NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
MATERIALS INSPECTION, SAMPLING AND TESTING
CONSULTANT SERVICES FOR NYSDOT
Contract #C037857 – Regional Technical Support – Region 7

Initial Information for Submittal

A. Please note the following tentative dates and deadlines:
   September 6, 2019: RFP Release Date
   September 13, 2019: Deadline for questions about the RFP at 12:00 PM EST
   October 1, 2019: Deadline for submission of proposals at 12:00 PM EST
   November 2019: Recommendation & Tentative Designation
   November 2019: Contract Finalizing
   December 2019: Tentative Contract Award
   February 2020: OSC Contract Award

B. Complete proposals are to be submitted to the Designated Contact stipulated in Section 1.4.
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 PROPOSAL

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

_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

Name and Address of Organization (Include Zip Code):

_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

Date: ________________

Typed Name and Title: _______________________________________________________________________

Telephone: _______________________________ Fax: ___________________________

E-Mail Address: __________________________________________________________

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

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**  
**REQUEST FOR PROPOSALS**  
**MATERIALS INSPECTION, SAMPLING AND TESTING**  
**CONSULTANT SERVICES FOR NYSDOT – REGION 7**  
**Contract #C037857**

### Part I - Technical and Management Submittal

- One (1) original plus Six (6) hard copies in 3-ring binders bound separately of Part I plus one copy of Part I on Flash-drive –
- Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “Materials Inspection, Sampling and Testing Consultant Services for NYSDOT RFP Part I — Regional Technical Support Services – Region 7 (C037857)”
- Signed Cover Letter on official business letterhead
- Table of Contents identifying each major section and page numbers
- Complete and submit Attachment #17: NAE255 Form

### Part II - Cost and Contract Submittal

- One (1) original plus Two (2) hard copies in 3-ring binders bound separately of Part II plus one copy of Part II on Flash-drive
- Securely sealed and clearly labeled with the words “Materials Inspection, Sampling and Testing Consultant Services for NYSDOT RFP, Part II — Cost and Contract Proposal — Regional Technical Support Services — Region 7 (C037857)”
- Required Cost information (complete and submit Exhibits 1 & 2 for specific categories and/or regions)
- Certification of completed online or hard copy of Vendor Responsibility Questionnaire
- 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 11: M/WBE/SDVOB Participation Information Form
- Complete and submit (if applicable): Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log AND Goal Attainment Explanation Letter
- Complete and submit Attachment 13: New York Business Reporting
- Complete and submit Attachment 14: Diversity Practices Questionnaire
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
MATERIALS INSPECTION, SAMPLING AND TESTING
CONSULTANT SERVICES FOR NYSDOT

Contract #C037857 – Regional Technical Support Services – Region 7

1 INTRODUCTION ........................................................................................................................................... 5
  1.1 PURPOSE ............................................................................................................................................... 5
  1.2 BACKGROUND ..................................................................................................................................... 5
  1.3 MINIMUM RFP RESPONSIVENESS ...................................................................................................... 6
  1.4 DESIGNATED CONTACT .................................................................................................................... 7
  1.5 RFP MODIFICATIONS .......................................................................................................................... 7

2 CIVIL RIGHTS REQUIREMENTS .................................................................................................................. 8
  2.1 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION .......................................................... 8
  2.2 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION .................................. 8
  2.3 SERVICE-DISABLED VETERAN-OWNED BUSINESS PROGRAM (SDVOB) ....................................... 9
  2.4 DIVERSITY PRACTICES ...................................................................................................................... 10
  2.5 TITLE VI ASSURANCE .......................................................................................................................... 10
  2.6 EQUAL EMPLOYMENT OPPORTUNITY – PAY EQUITY .................................................................... 11

3 PROJECT AND CONTRACT OBJECTIVES ................................................................................................. 12
  3.1 PROJECT OBJECTIVES ...................................................................................................................... 12
  3.2 CONTRACT OBJECTIVES ................................................................................................................... 12
  3.3 CONTRACT TERMS AND RATE ADJUSTMENTS .................................................................................. 12

4 SCOPE OF SERVICES .................................................................................................................................. 14
  4.1 PROJECT OVERVIEW ............................................................................................................................ 14
  4.2 PERSONNEL REQUIREMENTS ............................................................................................................. 15
  4.3 DETAILED SCOPE OF SERVICES ......................................................................................................... 18

5 PROPOSAL FORMAT AND CONTENTS ........................................................................................................ 25
  5.1 PART I: TECHNICAL AND MANAGEMENT SUBMITTAL/PROPOSAL ............................................. 25
  5.2 PART II: COST AND ADMINISTRATIVE SUBMITTAL ........................................................................ 29

6 CRITERIA FOR EVALUATION OF PROPOSALS ..................................................................................... 33
  6.1 GENERAL ............................................................................................................................................. 33
  6.2 PRE-SCREENING OF PROPOSALS .................................................................................................... 34
  6.3 TECHNICAL AND MANAGEMENT .................................................................................................. 34
  6.4 COST .................................................................................................................................................... 35
  6.5 WRITTEN TECHNICAL PROPOSAL CLARIFICATIONS ..................................................................... 36
  6.6 BEST & FINAL OFFER (BAFO, OPTIONAL) AND PROPOSAL WITHDRAWAL ..................................... 36
  6.6 FINAL BEST VALUE EVALUATION .................................................................................................... 36

7 ADMINISTRATIVE SPECIFICATIONS ....................................................................................................... 38
  7.1 PROPOSAL SUBMISSION ..................................................................................................................... 38
  7.2 STATE’S RIGHTS .................................................................................................................................. 38
  7.3 CONSULTANT RESPONSIBILITY WHEN PROPOSING FORMER NYSDOT EMPLOYEES ............... 39
  7.4 METHOD OF PAYMENT ....................................................................................................................... 39
7.5. INFORMATION FOR THE SELECTED CONSULTANT .................................................................................................. 41
7.6. INQUIRIES AND INFORMATION .......................................................................................................................... 43
7.7. PROTEST PROCEDURE ..................................................................................................................................... 43
7.8. TENTATIVE SCHEDULE OF KEY EVENTS ............................................................................................................... 43
ATTACHMENT 1: DRAFT CONTRACT .......................................................................................................................... 44
ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS ................................................................. 96
ATTACHMENT 3: FORM AOR ....................................................................................................................................... 99
ATTACHMENT 4: PROCUREMENT LOBBYING LAW COMPLIANCE ........................................................................ 100
ATTACHMENT 5: CONSULTANT DISCLOSURE LEGISLATION FORMS A & B ........................................................... 102
ATTACHMENT 6: NON-COLLUSIVE BIDDING CERTIFICATION ................................................................................ 104
ATTACHMENT 7: VENDOR ASSURANCE OF NO CONFLICT OR DETRIMENTAL EFFECT ...................................... 107
ATTACHMENT 8: EXECUTIVE ORDER 177 CERTIFICATION .................................................................................... 109
ATTACHMENT 9: FORM M/WBE EEO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT .................................................. 110
ATTACHMENT 10: DBE PARTICIPATION INFORMATION ............................................................................................. 112
ATTACHMENT 10A: DBE SUBCONSULTANT PARTICIPATION SOLICITATION LOG ...................................................... 113
ATTACHMENT 11: M/WBE/SDVOB PARTICIPATION INFORMATION ........................................................................... 114
ATTACHMENT 11A: SUBCONSULTANT PARTICIPATION SOLICITATION LOG ............................................................ 115
ATTACHMENT 12: SOLICITATION LOG INSTRUCTIONS ............................................................................................ 116
ATTACHMENT 13: NEW YORK BUSINESS REPORTING .......................................................................................... 120
ATTACHMENT 14: DIVERSITY PRACTICES QUESTIONNAIRE .................................................................................. 122
ATTACHMENT 15: .................................................................................................................................................. 125
NOT APPLICABLE ....................................................................................................................................................... 125
8. ATTACHMENT 16-19 AND EXHIBITS 1-5 ................................................................................................................. 126
1 INTRODUCTION

1.1 Purpose

The New York State Department of Transportation (the "Department") is seeking proposals from responsible and responsive inspection and testing consultants to perform sampling, inspection, and testing services at manufacturing sites, supply sites and fabrication sites as materials are being manufactured, supplied or fabricated for use in Department construction projects. The materials to be sampled, inspected and/or tested include: Hot Mix Asphalt (HMA) and Portland Cement Concrete (PCC) plants.

Selected consultants will be required to provide qualified and trained personnel, respond to assignments on an as-needed basis in a timely fashion, provide the necessary administrative and technical supervision to their employees, and work in a cooperative fashion with Department personnel.

Services are to be provided in accordance with the Department’s written instructions and procedures, including:

- The construction contract documents
- the “Steel Construction Manual” (https://www.dot.ny.gov/divisions/engineering/structures/manuals/scm),
- "Prestressed Concrete Construction Manual" (https://www.dot.ny.gov/divisions/engineering/structures/manuals/pccm),

These services will be required at various locations throughout Region 7 (Watertown) of New York State.

Payment for services will be made under the Items of Service listed in Exhibit 4 for each service category being proposed which are provided for your information to get a better understanding of the type of services that will be needed.

1.2 Background

The New York State Department of Transportation currently utilizes consultants to provide materials sampling, inspection, and testing services. These services are part of
the Department's offsite Quality Assurance (QA) Program for materials used in the Department's construction program. Off-site QA program are federally mandated activities in highway construction programs.

The above services have been in existence for several decades. The Department is seeking to re-bid these services with a 58-month base agreement beginning in March 1, 2020 and ending on December 31, 2024. The selected consultant will continue to provide qualified and trained personnel, respond to assignments on an as-needed basis in a timely fashion, provide the necessary administrative and technical supervision to their employees, and work in a cooperative fashion with Department personnel.

Sampling, testing, and inspection assignments will be performed in accordance with the Department's procedures. These procedures are contained in various Department documents including the "Standard Specifications," "Steel Construction Manual," "Prestressed Concrete Construction Manual," Materials Methods, Materials Procedures and other related procedural directives.

The Department pays the consultants for their labor, testing costs, travel, lodging, overhead and profit. Testing is generally not a major portion of these contracts; they are included in case the Department is unable to perform the testing required due to lack of resources, expertise, or equipment.

1.3 Minimum RFP Responsiveness

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

1. 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:
   Exhibits 1 & 2 COST SUBMISSION
   Vendor Responsibility Questionnaire
   Attachment 2: Consultant Information and Certification Form
   Attachment 3: Form AOR Acknowledgement of Receipt
   Attachment 4: Procurement Lobbying Law Forms
   Attachment 6: Non-Collusive Bidding Certification
   Attachment 7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
   Attachment 11: M/WBE/SDVOB Participation Information Form
   Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log
   Attachment 13: New York Business Reporting
   Attachment 14: Diversity Practices Questionnaire
   Attachment 17: NAE255 Form
1.4 Designated Contact

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

Primary Contact:
Shalina L. Mallory
New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232, USA
Ph. 518-457-9101
E-mail: Shalina.Mallory@dot.ny.gov

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

1.5 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

“Not Applicable”

2.2 Minority and Women-owned Business Enterprise Participation

While not indicative of a proposer’s individual merit (technical excellence, proposer’s ability, experience, etc.), the NYSDOT encourages the participation of certified Minority Business Enterprises and Women-Owned Business Enterprises in this solicitation. The level of Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. A directory of certified MBEs and certified WBEs is available from Empire State Development’s searchable database website: http://www.esd.ny.gov/MWBE.html

New York State has established a 16% MBE participation goal and 8% WBE participation goal for this solicitation.

Only meaningful participation by either a prime consultant who is certified as an M/WBE or inclusion of subconsultant(s) who is/are certified as an M/WBE counts toward the M/WBE 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 MBE and/or WBE consultant, and/or
- Perform significant tasks which can be considered commercially marketable.

A firm can only be used to meet ONE of the utilization goals. Either MBE or WBE, not both. This is outlined in Article 15-A of the Executive Law:

Article 15-A of the Executive Law that governs the State program states in part:

…”A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.
Interested proposers should verify their attainment of the above established M/WBE participation goal by completing Attachment 11: M/WBE/SDVOB Participation Information. For participation to count towards the M/WBE goal set for this solicitation, the offered MBE and/or WBE participating firm must be currently certified by Empire State Development. If the proposal does not meet the 16% percent MBE and 8% WBE participation goals, the firm must provide evidence of a good faith effort by completing Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log.

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

The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section 6 for the procedure the Department will follow in evaluating a firm’s proposed MBE and WBE participation.

2.3 Service-Disabled Veteran-Owned Business Program (SDVOB)

New York State has established a 6% SDVOB participation goal for this solicitation:

Only meaningful participation by either a prime contractor who is certified as an SDVOB or inclusion of subcontractor(s) who is/are certified as an SDVOB counts toward the SDVOB participation goal. Meaningful participation is defined as providing commercially useful functions or services.

These services should:

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

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

Interested proposers should verify their attainment of the above established SDVOB participation goal by completing Attachment 11: M/WBE/SDVOB Participation Information Form. For participation to count towards the SDVOB goal set for this
solicitation, the offered SDVOB participating firm must be currently certified by Empire State Development. If the proposal does not meet the 6% percent SDVOB participation goal, the firm must provide evidence of a good faith effort by completing Attachment 11a: M/WBE/SDVOB Subcontractor Participation Solicitation Log.

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

The above forms and letter must be included in Part II: Cost and Administrative submittal. Firms are advised to refer to Section 6 for the procedure the Department will follow in evaluating a firm’s proposed SDVOB participation.

2.4 Diversity Practices

NYSDOT evaluates the diversity practices of primes to ensure that certified minority and women-owned businesses are given the opportunity for maximum participation in state contracts. Diversity practices are a legal requirement and may include past, present or future actions and policies which show interaction in developing M/WBE firms. Interested proposers should complete Attachment 14: Diversity Practices Questionnaire, which will be evaluated during the procurement process.

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

Selected inspection and testing consultants will provide sampling, testing, and inspection services on an as-needed task assignment basis in accordance with the Department's procedures for Regional Technical Support Services in Region 7- Watertown, NY.

The services sought are more fully described in Section 4 (Scope of Services) of this solicitation.

Services may be provided in technical support of other federally aided construction programs (such as local let programs; Design/Build contracts and; New York State Thruway Contracts). These services will be directed by the New York State Department of Transportation, generally in accordance with State standards and procedures. The nature of these services is essentially the same as the Department utilizes in its own quality assurance program.

3.2 Contract Objectives

NYSDOT is seeking proposals to consummate a 58-month contract ending December 31, 2024. The Department anticipates the award of one contract.

3.3 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultants will commence on March 1, 2020. The base term or duration for the contract is 58 months.

The contract may be extended for up to one-year to allow transitioning to new contracts and 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 year, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 3%, whichever is lower, will be used as a basis for increasing the hourly rates. The rate adjustment will be effective on January 1 and calculated using the previous October Index, using Series ID PCU5413--5413--(Architectural, engineering, and related services). 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 used are for illustrative purposes only):

Senior Inspector 1/1/17 - 12/31/17 Billing Rate $9.00/Hour
October 2017 PPI Index (PCU5413--5413--) 136.1
October 2016 PPI Index (PCU5413--5413--) 130.0
Index Point Change 6.1
Divided by previous Index 130.0
Percent change, rounded to nearest tenth 4.7%
Senior Inspector II 1/1/18 – 12/31/18 Billing Rate ($9 x 1.047) $9.42/Hour
4 SCOPE OF SERVICES

4.1 Project Overview

The inspection and testing consultant must be a competent, technically oriented firm with the organization, experience and capabilities to provide the services required. The Department considers the selected consultant to be in a technical support role wherein the consultant provides inspection and testing services, reports, indicates any irregularities or deficiencies and, when requested, makes evaluations or recommendations. The Department retains the policy and decision-making role, including devising and establishing quality assurance programs and procedures, making engineering judgments, interpreting plans and specifications and ordering corrective action of the construction contractor and his/her subcontractors, and/or suppliers, as appropriate.

In addition, there are qualification requirements contained in this RFP. These involve either a consultant qualification or an individual qualification such as the AASHTO Accreditation Program (AAP), American Concrete Institute (ACI) certification program, American Welding Society (AWS) certification program, National Association of Corrosion Engineers (NACE), New York Construction Materials Association (NYMA) QC/QA Technician Certification program, or the National Precast Concrete Association (NPCA) “Fundamentals of Quality Precast” certification program.

Consideration is also given to the cost and promptness of services based upon the geographic location of a consultant office to the location of services to be provided. Expected consultant response time to an assignment is typically 1-2 days. It is desirable that a consultant have an inspector or an office within a 200-mile radius of the anticipated assignment.

Sampling, testing and inspection assignments are to be performed in accordance with the Department's procedures. These procedures are generally recognized and accepted by the inspection and testing industry. Materials testing methods and procedures are contained in Exhibit 5.

Note: Consultants selected to provide materials sampling, testing and inspection services are prohibited from assigning any inspector to perform inspection work for the State and another client during the same day (or extended period of time) at the same site of inspection unless approved in writing by the State, prior to the consultant assigning the inspector to work for the State and another client. A copy of the State’s written approval must be retained by the Consultant for a period of three years after final payment.

If the State provides written authorization for the Consultant to assign inspectors to perform inspection work for the State and another client during the same time period at the same site of inspection, the Consultant must:

1. Maintain a Time Sheet (daily record, time card, labor distribution report) of each inspector’s beginning and ending times for each individual time period
worked for each client (including project numbers or other characteristic
descriptions) throughout the day.

If, for a given time period, the nature of the inspection work requires frequently
alternating between one client’s project and another client’s to the extent that it is
impossible or unreasonable to document the high number of individual work
shifts, the inspector must allocate their inspection time equitably among the
respective clients for the given time period.

Additionally, an inspector’s travel time must be allocated equitably to the State
and the other client(s) if the inspector returns from or travels to an inspection site
where inspection work was performed or is to be performed for the State and
another client.

2. Use the time sheet as the basis for billing the State for work assigned by
the State under this agreement.

a) Allocate each inspector’s total time worked per day between the State and
the other client(s) based on the accumulated actual time spent in the
performance of work assigned by the State and the other client(s), as
reported on the daily record.

b) Allocate equitably each inspector’s travel expenses (per diems and
mileage) between the State and other client(s) if the travel expenses were
incurred because the inspector was performing work for the State and
another client.

For those occasions where the Consultant seeks to assign an inspector to perform
inspection work for the State and another client(s) during the same day but at different
work sites, and there is insufficient available time to reasonably expect pre-approval from
the State, the Consultant shall notify the State in writing after the occurrence of the
assignment to an additional client along with the proposed equitable allocation of travel
time, inspection time and associated expenses.

The Consultant shall retain all documentation, including associated billings to other
clients for a period of three years after final payment.

4.2 Personnel Requirements

The inspection and testing consultants will be required to provide qualified and trained
personnel, respond to assignments on an as-needed basis in a timely fashion, provide the
necessary administrative and technical supervision to their employees and work in a
cooperative fashion with Department personnel.

No payment will be made to the consultant for providing non-certified inspectors
according to the certification requirements listed under the detailed scope of services.
It is recognized that at the time of submittal of a firm's proposal, that firm may not have sufficient trained and certified inspectors and QA technicians. The proposal shall fully describe the consultant’s plan to train sufficient staff and obtain sufficient certified QA technicians.

The selected consultant and its employees may be asked to participate in other Department training programs such as Work Place Violence, Sexual Harassment and Prevention, and others.

During peak periods and/or emergency conditions (such as emergency repairs), greater levels of staffing may be required by the State. If the State deems that additional manpower is necessary, the Consultant shall provide extra personnel.

Personnel functioning under contract with the Department will include Project Manager, Inspectors, Intermediate Inspectors or Senior Inspectors. The complexity of the assignment will determine which grade of inspector is specified. The minimum qualifications are discussed under each category of service.

The Consultant shall utilize and maintain a detailed time sheet executed by the inspector and upon completion of the time period, signed by the inspector and signed by the supervisor. This time sheet (daily record, time card, labor distribution report) shall show actual beginning and ending times for each individual time period worked as well as number(s) of hours worked or allocated to each project/job and/or client. This time sheet shall be the basis of billings to the State. A copy of each time sheet must be retained by the Consultant for a period of three years after final payment.

The selected consultant is also advised that overtime rates must be paid by them to inspectors and will be reimbursed by the Department according to the NYSDOT contract’s approved overtime rate.

Overtime can only be accrued: i) after more than eight total hours of straight time has been worked for NYSDOT during a single work day; or ii) after more than a total of 40 hours of straight time has been worked for NYSDOT in a single work week (a work week is defined as seven consecutive calendar days); or iii) for work done on any state-recognized holiday.

There are other days during the year that the State recognizes as “floating holidays”. An example of a “floating Holiday” is Election Day. If those “floating holidays” are official holidays per the consultants’ policy, any hours their inspectors work on that day would be considered OT.

Straight time is the time an inspector works for a daily shift for NYSDOT, which consists of up to eight hours worked during a work day (excluding holidays). Straight time is expressly limited to work performed exclusively for NYSDOT on the NYSDOT contract and does not include employee lunch time or work for other clients.

The Department will reimburse for inspector’s actual time at the plant. To qualify for compensation, the required inspection personnel must in fact be present at the assigned plant or project at the appointed time and remain until cancellation of the assignment is made by the Administrator or his/her designee, to a representative of the consultant.
OVERTIME GUIDANCE:
Definition of ‘Work Day’ – Per NYSDOT’s Standard Specifications (Section 101-02 ‘Definition of Terms’, USC May 1, 2018): The term ‘Work Day’ is defined as: “A calendar day on which State offices are open to the public for business. State recognized public holidays are not work days.

NYS public holidays are:
• New Year’s Day January 1
• Martin Luther King Day 3rd Monday in January
• President’s Day 3rd Monday on February
• Memorial Day Last Monday in May
• Independence Day July 4
• Labor Day 1st Monday in September
• Columbus Day 2nd Monday in October
• Veteran’s Day November 11
• Thanksgiving Day 4th Thursday in November
• Christmas Day December 25”

The term ‘Work Day’ is synonymous with the term ‘Calendar Day’ which is defined as: “Every day shown on the calendar. The calendar day begins at 12:00 AM (Midnight).” The definition of ‘Calendar Day’ is taken from NYSDOT’s Standard Specifications (Section 101-02 ‘Definition of Terms’, USC May 1, 2018).

Definition of ‘Contractor Work Day’ – Per NYSDOT’s Standard Specifications (Section 101-02 ‘Definition of Terms’, USC May 1, 2018): The term ‘Contractor Work Day’ is defined as: “A calendar day scheduled for active prosecution of the work.”

Definition of ‘Single Work Week’ – A single work week is defined as seven consecutive calendar days.

HYPOTHETICAL EXAMPLES:
Solely for the purposes of clarifying the Department’s long-standing policy regarding the contract’s overtime rule, the following present three hypothetical examples of an inspector working over one work week where regular or straight time (ST) and any earned overtime (OT) is shown. Not shown is time off for meal breaks (excluded to keep the examples hypothetical and simple; these examples in no way reflect NYSDOT’s labor practices).
1) Inspector working one work week, working days (all work done during a work day).

<table>
<thead>
<tr>
<th>Sunday</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No work</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>72 total hours</td>
</tr>
<tr>
<td>Daily Totals:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cumulative:</td>
<td>8 ST+4OT</td>
<td>16ST+8OT</td>
<td>24ST+12OT</td>
<td>32ST+16OT</td>
<td>40ST+20OT</td>
<td>40ST+32T</td>
<td>ST=40 OT=32</td>
</tr>
</tbody>
</table>

2) Inspector working one work week, working day where one of those days is a week-day State holiday.

<table>
<thead>
<tr>
<th>Sunday</th>
<th>Monday</th>
<th>Tuesday (HOLIDAY)</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Work</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>8am to 8pm 12 total hours 8 ST+4OT</td>
<td>72 total hours</td>
</tr>
<tr>
<td>Daily Totals:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cumulative:</td>
<td>8 ST+4OT</td>
<td>16ST+8OT</td>
<td>16ST+20OT</td>
<td>24ST+24OT</td>
<td>32ST+24OT</td>
<td>40ST+32T</td>
<td>ST=40 OT=32</td>
</tr>
</tbody>
</table>

3) Inspector working one work week, working nights (working across two work days). The inspector’s work week starts on Monday evening (with Sunday PM to Monday AM off).

<table>
<thead>
<tr>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
<th>Sunday</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>6pm to 12am</td>
<td>12am to 6am</td>
<td>12am to 6am</td>
<td>12am to 6am</td>
<td>12am to 6am</td>
<td>12am to 6am</td>
<td>12am to 6am</td>
<td>6 total hours</td>
</tr>
<tr>
<td>6 total hours</td>
<td>6pm to 12am</td>
<td>6pm to 12am</td>
<td>6pm to 12am</td>
<td>6pm to 12am</td>
<td>6pm to 12am</td>
<td>6pm to 12am</td>
<td>6 ST + 0 OT</td>
</tr>
<tr>
<td>6 ST + 0 OT</td>
<td>12 total hours 8 ST+4 OT</td>
<td>12 total hours 8 ST+4 OT</td>
<td>12 total hours 8 ST+4 OT</td>
<td>12 total hours 8 ST+4 OT</td>
<td>12 total hours 8 ST+4 OT</td>
<td>12 total hours 2 ST + 10 OT</td>
<td></td>
</tr>
<tr>
<td>6 ST+ 0 OT</td>
<td>14ST+4 OT</td>
<td>22ST+8 OT</td>
<td>30ST+12 OT</td>
<td>38ST+16 OT</td>
<td>40ST+26 OT</td>
<td>40 ST+ 32 OT</td>
<td>72 total hours</td>
</tr>
<tr>
<td>Daily Totals:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ST=40 OT=32</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.3 Detailed Scope of Services

4.1 Regional Technical Support Services – Region 7

4.1.1 Overall Scope

Selected inspection and testing consultants will provide sampling, testing, and inspection services on an as-needed task assignment basis in accordance with the Department's procedures.

The services sought are Portland Cement Concrete and Hot Mix Asphalt Plant Inspection in Region 7 – Watertown. Please see Attachment 18 for NYSDOT Regional map.
The list of NYS testing plants and facilities can be found at the following link:
https://www.dot.ny.gov/divisions/engineering/technical-services/technical-services-repository/alme/ApprovedPlants.pdf

4.1.2 Organization

Agreements with the selected consultant will be administered by the Director, Materials Bureau. Authority and responsibility for day-to-day operations will be assigned by the designated Department staff. Assignments will be made in writing to the selected inspection and testing consultant with specific instructions detailing the duties to be performed, location of work, inspector level (Inspector, Intermediate Inspector, Senior Inspector), number of inspectors required, reporting procedures, office or branch location of the consultant from which inspection is assigned, and contact person(s) in the Department who will assign and monitor the work.

Assignments are typically made for the periodic provision of services on either a continuing basis or for a specified time period. Specific Department units in the Materials Bureau and the Regions are charged with the responsibility of administering the day-to-day activities associated with this contract.

4.1.3 Scope of Work

The selected firm(s) is/are to provide qualified personnel for sampling, inspection and testing services that include:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Material</th>
<th>Service Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>M1</td>
<td>Portland Cement Concrete</td>
<td>Plant Inspection, Sampling and Testing</td>
</tr>
<tr>
<td>M2</td>
<td>Bituminous Concrete</td>
<td>Plant Inspection, Sampling and Testing</td>
</tr>
<tr>
<td>M4</td>
<td>Various Materials</td>
<td>Testing <em>(See Exhibit 1 Regional Laboratory Testing Services)</em></td>
</tr>
</tbody>
</table>

These services will be primarily performed at Portland Cement Concrete (PCC) and Hot Mix Asphalt (HMA) plants providing such materials to Department construction projects. Services shall be provided in accordance with the Department's written instructions and procedures including Materials Methods and Materials Procedures on plant inspection of Portland Cement Concrete and Hot Mix Asphalt: Specifically, Materials Method 9.1 for plant inspection of Portland Cement Concrete and Material Procedure (MP) 401 and Materials Method (MM) 5.16. These documents can be found in Exhibit 5.

The Department has implemented QC/QA specifications, Section 401, which requires the Quality Control (QC) of Hot Mix Asphalt production by the producer and Quality Assurance (QA) by the Department. The duties for QC/QA inspection are outlined in
Materials Procedure MP 401, “Quality Control and Quality Assurance Procedures for Hot Mix Asphalt (HMA) Production”. MP 401 appears on the Department’s web site at:


If the selected consultant is unable or unwilling to provide required inspection/testing services, then the Department reserves the right to request the required testing/inspection services from a consultant contracted to provide said inspection/testing services in other Region(s).

Should the need arise, the Department may expand the coverage area beyond the designated regions for the selected consultant. The terms of reimbursement for the expanded coverage area will be the same as the rates established in the Regional contract.

A listing of testing and coring services, which may be required, is included as part of this solicitation. (See Exhibit 1 AND Exhibit 3).

Laboratory and field-testing services will be required for all Regional contracts. It is mandated that the laboratory testing of materials (Exhibit 1) be performed by a firm accredited by the AASHTO Accreditation Program (AAP) in the following fields of construction materials testing: (1) Hot Mix Asphalt (HMA), (2) Hot Mix Asphalt Aggregates, (3) Portland Cement Concrete (PCC) and (4) PCC Aggregates. Firms should fully describe in their submittal(s) how they plan to meet these Accreditation requirements.

It is expected that the selected firm will actively pursue accreditation, as necessary, with the details of their plan to become accredited and have the expected date of accreditation approved by the Department’s administrator.

Due to the fact that Materials Testing Requirements/Procedures change over time the selected firm may also be required to provide other related sampling, testing, and inspection services. This testing, if required, shall be performed in accordance with generally recognized national standards at the time. In addition, the consultant is required, upon request by the Department, to supply the state with certified inspectors to be utilized at the plants in case of an emergency need.

Consideration is also given to the cost and promptness of services based upon the geographic location of a firm’s functional office in relation to the NYSDOT Region where the services are to be provided. Expected firm response time to an assignment is typically 1-2 days (or sooner depending on construction operation needs). It is desirable that a firm have an inspector or an office within a 200-mile radius of a NYSDOT Regional Office that is associated with each contract being submitted for.
The estimated number of Inspection Effort (Total Inspector Hours) for the base term of the contract is listed below. These figures are for planning and budget submission purposes only and do not guarantee the level of work that the Designated Firm will receive during the course of the contract:

<table>
<thead>
<tr>
<th>Region</th>
<th>Item</th>
<th>No. of Tests</th>
<th>Sr. Insp. (hours)</th>
<th>Inter. Insp. (hours)</th>
<th>Insp. (hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Inspection</td>
<td>N/A</td>
<td>7,438</td>
<td>1,240</td>
<td>1,240</td>
</tr>
</tbody>
</table>

The Department will reimburse for inspector’s actual time at the plant. To qualify for compensation, the required inspection personnel must in fact be present at the assigned plant or project at the appointed time and remain until cancellation of the assignment is made by the Administrator or his/her designee, to a representative of the consultant.

4.1.4 Personnel Requirements

The number in the table below are meant as a guide for the number of trained PCC and HMA inspectors a consultant should anticipate needing to supply during peak construction season. A consultant should anticipate that the number of inspectors needed prior to the peak construction season will likely gradually ramp up to the number needed at the peak time. Likewise, after the peak time of the construction season, the number of inspectors needed, will gradually ramp down.

<table>
<thead>
<tr>
<th>Region</th>
<th>*Project Mgr</th>
<th>PCC Inspectors needed</th>
<th>HMA Inspectors needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

* The Project Manager Position is a non-billable title covered in Firm Overhead – plans, organizes, assigns and supervises the work of the inspectors. Evaluates progress of the staff and results obtained and recommends major changes to achieve overall objectives.

Inspector – The inspector must be at least a high school graduate with mathematical/technical course work (e.g. algebra) and either three months of sampling, testing, inspection or other related work experience. However, subject to Department review and approval, equivalent combinations of education, training and experience may also be considered as meeting these requirements.

Intermediate Inspector – In addition to the educational qualifications for inspector, the intermediate inspector must have at least a total of one year’s (one construction season) sampling, testing, inspection or other related work experience. However, subject to Department review and approval, equivalent combinations of education, training and experience may also be considered as meeting these requirements.
**Senior Inspector** – In addition to the educational qualifications for inspector, the senior inspector must have at least a total of three years (three construction seasons) sampling, testing, inspection or other related work experience. However, subject to Department review and approval, equivalent combinations of education, training and experience may also be considered as meeting these requirements. While providing inspection services a senior inspector must also have responsibilities which include supervision and/or training of other inspectors.

- Inspectors at Portland Cement Concrete (PCC) plants must have a current certification from the NYSDOT Concrete Batch Plant Training Program, or an equivalent as determined by the Director, Materials Bureau.

- Inspectors at Hot Mix Asphalt (HMA) plants must have a current QC/QA Technician Certification as provided by the NYCMA Technician Certification program at Alfred State College or equivalent as determined by the Director Materials Bureau. Certification under the QC/QA Technician Certification Program is based upon either a successful completion of a two (2) day program including written examination and proficiency testing, or the inspector has been tested at least twice under the IAST inspection program within 5 years and written examination.

Details for this proficiency program and examination may be obtained by contacting:

Center for Community Education and Training  
Alfred State College  
10 Upper College Drive  
Alfred, NY 14802  
Fax: (607) 587-3295  Phone: (607) 587-4107

4.1.5 Training

Once a year, the Department will provide one day of training to consultant staff (data entry staff or inspectors) responsible for entering sample and test data into the Department’s SiteManager system. This training will be held in Albany, NY. Firms will be reimbursed for their data-entry staff training time at the hourly rate of an Inspector, as well as for travel, meals, and lodging as defined in Section 6.3 at the maximum rates established by the State Comptroller. In addition, a computer-based training aid will be available, providing video training for correct data entry procedures.

New Inspectors hired by the firm after contract award must first be approved by the Department before being assigned. In addition, at the discretion of the Department, new inspectors will be required to receive a minimum of five days of on-the-job training and evaluation prior to assignment to the Department. The training schedule must be approved by the Department prior to its start, should be continuous or nearly continuous, and be completed within three consecutive weeks. At the end of the training, the Department will authorize payment for a maximum of five days of training. The Department will then determine the new inspector’s suitability for future assignments. If,
at any point during the life of the contract and if deemed necessary by the state, if further training is deemed necessary (for example, at the beginning of the construction season) the consultant will be required to provide the additional training at no cost to the Department.

4.1.6 Equipment Requirements

In order to facilitate efficient and timely communication, the consultant will be required to provide inspectors with access to a digital camera. The consultant will also be required to supply up to three internet-ready laptop computers along with wireless internet access meeting the Department’s specifications. The consultant will also be required to supply plant inspectors with a calculator that is capable of converting US Customary Units to Metric Units. The cost of equipment is not directly reimbursable by the Department and is to be included in the firm’s overhead.

Furthermore, the New York State Department of Transportation has implemented a computer system, called SiteManager, which will support construction and materials management business processes. SiteManager will be used to document all materials related testing statewide. This includes testing done at production facilities supplying materials to construction projects, like concrete and hot mix asphalt plants. In light of the SiteManager system, the Department requires that firms awarded plant inspection contracts in 2015 and beyond will enter sample and test results from plants directly into the SiteManager, once fully implemented for materials testing.

In order to support the electronic documentation of sample and test data completed at plants, the Consultant will be required to enter plant sample and test results directly into SiteManager, by the close of the business day following testing. Depending on the number of inspectors the Consultant provides the Department, the Consultant needs to have the data entry resources to support this requirement. At least two staff from the inspection firm shall be trained to enter test data into SiteManager (See Training below). Data entry staff from inspection firms will need to submit security access request forms to gain access to the Department’s SiteManager computer system. The Department will work with the designated firm to accomplish this. Until SiteManager is available for data entry, the Consultant shall provide the Laptops to the inspectors for entering data into the spreadsheet developed by the Department.

Below are two examples of business processes which will satisfy this requirement:

Example 1 – Inspectors providing services through this contract will arrive at the plant with a laptop equipped to meet the following (which will support real time transmission of plant test data):

Inspectors shall be equipped with personal laptop computers with wireless broadband capabilities using the evolution-data optimized (EVDO) telecommunication standard. The Consultant firm shall bear the cost to maintain wireless broadband capabilities on these personal computers. The Department requires these expenses to be part of the Consultant’s
overhead and not to be a direct reimbursable contract expense item. These personal computers shall be equipped with the following software installed on them, and this software shall be maintained by the Consultant:

- Microsoft Office 2016 (which includes MS Access)
- Adobe Reader IE (or newer)
- Microsoft Internet Explorer

Example 2 – The plant inspector would complete lab testing at the plant and transmit this data back to the consultant firm’s home office, via FAX, e-mail or some other method. These results shall NOT BE FAXED to the Department for purposes of data entry. Consultant staff will be required to enter this sample and test data directly into the SiteManager system, via a connection to the internet to the Department via a secure portal. SiteManager is available on the internet. Under this process, the cost of the data entry staff will not be directly reimbursable, and will be required to be part of the firm’s overhead
5 PROPOSAL FORMAT AND CONTENTS

Part I shall consist of the Technical and Management Proposal. Part II is the Cost and Administrative Proposal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is not to be included in 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/Proposal

All of the proposals must have a cover letter, title page, table of contents, NYSDOT NAE255 Form (1 original and 6 hard copies plus 1 copy on Flash Drive, Bound Separately).

These items are highlighted below.

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.
Note: Firms shall submit a NYSDOT 255NAE form.

Item #1 Indicate the distance, in miles, from the Regional Office to either the closest inspector or closest consultant office.

Item #2 Organizations Chart

The Consultant’s Project Manager should be identified in the Organizational Chart. The Project Manager is the individual who is the primary Point of Contact for NYSDOT and will be the individual responsible for the overall success of the Project.

Item #3 Key Staff Resumes

The selection and retention of a Consultant will be contingent on the availability of the following proposed key staff. Proposing firms must provide resumes for the following key staff:

- Project Manager (1)
- PCC – Senior Inspectors (2)
- HMA – Senior Inspectors (2)
- PCC – Intermediate Inspector (1)
- HMA – Intermediate Inspector (1)
- PCC – Inspector (1)
- HMA – Inspector (1)

The total number of resumes is limited to nine.

Note: If the actual start date of the contract is delayed past the expected date stated in Section 2.4 and specific individuals as proposed are no longer available, or if specific individuals proposed become unavailable during the life of the contract, the consultant will supply replacement staff at the same level of experience and expertise, subject to the approval of the NYSDOT Project Director.

For each PCC Inspector, indicate on the resume (section 8G) their appropriate certification and/or training:

- Inspectors for PCC plants will indicate that they either have a current certification from the NYSDOT Concrete Batch Plant Training Program, or an equivalent as determined by the Director, Materials Bureau; or indicate when and where they will obtain certification.
For each **HMA** Inspector, indicate on the resume (section 8G) their appropriate certification and/or training:

- Inspectors at Hot Mix Asphalt (HMA) plants will indicate that they either have a current QC/QA Technician Certification as provided by the NYCMA Technician Certification program at Alfred State College or equivalent as determined by the Director Materials Bureau (Certification under the QC/QA Technician Certification Program is based upon successful completion of a two (2) day program including written examination and proficiency testing); or indicate when and where they will obtain certification. Details for this proficiency program and examination may be obtained by contacting:

  Center for Community Education and Training  
  Alfred State College  
  10 Upper College Drive  
  Alfred, NY 14802  
  Fax: (607) 587-3295   Phone: (607) 587-4107

If more space is needed than provided in 8G, firms may use the space provided in 8I.

If a firm is proposing individual(s) for a key staff position who are currently employed by a different firm, then a letter from the individual(s) confirming their intent to leave their current employer to join the proposing firm if designated for this contract must be supplied. The confirmation letter must be a separate document along with the proposal submission.

In the narrative section (section 8I), please address the individual’s experience with the following:

a. Sampling, inspection, and testing experience at Portland Cement Concrete plants.

b. Sampling, inspection, and testing experience at Hot Mix Asphalt plants.

c. Quality, extent and relevance of education and training.

**Item #4. Approach to Scope of Services**

Address the following in item 9 of the NYSDOT 255NAE:
• Describe the firm’s plan to train sufficient staff and obtain sufficient certified senior inspectors, intermediate inspectors, and inspectors. (It is necessary that the certification be in place by March 1, 2020.)

• Describe firm’s approach to respond to regional specific needs in a timely manner with regard to functional office, travel for inspectors and coordination with NYSDOT. For Region 11 describe how the firm will fully meet the Departments testing and AAP accreditation needs as described in Section 3.6.4 above, including the need for a Super pave Gyratory Compactor.

• Describe how the firm plans to enter data into NYSDOT’s SiteManager system.

Item #5 Project Experience

List/Describe up to ten contracts/projects for which any or all Team members provided relevant material sampling/testing services. This is a Team response - include as appropriate a description of the different roles of each Team member(s).

In the “Description and Nature of Firm’s Responsibility” area, please address the experience of the proposing firm(s) with regard to:

a. Sampling, inspection, and testing at Portland Cement Concrete plants.

b. Sampling, inspection, and testing at Hot Mix Asphalt plants.

Only those contracts listed that provide a reachable point of contact with both a valid telephone number and a current e-mail address (that is in a position to answer reference check questions for the firm) will be considered by the committee. Point of contact shall not be a current NYSDOT employee. These points of contact may be asked to complete a reference check form used for evaluation of experience (see Section 5.3).

Part II: Cost and Contract Submittal – (1 original and 2 hard copies plus 1 copy on Flash Drive)

Project Budget Submission

All firms must complete the Project Budget Submittal (See Exhibit 2) to provide salary rate information proposed for all categories of personnel offered and price-per-test figures for Major Element Testing. The specific hourly rates shall be inclusive of all direct and indirect costs and profit and shall represent the rates which would be utilized over the 5-year period of performance. For pricing purposes, the estimated hours (Section
3.6.4) assume that approximately 20% of the assignments may involve overtime
situations. Firms are to complete only the white areas of the form, and shall not change
any of the formulas embedded into the spreadsheet. Firms should complete only those
worksheets for the Regional contracts on which they are bidding.

Note: Direct non-salary cost schedule is not part of the cost submission. Travel, meals
and lodging reimbursements shall be limited to the prevailing maximum state and
nationwide rates available at the following Web site:  http://www.gsa.gov/. All direct
non-salary costs attributed to this project must be included.

Firms shall use a single Exhibit 1 for their submission.

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 five years of specific hourly rates 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

   Cost Proposal Instructions

   Use Exhibit 2 to complete the Cost Proposal response form. These Exhibits contain
instructions to guide completion of these forms. 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.

   Firms shall complete the unit costs for Exhibit 1 Laboratory/Testing Services and
submit it as a PDF File. Firms shall indicate if they have the in-house capability to
perform the test, and a 5-year price that will be charged during the 5-year base period
of the contract.

Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award

   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.

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

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

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

c) Modification Acknowledgement Forms
The Proposer shall include a completed Attachment 3: Form AOR, acknowledging receipt of any Modifications issued by the Department.

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

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


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

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

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

f) Vendor Assurance of No Conflict or Detrimental Effect
All Proposers shall submit a completed Attachment 7: Vendor Assurance of No Conflict or Detrimental Effect.

g) M/WBE/SDVOB Participation
In Part II of your firm’s proposal, provide the following:

i. Complete Attachment 11: M/WBE/SDVOB Participation Information and if applicable, Attachment 11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log and Goal Attainment Letter. Provide the legal names of all certified M/WBE/SDVOB consultants (prime and/or subconsultant.

h) New York Business Reporting

i) Diversity Practices Questionnaire
NYSDOT has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement are required to include as part of their response to this procurement Attachment 14: Diversity Practices Questionnaire. All firms shall submit a completed questionnaire. Firms shall separately submit all additional information required by Attachment 14: Diversity Practices
**Questionnaire**, where indicated by the Questionnaire (Questions 1, 4, 5, 6, and 7).

Use Contract #C037857 wherever requested in the forms. Please call or e-mail the individuals identified as the Designated Contacts in section 1.4 of this RFP if you have any questions regarding how to complete this required form.

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

6.1. General

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

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

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

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

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

An award shall be made to the offeror whose proposal receives the highest total score after considering all technical and cost/price evaluation factors. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm withdraw form this 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).
At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on the NYSDOT web site. All non-designated firms shall be notified in writing regarding the results from the solicitation and will be offered an opportunity to hold a debriefing. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.

6.2. Pre-Screening of Proposals

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

M/WBE/SDVOB Goal Attainment

As part of the pre-screening process, the proposed M/WBE/SDVOB participation percentages offered for M/WBE prime consultants or subconsultants certified by Empire State Development and SDVOB certified by NYS OGS will be reviewed (Attachment 11: M/WBE/SDVOB Participation Information). To count towards the State’s M/WBE participation goals, each firm must be currently listed in the NYS Empire State Development M/WBE Directory and to count towards the State’s SDVOB goal. Each firm must be currently registered on the NYS OGS online SDVOB directory. If the proposed M/WBE and SDVOB participation is less than the established 16% percent MBE, 8% WBE and 6% SDVOB participation goals, then the firm’s evidence of a Good Faith Effort (Attachment 11a: Subconsultant Participation Solicitation Log) to achieve participation in the goals 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(s). 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 reviewed and scored according to the following criteria:
Technical Support Services – Region 7

The technical and management proposal will be scored and will represent 80% of the total score for a proposal. A proposal to be deemed technically acceptable and susceptible to contract award must receive an average weighted committee score of 48.00 points or higher out of a total possible of 80 points. 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. Experience of the firm: This will include experience in Sampling, inspection, and testing at Portland Cement Concrete plants. Sampling, inspection, and testing at Hot Mix Asphalt plants. The Department reserves the right to contact project references and/or utilize the Department’s performance evaluation system to evaluate firm experience. (Up to 36 points)

2. Experience, education, training of the proposed staff: This will include experience in: Sampling, inspection, and testing experience at Portland Cement Concrete plants. Sampling, inspection, and testing experience at Hot Mix Asphalt plants. Quality, extent and relevance of education and training of the proposed staff. (Up to 24 points)

3. Approach, Scope of Services, and Organizational capability. (Up to 20 points)
   a. Plan for implementing scope of services, including the firm’s plan to train sufficient staff and obtain sufficient certified senior inspectors intermediate inspectors and inspectors. (It is necessary that the certification be in place by March 1, 2020.)
   b. Firm’s approach to respond to regional specific needs in a timely manner with regard to functional office, travel for inspectors and coordination with NYSDOT.
   c. Firm’s plan to enter data into NYSDOT’s SiteManager system.

6.4. Cost

The cost portion of the proposal will be point scored and will represent 20% of the total score for a proposal. The calculation of a cost score will be determined by comparing each of the composite firms’ Project Submittal Total Budget (See Exhibit 2: Project Budget Submission) for those technically acceptable proposals. (Note: the hours used in Exhibit 2 are estimates used only for scoring purposes. Only actual hours performed during the life of the contract will be billable.) The proposal with the lowest Project Total 58-Month Budget will receive a perfected score of 20 points. Other technically acceptable offers with higher Project Submittal Total Budget will receive proportionately lower cost scores.

Unit costs submitted for other testing schedules (Exhibit 1) will not be point scored.
6.5. **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.

6.6. **Best & Final Offer (BAFO, Optional) and Proposal Withdrawal**

The Department reserves the right to request Best and Final Offers. 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 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).

6.6. **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 as stated in Section 6.3 with the other lower weighted written technical Proposal scores adjusted proportionately downward. Perfect cost scoring results 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.
6.7 **Consultant Selection Recommendation and 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, 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 will be posted on the Department website. All 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 one (1) original and six (6) copies of Part I and one (1) original and two (2) copies of Part II.

Your proposal must be received by NYSDOT by Noon on October 1, 2019 EST. The proposal must be addressed to:
Shalina L. Mallory
NYS Department of Transportation
50 Wolf Road, 6th floor
Albany, New York 12232
Attention: #C037857 MATERIALS INSPECTION, SAMPLING AND TESTING CONSULTANT SERVICES FOR NYSDOT – REGION 7

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

a. To accept or reject any or all proposals;
b. To correct any arithmetic errors in any or all proposals;
c. To change the proposal’s due date upon appropriate notification to interested firms;
d. To eliminate any mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;
e. To adopt any or all of a successful offeror’s proposal;
f. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
g. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
h. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
i. To eliminate any requirement that is found to be unmet by all offerors;
j. To make inquiries, by means it may choose, into the offeror’s background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
k. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;

l. 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.
Payment for services provided under the project shall be a **specific hourly rate** reimbursement and compensation for actual non-salary costs incurred in the performance of the scope of services.

For testing assignments, the consultant will typically be compensated on a unit price basis. No other direct or indirect costs (e.g., postage for reports, supplies, reproduction, clerical support, etc.) will be reimbursed unless otherwise expressly approved by the Department. Typically, the cost of transmitting samples, mill test reports, and radiographs is reimbursable. All costs associated with certification, qualification, training, or accreditation of the consultant or their personnel shall be borne by the consultant.

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](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.

### Travel

Travel, meals and lodging reimbursements shall be limited to the prevailing maximum nationwide rates which are available at the following Web site: [http://www.gsa.gov/](http://www.gsa.gov/)

A pre-determined amount of Direct Non-Salary Cost (DSNC) for travel will be added to the total proposed 5-year budget to determine the Maximum Amount Payable (MAP) for each contract during the contract finalization phase. This amount is based on historic data. The value of DNSC will not be included in the scoring of the cost proposal.

Inspectors on assignments which span one or more weekends will be reimbursed for meals and lodging on any Saturday or Sunday they remain at the assignment location.

Alternatively, an Inspector may choose to travel home and back to the assignment location during the weekend. Reimbursement for this travel will only include mileage and tolls from the assignment location to the Official Station or residence (whichever is less) at the appropriate vehicle rate. If this alternative is chosen, reimbursement shall not exceed the total of the daily per diem rates if the individual had stayed over the weekend. The same criteria used for the weekend reimbursement will also apply over a holiday period. No per diem expenses will be paid during the weekend or holiday time period when this alternative is used i.e. the alternate must not be used in combination with lodging and meal per diem expenses over a weekend or holiday period.

An “Official Station” will be designated for each location of service by the State. This “Official Station” may be changed at the discretion of the State when such is determined to be in the best interests of the State. The State may designate alternate or secondary “Official Stations” for any
service location where the services of substitute personnel or more than one person may be required at any given time.

Payment will be made to the Consultant for travel time, at the specific hourly rates, plus necessary travel expenses required to provide services under this Agreement, in the following conditions:

a) Between two or more points of continuous service during the course of a daily assignment  
b) In distances of 10 miles or more to the point of service from the origin  
c) When the origin of travel is within the boundaries of New York City and the point of service is in New York City or the counties of Essex, Hudson or Union in the State of New Jersey

When the beginning and end of a daily assignment meets criteria (b) of this section, the travel time will be reimbursed from the “Official Station”, residence or point of origin of the travel, whichever results in the lesser mileage.

When the “Official Station”, residence or point of origin is less than ten miles from the point of service except as modified under (a) and (c) of this section, no payment will be made to the Consultant for travel time or travel expenses, except highway and bridge tolls.

Note: For assignments determined to be daily travel (no overnight lodging expenses), the inspector is not eligible for meal reimbursement.

It shall be the responsibility of the Consultant to determine, in consultation with the Administrator, whether it is in the best interest of the State for the Inspector to travel on a daily basis or obtain lodging near the assignment location.

7.5. Information for the Selected Consultant

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.

41

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, an 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
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:

- **September 6, 2019:** RFP Release Date
- **September 13, 2019:** Deadline for questions about the RFP at 12:00 PM EST
- **October 1, 2019:** Deadline for submission of proposals at 12:00 PM EST
- **November 2019:** Recommendation & Tentative Designation
- **November 2019:** Contract Finalizing
- **December 2019:** Tentative Contract Award
- **February 2020:** OSC Contract Award
ATTACHMENT 1: DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C037857

PROJECT: Materials Inspections, Sampling and Testing Consultant Services for NYSDOT – Region 7

This Agreement made this ________ day of ___________________, 20___ pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the New York State Department of Transportation (hereinafter referred to as "STATE" or “DEPARTMENT”) whose Main Office is located at 50 Wolf Road in the County of Albany, State of New York 12232, and

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

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

44
The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the STATE.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

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

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees that the base term of the AGREEMENT shall be 60 months from ___________ to _______________. Additionally, this AGREEMENT may be extended for up to one year based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT.

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

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

ARTICLE 6. PROVISION FOR PAYMENT.

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

Item I Specific Hourly rates of pay shown in SCHEDULE B (EXHIBIT __) for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged is subject to audit. If the AGREEMENT is extended beyond ______ (end date in Article 4)____, then all of the Specific Hourly Rates of pay shown in EXHIBIT ___ are eligible for rate
adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413--5413--) for the most recent 12-month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 3%, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

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

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

ARTICLE 7. CONTRACT PAYMENT.

Billing invoices submitted to the STATE by the CONSULTANT shall be complete and accurate and 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 must enroll in the State Comptroller’s ePayments system to authorize electronic payments and 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. Authorization instructions are provided on the State Comptroller’s website at www.osc.state.ny.us/vendors/epayments.htm. For assistance, email ePayments@osc.state.ny.us.

ARTICLE 8. PARTIAL PAYMENTS.

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

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

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

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

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

**ARTICLE 9. FINAL PAYMENT.**

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

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

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

**ARTICLE 10. EXTRA WORK.**

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

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

ARTICLE 11. CONSULTANT LIABILITY.

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

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

**ARTICLE 12. INSURANCE.**

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

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

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

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

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

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

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. 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. Not applicable

8. Railroad Protective Liability Insurance. Not applicable

9. Marine Protection & Indemnity. Not applicable

ARTICLE 13. INTERCHANGE OF DATA.

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

ARTICLE 14. DISPOSITION OF DATA.

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

ARTICLE 15. DAMAGES AND DELAYS.

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

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

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

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

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

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

ARTICLE 17. TERMINATION.

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

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

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

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

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.

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

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

ARTICLE 19. INDEPENDENT CONTRACTOR.

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES.

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

**ARTICLE 21. TRANSFER OF AGREEMENT.**

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

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

**ARTICLE 22. PROPRIETARY RIGHTS.**

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

**ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.**

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

**ARTICLE 24. ORDER OF PRECEDENCE.**

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

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

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

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

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

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

3. Does not have a proposed debarment pending; and

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

**EXCEPTIONS -**

**ARTICLE 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.**

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 27. RESPONSIBILITY OF THE CONSULTANT.

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

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

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

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

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

ARTICLE 28. SECURITY AND CONFIDENTIALITY OF INFORMATION.

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

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

ARTICLE 29. VENDOR RESPONSIBILITY.

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

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

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

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

ARTICLE 30. NOTICES.

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

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

New York State Department of Transportation:

Contact Person’s Name: Matt Bromirski, Contract #C037857
Title: Deputy Assistant Commissioner, Contracts
Address: NYSDOT Contract Management Bur., 50 Wolf Rd., 6th Fl, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2875
E-Mail Address: Matt.Bromirski@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 31. TITLE VI ASSURANCE.

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

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

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

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

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

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

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

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

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
ARTICLE 32. CONSULTANT DISCLOSURE LEGISLATION.

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

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

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

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

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

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

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

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

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

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.**

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

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

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

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

**ARTICLE 35. ETHICS REQUIREMENTS.**

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

**ARTICLE 36. SUBCONTRACTING.**

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

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

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

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors

64
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. C037857 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 139j & 139k is complete, true and accurate.

By ________________________________ Date: ________________________________
FIRM

Materials Inspection, Sampling and Testing Consultant Services for NYSDOT – Region 7

APPROVALS

ATTORNEY GENERAL            THOMAS P. DINAPOLI
STATE COMPTROLLER

By ________________________________       By ________________________________
Date ________________________________       Date ________________________________
For contracts signed in New York State

State of New York )
County of ) ss.:

On the__________ day of ___________ in the year 20_____, 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 20_____, 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 the undersigned in ______________________________________ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

___________________________________

NOTARY PUBLIC

___________________________________

(Signature and office of individual taking acknowledgement.)

My Commission Expires: _______________________

67
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, 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. 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. 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](https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp)

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
   (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
   (b.) cancellation, termination or suspension of the contract, in whole or in part.
(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT’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 NYSDOT 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.

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1 The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.
Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation’s Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

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

THE CFDA IDENTIFICATION NUMBER

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

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

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

PROMPT PAYMENT MECHANISMS

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

http://www.cfda.gov/
(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 sub-contractors 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.

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

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER  The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.
4. DISSEMINATION OF POLICY  (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

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

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

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

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

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

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

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

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

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

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

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

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms
of this agreement. This can include offsite training cost as discussed above. All offsite training must
be defined in the training schedule. All costs claimed or calculated for training must be directly
related to the work defined in the scope of this agreement and/or added by supplemental agreement.
The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

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

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

Updated 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 (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

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

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

II. MWBE Utilization Plan

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

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

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

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

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

IV. Liquidated Damages – MWBE Participation

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

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

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

FORM B

OSC Use Only:
Reporting Code:
Category Code:

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

Contracting State Agency Name: Transportation
Agency Code: 3900283
Contract Number: 
Contract Term to 
Contractor Name: 
Contractor Address: 
Description of Services Being Provided:

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

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Total this page 0 0 $ 0.00
Grand Total

94
ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS
(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBERS: C037857
PROJECT TITLES: MATERIALS INSPECTION, SAMPLING AND TESTING
CONSULTANT SERVICES FOR NYSDOT – Region 7

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](http://www.osc.state.ny.us/vendrep/forms_vendor.htm))
- **ST-220:** If selected for contract award greater than $100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites: [http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf](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](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 _______________________________ hereby certify that I have read and
(Firm) accept all terms and conditions contained in the draft Contract, including
Appendix A, which is included as Attachment 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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We hereby acknowledge receipt of the Materials Inspection, Sampling and Testing Consultant Services for NYSDOT (contract #C037857) Request for Proposals, dated September 6, 2019 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:

Shalina L. Mallory
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Shalina.Mallory@dot.ny.gov
Tele: (518) 457-9101
FORM A

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

<table>
<thead>
<tr>
<th>O*Net Employment Category</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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Total this page: 0 0 $ 0.00

Name of person who prepared this report:

Title: Phone #:

Preparer's Signature:

Date Prepared: / /

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

Contracting State Agency Name: Transportation
Agency Code: DOT01
Contract Number:
Contract Term to
Contractor Name:
Contractor Address:
Description of Services Being Provided:

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

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<tr>
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<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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Total this page 0 0 $ 0.00

Grand Total

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

Use additional pages if necessary)
ATTACHMENT 6: NON-COLLUSIVE BIDDING CERTIFICATION

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

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

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

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

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

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

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

_____________________________   ______________________________

Title        Title

Address: _____________________________   Address: ______________________

                     Street

                     City    State

                     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 C037857 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

(Submit original with Executed Contract Signature pages)

Contract Number __________________
Contract Description: ____________________________________________________________
______________________________________________________________________________

M/WBE AND EEO POLICY STATEMENT

I, _______________________________________________, of (awardee/consultant) ____________________________, agree to adopt the following policies with respect to the project being developed or services rendered.

MWBE

This organization will, and will cause its contractors and subcontractors to, take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

1. Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
2. Request a list of State-certified M/WBEs from NYSDOT and solicit bids from them directly.
3. Ensure that plans, specifications, requests for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
4. Where feasible, divide the work into smaller portions to enhance M/WBE participation and encourage the formation of joint ventures and other partnerships among M/WBE contractors.
5. Document and maintain records of bid solicitation, including those to M/WBEs, and the results thereof. The Consultant will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
6. Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and if legally permissible, that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization 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 programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its efforts to employ and utilize minority group members and women in its work force on State contracts.
(b) This organization shall state in all solicitations or advertisements for employees in the performance of the State contract, that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
(c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized 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 this organization’s obligations herein.
(d) The Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and subconsultants/subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant/subcontractor as to work in connection with the State Contract.
Agreed to this _______ day of _______________________, 20____

By _____________________________________________________

Print:________________________________________ Title:____________________________________

________________________________________ is designated as the Minority Business Enterprise Liaison
(Printed Name of Designated Liaison)

**Total Committed M/WBE Contract Participation**

_____ percent Minority and Women’s Business Enterprise Participation

_____ percent Minority Business Enterprise Participation

_____ percent Women’s Business Enterprise Participation

(Authorized Representative Signature)

Title: _____________________________________________________

Date: _____________________________________________________
ATTACHMENT 10: DBE PARTICIPATION INFORMATION

“Not Applicable”
ATTACHMENT 10a: DBE SUBCONSULTANT PARTICIPATION SOLICITATION LOG

“NOT APPLICABLE”
ATTACHMENT 11: M/WBE/SDVOB PARTICIPATION INFORMATION

The proposer is required to complete and submit this Attachment 11. Please complete for the prime firm and all subconsultants (consultant team composition): please identify each firm’s legal name, checking if they are an Empire State Development (ESD) certified MBE and/or a ESD certified WBE or SDVOB, and indicating each firm’s percentage of the total salary for the contract. Please keep in mind that only ESD certified M/WBE/SDVOB prime consultants and/or ESD certified M/WBE/SDVOB subconsultants are eligible to participate toward attainment of this state-funded procurement.

Further, participation by a certified M/WBE/SDVOB prime consultant as well as certified MBE and/or WBE subconsultants may count towards the M/WBE/SDVOB participation goal.

If the combined percentage of total salary for all certified M/WBE/SDVOBs proposed is less than the M/WBE/SDVOB participation goals, then the proposing prime firm is required to fill out and submit the Participation Solicitation Log (Attachment 11a; one for each goal not attained) and is required to submit a M/WBE/SDVOB Goal Attainment Explanation Letter.

Contract#: C037857

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYS ESD Certified MBE/WBE/SDVOB</th>
<th>% of Total Contract Value</th>
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<td>MBE</td>
<td>WBE</td>
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**A. Prime Consultant**

**B. Sub-Consultants**

| Total | 100% |
# ATTACHMENT 11a: SUBCONSULTANT PARTICIPATION SOLICITATION LOG

(Good Faith Effort Documentation)

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<th>CONTRACT NO. C037857</th>
<th>PARTICIPATION GOALS (SELECT ONE)</th>
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<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
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<th>SOLICITED COMPANY NAME AND CONTACT PERSON</th>
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<th>FEDERAL EMPLOYER ID #</th>
<th>WORK TYPES BEING SOLICITED (enter work types or CUF)</th>
<th>TYPES AND DATES OF CONTACTS</th>
<th>CONTACT RESULT(S) CODE*</th>
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*See Solicitation Log Instructions listed in Attachment 12: Solicitation Log Instructions*
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

Encouraging Use of New York State Businesses in Contract Performance

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

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

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

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

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below and if answered in the affirmative, completing and submitting the following table for all firms (prime consultant and all subconsultants) participating in your proposal. The definition of ‘NYS Business’ is: ‘Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this contract’. Indicate whether each proposed firm is classified as a NYS Business, the total dollar amounts attributable to each firm, the total proposed contract cost, and the NYS business address of each firm.
Contract Number: C037857

Will New York State Businesses be used in the performance of this contract?
Yes  _____
No  _____

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<th>Firm Legal Name</th>
<th>NYS Business? (Y or N)</th>
<th>% of Total Proposed Contract Cost</th>
<th>NYS Business Address</th>
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Total Proposed Contract Cost:
ATTACHMENT 14: DIVERSITY PRACTICES QUESTIONNAIRE

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

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives?   Yes or No
   If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

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

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

4. Does your company provide technical training⁴ to minority- and women-owned business enterprises? Yes or No
   If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?
   If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company’s commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No
   If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

³ Do not include onsite project overhead.
⁴ Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.
7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No
   If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No
   If Yes, complete the attached Utilization Plan (Attachment 11a).

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

Signature of Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip
STATE OF _______________________________
COUNTY OF                             ) ss:

On the ______ day of __________, 20___, before me, the undersigned, a Notary Public in and
for the State of ________________, personally appeared ____________________________,
personally known to me or proved to me on the basis of satisfactory evidence to be the individual
whose name is subscribed to this certification and said person executed this instrument.

__________________________
Notary Public
ATTACHMENT 15:

Not Applicable
8. ATTACHMENT 16-19 and EXHIBITS 1-5

Attachments 16-19 and Exhibits 1-5, which contains the RFP’s Modifications can be found on the NYSDOT project web site, located at https://www.dot.ny.gov/business. Click on “Consulting Services”, then click on “Opportunities”, and then click on the date to the left of “C037857 Materials Inspections, Sampling and Testing Consulting Services for NYSDOT – Region 7”

ATTACHMENT 16 – NAE255 Instructions
ATTACHMENT 17 – NAE255 FORM
ATTACHMENT 18 – NYSDOT Regional Map
ATTACHMENT 19 – Modifications and Source List

EXHIBIT 1: Laboratory and Field-Testing Services
EXHIBIT 2: Cost Schedule
EXHIBIT 3: Regional Coring Services Scope
EXHIBIT 4: Contract Items of Service
EXHIBIT 5: Listing of Pertinent Materials Methods and Other Related Documents