February 17, 2012

To All Concerned:

Enclosed is a copy of the Request for Proposals (RFP) referenced above. The New York State Department of Transportation is using the Non-Engineering/Best Value Process for this solicitation. All information necessary for the submission of your proposal is contained in this solicitation.

The Department of Transportation (NYS DOT) estimates that work for the successful proposing CPA firm/team will commence in August 2012 and continue for a period of three to five years depending on the selected CPA firm/teams’ performance.

Please note the following dates and deadlines:

- **March 23, 2012**: Deadline for the submission of proposals is 12:00 PM (Eastern Time)
- **March 2, 2012**: Deadline for questions about the RFP is 5:00 PM (Eastern Time)

If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form.

Any questions regarding this Request for Proposals should be directed to the designated contact for this solicitation, Ms. Patricia Rowe of NYS DOT Contract Management, at (518) 457-2600 or via e-mail at: prowefdot.state.ny.us
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. Information on the availability of New York State subcontractors and suppliers is available from Empire State Development, Division for Small Business (518) 292-5224 or 1-800-STATE NY (1-800-782-8369). The applicable website is: http://www.nylovesmallbiz.com/home.asp

The New York State Department of Transportation is encouraging the participation of certified Minority Business Enterprises and certified Women-Owned Business Enterprises in this solicitation. A directory of certified Minority Business Enterprises (MBEs) and certified Women-Owned Business Enterprises (WBEs) is available from the following searchable database website: http://www.esd.ny.gov/MWBE.html

The New York State Department of Transportation has set an MBE Contract Participation Goal of 15 percent and a WBE Contract Participation Goal of 5 percent for this solicitation. Only certified MBE and WBE consultants listed in Empire State Development’s MBE/WBE directory are eligible for participatory credit in this procurement.

A “Checklist for Proposal Submission” is included for reference purposes when submitting your proposal to NYSDOT. It also contains instructions for complying with the Procurement Lobbying Law (PLL) so that your proposal may be considered for contract award. **NOTE:** Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.

Please see the RFP for more information.

NYSDOT looks forward to the receipt of your proposal.

Sincerely,

WILLIAM A. HOWE
Director, Contract Management

Enclosure
RFP RESPONSE FORM

RFP RESPONSE FORM: CONTRACT AUDIT SERVICES FOR NYSDOT

Please review this RFP. Please complete the following information and mail, e-mail or fax to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see Attachment 3) before questions or other communications with the Department regarding this solicitation can be initiated.

______________________ WE DO INTEND TO SUBMIT A PROPOSAL

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

_______________________________________________________________________

_______________________________________________________________________

Name and Address of Organization (Include Zip Code):

_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

Signature: ___________________________ Date: ________________

Type or Print Name and Title: ___________________________________________

Telephone: ___________________________ Fax: ___________________________

E-Mail Address: ________________________________________________________

Please send to:
  • E-Mail: PROWE@DOT.STATE.NY.US
  • Fax: 518-457-8475
  • US Mail:
    New York State Department of Transportation
    Contract Management, Suite 1CM
    50 Wolf Road
    Albany, New York 12232
    ATTN: Patricia Rowe, Contract #C030871
## Consultant Checklist for Proposal Submission

### Part I - Technical and Management Submittal (one proposal submission for each Work Lot)

- Seven (7) Bound Hard Copies of the Technical and Management Submittal
- Name, address and telephone number of proposing firm on cover page
- Name and title of person who prepared proposal on cover page
- Name, title, address, telephone number and e-mail address of person(s) with authority to negotiate and who may be contacted during proposal evaluation (include in cover letter)
- Statement of Experience of Key Personnel ([Attachment 7](#))
- Resumes for Key Personnel
- Selection of a Work Lot (include in cover letter)
- Annual minimum commitment of 10,000 hours (Lot 1) or 2,500 hours (Lot 2) (include selection in cover letter)
- If proposing on both Lots – designate one managing partner (include name in cover letter)
- Any exceptions taken to the draft contract’s terms and conditions ([Attachment 1](#)) (include in cover letter)

