to be filled out and submitted with the proposing firm’s Cost and Contract Proposal. In order for a proposal to be determined as responsive when the D/M/WBE/SDVOB 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 or SDVOB PROGRAMS. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS

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

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

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

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

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

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

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

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

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

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

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

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

CODE DESCRIPTION:

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

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

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

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

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – [http://www.nysucp.net/](http://www.nysucp.net/) or the ESD M/WBE Directory -[http://www.esd.ny.gov/MWBE.html](http://www.esd.ny.gov/MWBE.html) ) the interest of all certified D/M/WBEs, or the NYS Office of General Services list of certified SDVOBs at [http://ogs.ny.gov/core/sdvoba.asp](http://ogs.ny.gov/core/sdvoba.asp), who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the D/M/WBE/SDVOBs to respond to the solicitation. The bidder must determine with certainty if the D/M/WBE/SDVOBs are interested by taking appropriate steps to follow up initial solicitations.

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

- Providing interested D/M/WBE/SDVOBs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

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

- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including D/M/WBE/SDVOB subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a D/M/WBE/SDVOBs is not in itself sufficient reason for failure to meet the contract D/M/WBE/SDVOB goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.
Do not reject D/M/WBE/SDVOBs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal.

Making efforts to assist interested D/M/WBE/SDVOBs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.

Making efforts to assist interested D/M/WBE/SDVOBs 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 D/M/WBE/SDVOBs.
ATTACHMENT 13: NEW YORK BUSINESS REPORTING

Not Applicable
ATTACHMENT 14: DIVERSITY PRACTICES QUESTIONNAIRE

Not Applicable
ATTACHMENT 15: KEY PERSONNEL RESUME AND REFERENCES

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

<table>
<thead>
<tr>
<th>Personnel Name and Title:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Title Assigned for this Project:</td>
<td></td>
</tr>
<tr>
<td>Firm working for on this Project:</td>
<td></td>
</tr>
<tr>
<td>Current Employment Status:</td>
<td>[ ] Employed by Firm identified #3 above [ ] Employed by a different Firm [ ] Unemployed</td>
</tr>
<tr>
<td>Years of Relevant Experience</td>
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</tr>
<tr>
<td>Description of Relevant Experience:</td>
<td></td>
</tr>
<tr>
<td>Certifications/Licenses:</td>
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</tr>
<tr>
<td>Education:</td>
<td></td>
</tr>
<tr>
<td>Past Project Experience</td>
<td>Complete below for a maximum of five past projects</td>
</tr>
<tr>
<td>Project Description (include contract number where appropriate):</td>
<td></td>
</tr>
<tr>
<td>Client Name:</td>
<td></td>
</tr>
<tr>
<td>Client Contact Information (including contact name, phone number, and e-mail address):</td>
<td></td>
</tr>
<tr>
<td>Description of person’s role and responsibilities during project:</td>
<td></td>
</tr>
</tbody>
</table>

Project Description (include contract number where appropriate):
Client Name:
Client Contact Information (including contact name, phone number, and e-mail address):
Description of person’s role and responsibilities during project:

Project Description (include contract number where appropriate):
Client Name:
Client Contact Information (including contact name, phone number, and e-mail address):
Description of person’s role and responsibilities during project:
Project Description (include contract number where appropriate):
Client Name:
Client Contact Information (including contact name, phone number, and e-mail address):
Description of person’s role and responsibilities during project:

Project Description (include contract number where appropriate):
Client Name:
Client Contact Information (including contact name, phone number, and e-mail address):
Description of person’s role and responsibilities during project:
ATTACHMENT 16: DOT – HIGH LEVEL NYS E-SCREENING NETWORK CONNECTIVITY DIAGRAM

ATTACHMENT 16:
High Level New York State E-Screening Network Connectivity Diagram to the Colleges of Nanoscale Science and Engineering (CNSE) Data Center
ATTACHMENT 17: COST PROPOSAL WORKBOOK

See Attachment 17 – Cost Proposal Workbook online at:

https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities
ATTACHMENT 18: LEVEL OF EFFORT TABLE

See Attachment 18 – Level of Effort Table online at:

https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities
ATTACHMENT A: NYS TRAFFIC MONITORING STANDARDS

Please see Attachment A – NYS Traffic Monitoring Standards on NYSDOT’s website at:

https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities
ATTACHMENT B: MAINTENANCE PRICE SCHEDULE EQUIPMENT SPECIAL SPECIFICATIONS

Please see Attachment B – Maintenance Price Schedule Equipment Special Specifications on NYSDOT’s website at:

https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities
ATTACHMENT C: BASIC NETWORK DIAGRAM

Please see Attachment C – Basic Network Diagram on NYSDOT’s website at:

https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities