Tentative RFP Schedule:

The New York State Department of Transportation (NYSDOT) will attempt to adhere to the following tentative schedule with regard to progressing this solicitation:

- **NYS Contract Reporter Announcement**: February 3, 2020
- **RFP Release Date**: February 5, 2020
- **Pre-Proposal Webinar**: February 12, 2020 at 10:00 AM
- **Question Submittal Due**: February 19, 2020 by 2:00 PM
- **Answers/RFP Mod #1 Due**: February 26, 2020
- **Proposals Due**: March 9, 2020 by 2:00PM Eastern Time
- **Proposal Evaluation**: March 10 to March 13, 2020
- **Recommendation & Designation**: March 17, 2020
- **Final Contract**: March 2020
- **Contract Award/NTP**: Before April 30, 2020
- **Begin Work**: May 1, 2020

Inquiries and Information/ Designated Contact Person:

Potential responders are advised that under New York State’s procurement lobbying law (state finance law section 139-j), communications regarding NYSDOT’s RFP #C037907 can be made to the following designated primary contact person:

- Al Hasenkopf, Contract Mgt Specialist II
  - E-mail: alfred.hasenkopf@dot.ny.gov
  - Phone: 518-457-1560
  - New York State Department of Transportation
  - Contract Management Bureau
  - 50 Wolf Road, 6th Floor
  - Albany, NY 12232, USA

Communications regarding NYSDOT’s RFP #C037907 can also be made to the following designated secondary contact person:

- Patty Kappeller, Contract Mgt Specialist II
  - E-mail: patty.kappeler@dot.ny.gov
Phone: 518-457-2600  
New York State Department of Transportation  
Contract Management Bureau  
50 Wolf Road, 6th Floor  
Albany, NY 12232, USA

All questions concerning this solicitation must be directed only to the RFP’s designated Contact Person. Questions are due by February 19, 2020 2:00 PM. NYSDOT is not obligated to respond to any late questions. However, NYSDOT may choose to respond to late questions should doing such be in the best interest of the state. Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT web site.

Pre-Proposal Webinar:

NYSDOT will hold a Pre-Proposal Webinar. Participation is optional yet recommended. The agenda shall include a review of the RFP and its attachments, and highlight any changes since the RFP was first issued. Questions can be submitted in advance as well as electronically via the webinar. The Pre-Proposal Webinar shall be held on February 12, 2020 at 10:00 AM. To pre-register for the webinar, please contact: alfred.hasenkopf@dot.ny.gov.

NYSDOT will record the webinar. Answers provided at the webinar shall be recorded; some questions may have to be deferred. Answers to all substantive questions shall be publically posted onto NYSDOT’s website under this solicitation, and all parties notified via announcement. E-mail notices shall be sent to the e-mail addresses of all parties who officially register their interest in NYSDOT’s RFP #C037907. Only written answers posted on the NYSDOT website will be official. Questions that address possible conflicting information in this RFP will be resolved via formal Modification to this RFP and posted on the NYSDOT website, with all firms expressing interest being notified via e-mail. To be deemed responsive, all firms offering proposals are required to acknowledge receipt of any and all RFP Modifications in writing by submitting the one-page acknowledgement response form included in the RFP Modification document.

RFP Modification(s):

NYSDOT reserves the right to modify conditions or requirements of this RFP with sufficient notice given to all potentially interested parties. All public information releases regarding NYSDOT RFP #C037907 shall be posted to the NYSDOT web site (https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities). Firms who express interest in this RFP shall receive an e-mail alerting them to each new RFP information release. Firms are advised to also regularly to check for releases of new RFP information. The final Modification will be posted on NYSDOT’s web site not later than ten business days prior to the proposal due date – acknowledgement of receipt of any and all RFP modifications is a mandatory requirement. If any additional modification is required within that ten-day window, the Proposal due date shall be revised such that there will be seven days from the final Modification to the Proposal due date and all parties shall be notified.
NYSDOT has an Equal Employment Opportunity – Pay Equity:
In Accordance with New York State Executive Order 162, issued on January 9, 2017, the selected Consultant shall provide workforce utilization reports in accordance with Article 33 in Attachment 1 RFP Draft Contract.

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

511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES RFP

Please review this RFP for Contract #C037907. Please complete the following information and mail, e-mail, or fax to the NYSDOT address shown below, by the earliest practical date.

____________________  WE DO INTEND TO SUBMIT A PROPOSAL

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

__________________________________________________________________________

__________________________________________________________________________

Name and Address of Organization (Include Zip Code):

__________________________________________________________________________

__________________________________________________________________________

Signature: ____________________________  Date: ____________________________

Types of Printed Name and Title: ____________________________________________

Telephone: ____________________________  Fax: ____________________________

E-Mail Address: __________________________________________________________

RFP Title: ______________________________________________________________

Please send to:

* E-Mail: alfred.hasenkopf@dot.ny.gov  RE: #C037907

* Regular Mail:
  New York State Department of Transportation
  Contract Management Bureau, 6th Floor
  50 Wolf Road
  Albany, New York 12232
  ATTN: Contract #C037907

* Fax: 518-457-2875
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES
Contract #C037907

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1 INTRODUCTION

1.1 Purpose
The New York State Department of Transportation (NYSDOT) is seeking Proposals from responsive and responsible Service Providers to maintain NYSDOT’s established multi-platform system to provide 511NY Travel Information Services. NYSDOT intends to select a Consultant and enter into a contract that provides Best Value to the State based on this solicitation.

1.2 Project Background
This RFP specifies: 1) the services presently servicing NYSDOT’s current 511NY system which must be maintained, 2) Proposer and NYSDOT responsibilities, and 3) other pertinent information related to submission of a responsive proposal. The provisions and requirements of this RFP, along with the services offered by the selected Consultant, will be incorporated into the resulting contract.

NYSDOT’s current 511NY system provides travel information on a multi-functional platform system, which distributes travel information by telephone, mobile app, website, and a personalized e-mail/SMS subscription.

The transportation landscape of New York State is vast, including:

- A state and local highway system that annually handles more than 130 billion vehicle miles, encompassing more than 114,000 highway miles and 17,000 highway bridges, and numerous other assets.
- A rail network extending 3,500 miles, over which 76 million tons of equipment, raw materials, manufactured goods and produce are shipped each year.
- More than 60 public and private aviation facilities, serving 100 million flyers annually.
- More than 130 public transit operators, providing more than 3.8 billion trips annually.
- A dozen major public and private ports.
- Hundreds of pedestrian, bicycle and trail facilities.

NYSDOT Organization Structure
The New York State Department of Transportation, with its Main Offices located at 50 Wolf Road in Albany, also includes 11 Regional Offices and 68 county transportation maintenance residencies.
Main Office: Albany, New York
NYSDOT Region 1: Albany, New York
NYSDOT Region 2: Utica, New York
NYSDOT Region 3: Syracuse, New York
NYSDOT Region 4: Rochester, New York
NYSDOT Region 5: Buffalo, New York
NYSDOT Region 6: Hornell, New York
NYSDOT Region 7: Watertown, New York
NYSDOT Region 8: Poughkeepsie, New York
NYSDOT Region 9: Binghamton, New York
NYSDOT Region 10: Hauppauge, New York
NYSDOT Region 11: Long Island City, New York

Stakeholders

While NYSDOT manages the 511NY, there are a number of stakeholders that provide data and information into the 511NY travel information system. These entities include transportation agencies such as:

1. New York State Thruway Authority (NYSTA)
2. Niagara International Transportation Technology Coalition (NITTEC) - an organization of fourteen agencies in Western New York and Southern Ontario;
3. Transportation Operations Coordinating Committee (TRANSCOM) - a coalition of 16 transportation and public safety agencies in the New York - New Jersey - Connecticut metropolitan region
4. The City of New York, including the New York City Department of Transportation (NYCDOT)
5. Upstate and downstate transit organizations
6. Metropolitan Transportation Authority (MTA)
7. Port Authority of New York New Jersey (PANYNJ)
8. Border States and Provinces

Current 511 Statistics

According to 2019 data, the 511NY phone system received an average of 131,000 calls/month, while the website received 153,000 visits/month. Weather events typically cause an increase in the number of calls and visits to 511.
In 2011, over one-hundred MTA customer service numbers were consolidated to 5-1-1. The downstate phone menus were expanded to include options for customers to access MTA related information. As a result of this partnership, approximately eighty-five to ninety percent of 511 calls are for transfers to MTA services.

The following are cumulative totals as of November 2019:
1. My511NY Subscribers: 19,144
2. Mobile App Downloads: 51,243
3. Android – 23,051
4. iPhone – 31,759
5. Twitter Followers: 19,400

2 PROJECT AND CONTRACT OBJECTIVES

2.1 Project Objectives
The goal of this RFP is to retain a qualified, responsive and responsible Consultant to operate and maintain NYSDOT’s 511NY Travel Information System. The services provided by the selected Consultant shall:
1. Meet NYSDOT business requirements
2. Employ proven hardware and software technology that ensures data security
3. Meet defined performance standards
4. Is supportable for the term of this contract
5. Provide a demonstrated ability to offer upgraded functionality as travel information industry business needs and technology changes

2.2 Contract Objectives
1. Consulting Arrangements: To hire one responsive, responsible, experienced, knowledgeable and qualified Prime Consultant under Contract #C037907. NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant. Sub-consulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.
2. For all offerors to accept the RFP’s Draft Contract Terms and Conditions (Attachment 1) as is, after having been given ample opportunity to review and ask questions regarding the RFP’s draft contract’s terms and conditions prior to the submission of proposals.
3. Ownership of Data Sources: All reports or data provided to, and produced by, the selected Consultant shall be the property of NYSDOT (or other project stakeholders).
4. Contract Term: The base term of the contract will be two years with two optional extensions of up to twelve months each. The term ‘contract year’ will be defined after selection and prior to award.
5. Method of Payment: The selected Consultant shall be reimbursed after acceptance of all-inclusive, firm fixed priced deliverables or after acceptance of scheduled firm fixed price milestones (partial payments). Please reference Article 6 of the RFP’s Draft Contract (Attachment 1). Fixed price deliverables or milestones shall include all costs associated with delivering each task item per the Agreement’s Scope of Services (Schedule A), including all estimated travel, tolls, fares, meals, lodging, materials etc. Regarding materials, please ensure that all costs associated with printing reports, pamphlets, etc., for public involvement are also included in the proposal.
6. Best Value Selection: To select a responsive and responsible Consultant using NYSDOT’s Best Value method based on a thorough examination of proposals submitted in response to the RFP.
7. Fair and Equitable treatment of all firms participating in this competitive Consultant selection
8. Good Faith: Consultants are expected to work with, communicate with, and negotiate with, NYSDOT in good faith. Consultants shall not knowingly misrepresent any products and services, relevant information, themselves, or their Subconsultants. Consultants are also expected to demonstrate good faith efforts towards the attainment of any identified and applicable civil rights participation goals.

9. Non-Infringement/Compliance with Laws: The selected Consultant warrants that in performing the services called for by this Contract it will not violate any applicable law, rule, or regulation, any Contracts with third parties, or any intellectual rights of any third party, including, but not limited to, and United States patent, trademark, copyright, or trade secret.

3 SCOPE OF SERVICES

3.1 Overview

NYSDOT seeks a consultant team to operate and maintain the existing suite of 511NY travel information services and subsystems for two years. At NYSDOT’s discretion, the contract may be extended by two optional extensions of up to twelve months each.

The consultant team is expected to operate and maintain the current 511NY system by providing existing functionality and supporting all associated systems and sub-systems as defined below in Section 3.3 and illustrated in Attachment 13 511NY Data Diagram. While no major upgrades or enhancements to 511NY are planned, the contractor must be able to adapt to changing systems and/or web standards as warranted by technology or industry standards.

The existing 511NY system costs approximately $850,000/year to operate and maintain.

NYSDOT will not own, nor be responsible for any hardware necessary to operate and maintain NYSDOT’s 511NY system. The winning consultant will be expected to purchase, maintain and upgrade when necessary, all hardware required to operate the 511NY service.

The cutover to the new consultant team must occur within 30 days of NYSDOT issuing the Notice to Proceed (NTP) to the consultant team.

While the consultant team provides continuation of the existing 511NY system, NYSDOT will complete a strategic plan and procurement for a replacement next generation traveler information system. Proposals are expected to be solicited in 2021.

3.2 Transition and Operation

The winning consultant team shall deliver the following plans once the contract has been awarded.

1. Transition Plan

The Transition Plan shall cover key pieces of project initiation and planning and shall include and/or address the following:

1. A project schedule which includes key milestones, a staffing plan which includes expertise for all 511NY systems and sub-systems, and a change management plan.

2. The approach for completing the transition from the current consultant to the selected consultant within 30 days of receiving the Notice to Proceed from NYSDOT. This should include general strategies, coordination meetings, and knowledge transfer sessions.

3. An explanation of how the existing functionality will be sustained during the transition period. This should identify high risk items and potential methods to minimize risks or reduce negative impacts of those risks on the system.

2. Operations Plan
The Operations Plan shall include and/or address the following:

1. A communication plan with NYSDOT on a regular basis, and other stakeholders (i.e. Transcom, Skyline) as needed.
2. An approach for 24/7 proactive monitoring of the 511 system, including web and IVR (Interactive Voice Response) systems. Monthly system performance monitoring must be in accordance with Attachment 14 Service Level Agreement.
3. The availability of a 24/7 helpdesk accessible via phone and e-mail.
4. An approach for identifying, coordinating and implementing design changes, as warranted.
5. An approach for a smooth and orderly transition to a new consultant at the end of this maintenance contract.

3.3 511NY System Services: Tasks

The 511NY system services to be provided and maintained in the new agreement include all task work listed below.

**Project Management, Execution and Control:** Describe the high level approach for performing work, meeting all RFP requirements, and accomplishing all project and contract objectives. Include a high-level discussion which addresses resources, timeframes, and dependencies to ensure successful project delivery. Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, industry practices, etc.

Discuss all management plans to ensure effective and efficient delivery of services while meeting the project objectives. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. The Consultant’s Project Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant’s Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as contractual matters. Describe the level and type of interaction the PM will have with NYSDOT. Each proposer must demonstrate a sound management plan to ensure sub consultant compliance with all contract and scope of service provisions.

Provide an organizational chart for the project showing the names of the Consultant’s Project Manager and all proposed key personnel, as well as, all proposed subcontractors, subconsultants, or third party software providers. For all proposed subcontractors, subconsultants, or third party software providers, explain each party’s role, the specific area(s) of expertise being offered and describe related arrangements. Describe how the Prime Consultant will manage services delivery from all proposed subconsultants.

**TASK 1: The 511NY.org Website**

This website provides a variety of means for accessing and visualizing real-time, anticipated and planned traffic and road conditions and transit and modal services available in New York State. The website provides interactive mapping of this information as well as options to generate text lists, access to source data via a Developers’ page and links to other transportation agency and service websites. The site also provides registration access to customized alert information via a the free MY511 subscription alert service. The website also provides information on accessing the 511NY app and social media. The website is hosted by Amazon Web Services.

Functions and systems that are required to operate the 511NY website include:

**Task 1.1. Map Interfaces to content and data maintained outside of the 511NY system.** The following information, managed outside of the 511NY contract and project,
is interactively mapped at the 511NY website. This is accomplished by the maintenance of Application Programming Interfaces (APIs) or through periodic uploading of data updates from external databases. The existing mapped data sets (selectable from the 511NY Map legend) to be maintained include:

<table>
<thead>
<tr>
<th>511NY Map Content</th>
<th>Method of Update</th>
<th>Source of Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highway Speed Data</td>
<td>API</td>
<td>HERE License through TRANSCOM</td>
</tr>
<tr>
<td>Winter Road Conditions</td>
<td>API</td>
<td>NYS DOT Weather Travel Advisory*/NYSTA</td>
</tr>
<tr>
<td>Incident</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach / NITTEC Crossroads</td>
</tr>
<tr>
<td>Transit Incident</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach</td>
</tr>
<tr>
<td>Construction</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach / NITTEC Crossroads</td>
</tr>
<tr>
<td>Transit Construction</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach</td>
</tr>
<tr>
<td>General Information</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach</td>
</tr>
<tr>
<td>Park and Ride locations</td>
<td>API</td>
<td>NYS DOT ATDM Contract P&amp;R Database</td>
</tr>
<tr>
<td>Closures</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach</td>
</tr>
<tr>
<td>Traffic Cameras</td>
<td>API</td>
<td>Skyline, Trafficland, NYSTA, Transportation Agencies</td>
</tr>
<tr>
<td>Major Crossings</td>
<td>API(s)</td>
<td>TRANSCOM Data Fusion Engine/OpenReach / XML for NITTEC</td>
</tr>
<tr>
<td>Message Signs</td>
<td>API</td>
<td>Foundation ATMS (INFORM)</td>
</tr>
<tr>
<td>Weather Alerts</td>
<td>API</td>
<td>NOAA</td>
</tr>
<tr>
<td>Weather Forecasts</td>
<td>API</td>
<td>NOAA</td>
</tr>
<tr>
<td>Rest Areas</td>
<td>Periodic File Update</td>
<td>NYS DOT ATDM Contract P&amp;R Database</td>
</tr>
<tr>
<td>Truck Restrictions</td>
<td>Periodic File Update</td>
<td>NYS DOT Structures Bridge Database</td>
</tr>
<tr>
<td>Special Events</td>
<td>API</td>
<td>TRANSCOM Data Fusion Engine/OpenReach / NITTEC Crossroads</td>
</tr>
<tr>
<td>Transit Routes</td>
<td>API</td>
<td>GTFS Transit Data Manager*</td>
</tr>
</tbody>
</table>

*This data source is to be managed via a subsystem of 511NY maintenance scope and is described below.

**Task 1.2. 511NY Website Subsystems:** The 511NY system maintenance scope includes directly operating and maintaining the following subsystems listed in Tasks 1.3 through 1.8:

**Task 1.3. 511NY Transit Trip Planning Subsystem:** This subsystem consists of a full implementation of the open source Multi Modal Open Trip Planner (MMOTP) ([https://www.opentripplanner.org/](https://www.opentripplanner.org/)), a comprehensive statewide General Transit Feed Specification (GTFS) transit service database managed in the open source Transit GTFS Data Manager and includes an implementation of transit data analytics tools available to transit agency partners as a benefit of maintaining their service data in 511NY. The MMOTP and GTFS Data Manager platforms use current transit schedules, maintained
via a separate data maintenance contract to provide customer transit and multimodal trip planning itineraries via the Transit Trip Planner option at the 511NY webpage.

The GTFS Data Manager platform, as the transit service information repository for NYSDOT also provides the source of the Transit Routes mapping at the 511NY webpage (listed in the table above. Please note that there is no publishable URL/webpage link for the GTFS Data Manager platform because such is password protected and one needs an account to log in). The existing subsystem also supports a routing/navigation service to provide driving directions to park and ride locations that are then used as trip origins for generating transit itineraries in the MMOTP system.

The full range of functions under the transit trip planning system are made available via APIs to support number of mobility programs operated outside of the 511NY system. These include transit, bicycle and micromobility service trip planning provided by NYSDOT’s GTFS Active Transportation and Demand Management (ATDM) Program, bicycle and pedestrian program and partnership programs with transit agencies and regional/local travel demand management programs.

The maintenance contract resulting from this RFP will require that the currently implemented subsystem and its APIs to external programs remain available and uninterrupted.

**Task 1.4. Winter Road Conditions Subsystem:** This subsystem consists of field reporting tools that record road conditions as reported by snow plow operators. Operators with access to the Winter Travel Advisory (WTA) system update winter road conditions as plow operators complete their shifts. The data is then directly mapped onto the state highway network and displayed in 511NY via an API noted in the table above. Regions are required to update this data every four hours at a minimum. Segments not updated within the four-hour window default to *Update Pending*. The WTA system also allows operators to add/modify plow truck routes as needed. The NYS Thruway Authority also enters winter road conditions, however they use a separate WTA portal which feeds 511NY directly.

**Task 1.5. My511NY subsystem:** My511NY is a free, personalized service on the phone, mobile apps, and web that allows users to customize 511NY. MY511NY allows the user to build a custom 511NY.org home page and bypass phone menu options directly giving information for the defined routes. With MY511NY users may define and save up to six traffic trips, six transit trips, and identify up to six CCTV traffic cameras most often checked. MY511NY also gives subscribers the opportunity to sign up for up to six driving time trips on Long Island.

Once defined, subscribers can set up emergency and travel advisory alerts by region and create SMS/email alerts for defined routes. These alerts can be based on day of week, time of day, and travel time/travel speed thresholds.

**Task 1.6. Roadside Damage Assessment (RSDA) Tool Subsystem:** This subsystem provides field condition and damage assessment reporting during emergencies. The platform supports FHWA-mandated damage assessment by enabling detailed field data collection transmitted to the 511NY data platform. At the current time, RSDA information is not displayed to the public via the 511NY website. However, the direct connection to the 511NY platform enables NYSDOT to provide updates to the public regarding the status of damaged or impacted highway facilities in the future.
Task 1.7. 511NY Developers’ Page subsystem: This subsystem is a free service that allows users to access 511NY real-time and static transportation data to customize their applications and research efforts. This information is available via XML feed to the general public, commercial vendors, transportation agencies, researchers, media and other interested groups. The XML feed is the single point of access for all information displayed on the 511NY Map such as incidents/accidents, construction projects, special events and camera images and video in NYS.

Task 1.8. 511NY Menu Managed URL/Links: In addition to directly managed subsystems and APIs, the 511NY Webpage also manages links to relevant content hosted and managed via other NYSDOT contracts and programs. These include:

Task 1.8.1. Rideshare Service Menu: This menu item links to a coordinated set of travel demand management (TDM) programs managed by NYSDOT and co-branded as 511NY Rideshare. The content is closely integrated, for example, the Multi-Modal Open Trip Planner is used extensively by these programs. However, the content and design of the pages being linked to is managed under a separate NYSDOT contract.

Task 1.8.2. Travel Links: This menu item links to a page of transportation links managed by NYSDOT. These links refer users to more information on border crossings, parking, bridges and tunnels, and toll charges.

TASK 2: The 511NY Telephone Interactive Voice Response System

The 511NY IVR System provides callers with the same current travel information displayed on the website. The IVR System is available 24 hours a day, seven days a week. The system identifies the caller’s telephone prefix for landlines or communication tower for wireless calls to determine calling location and appropriate travel information to convey to the user. 511 is also the calling number for the MTA. Callers can reach an MTA department or representative by dialing 511 and navigating through the appropriate menu tree.

TASK 3: The 511NY Mobile App

The 511NY mobile application is available on both Android and iOS devices. The 511NY mobile app provides the same up-to-the-minute, real time traffic and transit information as the website and IVR system and features Drive Mode. In Drive Mode, users enter in their destination and origin and are provided up to three routes with highway travel times based on traffic conditions. Drive Mode provides audible alerts to the driver for incidents that occur along their route. The mobile app also offers a trip planner, access to camera images/video and winter road conditions.

TASK 4: The 511NY Social Media

The 511NY Social Media effort is centered around Twitter and the @my511NY account. The traveling public can direct questions/comments to the @my511NY account. This account is monitored and provides predetermined responses for certain questions. In certain instances, questions are brought to the NYSDOT staff for guidance on how to respond. In addition to the @my511NY account, the social media campaign is responsible for updating several 511NY Regional Traffic and Transit feeds.

Information Technology (IT) Project Work
Should any new IT project work be requested during C037907’s term, the NYSDOT Project Manager shall coordinate with NYSDOT’s Information Technology Services (ITS) processes and procedures to ensure that all pertinent IT policies are adhered to in the development of any significant project IT work. Further, should this be the case, the selected Consultant shall adhere to the New York State Project Management Guidebook Release 2 for any significant IT project development work under C037907. It is required that prospective proposals submit IT project management methodology and IT resources. It is possible that during the delivery of C037907 services, the selected Consultant maybe responsible for complying with New York State Office of ITS policies, standards and guidelines (available on NYS ITS’s website). The selected Consultant may also responsible for notifying NYSDOT of any security breaches. NYSDOT Information Security Policies are available upon request to the selected Consultant. Also, see RFP Attachment 1, Article 37 and Appendix E for additional information.

3.4 NYSDOT Responsibilities

NYSDOT will be responsible for the following:

- **Maintaining the Website Domain** - NYSDOT will remain as the owner of the 511NY website domain names and also be responsible for maintaining the domains, including all associated costs.

- **Appointing a Project Manager** - NYSDOT will appoint a Project Manager who will serve as the single point of contact for the consultant. The NYSDOT Project Manager will lead and coordinate the Department’s effort and manage the Consultant’s service delivery to NYSDOT.

If there are any design changes necessitated by changes or updates in technology or industry standards, NYSDOT will be responsible for:

- **Approving Design** - NYSDOT is responsible for approving all 511NY design plans, approaches and related architectural decisions.

- **Providing User Acceptance** – NYSDOT is responsible for approving all submitted test plans and performing acceptance testing.

- **Accepting Deliverables** - NYSDOT will review deliverables and evaluate them for completeness, clarity, adherence to generally recognized standards, and compliance with NYSDOT’s intent as conveyed in this RFP and contained in the resulting contract. A deliverable, phase, or milestone will not be considered complete until formal, written sign-off has been provided by NYSDOT.

- **Facilitating Internal NYSDOT Communication** – NYSDOT is responsible for facilitating communications among various NYSDOT regions and divisions.

3.5 Consultant Responsibilities

The Consultant shall produce all requested services and deliverables per the requirements of this RFP. The Consultant shall perform all the activities and tasks required to achieve the project objectives. All services must be consistent with State and federal laws and regulations and shall be appropriate and acceptable to NYSDOT management.

During the life of the project, the Consultant shall communicate regularly with the NYSDOT PM and NYSDOT project team, as needed. The Consultant shall provide quarterly reports due the first day of each calendar quarter following execution of the contract, indicating progress
towards achieving project goals, and expected activities for the upcoming quarter. As deliverables are submitted, NYSDOT management will evaluate deliverables for completeness, clarity, adherence to generally recognized standards, and compliance with NYSDOT’s intent as conveyed in this RFP and contained in the resulting contract. A deliverable, phase, or milestone will not be considered complete until formally accepted by NYSDOT. NYSDOT will only render payment for services and deliverables it accepts.

After contract approval/notice to proceed, the selected Consultant shall be required to provide all proposed key personnel for the duration of the project. After work begins, all changes in key personnel shall be subject to NYSDOT review and approval. Any proposed personnel changes shall have equal or greater qualifications and shall be at same or lesser rates of pay.

3.6 Selected Consultant Start of Work

The goal of this solicitation is to select, award and have the selected Consultant commence work on May 1, 2020, or no later than ten (10) days after receiving notice to proceed from NYSDOT (whichever comes first). NYSDOT is requiring that, after Contract #C037907 has been fully approved and notice to proceed has been given to the selected Consultant, that the team of key personnel proposed by the Consultant shall be available to start work within ten (10) days after receipt of NYSDOT’s notice to proceed, and that no substitutions are allowed. All key personnel shall remain available until work under #C037907 has been completed. Substitution is only allowed if absolutely necessary, due to a reasonable, unavoidable circumstance (i.e., person left employment). All substitutes are subject to NYSDOT review and approval.

3.7 Deliverable Submittal, Review and Acceptance Process

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

Submittal Process:

The Consultant shall submit an advance deliverable to the assigned NYSDOT PM. An electronic copy is preferred. A final hardcopy may be requested.

Review Process:

1. NYSDOT’s PM consults with involved NYSDOT Program Area(s) or other involved Project Stakeholder to develop lists of reviewers and approvers.
2. Electronic copies of the deliverable are distributed to reviewers and approvers.
3. If requested, then the Consultant shall schedule a meeting with designated reviewers and approvers to provide a high-level walkthrough of the document to facilitate review.
4. NYSDOT reviewers may meet with PM to review and discuss comments.
5. Unless informed otherwise, NYSDOT will make every reasonable effort to provide the review comments to the Consultant within 10 business days from submittal. It should be noted that all submittals not received before noon shall be considered to have been submitted the following day.
6. It is expected that NYSDOT will receive from the Consultant the revised documents addressing all NYSDOT comments within five (5) business days, unless other arrangements between the PM and the Consultant are made.
7. NYSDOT may review the revised submittal and return additional comments to the Consultant. NYSDOT will make every effort to return such comments to the Consultant within five (5) business days.
8. The Consultant shall address all comments and resubmit within three (3) business days.
9. NYSDOT may complete the “Final Review” within two (2) business days. If there are outstanding issues that remain, resolution of such may involve higher levels of NYSDOT management.

Acceptance Process:

1. When the deliverable has been accepted, the Consultant shall be notified by NYSDOT’s PM. The Consultant shall submit an invoice via email to NYSDOT’s PM. Signed hardcopy invoice to follow in regular mail.

2. If the deliverables have been satisfactorily completed, NYSDOT PM will forward the invoice to designated NYSDOT payment person along with a statement indicating that the deliverable fulfills contract requirements and has been accepted.

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

4. Questions regarding all Consultant-provided services and deliverables shall be governed by the contract (which includes the RFP and the selected Consultant’s proposal).

4 PROPOSAL SUBMISSION FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two separate parts: the Technical and Management proposal and the Cost and Administrative Proposal. Copies of each part must be contained in separate three-ring binders. Each part of the proposal must be complete 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 Technical submittal. Web links, photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required. Any referenced information found via web link must include very specific navigational directions to reach the referenced information. Your proposal should follow the format listed below.

Original Signatures. One complete set of Proposal documents shall be identified on the cover as the 'Original Signatures' set and shall contain original signatures for all of the various forms and documents which require signatures. Original signatures are not required for the other sets but photocopied or otherwise reproduced versions of the signed forms and documents should be provided (i.e., do not provide forms with unsigned/blank signatures).

FOIL 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 offeror 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, offerors 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.

4.1 Proposal Submissions

Your proposal must be received by NYSDOT in Contract Management Bureau’s 50 Wolf Road, 6th floor, Albany, New York 12232 address by 2:00 PM on March 9, 2020. Access to the building requires clearance through First Floor Security. NYSDOT is not responsible for late proposals due to shipping delays. However, should your proposal be on its way with a possible delay in its physical delivery, please as soon as practicable contact the designated RFP contact person.
4.2 Minimum RFP Responsiveness Requirements

Any Firm that does not provide all the material identified in RFP Tables 1 and 2 by the proposal submission deadline may be determined to be non-responsive. Any proposal deemed non-responsive by NYSDOT shall be removed from further consideration (prior to the technical evaluation of proposals):

4.3 Mandatory Requirements

For proposals to be deemed responsive, all RFP mandatory technical requirements must be acceptably addressed. Follow Table 1 guidance regarding how to respond; this includes:
- Completion and submission of competed Acknowledgement of Receipt (OAR) Form Attachment 4
- Submission of completed, signed Procurement Lobbying Law Compliance forms per Attachment 5

Failure to acceptably meet the RFP’s mandatory requirements may result in your proposal being deemed non-responsive.

4.4 Technical and Management Proposal Submittal

Note: Cost and administrative information is not to be included in the Technical Proposal submittal, and Technical and Management information is not to be included in Cost Proposal submittal. To be considered responsive and complete, your Technical and Management proposal shall contain the following:

Table 1. Technical and Management Proposal Submittal Checklist

<table>
<thead>
<tr>
<th>Packaging Requirements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Five (5) Printed bound complete hard copies (each in separate three-ring binders with labeled and tabbed sections) plus one complete copy on a thumb drive in MS Office 2016 compatible formats (Word, PDF, etc.). One copy must be an original (contain original signatures)</td>
</tr>
<tr>
<td>□ Securely sealed and clearly labeled with the Consultant’s name, address, and telephone number and the words “C037907 511NY Travel Information System Maintenance Services, Technical &amp; Management Proposal”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Technical &amp; Management Proposal Submission Requirements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Proposal Cover Page, stating RFP title, “Technical and Management Proposal”, firm name and date of submission</td>
</tr>
<tr>
<td>□ Table 1: Technical Proposal Submittal Checklist</td>
</tr>
<tr>
<td>□ Signed Cover Letter on official business letterhead. Three page limit</td>
</tr>
<tr>
<td>□ Table of Contents identifying each major section and page numbers</td>
</tr>
<tr>
<td>□ Complete and Submit Attachment 10 Firm Experience</td>
</tr>
<tr>
<td>□ Complete and Submit Attachment 11 Key Personnel Experience</td>
</tr>
<tr>
<td>□ Complete and Submit Project Plan, Scope of Services &amp; Schedule</td>
</tr>
<tr>
<td>□ Include a completed Exhibit 3B: Hours by Task By Person (with NO rates/cost).</td>
</tr>
<tr>
<td>□ The Technical and Management Proposal may include a relevant previous work sample (encouraged). Relate this work sample to this RFP’s requirements, explaining why they consider that experience to be relevant.</td>
</tr>
</tbody>
</table>

NYSDOT prefers concise and succinct proposals with supporting details and additional information backing up significant statements and offers. The Firm may include such additional information or data as may be appropriate or offer alternate solutions as long as those solutions meet all of the project’s objectives.
Proposal Submission Checklist. The above checklist (Table 1) should be completed, included in your technical proposal, and should illustrate that all required items are provided. An explanation should be provided for any missing items. Depending on the missing items, the proposal may be deemed incomplete and be grounds for removal from consideration.

To assist you to prepare responsive proposals, the RFP offers the following additional information regarding each Technical and Management proposal section:

Title Page and Cover Letter. Title Page lists name, address and phone number of the proposer, and the name, title, address, email, and telephone number of person(s) with official authority to negotiate, bind the company to a contract, and who may be contacted during the procurement process. The title page should also list the RFP Title and Contract #C037907. The Cover Letter shall include the following information regarding the Consultant’s official representative for its proposal:

- Name of Consultant’s official representative
- Title
- Name of company
- Address
- Telephone number
- Fax number
- E-mail address of the Consultant’s representative

The signed Cover Letter must be on official business letterhead and accompany each volume. In addition to the information listed on the title page, the cover letter should provide a brief description of the proposed approach, work effort, resulting deliverables. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed one double-sided page. The Cover Letter should not exceed one double-sided page, and should include the following:

- The signature of an official authorized to bind the Consultant to all provisions.
- A statement that, if awarded the contract, the Consultant shall comply with all the requirements set forth in the RFP.
- A statement that the proposed key personnel shall be provided once NYSDOT issues a notice to proceed. The NYSDOT does not allow unapproved substitutes.
- Any claims of confidential and proprietary information should also be identified and addressed in this section. NYSDOT may 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, provided that NYSDOT agrees beforehand to shield the release of proposed information. If a proposer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. All proposers shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in your Cover Letter. NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm. The State will only consider those items confidential and proprietary which it agrees are confidential and proprietary based on the proof provided by the Consultant and responses to the State’s questions regarding any such claims.
- If there are multiple offices of the Consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.
- The full, legal names of all Subconsultants involved in your response.
A Table of Contents.
The Table of Contents which should identify each major section of the Consultant’s proposal, along with its initial-page number. Proposals should be well organized and outlined such that information can be easy located. Any separate companion document submitted (i.e., work example) shall be referenced in the Table of Contents.

Firm Experience.
The qualifications and prior experience of the Proposer are of high importance to NYSDOT. Direct, prior/ongoing, relevant experience in providing the requested services is highly desirable. Describe any relevant history, company background, relationships, and scope of provided products and services with other government agencies. To facilitate, please complete and submit Attachment 10 Firm Experience. If subconsultants are part of the proposer’s proposal, the Technical and Management Proposal shall include a Statement of Company Background describing each subconsultant, providing the same information as required for the prime Consultant.

Complete and submit Company References. Provide the names, address and phone numbers of at least two (2) transportation agencies or companies with whom your firm has transacted similar business in the last five (5) years. You must include contact names of individuals who are knowledge about your company’s performance on engagements for services similar to those sought by NYSDOT. If subconsultants are part of the proposal, the proposer shall submit at least one company reference for each of the subconsultants for similar services performed, and the description may include projects conducted by the subconsultant(s). The Technical and Management Proposal may include any additional reference information submitted to further support a firm’s technical submission. Provide details regarding how additional references or work sample are relevant to the services being requested via this RFP.

The Technical and Management Proposal shall include a description of the proposer team's experience with relevant state master plan services (or similar, relevant services) to clients of similar size and scope (preferred) to the project described in this RFP. It is important to note if the proposed team has stayed together during these engagements and how/if different personnel have been utilized. The proposer's experience description shall include information about its history working with the proposed subconsultants (e.g., nature of relationship, number of engagements worked together, duration of engagements, budget of engagements, percent split between firms).

Project Management. Complete and submit your proposed Project Management Plan Organization and Project Manager.

Describe your approach for managing and organizing the work, meeting all goals and objectives of the RFP, project and contract, and successfully accomplishing the scope of services as specified in the RFP and as proposed. Provide an organizational chart for the Project showing the names of the Consultant’s Project Manager and all proposed key personnel. Include a discussion of managing staffing (staffing plans) as well as management of all proposed subconsultants. Discuss the plan for phasing in temporary and long-term staff for implementation and support of the Project (for two years with two potential one-year extensions). Discuss issues associated with the incorporation of enhanced future service upgrades, and efforts towards keeping an eye on the future of travel information service provision.

Complete and submit Attachment 11. The Consultant’s Project Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant’s Project Manager is
responsible for all performance required while under contract, including the performance of all key personnel and support staff assigned to this Contract by the Consultant and Subconsultants. The Consultant’s Project Manager (or qualified designee) shall also be responsible for all contractual, administrative and billing matters on the Consultant’s side. Describe the level and type of all expected interactions with NYSDOT and NYSDOT’s stakeholders by this Consultant role.

**Scope of Services and Project Schedule.** Provide a detailed scope of services which describes all proposed tasks, activities, schedule and deliverables. A general scope of services is outlined in RFP Section 3. You may base your scope of services on these tasks or suggest alternative tasks which could improve the ability of the project to meet its objectives according to the skills, experience and expertise of proposed key personnel. NYSDOT seeks to allow maximum flexibility for the ideas, initiative and creativity of proposers. Alternative tasks and suggestions are encouraged and will be reviewed within the framework of the stated goals, objectives and scope of the project. Fully explain and justify your approach if significant departures from the RFP’s general scope are recommended.

Specifically, the response shall include detailed project plans and staffing plans. Include Exhibit 3B, to provide further details regarding proposed level of effort by staff by task. **Do not present any cost, salary or rate information in this schedule.**

Include a detailed schedule for completion of the project showing the duration and interaction of each task and all major milestones.

Describe the level of interaction contemplated with NYSDOT and with involved stakeholders.

Include explanations of any key project assumptions made when preparing your proposed scope of services. Provide an explanation of risks involved to make project delivery successful and how such risks are to be distributed to and handled by responsible parties.

**Key Personnel.**
Complete and submit **Attachment 11 Key Personnel Experience.** The proposal shall include personnel resumes and references (as set forth in Attachment 11) for all proposed Key Personnel (including Project Manager and any subconsultants) that are assigned to this account. The Key Personnel proposed by the Consultant are an important factor in the evaluation of Proposals. Complete and submit the applicable portions of Attachment 11 to provide Key Personnel information. Additional documents (resumes) can be added but no more than four (4) double sided pages should be provided for any one individual. Identify the availability status of Key Personnel candidates (e.g., confirmed, probable, in early negotiations, etc.). Include at least two references for each proposed Key Personnel. Key Personnel references identified in the proposer's proposal shall be English-speaking and available for contact between 9:00 am and 4:00 pm EST. Information for each reference shall include:

1. Client name and main line of business
2. Name, title, mailing address, e-mail address, and telephone number of primary contact person at the firm
3. Degree to which the proposed Key Person was directly responsible for, and the success of, delivery of relevant services for the other clients.

To be deemed responsive, prospective Consultants shall dedicate sufficiently qualified staff towards the management and execution of this Project.
4.5 Cost and Administrative Proposal Submittal

Cost Proposal Preparation: The Cost Proposal consists of two sections: (1) a Cost Section, which sets forth all-inclusive discrete firm fixed price deliverables and shall set forth a schedule of proposed not-to-exceed fully loaded rates for all proposed Key Personnel to deliver the scope of services via a time and materials payment method; and (2) an Administrative Section, which provides the required State certifications and other RFP administrative and response forms. Submit one signed original Cost Proposal with other copies identified as such.

To be deemed responsive, cost information shall not be included in the Technical and Management Proposal submittal, and technical and management information shall not be included in Cost Proposal submittal. It is the responsibility of the applicant to ensure that all costs, including any potential technology transfer costs, are included in its cost proposal. Failure to offer costs for all proposed activities to deliver the requested services may result in proposal dismissal.

A complete Cost and Administrative proposal shall contain the following:

Table 2. Cost and Administrative Proposal Submittal Checklist

<table>
<thead>
<tr>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Submit two (2) printed, complete, bound hardcopy Cost Proposals (one original) and one (1) complete electronic copy in MS Excel, Word and PDF formats on a thumb drive. Electronic copies shall be incomplete. One copy must be an original (contain original signatures)</td>
</tr>
<tr>
<td>□ Proposal Cover Page, with: “C037907 511NY Travel Information System Services, Cost and Administrative Proposal”, firm name and date of submission</td>
</tr>
<tr>
<td>□ Include Table 2: Cost Proposal Submittal Checklist</td>
</tr>
<tr>
<td>□ Include a copy of the Cover Letter (provided in the Technical Proposal). Three page limit</td>
</tr>
</tbody>
</table>

Cost Proposal: Cost Section Submission Requirements:

<table>
<thead>
<tr>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Include completed Attachment 12 Cost Proposal (without Exhibit 3B)</td>
</tr>
</tbody>
</table>

Cost Proposal: Administrative Section Submission Requirements:

<table>
<thead>
<tr>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Include a completed Attachment 4 Acknowledgement of Receipt (Form OAR) of all RFP Modifications</td>
</tr>
<tr>
<td>□ Include a completed, signed Attachment 5 Procurement Lobbying Law (PLL) Compliance Forms</td>
</tr>
<tr>
<td>□ Include a completed, signed Attachment 6 Prime Consultant Information &amp; Certifications</td>
</tr>
<tr>
<td>□ Include a completed, signed Attachment 6A Subconsultant Information (one for each proposed Subconsultant)</td>
</tr>
<tr>
<td>□ Include completed Attachment 7 New York Business Reporting</td>
</tr>
<tr>
<td>□ Include completed Attachment 8 Certification of Non-Collusive Bidding</td>
</tr>
<tr>
<td>□ Include a completed Attachment 9 Vendor Assurance of No Conflict of Interest or Detrimental Effect</td>
</tr>
</tbody>
</table>

Do not submit RFP Attachments 1, 2 and 3 in your proposal

Proposal Submission Checklist. The above checklist should be completed, included in your cost proposal, and should illustrate that all required items are provided. An explanation should be provided for any missing items. Depending on the missing items it could be deemed as an incomplete Proposal submittal and be grounds for removal from consideration.

To assist you to prepare responsive proposals, the RFP offers the following additional information regarding your Cost and Administrative Proposal sections:
Cost Proposal Section
A Cost Proposal for performing all proposed Scope of Services and delivering all proposed deliverables shall be submitted using Attachment 12.

Payment for service delivery shall be based upon acceptance of all-inclusive discrete firm fixed price deliverables and acceptably delivered scope of services via a time and materials payment method. Payment shall be made only after NYSDOT has accepted and approved each deliverable or milestone.

For all time and materials project work, proposers must provide both a hard copy and an electronic copy of each of the worksheets within this Excel spreadsheet as part of their response. PDF format is not acceptable. The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the proposer, although NYSDOT reserves the right to correct arithmetic errors.

The proposer shall include costs for all labor, overhead and fees as well as all costs of anticipated direct, out of pocket project-related expenses (travel, document preparation, etc.) to deliver all requested 511NY maintenance services.

Your Cost Proposal shall:

1. Include an explanation of the pricing structure and assumptions used in determining all proposed costs included in Attachment 12. The assumptions and the basis (background) determining proposed costs must be included in the Cost Proposal. Costs must be specified for all services.

2. Include an explanation of the pricing structure (Firm Fixed Price/Time & Materials) and the assumptions used in determining costs, as well as how those assumptions relate to the project staffing plan and schedule. Annual rates are required for all proposed Consultant key personnel (year to year adjustments cannot exceed 2.0%).

3. Affirm that the accepted Firm Fixed Price cost for all discrete scope of services delivery items shall remain fixed over the life of the contract.

4. Propose fully-loaded, not-to-exceed billing rates for each proposed key personnel for all Time & Materials scope work and, as applicable, for any work orders added to the contract. All proposed rates shall remain fixed for the entire length of each contract year for the two-year duration of the contract’s base term. Rates for additional contract years are not to be proposed, and can only be adjusted via draft contract Article 6.3 Specific Hourly Rates (RFP Attachment 1). Any rate adjustments are subject to NYSDOT approval.

5. Provide the number of labor hours per labor category by task and total project cost that form the basis for its proposed cost to deliver Time & Materials scope of services work.

6. Proposed Time & Materials costs shall include any and all project-related direct non-salary expenses (e.g., overhead (including insurances), profit/fixed fee (not to exceed 10%), travel, per diem expenses, etc.) to effectively and economically execute the responsibilities and tasks set forth in the RFP and/or Contract. All costs associated with directed travel shall not be bid and instead shall be budgeted into the awarded contract during negotiations after selection. Commuting travel costs are not allowed. All travel shall be directed travel by NYSDOT. Travel costs, parking fees, tolls, cost of document production/reproduction, and any other ancillary fees and costs directly necessary to support delivery of all project/contract services must be itemized and summarized. Reasonable reimbursement for all travel and travel-related expenses shall be limited to current NYSDOT allowances or reimbursement limitations. (Travel necessary to deliver
A contract for services will be used to manage the implementation of the Right of Way Adaptation Program (RWAAP). Some of the elements and metrics of the cost proposal may be consistent with the terminology used in the technical portion of the RFP response. NYSDOT may request a “Best and Final Offer” (BAFO) from any or all proposers during the final stages of proposal evaluation.

A contract for services will be used to manage the implementation of the Right of Way Adaptation Program (RWAAP). Some of the elements and metrics of the cost proposal may be consistent with the terminology used in the technical portion of the RFP response. NYSDOT may request a “Best and Final Offer” (BAFO) from any or all proposers during the final stages of proposal evaluation.

The State reserves the right to negotiate a lower rate adjustment than stated above for the additional extension periods. NYSDOT prefers not to adjust rates in a negative manner.

**Method of Payment.**
Payment for services provided under the agreement resulting from this RFP shall be fixed for the duration of the agreement unless changed by an executed supplemental agreement. The selected Consultant shall be reimbursed per Article 6 of the RFP’s Draft Contract (Attachment 1). Fixed price deliverables or milestones shall include all costs associated with delivering each task item per the Agreement’s Scope of Services (Schedule A), including all estimated travel, tolls, fares, meals, lodging, materials, etc. Delivery of variable scope work shall be reimbursed via agreed-upon Time and Materials budgets. Please designate a Billing Representative (could be proposed Project Manager) who shall be responsible for resolving any invoicing issues during the term of the Contract. The contract’s labor rates shall be used to calculate the cost for any additional services (work orders). All work orders shall be added to the Agreement by an executed supplemental agreement.

A Contract Year is anticipated to be from May 1st through April 30th (subject to change). The State fiscal year is April 1st through March 30th. The Consultant is put on notice that payments in any given fiscal year are contingent upon enactment of NYSDOT’s legislative appropriations. Pricing shall remain firm for the duration of the Contract.
Requests for progress and final payments shall be made by the designated Consultant on standard payment request forms (FIN 421). Use proper procedure for billing each deliverable: Submit a draft billing to NYSDOT’s assigned Project Manager via the following sample electronic billing: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The NYSDOT 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.

Three hundred sixty-five (365) days prior to expiration of initial two-year contract term, the Consultant shall provide pricing for optional years beyond the Contract term to the State, per the State’s direction.

All vendors are directed to register with the New York State Office of the State Comptroller to receive electronic payments.

**Cost Proposal: Administrative Section**

The second section of your Cost Proposal shall be the Administrative Section, consisting of completed RFP Attachments 4 through 9. Additional supporting information is presented below.

**Attachment 4 Acknowledgement of Receipt (Form OAR)**

Complete and submit Attachment 4 which will be administratively evaluated for compliance with RFP submission requirements. It is an RFP mandatory responsiveness requirement that all proposers acknowledge receipt of each RFP Modification released. Do not include any released RFP Announcements.

**Attachment 5 PLL compliance Forms**

Include a set of completed Attachment 5 Procurement Lobbying Law (PLL) Compliance Forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j (3) and Section 139-j (6) (b) and Offerer Disclosure of Prior Non-Responsibility Determinations). These forms are required with the RFP Response Form or if you do not submit an RFP Response Form then the PLL forms are required with the Proposal. These forms are also available at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions (Compliance Procurement Lobbying Law). Note: *Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award.*

**Attachment 6 Prime Consultant Information & Certifications**

Offerors shall complete and submit RFP Attachment 6 which will be administratively evaluated for compliance with RFP submission requirements. Attachment 6 is used to provide information about the Prime Consultant, to provide certifications regarding several RFP requirements, and to indicate acceptance of all terms and conditions contained in the RFP’s draft Contract (Attachment 1). Attachment 6 also requires the signature of an official authorized to bind the offeror to all contract provisions, a statement certifying that the proposal shall remain valid for at least 180 days, and a statement that, if awarded the contract, the offeror shall comply with all the requirements of the RFP including its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. *After proposal submission, no exceptions to any of the RFP’s draft contract’s terms and conditions will be entertained by NYSDOT.* Conditional bids shall be deemed non-responsive. Failure to accept the RFP’s draft contract is an automatic condition of non-award. Firms are encouraged to fully examine the RFP’s draft contract and to avail themselves of the opportunity to ask questions regarding the RFP’s draft contract before proposal
submission. NYSDOT will carefully examine questions posed regarding the RFP’s draft contract and will entertain only those changes to the RFP’s draft contract which are in the State’s best interest.

**Attachment 6A Subconsultant Information**
Offerors shall complete and submit one RFP Attachment 6A with all requested information about the proposed Subconsultant and be administratively evaluated for compliance with RFP submission requirements.

**Attachment 7 New York Business Reporting**
Complete and submit Attachment 7 which will be administratively evaluated for compliance with RFP submission requirements. The inclusion of New York State-based businesses in the execution and progress of this Project is encouraged. Bidders are required to report any proposed Project participation by NYS businesses.

**Attachment 8 Certification of Non-Collusive Bidding**
Complete and submit Attachment 8 which will be administratively evaluated for compliance with RFP submission requirements. All Bidders must submit an attestation that there was no collusion with other bidders. Firms shall also identify any partnerships or corporations to which they belong.

**Attachment 9 Vendor Assurance of No Conflict of Interest or Detrimental Effect**
Complete and submit Attachment 9 which will be administratively evaluated for compliance with RFP submission requirements.

5 PROPOSAL EVALUATION PROCESS

5.1 Pre-Screening of Proposals/Administrative Proposal Section Evaluation

**Proposal Due Date.** All proposals must be delivered to NYSDOT Contract Management in hard copy by 2:00 PM on March 9, 2020. Any proposals received after that time/date shall not be evaluated further.

**Proposal Opening, Log-in and Certification.** Proposals received on or prior to the due date and time will be opened, inventoried for completeness, certified, and logged-in (per Tables 1 and 2 in RFP Section 4). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT in the most-timely manner possible.

**Complete Proposal.** It is NYSDOT’s sole discretionary determination as to whether a proposal is complete per RFP Tables 1 and 2. Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness requirements may be deemed incomplete and non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

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

1. Complete Technical and Management proposal submission (Table 1)
2. Complete Cost and Administrative proposal submission (Table 2)
3. Acceptance of RFP’s draft contract
4. Acknowledged receipt of any and all RFP Modifications (Attachment 4)
5. Submission of acceptable Procurement Lobbying Law compliance forms (Attachment 5)
**Attachment 6 Prime Consultant Information & Certifications.** NYSDOT shall review all submitted information for completeness and correctness. Each proposer must acknowledge all required certifications. Each proposer must accept all the RFP’s draft contract terms and conditions. Failure to acknowledge all required certifications and accept all the RFP’s draft contract’s terms and conditions shall be grounds for proposal dismissal.

Verifiable Statements: NYSDOT has the right to request authentication of any certifications or statements of ability and capacity to meet and provide the requirements outlined in this RFP. Failure to provide acceptable supporting documentation or references in a timely manner (30 days) or to verify any statements or certifications is grounds for removal from further consideration.

**Attachment 6A Subconsultant Information.** NYSDOT shall review all submitted information for completeness and correctness.

**Attachment 7 New York Business Reporting.** NYSDOT shall review all submitted information for completeness and correctness.

**Attachment 8 Certification of Non-Collusive Bidding.** NYSDOT shall review all submitted information for completeness and correctness.

**Attachment 9 Vendor Assurance of No Conflict of Interest or Detrimental Effect.** NYSDOT shall review all submitted information for completeness and correctness.

5.2 Evaluation Category Weight Distribution

Proposals will be evaluated using the NYSDOT’s Best Value method based upon a 100-point scale with major subcategories corresponding to the Technical and Management Proposal (75), and the Cost Proposal (25). The cost portion of the Cost and Administrative proposal will be evaluated and numerically point scored and will represent up to 25 points of the total Best Value score for the proposal. The Administrative portion of the Cost and Administrative proposal shall be evaluated on a pass/fail basis and will not point scored. A more detailed breakdown of the RFP’s technical and cost proposal evaluation factors and weights follows.

5.3 Technical & Management Proposal Evaluation (General)

Technical evaluation of proposals will be accomplished by NYSDOT evaluators who will evaluate and score each proposal individually (may ask initial clarification questions). Using the RFP’s evaluation factors, each evaluator shall measure the degree of responsiveness to the specifications and requirements contained in the RFP with a focus on the quality, reasonableness and professionalism of each proposal. The quality of a firm’s approach shall be evaluated as an integral part of each functional and non-functional requirement response (as applicable). Evaluators shall convene as a group to discuss each proposal and their findings and scores. Evaluators will be allowed to revise scores on the basis of the committee discussions. Reasons for score changes will be documented. Clarification questions may be formulated during group discussion and forwarded to firms for response. Clarification responses from proposers shall be forwarded to the evaluators for additional consideration.

The resulting raw average technical proposal score by proposer shall be determined with proposers listed in alphabetic order and by initial and final best value rank order.

5.4 Technical and Management Written Proposal Evaluation (up to 75 Points)

The technical evaluation criteria listed below, per the RFP, shall be used by evaluators to measure responsiveness of proposals. The major evaluation subcategories are assigned no subweights, as the one higher-level category weight covers all subcategories. These are detailed below:
1. Experience (up to 35 points)
   a. Quality, extent and relevance of current and prior experience of the firm. Confidence in the Firm to deliver the Project as proposed.
   b. Quality, extent and relevance of experience, education and training of Key Personnel.

2. Approach and Quality of Proposal (up to 10 points)
   a. Degree to which proposal reflects understanding and comprehension of the project.
   b. Quality and acceptability of approach for accomplishing project objectives.
   c. Demonstrated ability to keep up with current 511 travel information service; ability to effectively recommend service upgrades due to market or technology changes via efficient and cost effective upgrades.

3. Management Plans, Scope of Services and Schedule (up to 20 points)
   a. Quality, acceptability and degree of relevant management expertise demonstrated via the proposed project management plan.
   b. Sound scope of services. Ability to maintain all required services is effectively demonstrated.
   c. Completeness and reasonableness of schedule.

4. Organization and Staffing (up to 10 points): Quality of project organization; reasonableness of staff/task allocations for each task and total effort, including quality of plan for phasing Key Personnel into project.

5.5 Reference Checks
Reference checks (to verify offered experience) may be required to complete the evaluation of technical proposals. In cases where evaluators are unfamiliar with a firm’s work or NYSDOT does not have prior consultant performance documentation, evaluators may request verification of a firm’s offered references. Subject references shall be contacted by Contract Management using its standard reference check questionnaire, adjusted to the specifics of the RFP. Reference check feedback will be forwarded to evaluators for their considerations during the group discussion phase. Evaluators may meet to consider reference check information. Evaluators will be allowed to revise their technical scores based on consideration of this additional information and their follow-up discussions. Changes to scores and the reasons for those changes shall be recorded on written scoresheets.

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

5.7 Cost Proposal Evaluation (Up to 25 Points)
Cost proposals shall be reviewed, evaluated and scored for all proposals once they have been determined to meet the RFP’s minimum response requirements. Cost proposals shall be evaluated and point scored with up to 25 best value points available. Initial cost scores shall be developed and used to identify initial Best Value scores. Cost proposal clarification questions may be asked at this time.

The cost proposal with the lowest total cost per RFP Attachment 12 Exhibit 1 to deliver all requested RFP #C037907 services shall receive a perfected cost score of 25 points. Proposals with higher total costs shall receive proportionately lower cost proposal scores.
Cost scores are subject to change depending upon whether cost proposal clarifications or Best and Final Offers are requested. Cost scoring results shall be used to determine which proposals are susceptible to contract award (a best value determination). A final cost score shall be calculated once all cost proposal evaluation has been completed.

5.8 Initial Best Value Determination

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

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

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

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

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

5.10 Final Best Value Evaluation

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), the final average weighted Technical and Management proposal score shall be added to the firm’s cost score to generate a tentative Final Best Value Score. Firms shall be ranked in Final Best Value Score order (highest to lowest).

*Tie-Breaking Rule*: Should any of the tentative final Best Value Scores of one or more proposals competing for the contract award lie within one (1) point of each other, then State Finance Law Section 163(10)(a) shall be used to settle any ties.

Once all possible score ties have been resolved, NYSDOT will determine the Final Best Value Score and that proposer shall be recommended to NYSDOT Executive Management for contract award for Contract #C037907.

5.11 Consultant Selection Recommendation & Tentative Contract Award

A designation recommendation memo shall be prepared and forwarded to the applicable NYSDOT Executive Manager(s) that includes details of the proposal evaluation process. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award of #C037907. The Executive Manager will be asked to concur with the conclusion of the
proposal evaluation process - a recommendation for the tentative contract award(s) - and designate the top-Best Value rated consultant based upon the above results.

Should negotiations with the top-ranked Best Value Consultant fail to produce an agreed-upon contract, then NYSDOT Executive Management will designate and award Contract #C037907 to the next highest-ranked Best Value Consultant. In that event, the Department will enter into negotiations with the second-highest rated Consultant. This process may repeat itself until acceptable contracts are consummated. The Consultant designation becomes final after the NYS Office of the State Comptroller approves Contract #C037907.

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

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation(s) will be posted on the ‘Consulting Services’ portion of NYSDOT’s website: https://www.dot.ny.gov/business. All proposers will be notified in writing regarding the results from the solicitation and will be offered an opportunity to hold a debriefing. Debriefing requests should be made to NYSDOT’s Designated Representative within 15 calendar days from the date of the designation notice.

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

5.12 Protest Procedure

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

6 ADMINISTRATIVE SPECIFICATIONS

6.1 State’s Rights

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

1. To accept or reject any or all Proposals, in part or in whole;
2. To cancel this RFP;
3. To correct any arithmetic errors in any or all Proposals;
4. To change the Proposal’s due date upon appropriate notification to interested Firms;
5. To eliminate any mandatory RFP requirement or specification unmet by all Offerors in the evaluation of received Proposals;
6. To adopt any or all of a successful Offeror’s Proposal;
7. To negotiate modifications to the scope, milestone or deliverable 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;

8. 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;

9. To revise/amend any provision of this RFP by written notification to Offerors, prior to Proposal submission;

10. To eliminate any requirement that is found to be unmet by all Offerors;

11. 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;

12. To select and award the Contract to the Offeror whose Proposal represents the best value to NYSDOT;

13. To cancel the contract should the selected Consultant (after Contract #C037907 has been fully approved and notice to proceed has been given) not make available the team of key personnel proposed by the Consultant at the start of work, and that NYSDOT can award Contract #C037907 to the next Best Value proposal without readvertising.

14. 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;

15. If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and

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

6.2 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:

1. It is two (2) years or less between the date that the individual is proposed and the individual’s date of separation from the State.

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

Procedure

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

2. A copy of this opinion must be on file in the Consultant’s office and available for review by NYSDOT if requested.
3. Failure to obtain New York State Joint Commission on Public Ethics (http://www.jcope.ny.gov/) approval for an individual’s participation in a Project may jeopardize the Firm’s designation for that Project.

6.3 Cost Liability
NYSDOT is not responsible or liable for any costs incurred by any Bidder prior to the signing of a Contract.

6.4 Information for the Selected Consultant

6.4.1 Vendor Responsibility
In accordance with the NYS Finance Law, NYSDOT will only make Contract award to Vendors that are determined to be responsive and responsible. All selected Offerors of Contracts valued at one hundred thousand dollars ($100,000 USD) 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 one hundred thousand dollars ($100,000 USD) or more is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

6.4.2 Registration with NYSDOT
Firms entering into Contracts with the New York State Department of Transportation (NYSDOT) as Prime Consultants, joint venture partners, Subcontractors, or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb). All 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 Firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered Firms are responsible for verifying and updating their registration information for the duration of the agreement.


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

6.4.3 Registration with Statewide Financial System (SFS)
Should this solicitation lead to a designation, the Prime Consultant 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.

6.4.4 Consultant Employment Disclosure Requirements of this Project
To become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006, go to the Office of the State Comptroller’s (OSC) website (http://www.osc.state.ny.us/procurement/consultantdisclosure.doc). Upon Contract signature, the Consultant selected for this solicitation shall be required to complete and submit Form A (“State Consultant Services – Contractor’s Planned Employment”) which can be found on the OSC website. For each Contract Year thereafter, the Consultant shall complete and submit Form B (“State Consultant Services Contractor’s Annual Employment Report”). Copies of the completed Form B shall be submitted to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the Contract is in effect.

6.4.5 Insurance Requirements of this Project
Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 – Draft Contract 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 selected as a result of this solicitation and will not be waived.

6.4.6 Contractor Tax Certification
Per Section 5-a of the NYS Tax Law, all Vendors selected for Contracts in excess of one hundred thousand dollars ($100,000 USD) 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. Firms should make themselves familiar with these forms by visiting the following websites:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf  (Form ST-220-CA) and
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf  (Form ST-220-TD)

6.4.7 EO177
In accordance with Executive Order No. 177, the selected Consultant shall be is required to certify via completion and submission of Attachment 3 EO177 Certification 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. Do not submit Attachment 3 in your proposal – for informational purposes only; only for the selected Consultant.

7 ATTACHMENTS
Attachment 1: Draft Contract
(FYI Only – do not submit in your proposal.)

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. Project No.: SPR1255

P.I.N.: P116.52.881

COMPTROLLER'S CONTRACT NO. C037907

PROJECT: 511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES

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

CONSULTANT FIRM ADDRESS

(herinafter referred to as "CONSULTANT")

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

Subject to the provision of ARTICLE 14 hereof, the CONSULTANT shall perform all of the work described in SCHEDULE A generally in accordance with the CONSULTANT'S PROPOSAL and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this AGREEMENT. It is understood and agreed that ________________ shall serve as the CONSULTANT's Project Manager and as such shall have the responsibility for the overall supervision and conduct of the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described therein. Any change of key project personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval, of all necessary state officials.
The CONSULTANT shall commence work no later than ten (10) days after receiving notice to proceed from the STATE, and all of the Consultant’s proposed Key Personnel must be working under this Agreement within two weeks after Consultant receipt of NYSDOT’s Notice to Proceed. All Key Personnel shall remain available until work under C037907 has been completed.

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, Appendix D, and Appendix E; Exhibit A; Schedule A (including Exhibits); Schedule B (including Exhibits); the STATE’s Request for Proposals (RFP; dated February 5, 2020, as modified) incorporated by reference; and the CONSULTANT’s Proposal (dated ____, as clarified) 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 Twenty-Four (24) Months from May 1, 2020 to April 30, 2022. Additionally, this AGREEMENT may be extended for up to two one-year periods based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT.

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

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

ARTICLE 6. PROVISION FOR PAYMENT.

Item I. If the AGREEMENT is extended beyond April 30, 2020, then all of the Specific Hourly Rates of pay shown in EXHIBIT 3 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 final month period (usually four months from current) as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 2.0%, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.
Item II. The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose. In no event, however, will monies be deleted from this Agreement except pursuant to ARTICLE 16 hereof, entitled Termination.

Item III. Specific Hourly rates of pay shown in SCHEDULE B (EXHIBIT 3) for employees assigned to this PROJECT shall be used to estimate fair reimbursement for any and all EXTRA WORK added to the Agreement per Article 10 per Supplemental Agreement.

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](http://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 for accepted firm fixed price deliverables or milestones for all actual allowable costs incurred during the period of performance in accordance with ARTICLE 6 of this AGREEMENT and in accordance with Schedule A and Schedule B of this Agreement. Bills are subject to the approval of the State's Project Manager, or their successor as identified by the STATE. Payments shall not be withheld unreasonably.

The CONSULTANT shall inform the STATE and all Subcontractors and Subconsultants of the Consultants schedule for submitting scheduled 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 Section 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 employer’s 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 C037907 and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov

Certificates may be mailed to:

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

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

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

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

a. Direct the Consultant to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
b. May withhold further contract payments in accordance with Partial Payments, Section 109-04 of the Standard Specifications, or
c. Treat such failure as a breach or default of the contract.

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

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

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

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

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

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

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

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

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

2. Commercial General Liability Insurance. The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than $1,000,000.00 per occurrence and not
less than $2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).

b. All insurance policies required by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to “the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees” using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.

c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.

d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.

e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.

f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

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

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.

**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 Section 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, Appendix D, and Appendix E;
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 #C037907
Title: Deputy Assistant Commissioner, Director, 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 purposes of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the 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 A) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May15th 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
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 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.

ARTICLE 37. IT PROJECT REQUIREMENTS. [Pertinent only to any new IT Project Development Work or any new IT application developed under this Agreement]

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

   • “Consultant-Owned Software” and/or “Proprietary Software” means Software developed and owned by the Consultant or its subcontractors which either pre-exists, or whose development is not funded by this Agreement.
   • “Commissioner” means the Commissioner of Transportation of the State of New York or their duly authorized representative.
   • “Developed Software” means any and all Software and associated documentation that are specific to the Project Scope of Services and Deliverables developed under this Agreement.
   • “Enhancement” shall mean any changes or additions to Software, other than Maintenance Releases, New Versions, or modifications, tailoring and/or customizations resulting from Integration Services that improve features or functions, add new features or functions, or improve performance.
   • “Equipment” for Commercial-Off-the-Shelf Software or Consultant-Owned Software, Equipment consists of any computer or computer system on which such software may be used pursuant to the relevant license; for Developed Software, Equipment consists of any computer or computer system.
   • “Error” shall mean any error, problem, or defect resulting from: (i) incorrect coding, or (ii) any failure of a deliverable to meet specifications.
   • “FHWA” means the Federal Highway Administration, an operating administration of the U.S. Department of Transportation.
"Licensed Software" means any Consultant-Owned Software and any Third-Party Software provided by the Consultant pursuant to this Agreement.

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

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

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

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

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

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

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

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

"Project" means the provision or development of testing, evaluation, deployment and support for any IT-related aspects of NYSDOT’s ATDM Program, as more fully described in this Agreement’s Scope of Services.

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

"Scope of Services" means Schedule A – Scope of Service of this Agreement.

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

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

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

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

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

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

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

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

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

2. **IT Project Management.** Any IT Project or any IT application under this Agreement shall be performed under the direction and contract administration of NYSDOT and in accordance with the New York State IT Project Management Methodology, as defined in the New York State Project Management Guidebook.

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

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

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5. **Disputed Work.** If Consultant is of the opinion that any work ordered by NYSDOT to be done as contract work is extra work and not contract work, or that any order of NYSDOT exceeds the work requirements of this Agreement, Consultant shall promptly, within ten (10) work days of receipt of the order or direction, so notify NYSDOT's Project Manager, in writing, explaining Consultant's contention. Consultant must progress the work as required and ordered. In the meantime, Consultant, if it considers the issue unresolved, shall promptly, within ten (10) work days of receipt of NYSDOT's written decision, notify the Commissioner, in writing with copies to the Project Manager, of its contentions relative to the dispute, indicating the substance of previous communication with the Project Manager on the issue and its rebuttal of the previous findings. The Commissioner or his/her designated representative shall make a finding thereon and notify Consultant of same in writing in a timely manner. If such work is determined by the Commissioner or his/her designee to be extra work pursuant to the provisions of this Article, NYSDOT will initiate a Supplemental Agreement. If the Commissioner or his/her designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct Consultant to continue the disputed work, and Consultant must promptly comply. Consultant's right to pursue a dispute under this Article
for extra compensation will not be affected in any way by Consultant's complying with the directions of the Commissioner or the Project Manager to proceed with the work, provided Consultant continues to keep and furnish documentation of the extra work claimed.

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

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

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

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

   1. Consultant grants a royalty-free, perpetual, transferable, nonexclusive and irrevocable license for all Intellectual Property related to the Licensed Consultant-owned Software for authorized users of any IT Project software under NYSDOT's ATMD Program (including entities outside of NYSDOT).

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

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

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

8. **Intellectual Property Developed Under This Agreement.** Rights to intellectual property developed under this Agreement shall be allocated and owned in accordance with the following:

a. **Federal Law.** The applicable provisions of Federal Law and regulation provide for the non-Federal parties of an agreement to retain all intellectual property rights developed under this Agreement, subject further to the provisions defining, identifying, allocating, or restricting such rights otherwise set forth herein.

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

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

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

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

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

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

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

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

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

10. **Delivery of Developed Software.** All source and object codes for the Developed Software, i.e., all software custom developed for any IT Project or any IT application under this Agreement, shall be provided to NYSDOT during System Implementation to support the maintenance of ATDM IT Project. This will include the software, documentation of the customization, and training materials for the maintenance of the customized software.

11. **Training, Support and Maintenance.** Consultant shall offer training in the use and implementation of any IT Project or any IT application under this Agreement and any COTS, Developed or Consultant-Owned Software, to NYSDOT staff, consultant, and other structure owners, including but not limited to municipalities, state and local authorities, commissions, and railroads that will be using any IT Project or any IT application under this Agreement, in accordance with the RFP and any other part of this Agreement.

   a. **Scope and Duration of Consultant Maintenance and Support of Proprietary, Developed, and/or Licensed Third-Party Software and Systems.** Following initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing maintenance and support during the term of this Agreement for such software and systems. Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance and support for Consultant’s proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

   b. **Terms and Conditions of Maintenance.** The maintenance to be provided by Consultant under Article 33.10(a) of this Agreement shall include, but not be limited to, providing new releases or updates if issued, and/or patches or bypasses, to address any known problem, i.e., any substantial deviation of unmodified software or systems from their then applicable specifications. Consultant shall provide access to the current version of such software and systems. Consultant’s obligation to provide ongoing maintenance shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same for a period of twelve (12) months after it is first superseded. Subject to such additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance for Consultant’s proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

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

d. **Terms and Conditions of Support:**

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

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

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

a. **Repeated Failure Constituting Material Breach.** If the System fails to perform properly in accordance with the system acceptance for a second time, NYSDOT may determine that such failure constitutes a material default under this Agreement for the purposes of the default and termination provisions of this Agreement or may afford the Consultant with additional opportunity to cure the default.

b. **Correction Costs.** The Consultant’s correction of the product deficiency shall be at no additional cost to NYSDOT, unless the system acceptance failure(s) are the results of Disputed Work within the meaning of Article 33.5 of this Agreement (in which case the remedy within such section applies). The Consultant shall, however, bear sole responsibility for the costs of correction of product deficiencies revealed by such testing, including all previously unanticipated and unscheduled time and effort required for the development of corrective measures.

13. **Warranty Provisions.** Consultant warrants that, for 18 months from the acceptance of any IT Project or any IT application under this Agreement per the successful completion of the system acceptance, any IT Project or any IT application Software and Systems created under this Agreement, including all Service Components, Developed Software, and Consultant-Owned Software furnished hereunder, shall be free from significant programming and operational errors which shall prevent it from operating in conformity with the standards set forth in this Agreement.

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

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

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

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

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

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

14.2.1 In the event of the termination of this Agreement for failure of any IT Project or any IT application under this Agreement element or component, or in the performance of any IT Project or any IT application under this Agreement during the Warranty Period as stated in Article 33.13(a) of this Agreement, NYSDOT may: 1) recover from Consultant all costs, fees, and expenses incurred by NYSDOT to remedy such failure, including for elements which are rendered substantially useless as a result of such failure, up to the amount paid to Consultant for the Project element that has so failed; and 2) if such failure is integral to any IT Project or any IT application under this Agreement, all money paid for any IT Project or any IT application under this Agreement, as well as associated services.

14.2.2 In the event of the failure of any IT Project or any IT application, element or component under this Agreement, or in the performance of any IT Project or any IT application, software, systems or services provided under this Agreement during the Warranty Period as stated in Article 33.13(a) of this Agreement, NYSDOT may suspend Consultant’s performance, in whole or in part, without terminating this Agreement, and contractually or otherwise remedy the failure at costs to be charged to Consultant or offset against Consultant’s compensation under this Agreement. In the event of such suspension or other remedy, Consultant’s aggregate liability shall not exceed two hundred percent (200%) of the amount stated in 14.2.1 above.

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

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

14.3 Delivery of Documentation. In the event of suspension or termination pursuant to this Article, Consultant shall secure for and deliver to NYSDOT all documentation relating to the contracts terminated thereby, including but not limited to any designs, plans or specifications, contract and subcontract documents, tapes or discs, or software.

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

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

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

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

14.7 Reserved.

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

14.9 Limitation of Liability/Exclusion of Damages. Except for Licensee’s breach of confidentiality obligations hereunder, in no event shall either party be liable to the other for any incidental, indirect, special, consequential or punitive damages related to the software that is not expressly provided for elsewhere in this Agreement and its attachments and exhibits, including without limitation lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from the software’s use, even if the party from which such damages are sought has been advised of the possibility of such damages.
IN WITNESS WHEREOF, this Contract No. C037907 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT, by signature below, has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK
_________________________________ ____________________________
CONTRACT MANAGEMENT DEPARTMENT OF TRANSPORTATION

DATE: ______________________ DATE: ______________________

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

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: ___________________________
Name of FIRM

--------511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES--------

APPROVALS

ATTORNEY GENERAL THOMAS P. DiNAPOLI
STATE COMPTROLLER

By ___________________________ By ___________________________
Name of FIRM

Date: ______________________ Date: ______________________
Acknowledgement for Contract #C037907 Original Agreement

For contracts signed in New York State

State of New York )

County of ) ss.:  

On the_______ day of ___________ in the year 2020, 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 2020 before me, the undersigned, personally appeared ____________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in ________________________________ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

________________________________________

NOTARY PUBLIC

______________________________

(Signature and office of individual taking acknowledgement.)

My Commission Expires: ________________________________
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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 § 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: https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012

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 § 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.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Updated October 2019
During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

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

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

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

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

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

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

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

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS
(June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (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 Comptroller’s Office and the U.S. Governmental Accountability Office (GAO).

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

**THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE**

The Catalog of Federal Domestic Assistance (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:

(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.

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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.

2 [http://www.cfda.gov/](http://www.cfda.gov/)
(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 subcontractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subcontractors, 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 (NYS DOT) after the date of the notice by the NYS DOT 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 NYS DOT 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 has the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246).

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

6. PERSONNEL ACTIONS Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:
(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

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

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

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

7. TRAINING AND PROMOTION

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

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

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

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

8. UNIONS

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

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

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

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

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.
9. AFFIRMATIVE ACTION IN SUBCONTRACTING  (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

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

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

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

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

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

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

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

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

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

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

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows: The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

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

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less 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

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 NYSDOT, 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 Section 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.

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

II. MWBE Utilization Plan

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

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

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

III. Waivers Post Contract Execution

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

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

IV. Liquidated Damages – MWBE Participation

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

B. Such liquidated damages shall be calculated as an amount equaling the difference between:
   1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
   2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSDOT, the Consultant shall pay such liquidated damages to NYSDOT within sixty (60) days after they are assessed. Provided, however, that if the Consultant has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR Section 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consultant following the complaint process.

Revised July 12, 2017
APPENDIX E

INFORMATION TECHNOLOGY INFRASTRUCTURE REQUIREMENTS

1. PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE
1.1 Consultant is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Consultant is providing under this Agreement.

1.2 All Data security provisions agreed to by the Consultant within this Agreement may not be diminished for the duration of this Agreement. No reduction in these conditions in any fashion may occur at any time without prior written agreement by the parties amending this Agreement.

2. SECURITY POLICIES AND NOTIFICATIONS
2.1 State Security Policies and Procedures: The Consultant and its personnel shall review and implement all State security policies, procedures and directives currently existing or implemented during the term of this Agreement, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)).

2.2 Security Incidents: Consultant shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies).

3. DATA BREACH - REQUIRED CONSULTANT ACTIONS
3.1 Unless otherwise provided by law, in the event of a Data Breach, the Consultant shall:

3.1.1 notify the NYSDOT Project Coordinator or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Consultant has knowledge of a Data Breach;

3.1.2 consult with and receive authorization from the NYSDOT Project Coordinator as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by NYSDOT;

3.1.3 coordinate all communication regarding the Data Breach with the NYSDOT Project Coordinator

3.1.4 cooperate with the NYSDOT Project Coordinator in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and

3.1.5 take corrective action in the timeframe required by the NYSDOT Project Coordinator. If Consultant is unable complete the corrective action within the required timeframe, the NYSDOT Project Coordinator may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to NYSDOT, or until NYSDOT has completed a new procurement for a replacement service system. The Consultant will be responsible for the cost of these services during this period.

3.2 Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General (“OAG”) to bring an action against Consultant to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Consultant's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

4. DATA OWNERSHIP, ACCESS AND LOCATION
4.1 Data Ownership: NYSDOT shall own all right, title and interest in Data.

4.2 Access to Data:

4.2.1 NYSDOT shall have access to its Data at all times, through the term of the Agreement.

4.2.2 NYSDOT shall have the ability to import or export Data in piecemeal or in its entirety at NYSDOT’s discretion, without interference from the Consultant.

4.3 Consultant Access to Data: The Consultant shall not copy or transfer Data unless authorized by NYSDOT. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Consultant shall not access any Data for any purpose other than fulfilling the service. Consultant is prohibited from Data Mining, cross tabulating, monitoring NYSDOT’s Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by NYSDOT be copied, disclosed, or retained by the Consultant or any party related to the Consultant. The Consultant is allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to NYSDOT upon request. Consultant must comply with any and all security requirements within the Contract.

4.4 Data Location and Related Restrictions: All Data shall remain within the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS. All Data in transit must be handled in accordance with FIPS-140-2 or TLS1, or TLS2 (or successor).
4.4.1 Support Services: All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. PERSONNEL

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

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

16. BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS

16.1 The Consultant shall provide a business continuity and disaster recovery plan to the NYSDOT Project Coordinator within 30 days of receiving the Notice to Proceed.

17. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

17.1 If required, Consultant will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that NYSDOT is required to comply with.

18. AUTHENTICATION TOKENS

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

19. MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION WITHIN AN AUTHORIZED USER AGREEMENT

19.1 As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. NYSDOT requires notification of any such changes to ensure security and business needs are met.

19.2 Any changes to the description, type of service(s), or SKU (e.g., PaaS to IaaS) must be provided to NYSDOT.

19.3 In addition, notification must be provided to the NYSDOT Project Coordinator for review and acceptance, prior to implementation. Any changes to the Agreement will require NYSDOT to re-assess the risk mitigation methodologies and strategies and revise the Agreement as needed.

Updated December 2015
EXHIBIT A  
CDL FORM B

State Consultant Services  
Contractor’s Annual Employment Report

Report Period: April 1, to March 31,

Contracting State Agency Name: Transportation  
Agency Code: 3900283

Contract Number: C037907

Contract Term: to

Contractor Name:

Contractor Address:

Description of Services Being Provided: 511NY Travel Information System Maintenance Services

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐ Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

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<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)
Schedule A

Scope of Services

Contract #C037907
511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES

<FIRM NAME >

PLACEHOLDER

(NOTE: Scope of Service may be taken from the RFP’s Scope of Service Section 3 AS IS)
SCHEDULE B
COMPENSATION
(Firm Fixed Costs, Labor Costs, Rates)

Contract #C037907
511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES

<FIRM NAME >

PLACEHOLDER

Exhibit 1
Contract Cost Summary
(Taken From RFP Attachment 12)

Exhibit 2
All Services Costs
(Taken From RFP Attachment 12)

Exhibit 3
Firm Fixed Price Task Costs
(Taken From RFP Attachment 12)

Exhibit 4
Direct Non-Salary Expense Costs
(Taken From RFP Attachment 12)

Exhibit 5
Fully Loaded Hourly Rate Schedule (by Title)
(Taken From RFP Attachment 12)
Attachment 2: Consultant Employment Disclosure Law Forms A and B
NYSDOT Request for Proposals for Contract #C037907
(FYI Only – do not submit in your proposal.)

FORM A

| State Agency Name: Transportation Agency Code: 3900283 |
| Contractor Name: | Contract Number: C037907 |
| Contract Start Date: / / | Contract End Date: / / |

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Total this page 0 0 $ 0.00

Grand Total

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, 2023 to March 31, 2024

Contracting State Agency Name: Transportation
Agency Code: 3900283

Contract Number: C037907

Contract Term to

Contractor Name:
Contractor Address:

Description of Services Being Provided: NYSDOT 511NY Travel Information System Maintenance Services

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

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<tr>
<th>O<em>NET Employment Category Number and O</em>NET Job Title</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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Grand Total

Name of person who prepared this report:
Preparer's Signature: ___________________________________________________
Title: ____________________________ Phone #: _____________________________
Date Prepared: / / (Use additional pages if necessary)
Attachment 3: Executive Order 177 Certification

NYSDOT Request for Proposals for Contract #C037907

INFORMATIONAL ONLY. DO NOT SUBMIT WITH YOUR PROPOSAL. ONLY FOR THE SELECTED CONSULTANT.

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.

Consultant: ______________________________________

By [signature]: _________________________________

Name [print]: _________________________________

Title: _________________________________________

Date: _____________ __, 20__
NYSDOT Request for Proposals for Contract #C037907

ACKNOWLEDGMENT OF RECEIPT OF RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

<table>
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<tr>
<th>NAME OF PROPOSER:</th>
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</table>

We hereby acknowledge receipt of the NYSDOT 511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES (Contract #C037907) Request for Proposals, dated February 5, 2020 and all subsequent RFP Modifications issued by NYSDOT, as listed below. Do not include any RFP Announcements.

Add additional lines below, if needed.

<table>
<thead>
<tr>
<th>RFP MODIFICATION NUMBER:</th>
<th>DATE ISSUED BY DEPARTMENT:</th>
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SIGNED: ____________________________

(Signature)

DATE: ______________________________

NAME: _____________________________

(Print name)

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

<table>
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<th>Contract No.</th>
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# Offerer Disclosure of Prior Non-Responsibility Determinations

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

Address: ____________________________________________________________________________

Name and Title of Person Submitting this Form: ____________________________________________

Contract Procurement Number: C037907

Date: ____________________________________________________________________________

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): No Yes

   If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle): No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

   Governmental Entity: ____________________________

   Date of Finding of Non-responsibility: ____________________________

   Basis of Finding of Non-responsibility: ____________________________

   (Add additional pages as necessary.)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.

   Governmental Entity: ____________________________

   Date of Finding of Non-responsibility: ____________________________

   Basis of Finding of Non-responsibility: ____________________________

   (Add additional pages as necessary.)

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

By: ____________________________ Date: ____________________________

Name: ____________________________

Title: ____________________________
PROCUREMENT LOBBYING LAW COMPLIANCE INFORMATION

Required Forms

The consultant shall complete and sign the forms below. 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 Section 139-j (3) and Section 139-j (6) (b)**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

**NYSDOT Guidelines and Procedures**

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through NYSDOT Contract Management Bureau’s Designated Contacts (listed below). 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.

Refer to the NYSDOT “Procurement Lobbying Law Interim Guidelines and Procedures” – see the Consultant’s page at NYSDOT’s “Doing Business with DOT” website:


**Summary of the policy and prohibitions regarding permissible contacts**

**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 Bureau Contract Management Specialist**
- **The Contract Management Bureau Contract Management Specialist supervisor**
- **The Contract Management Bureau Assistant Directors**
- **The Contract Management Bureau 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.

**Contacts After Designation**

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

- **The Contract Management Bureau Contract Management Specialist**
- **The Contract Management Bureau Contract Management Specialist supervisor**
- **The Contract Management Bureau Assistant Directors**
- **The Contract Management Bureau Director**
- **The Consultant Management Bureau consultant job manager**
- **The Consultant Management Bureau consultant job manager’s immediate supervisor**

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

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.

Rules, Regulations And More Information On This Law

For rules, regulations and more information on this law, please visit:

The Joint Commission on Public Ethics at: [http://www.jcope.ny.gov/](http://www.jcope.ny.gov/)

For more information, go to NYSDOT’s World Wide Web Site at [http://www.dot.ny.gov](http://www.dot.ny.gov) or contact:

Al Hasenkopf, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: Contract #C037907
E-Mail: alfred.hasenkopf@dot.ny.gov
Fax: 518-457-8475
NYSDOT Request for Proposals for Contract #C037907

CONTRACT NUMBER:   C037907

PROJECT TITLE:   NYSDOT 511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES

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 Consultant Identification Number (CIN):   

Consultant’s SFS Vendor Identification Number:   

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

Preparer's Name/Title:   

Address:   

Telephone #:  FAX #:  E-Mail   

Other Authorized Individual(s):

Name/Title   

Address:   

Telephone #:  FAX #:  E-Mail   

Add additional pages if necessary.
II. PRIME CONSULTANT CERTIFICATIONS

By signing below, I, _____________________________________________, authorized individual (NAME) Of _____________________________________________, make the following certifications (FIRM) regarding the subject proposal:

- **365-Day Firm Offer**: This proposal is a firm offer for a 365-day (or more) period from the date of submission.

- **Former NYSDOT Employee**: The firm has read and will follow the procedure outlined in RFP Section 6.2 if it proposes the services of a former NYSDOT employee(s).

- **Vendor Responsibility**: In accordance with New York State law, if selected for contract award, the firm will complete and submit the required Vendor Responsibility questionnaire through the Office of the State Comptroller VendRep system, which is accessible via: http://www.osc.state.ny.us/vendrep/index.htm. Vendors must certify the accuracy of the information they provide in the questionnaire and must file their VRQ within 10 days of notification of designation. NYSDOT cannot sign a contract if a firm’s vendor responsibility certification is more than 12 months old.

- **ST-220**: If selected for contract award greater than $100,000, the firm will complete and submit the required Forms ST-220-TD and ST-220-CA during negotiations with NYSDOT. The ST-220 forms with instructions are downloadable from the following websites: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

**Warranties and Representations: The Consultant certifies that:**

1. The Consultant shall perform all services in accordance with high professional standards in the industry
2. The Consultant shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the services
3. The Consultant shall use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State
4. The Consultant shall use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance
5. The Consultant shall perform the services in a manner that does not infringe the proprietary rights of any third party
6. The Consultant shall perform the services in a manner that complies with all applicable laws and regulations
7. The Consultant has duly authorized the execution, delivery, and performance of the Contract
8. The Consultant has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the State

**Signature:** ___________________________ Date: ______________

**Name (Spelled Out):** ___________________________ **Title:** ___________________________
III. ACCEPTANCE OF AGREEMENT*

By signing below, I, ________________________________, authorized individual
(NAME)
of ________________________________ hereby ACCEPT all terms and conditions
(FIRM)
contained in the Draft Contract (including Appendix A), which is included as Attachment 1 to this
Request for Proposals.

Signature: ________________________________
(NAME OF ACCEPTOR)
Attachment 6A: Sub-Consultant Information

NYSDOT Request for Proposals for Contract #C037907

(Please Fill Out One of these Forms for EACH Proposed Sub-Consultant. Please include these in Administrative Section of your Cost Proposal)

CONTRACT NUMBER: C037907

PROJECT TITLE: NYSDOT 511NY TRAVEL INFORMATION SYSTEM MAINTENANCE SERVICES

I. SUBCONTRACTOR INFORMATION

FIRM NAME: ________________________________________________________________

ADDRESS: ________________________________________________________________

CITY: __________________________ STATE: __________________________

ZIP CODE: ___________ - ___________

TELEPHONE #: (____) _____ - ___________ FAX#: (____) _____ - ___________

E-MAIL ADDRESS: __________________________________________________________

CONTACT PERSON: __________________________________________________________

Consultant's Federal Identification Number (FIN): __________________________
Consultant's Consultant Identification Number (CIN): __________________________
Consultant’s SFS Vendor Identification Number: __________________________

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

Preparer’s Name/Title: ________________________________________________________

Address: ________________________________________________________________

Telephone #: _______________ FAX #: _______________ E-Mail _______________

Other Authorized Individual(s):

Name/Title ________________________________________________________________

Address: ________________________________________________________________

Telephone #: _______________ FAX #: _______________ E-Mail _______________

Add additional pages if necessary.
**Attachment 7: New York Business Reporting**

**NYSDOT Request for Proposals for Contract #C037907**

**Encouraging Use of New York State Businesses in Contract Performance**

Check One

Will New York State Businesses be used in the performance of this Contract?  
☐ Yes  
☐ No

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<tr>
<th>Firm Legal Name &amp; Business Address (include any NYS address)</th>
<th>NYS Business? (Yes/No)</th>
<th>Est. Amt. of Total Proposed Contract Cost ($)</th>
<th>Est. % of Total Proposed Contract Cost (%)</th>
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<td>B. Subconsultants</td>
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**Total Proposed Contract Cost:**

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 subconsultants, 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 Consultant and its New York State business partners. New York State businesses will promote the Consultant’s optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

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

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below and if answered in the affirmative, completing and submitting the following table for all firms (prime consultant and all subconsultants) participating in your Proposal. The definition of ‘NYS Business’ is: ‘Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this Contract’. Indicate whether each proposed firm is classified as a NYS Business, the total dollar amount attributable to each firm, the total proposed Contract cost, and the NYS business address of each firm.
NYSDOT Request for Proposals for Contract #C037907

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 THERE TO 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:

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<tr>
<th>NAMES OF PARTNERS OR PRINCIPALS</th>
<th>LEGAL RESIDENCE</th>
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IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

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<th>NAME</th>
<th>LEGAL RESIDENCE</th>
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<td>President:</td>
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<td>Secretary:</td>
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<td>Treasurer:</td>
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<tr>
<td>President:</td>
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<tr>
<td>Secretary:</td>
<td></td>
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<tr>
<td>Treasurer:</td>
<td></td>
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</tbody>
</table>
NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW

Identifying Data

Potential Consultant: ____________________________________________________________

Address: ____________________________________________________________________
   Street
   ________________________________________________________________
   City, Town, etc.

Telephone: ___________________ Title: _______________________

If applicable, Responsible Corporate Officer

Name: ______________________ Title: _______________________

Signature: ___________________

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

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

By: ______________________ _______________________
   Name Name
   ________________________________________________
   Title Title

Address: ______________________ _______________________
   Street Street
   ________________________________________________
   City State City State
Attachment 9: Vendor Assurance of No Conflict of Interest or Detrimental Effect

Request for Proposals for Contract #C037907

The Firm offering to provide services pursuant to this RFP, 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.

9. Firms responding to this RFP 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:

Firm Name: ______________________________________

This form must be signed by an authorized executive or legal representative.
Attachment 10: Firm Experience

Request for Proposals for Contract #C037907

The qualifications and prior experience of the proposing Consultants are of great importance to NYSDOT. Direct, prior experience regarding the delivery of state DOT 511 travel information system maintenance services is highly desirable. Comparable firm experience is allowed only if a direct relevancy is clear. Provide a list of projects currently in progress and those completed within the last three to five years which are relevant to this effort. Proposers must demonstrate that experience and expertise through past and current project attestations and reachable, verifiable references. NYSDOT reserves the right to request information from any source so named and to contact additional references (including appropriate references not specifically named by proposers) to completely verify all offered experience.

<table>
<thead>
<tr>
<th>Requirement Description: Organizational Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td>The organizational overview should consist of a succinct statement outlining corporate/business history including a general mission statement, the overall number of employees per position, and other general information about the firm. The Offeror must demonstrate that it possesses adequate staffing resources, financial resources and organization to perform the type, magnitude and quality of work specified herein this RFP, and demonstrate that the Offeror has been in continuous operation for at least the past five (5) years. In addition, the Proposer must provide a statement of previous experience that qualifies the Proposer to provide the Project Services. Proposer may include information not defined as required in this section but deemed necessary to fully understand the Proposer’s Company experience and Staff Qualifications.</td>
</tr>
</tbody>
</table>

Consultant’s Organizational Overview Response:

<table>
<thead>
<tr>
<th>Requirement Description: Company Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide a description of the Proposer’s direct, prior experience in delivery of state DOT 511 travel information system maintenance services. Describe this experience and related services as well as describing the client in each case, the number of years the Proposer’s team has been providing such services, and information documenting the complexity and relative size of previous projects. This should include, but not be limited to:</td>
</tr>
<tr>
<td>1. the type of client (government entity, private company, etc.)</td>
</tr>
<tr>
<td>2. the number of locations</td>
</tr>
<tr>
<td>3. the project duration</td>
</tr>
<tr>
<td>4. the number of Proposer FTE’s involved in the implementation</td>
</tr>
<tr>
<td>5. the number of client FTE’s involved in the implementation</td>
</tr>
<tr>
<td>6. and any other information relevant to describing the client organization in the context of this RFP</td>
</tr>
</tbody>
</table>

Consultant’s Company Experience Response:
Requirement Description: **Company References**

Submit relevant project and contact information for reachable references for up to two past relevant company projects. It is preferred that each cited project experience be of similar scale and scope to this RFP. All cited company references must be reachable (i.e., willing to provide a reference on behalf of the proposer to NYSDOT upon request). The references should be willing to provide information via an emailed reference response form and possibly follow that up with a conference call to speak further on the proposer's behalf.

Fill out the requested information using the provided form. Use one form for each company reference provided, for up to two past project references. Be sure to cover the proposed Prime Consultant and each proposed Subconsultant.

Consultant’s Company Reference Response (include as many completed responses as appropriate):

<table>
<thead>
<tr>
<th>Reference Company Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference Main Line of Business:</td>
<td></td>
</tr>
</tbody>
</table>

**Reference Contact Information**

<table>
<thead>
<tr>
<th>Primary Contact Person’s Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td></td>
</tr>
<tr>
<td>Affiliation/Company Employed By:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
</tbody>
</table>

**Project Information**

<table>
<thead>
<tr>
<th>Project Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Start Date:</td>
<td></td>
</tr>
<tr>
<td>Project End Date:</td>
<td></td>
</tr>
<tr>
<td>Project Budget:</td>
<td></td>
</tr>
<tr>
<td>Number of Staff Involved:</td>
<td></td>
</tr>
<tr>
<td>Types of Staff Involved:</td>
<td></td>
</tr>
</tbody>
</table>

Degree to which offered key personnel were primarily responsible for project delivery:

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

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

A list of all sub-consultants and the duties they performed (if applicable):

Project results and benefits delivered to the client

Requirement Description: **Experiences with Subconsultant**
Information documenting the Proposer’s experience working with any proposed subcontractors (e.g. nature of the relationship, number of engagements worked together, duration of engagements, percent split between firms, etc.).

Consultant’s Subconsultant Experience Response:
Attachment 11: Key Personnel Experience

Request for Proposals for Contract #C037907

- Complete a profile form for each proposed Contractor key personnel.
- One form is provided below. Use additional pages as needed.

<table>
<thead>
<tr>
<th>Staff Name and Title:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Associations, Degrees, and Certifications:</td>
<td></td>
</tr>
<tr>
<td>Number of Years of Relevant Experience in the Proposed Project Role:</td>
<td></td>
</tr>
<tr>
<td>Description of Relevant Experience:</td>
<td></td>
</tr>
</tbody>
</table>

Consultant Key Personnel References:
- Provide two per proposed contractor staff person.
- Can cite more than one project – work needs to be relevant to the RFP.
- Use below form, one for each (fill in number blank – i.e., Staff Reference #1; Staff Reference #2, etc.)
- Form is expandable – be concise.
- Reference check evaluation criteria provided below

<table>
<thead>
<tr>
<th>Staff reference Number:</th>
<th>#____</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client Name (Reference Company):</td>
<td></td>
</tr>
<tr>
<td>Reference Main Line of Business:</td>
<td></td>
</tr>
<tr>
<td>Project Name:</td>
<td></td>
</tr>
<tr>
<td>Name &amp; Title of Contact:</td>
<td></td>
</tr>
<tr>
<td>Email Address &amp; Telephone Number:</td>
<td></td>
</tr>
<tr>
<td>Provide a Brief Description of Recent, Relevant Project for which they are Serving to Reference</td>
<td></td>
</tr>
</tbody>
</table>

Staff Reference Check Evaluation Criteria:
- Describe the nature of the project and the work that this staff member performed for you.
- How would you rate the staff member’s experience and qualifications?
- How well did the staff member respond to your needs?
- How pleased are you with the work the staff member has performed/is performing for you?
- Would you contract with this staff member again?
Attachment 12: Cost Proposal

NYSDOT Request for Proposals for Contract #C037907

Online: https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities
Attachment 13: 511NY Data Diagram

NYSDOT Request for Proposals for Contract #C037907
Attachment 14: 511NY Service Level Addendum

NYSDOT Request for Proposals for Contract #C037907

The Consultant hereby agrees to the following additional terms in regards to provision of services under this 511NY Services agreement:

1. System Availability

System Availability is the time the 511NY system is fully functional, accessible and capable of meeting contracted performance requirements. The availability measurement includes all Consultant-provided circuits, software, and hardware for the 511NY IVR/telephony, web site, mobile applications and data feed solutions.

The Consultant shall provide 511NY service 24 hours per day, 7 days per week, 365 days per year at or above a 99.8% monthly availability. This availability shall include:

- 511NY Website
- 511NY Mobile Website
- 511NY Mobile Application Support
- 511NY Transit
- 511NY XML Data Feed
- 511NY TRANSCOM Data Interface
- 511 IVR System
- 511NY WTA Web Based User Interface from October 1st to April 30th, or dates as designated by NYSDOT
- Social Media Support (Twitter)

The 511NY minimum monthly availability of 99.8% includes maintenance and upgrades as well as network outages at the data center. The 511NY minimum availability excludes wireless data provider outages and coverage unavailability.

The Consultant will be responsible for reporting system availability on a monthly basis. The Consultant will use proactive fault monitoring at least four (4) times daily, 365 days a year. Downtime shall be calculated from the Consultant’s first notification of service unavailability whether such notification is a result of proactive fault monitoring or verbal or written notification from NYSDOT or the public. The Consultant shall provide automatic credits on the following month’s bill if service level requirements are below 99.8% for a given calendar (billing) month, according to the table below.

<table>
<thead>
<tr>
<th>511NY Monthly Availability</th>
<th>Initial Credit Percentage of Total Monthly Charges</th>
<th>Additional Credit Percentage for each subsequent month where availability is below applicable availability level</th>
</tr>
</thead>
<tbody>
<tr>
<td>99.8 to 100%</td>
<td>0%</td>
<td>1.0%</td>
</tr>
<tr>
<td>98% to 99.7%</td>
<td>5%</td>
<td>1.5%</td>
</tr>
<tr>
<td>95% to 97.9%</td>
<td>20%</td>
<td>2.0%</td>
</tr>
<tr>
<td>90% to 94.9%</td>
<td>45%</td>
<td>2.5%</td>
</tr>
<tr>
<td>89.9% or below</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

For example, if the availability was 96% in Month 13, then the Consultant would apply the applicable credit and reduce Month 14’s billings to NYSDOT by 20% of Month 13’s charges. If Month 14-16’s service is 99.8% or higher, there would be no additional credits applied for those periods. However, if Month 16’s service availability level were to be 98.0%, then billings to NYSDOT for Month 17 would be reduced by 6.0% of Month 16’s charges (5.0% plus an additional credit percentage of 1.0% for the Month 13 substandard availability incident).

The consultant will not be penalized for failures by NYSDOT or any other consultants or public entities that supply part of the 511NY system not under the control of the consultant.
1.1 Trouble Ticket Response

The Consultant shall provide response to trouble/alarm tickets with the ticket acknowledgement and initial status in one (1) hour or less, 24/7/365. Trouble/alarm tickets received shall be resolved according to the parameters established within this Section. The restoration time requirements include travel time.

<table>
<thead>
<tr>
<th>Ticket Severity Matrix</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NYSDOT reserves the right to assign severity levels based on urgency and impact.</strong></td>
</tr>
<tr>
<td><strong>The following are examples of NYSDOT standard severity levels</strong></td>
</tr>
<tr>
<td>Severity 1</td>
</tr>
<tr>
<td>A severe service degradation or out-of-service condition</td>
</tr>
<tr>
<td>Significant loss of service or high business impact.</td>
</tr>
<tr>
<td>Complete or substantial loss of service or severe degradation of the system that makes the service unusable.</td>
</tr>
<tr>
<td>Inability to use a mission-critical application.</td>
</tr>
</tbody>
</table>

1.2 Penalties: Trouble Ticket Restoration Non-Compliance

Penalties shall be incurred by the Consultant for non-compliance to the trouble ticket response/restoration requirements set forth above. Downtime for each incident shall begin from the time notification/alarm is received and ends when the equipment is returned to proper operating condition. A proactive ticket should be opened by the consultant’s automated monitoring system, and that alarm starts the outage period. For purposes of this section, delays are calculated from the end of the applicable ticket restoration times specified in the applicable severity matrix in Section 1.1 above. For example, if it takes three hours
to restore a Severity 1 issue, then the delay is defined as one hour and the penalty is to forfeit 10% of the following month’s regular monthly charge.

In the event there is no applicable regular monthly charge, the amount of the credit shall be remitted directly to NYSDOT. The State, at its sole discretion, may waive any penalties based upon precipitating events such as: catastrophic failure, multiple simultaneous failures, and/or best effort attempts to ensure service.

<table>
<thead>
<tr>
<th>Non-Compliance</th>
<th>Severity 1 Penalties (per incident)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to ½ hour of delay</td>
<td>Forfeit 5% of the following month’s regular monthly charge.</td>
</tr>
<tr>
<td>Greater than ½ hour, less than or equal to 1 hour of delay</td>
<td>Forfeit 10% of the following month’s regular monthly charge.</td>
</tr>
<tr>
<td>Greater than 1 hour, less than or equal to 4 hours of delay</td>
<td>Forfeit 15% of the following month’s regular monthly charge.</td>
</tr>
<tr>
<td>Greater than 4 hours of delay</td>
<td>Forfeit 100% of the following month’s regular monthly charge.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Compliance</th>
<th>Severity 2 – 4 Penalties (average time to repair calculated on a monthly basis per severity level)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to ½ hour of delay on average of all tickets with the same severity level</td>
<td>Forfeit 5% of the following month’s regular monthly charge.</td>
</tr>
<tr>
<td>Greater than ½ hour of delay on average of all tickets with the same severity level</td>
<td>Forfeit 10% of the following month’s regular monthly charge.</td>
</tr>
<tr>
<td>Greater than 1 hour of delay on average of all tickets with the same severity level</td>
<td>Forfeit 15% of the following month’s regular monthly charge.</td>
</tr>
<tr>
<td>Greater than 4 hours of delay on average of all tickets with the same severity level</td>
<td>Forfeit 80% of the following month’s regular monthly charge.</td>
</tr>
</tbody>
</table>

1.3 Penalty Escalation

Repeat violations are cumulative at NYSDOT’s sole discretion:
1) 2nd occurrence during the billing month – 1.5 times penalty.
2) 3rd occurrence during the billing month – 2 times penalty.
3) 4th occurrence during the billing month – 3 times penalty.
4) 5th occurrence during the billing month – 4 times penalty.
5) nth occurrence during the contract term – n times penalty (e.g. 6th occurrence = 6x penalty).

2. Service Orders

The Consultant shall maintain a toll-free number, e-mail address and a secure web site for accepting, tracking, and closing Service Orders. The State may, at its discretion, provide Service Orders to the Consultant either in writing, electronically, or verbally. All Service Orders shall be completed according to the schedule in the following table:

<table>
<thead>
<tr>
<th>Service Order Type</th>
<th>Maximum Completion Time Software Only</th>
<th>Maximum Completion Time Hardware/Circuits Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor changes</td>
<td>Two (2) business days or as designated by NYSDOT</td>
<td>NA</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>Major changes</td>
<td>Ten (10) business days or as designated by NYSDOT</td>
<td>45 business days or as designated by NYSDOT</td>
</tr>
<tr>
<td>Expedite</td>
<td>No minimum parameter</td>
<td>No minimum parameter</td>
</tr>
</tbody>
</table>

The interval will begin once the Change Request has been submitted by NYSDOT and the Consultant has certified and acknowledged the details of the Service Order. For Service Orders classified as requiring a major redesign, the Consultant will implement the requested Service Order on the mutually agreed upon date.

The Consultant has until 5:00 PM on the scheduled due date to complete the Service Orders, unless otherwise mutually agreed upon. The maximum completion times listed in the preceding table do not include the time required for preliminary tasks that are the responsibility of NYSDOT, another Agency, or another Consultant, and that are outside of the Consultant’s control.

All changes shall be tested, verified operational, and accepted by NYSDOT, whenever possible, before entering production.

Consultant shall return all completed orders to NYSDOT within two (2) business days of completion. Completed orders shall contain at a minimum the following criteria:

- Order Number
- Order Description
- Order Entry Date
- Order Due Date
- Order Completion Date
- Name and phone number of requestor, and
- Name of person(s) completing order

### 2.1 Penalties: Service Order Non-Compliance

Penalties shall be incurred by the Consultant for non-compliance with Service Orders (Section 3 above). If all work is completed prior to the start of the next business day and the State incurs no additional charges (i.e., overtime), no penalty shall apply. If a penalty is incurred and a credit is due, the total number of days entitled to credit, adjusted upward to the nearest day, shall be accumulated for the monthly billing period and deducted from the monthly maintenance charge. In the event there is no applicable monthly maintenance charge, the amount of the credit shall be remitted directly to NYSDOT.

Penalties incurred per order if criteria are not met are:

- 1 day - $50.00
- 2 days - $100.00; and
- Over 2 days - $250.00 per day (any partial days shall be rounded up).

### 3. Reporting

The Consultant shall provide compliance reports, delivered within the first five days of each month for the immediate preceding month. These reports will similarly be available via a web portal. The reports will verify fulfillment of the service level requirements as stated in the 511NY RFP. The Consultant shall furnish NYSDOT with a monthly report on all alarm-monitoring and trouble-ticket activity in an electronic format agreed upon by NYSDOT.

#### 3.1 Penalties: Reporting Non-Compliance
Penalties incurred per month for failure to meet reporting requirements:

- Each report not received by the 6th business day of the month - $50
- Each report not received by the 15th of month - $250
- Each report not received by first day of next succeeding month - $500.

4. IVR Response

The 511NY Interactive Voice Response (IVR) system shall respond to the caller in three seconds or less.

The 511NY IVR system shall provide a Blocked Calls level of less than 5% (five percent) for equipment and services, based on the contracted Busy Hour Call Completions (BHCCs) with an average of 3 (three) minutes per call.

5. Traffic and Travel Conditions Reporting

Event information (examples below) shall be available to the public on the 511NY web site and mobile apps within one minute (60 seconds) of a completed entry by a NYSDOT Traffic Management Center (TMC).

- Construction activities.
- Roadway or lane blocking incidents.
- Roadway weather observations.
- Travel time information.

6. Social Media Performance

511NY interfaces with a number of social media and application stores including, but not limited to: Twitter, the Apple App Store on iTunes, the Google Play Store. Regarding the Consultant’s performance with online social media and mobile applications the following performance levels are established:

- Twitter – the Consultant will have one minute (60 seconds) from the time they receive a notification from NYSDOT to post it publicly via Twitter.

If a Twitter feed goes down for a particular region or statewide, the Consultant shall have a maximum of 6 hours to determine the issue and fix the feed. If, for whatever reason, a Twitter feed needs to be turned off, the contractor shall disable the feed within 1 hour of notice. This is applicable during all operating hours.

- Mobile Applications – NYSDOT currently has a 511NY mobile application available on the Apple iTunes Store, Google Play and Blackberry App World. As part of this 511NY agreement, the consultant is expected to keep these (and future) mobile applications up to date with added functionalities and as yet undefined new features. NYSDOT acknowledges the complexities of submitting mobile applications and the dynamic nature of the criteria and policies of application stores (e.g., the Apple App Store, Google Play). To that end, NYSDOT reserves the right to not enforce the service level agreement items 1 through 5 below:

1) Submission of mobile applications – once a Consultant has received approval of a new or updated mobile application, they will have one business day to submit the application(s) to the mobile app store for posting. Any and all 511NY mobile applications will be provided free to the public.

2) Following notification from NYSDOT, the Consultant will have one week to fix technical or aesthetic issues across all platforms. Once the fixes are approved by NYSDOT, the consultant shall have one business day to submit the application to the mobile app store for posting.
3) In the event an initial submission is rejected by any application store, the consultant will have one week to re-submit updated mobile applications to the application store for re-review/approval.

4) In the event a second submittal of an updated mobile application is rejected by the application store, the Consultant will notify NYSDOT within one business day.

5) In the event a third submittal of an updated mobile application is rejected by the application store, the Consultant will incur a $1,000 penalty and subsequent $1,000 penalties for each rejected submittal.

6) Trouble Tickets – The Consultant shall have 48 hours from when a trouble ticket is opened to resolve issue(s) reported for any of the apps. This applies during all operating hours.

7) Ratings – The Consultant will review the 511NY mobile application ratings on the Apple Store, Google Play Store, and Blackberry App World (and any other as yet established applications stores) and report star-ratings to NYSDOT on a monthly basis. In the event of consistent and regular user complaints of the application crashing, responding too slowly or similar negative comments regarding the application’s functionality or performance, the Consultant must submit to NYSDOT a corrective action plan for addressing the users’ comments. NYSDOT acknowledges that online user reviews are subjective and difficult to control, and may not provide the most reliable measure of the application’s performance. However, high public satisfaction with the performance and functionality of the mobile application is an important deliverable.

7. Audit

In addition to all other audit and inspection rights under this Agreement, NYSDOT reserves the right to audit all aspects of the implementation of 511NY, including:

- The right to perform compliance inspection(s).
- The right to perform security inspection(s)
- The right to perform vulnerability assessment(s)
- The right to perform physical inspection(s) of the hosting facilities.

8. Overall 511NY Tracking

In the event the consultant is unable to provide any of the services in the RFP’s statement of work in a timely high quality manner, and NYSDOT must use in-house NYSDOT resources, or NYSDOT must hire a separate consultant to provide the service, NYSDOT will, at its discretion:

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

Example services that are specified in the RFP Statement of Work that the consultant is responsible for providing, include:

- Maintaining and updating the 511NY Web site.
- Providing online web-based widgets that provide basic traffic/transit information.
- Formulating and executing a System Acceptance Test (SAT) plan.
- Providing a programmer's manual and related documentation for an independent application programming interface (API).
- Building out and constructing the overall 511NY infrastructure.

9. Overall Performance
NYSDOT’s overall objective is to have the successful cut-over from the current 511 system/consultant to the new 511 system/consultant occur within 30 days after the Consultant has been given Notice to Proceed. Failure to implement a successful cut-over within the 30 days deadline will result in the Consultant being penalized, at NYSDOT’s discretion, according to the following schedule:

<table>
<thead>
<tr>
<th>Time period overdue (or any portion thereof)</th>
<th>Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st month</td>
<td>$20,000</td>
</tr>
<tr>
<td>2nd month</td>
<td>$40,000</td>
</tr>
<tr>
<td>3rd month</td>
<td>$60,000</td>
</tr>
<tr>
<td>4th month</td>
<td>$80,000</td>
</tr>
<tr>
<td>5th month or more</td>
<td>$100,000 per month</td>
</tr>
</tbody>
</table>

The above Liquidated Damages will be assessed against the next monthly invoice from the Consultant following the determination by NYSDOT that the successful cut-over has not occurred within the time period specified above.

10. Non-Exclusivity

All penalties and charges assessable in this SLA are not-mutually exclusive, and are in addition to any rights NYSDOT may have to assess damages against the Consultant or to suspend or terminate the 511NY Travel Information System Agreement under any other provisions of the 511NY Travel Information System Agreement or applicable New York State or federal law.

11. Definitions

It is understood by NYSDOT and the Consultant that the following definitions apply to the 511NY Service Level Agreement, unless expressed otherwise:

- **Business Hours** Monday-Friday, 8a.m.-5p.m.excluding NYS designated non-floating holidays.
- **Non-Business Hours** All hours except those hours identified as business hours.