### Part II – Cost and Contract Submittal (one proposal submission for each Work Lot)

- Four (4) Hard Copies of the Cost and Contract Submittal—each assembled in a three ring binder
- Required cost information (complete and submit [Attachments 9 through 11a](#))
- Complete and submit [Attachment 2 Consultant Information and Certifications](#) (sign both Sections II and III)
- Complete and submit [Attachment 3 Procurement Lobbying Law Compliance Forms](#) (see Section IV., B., 2., e. for info) – These forms are required either with the RFP Response Form or if you do not submit an RFP Response Form then the PLL forms are required with the Proposal
- Complete and submit [Attachment 12 MBE/WBE Participation Information Form](#).
- Complete and Submit (if applicable) [Attachment 13 MBE and WBE Subconsultant Participation Solicitation Log, Letter of Explanation](#) of Non or Partial MBE Goal or WBE Goal Commitment(s) AND proof of MBE/WBE advertisement.
- Complete and submit all future [RFP Modification Acknowledgement Forms](#) as instructed.

### Requirements Needed Upon Contract Designation (for firms designated for contract award):

**Vendor Responsibility**

___

All selected offerors of contracts valued at $100,000 or more will be required to provide vendor responsibility information through the Office of the State Comptroller’s website via [http://www.osc.state.ny.us/vendrep/index.htm](http://www.osc.state.ny.us/vendrep/index.htm) before negotiations of a contract. Interested parties are encouraged to become familiar with the State’s vendor responsibility requirements before being notified of selection for contract award. If you are a successful offeror, NYSDOT will not be able to begin negotiations with your firm if this questionnaire is not completed and electronically submitted as required.
Contractor Tax Certification

Vendors selected for contracts in excess of $100,000 for the sale of goods or services must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency) during negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf (FAQ’s)

Insurance Requirements of this Project

Please carefully read the terms and conditions of the draft Contract appended as Attachment 1 of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Articles 10 and 11 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived. Likewise, completion of insurance form C218M is required before work may begin on the contract. NYSDOT encourages interested proposers to verify with their insurance provider(s) that it/they will produce the completed C218M form on behalf of the proposer should it be awarded the contract.

Consultant Employment Disclosure Requirements of this Project

Go to OSC’s Web site (http://www.osc.state.ny.us/agencies/gbull/g-226.htm or http://www.osc.state.ny.us/procurement/consultantdisclosure.doc) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete “State Consultant Services – Contractor’s Planned Employment” (Form A, Attachment 4a) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Attachment 4b) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

It is the proposing firm’s responsibility to ensure it proposes staff who are eligible to provide the subject services and who are eligible to work on the subject project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics that approves his/her participation in the subject project. For an outline of the procedure that applies to this situation, reference Attachment 5.
Registration with NYSDOT

Should this solicitation lead to a designation, it is each Consultant team member’s, Prime and Subconsultant, responsibility to electronically register the firm using the Consultant Selection System web application (CSSWeb). Non-Architectural/Engineering consultant firms 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, D/W/MBE status, firm principals and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement. Section VI of this RFP provides more information.

Registration with Statewide Financial System (SFS)

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

Non-Disclosure Agreement

Should this solicitation lead to a designation, Prime consultant(s) and subconsultant(s) will be required to sign non-disclosure agreements. An authorized principal of the firm(s) will be required to sign a non-disclosure agreement on behalf of the firm’s staff working under this contract.
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

CONTRACT AUDIT SERVICES FOR NYSDOT

CONTRACT NO. C030871

February 17, 2012

Proposal Due Date: **March 23, 2012**

Proposal Delivery Location and Additional Information:

Director, Contract Management
NYS Department of Transportation
50 Wolf Road, Suite 1CM
Albany, NY 12232
Attention: Patricia A. Rowe, Contract Management Specialist
# REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
Contract Audit Services for NYSDOT – Contract No. C030871

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I. INTRODUCTION

A. Purpose

The New York State Department of Transportation (NYSDOT) is soliciting proposals from certified public accounting (CPA) firms to perform audit services related to business entities including, but not limited to:

- engineering firms;
- aviation, railroad, utility, transit operators;
- contractors; and
- municipalities participating in NYSDOT programs.

The CPA firm(s) selected to provide audit services under this solicitation must be licensed to provide professional audit services in New York State and will be required (as part of this RFP’s evaluation process) to provide current quality assurance plans, documentation of internal quality control systems, and current peer review reports. These audit services may include financial audits, attestation engagements including examinations, reviews, and agreed-upon procedures. The purpose of these services is generally to verify compliance with program requirements; allowability of costs proposed during NYSDOT contract negotiations; and/or allowability of costs submitted for reimbursement under NYSDOT agreements.

Proposals including subcontracting arrangements, particularly with minority and women-owned business enterprises, are encouraged.

Proposals from joint ventures are not allowed.

B. Background

NYSDOT’s Contract Audit Bureau (CAB) is responsible for providing audit services to support NYSDOT’s contract negotiation, payment and close-out activities. These services are generally conducted in accordance with Government Auditing Standards promulgated by the United States Government Accountability Office and/or the auditing and attestation standards of the American Institute of Certified Public Accountants (AICPA). Failure to perform audits in a timely manner could result in additional expense to NYSDOT.

CAB requires the services of CPA firms licensed to practice in New York State to supplement its in-house staff. Selected firms are expected to provide quality audit services on a timely basis. Firms selected will work under the direction of an assigned CAB audit supervisor (manager).
NYSDOT currently has contracts with five CPA firms to perform the work described in this solicitation and anticipates contracting with up to five CPA firms under this solicitation. The hourly rate range currently paid under these awards is as follows:

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<td>Manager</td>
<td>$102</td>
<td>$114</td>
</tr>
<tr>
<td>Senior Auditor</td>
<td>66</td>
<td>78</td>
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<td>Staff Auditor</td>
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C. Definitions as related to this RFP:

- **The New York State Department of Transportation:** NYSDOT; used interchangeably with “The Department.”
- **Best-Value:** The basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerer. Such basis shall reflect, wherever possible, objective and quantifiable analysis.
- **CPA firm:** Certified Public Accounting firm.
- **Prime Consultant:** The primary proposing entity; the firm with which NYSDOT will have a contract if the firm should be selected; used interchangeably with “Offerer,” “Proposing firm” and “Prime.”
- **Subconsultant:** A CPA firm contracted by a Prime Consultant to provide specific services under a specific contract.
- **Work Lot:** Represents a geographic area for assigning work.
- **Managing Auditor:** An auditor who oversees audit work and has a minimum of five (5) years professional audit experience and minimum of four (4) years of supervisory responsibility for subordinate staff.
- **Senior Auditor:** An auditor with three or more years of professional audit experience.
- **Staff Auditor:** Performs audit work.
- **Capacity:** The ability to hold, receive, contain; for the purposes of this solicitation, capacity represents the maximum amount of assignments the best value firm can accept at the current time and complete within the established time frames as included in the RFP/resulting contract.
- **Managing Partner:** Partner of the Prime Consultant firm who will oversee the work in one or both Lots.

D. Minimum RFP Responsiveness

Any proposing firm that does not provide **all** of the following by the RFP deadline may be determined to be non-responsive (it is NYSDOT’s sole discretionary determination as to whether a proposal is complete):

1. Part I of the Proposal – Technical and Management submission, including all required RFP-specified attachments.
2. Part II of the Proposal – Cost and Contract submission, including all required RFP-specified attachments.
3. For the purposes of evaluation, each proposal part (Part I and Part II) must be submitted separately. Each part of the proposal must be complete in itself in order that the
evaluation of both parts can be accomplished independently and concurrently and the 
Technical and Management submittal can be evaluated strictly on the basis of its merits. 
Cost information is NOT to be included in the Part I submittal. Technical 
information is NOT to be included in the Part II submittal.

4. The offeror must specify for which Work Lot the firm is proposing. This must be 
specified in the cover letter in Part 1, the Technical and Management Submittal. If 
submitting for both Lots, a firm must submit a complete separate proposal (Part I and II) 
for each Lot and specify in the cover letter of each which Lot that proposal relates to.

5. The proposing team must commit to providing a minimum of 10,000 hours for Lot 1 or 
2,500 hours for Lot 2 (include in cover letter).

6. The Composite rate (as calculated on Attachment 9) is not to exceed $115.00. A 
Composite rate exceeding $115.00 will not be considered or evaluated.

7. The offeror, including all proposed subconsultants, must be a CPA firm or sole 
practitioner registered with the New York State Education Department/NYS 
Department of State to provide professional audit services in New York State. All 
proposals must contain documentation that registration requirements are met and which 
will be verified by NYSDOT prior to evaluation of proposals. This status must be 
maintained by the offeror and each proposed subconsultant during the term of any 
resulting agreement. The firm’s staff auditors, as defined in this RFP, who may be 
assigned to the project, do not have to be Certified Public Accountants.

8. Attachment 2 - Consultant Information and Certifications Form

9. Attachment 3 - Procurement Lobbying Law Forms

10. Attachment 12 - MBE/WBE Participation Information Form

11. Proof of Advertisement for MBE/WBE subconsultant firms

12. Compliance with other MBE/WBE requirements (if applicable): 
   - Attachment 13 - MBE/WBE Participation Solicitation Log
   - MBE/WBE Good Faith Efforts Explanation Letter

13. Offeror must utilize the title structure outlined in Section IV of the RFP.

Proposals deemed non-responsive shall be removed from further consideration (prior to 
the technical evaluation of proposals) and the firm (s) notified.

It is recommended that each offeror utilize the checklist provided as part of this solicitation to 
assist in ensuring all necessary documentation and attachments are provided as requested/ 
indicated in this RFP. It is the proposing firm’s responsibility to ensure it includes all 
necessary forms, documents, and information needed for the review and evaluation of its 
proposal in response to this RFP.

NOTE: The New York State Education Department phone number and website for information 
regarding professional licensing is: (518) 474-3817, ext. 160 - http://www.op.nysed.gov/

E. Minority Business Enterprise and Women-Owned Business Enterprise Participation

While not indicative of a proposer’s individual merit (technical excellence, proposer’s ability, 
experience, etc.), NYSDOT encourages the participation of certified Minority Business 
Enterprises and Women-Owned Business Enterprises in this solicitation. The level of 
participation by Minority Business Enterprises (MBE) and Women-Owned Business 
Enterprises (WBE) will be relevant to the process of selecting proposals which will best 
achieve the overall goals of the Department. A directory of certified MBEs and certified WBEs
NYSDOT has established an MBE participation contract goal of 15 percent and a WBE participation contract goal of 5 percent for this solicitation. These are separate participation goals. Each goal relates to the overall value of the resulting contract. Meaningful participation by either a certified MBE prime consultant or subconsultant(s) and meaningful participation by either a certified WBE prime consultant or subconsultant(s) will count towards the contract goals. Meaningful participation by a subconsultant is defined as providing commercially useful functions/services which should:

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

When contract level MBE and WBE goals are established, tentative contract award can only be made to an offeror who is able to satisfy the goals or demonstrate that a NYSDOT-acceptable Good Faith Effort (GFE) has been made to meet both goals. A proposing firm can accomplish this by either offering sufficient MBE and WBE subconsultant participation to meet or exceed the goal(s), or, demonstrate that it made adequate and acceptable GFE to meet one or both of the goal(s) even though the prime firm was not able to meet either or both M/WBE goals.

Additionally, a prime consultant that is a certified MBE and/or a certified WBE may also propose to meet either the MBE goal or the WBE goal through its own participation. However, a prime consultant that is certified as both an MBE and a WBE can propose to meet only one of the goals via its own participation, the prime consultant cannot propose to utilize its own participation to meet both goals. Therefore, a prime consultant that proposes to meet either the MBE or WBE contract goals through its own participation must offer subconsultant participation to meet the other goal, or demonstrate that it made adequate, NYSDOT acceptable GFE to meet that goal even though it did not succeed.

To reiterate, a proposing prime firm that is certified as an MBE and/or WBE can propose to meet only one of the M/WBE contract goals via its own participation. It is not relieved from seeking participation by either a certified MBE or WBE firm for subcontractable services under the second goal in this solicitation, or to demonstrate adequate GFE to do so.

Proposing firms which do NOT meet the 15 percent MBE and/or the 5 percent WBE participation goals and do not demonstrate the required GFE to do so may be deemed not responsive and not considered further for contract award.

A proposing firm should document its MBE and WBE participation commitment by completing Attachment 12, MBE/WBE Participation Information. For participation to count toward the contract MBE and WBE goals, the proposed MBE and WBE firm(s) must be currently certified by Empire State Development. If the proposer does not meet the 15 percent and 5 percent MBE and WBE goals respectively, the firm must provide evidence...
of its good faith efforts by completing Attachment 13, MBE and WBE Participation Solicitation Log, and submit an MBE/WBE Good Faith Efforts Explanation Letter explaining why the firm was unable to meet the goal(s). The letter should include sufficient justification as to why the goals were not met, or were met partially, and should at a minimum address the following factors: the subcontracting opportunities associated with the proposed approach and scope of services and the availability of certified firms for the work to be performed via subcontract.

Additionally, proposing firms shall provide documentation of their MBE/WBE advertisement seeking MBE/WBE subconsultant firms for the subject services which is required by law.

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

A. Term and Funding

NYSDOT may award up to five contracts as a result of this solicitation. Fiscal constraints may play a determining factor in the number of contracts awarded as a result of this solicitation. Furthermore, NYSDOT is under no obligation to use any or all of the funding allocated to a particular agreement and is not obligated to make a minimum number of assignments. NYSDOT will only be liable for services it requests and are satisfactorily completed by the CPA firm pursuant to the agreement terms.

Each agreement will be awarded for a three-year term. At the end of the third year, NYSDOT will have the option to renew each agreement for up to two years based on NYSDOT’s needs and CPA firms’ performance. NYSDOT may choose to renew all or any number of the original agreements or none at all.

It is anticipated that the total value of all contracts awarded as a result of this solicitation will be approximately $1.1 million annually (up to five contracts may be awarded: up to three contracts in Lot 1 and up to two contracts in Lot 2). Individual contract values will be determined by the final best value ranking in each respective Work Lot (reference Section II.B. for information regarding Work Lots). The majority of the assignments are expected to be made within Lot 1. Work will be assigned as explained in section II.C of this RFP. Continued use of agreements will be based on resource needs, available funding and the demonstrated abilities of the selected CPA firms to complete assigned work effectively and promptly in accordance with agreement terms, approved audit plans and as further explained in this solicitation.

Each contract awarded will have an estimated amount included as the Maximum Amount Payable and will be based upon estimated usage (determined and agreed to during negotiations); with the highest best value ranked firm in each Lot receiving the most funding in that Lot. If during the life of the contract the amount awarded to the best value firm has been reached; that agreement may be amended by adding additional funds to that agreement and reducing funds for the lower ranked firms (the mechanism to change values will be discussed during negotiations with the designated firm(s)).

NOTE: NYSDOT is imposing a not to exceed “Composite Rate” of $115.00 (reference Attachment 9 for more information). A Composite rate exceeding $115.00 will not be considered or evaluated.

B. Work Lots and Service Delivery

A proposing Prime Consultant MUST indicate for which of the Work Lots the firm is proposing. This must be included in the cover letter in the Part I, Technical and Management, submission. If a firm wishes to be considered for a contract in both geographic Lots, separate proposals (both Part I and II) must be submitted for each Lot. This will allow the firm to present different information for consideration in each geographic Lot.
Please note if a Prime Consultant is proposing on both Lots, the firm must name one Managing Partner who will oversee the work for both Lots. Please further note that a Prime Consultant may propose the same Managing Auditor and Senior Auditor for both Lots. Staff Auditors do not have to be named and may work in both Lots.

The work to be assigned as a result of this solicitation will be broken down into Lots as described below:

**Lot 1: Downstate New York, Connecticut, Northern New Jersey and Other Out-of-State Work**

The work will include audits related to entities for which accounting records are located in Connecticut, Northern New Jersey and the following counties in New York State: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk and Westchester. In addition, some of these entities may be international, national or regional organizations with highly complex accounting systems which may require travel to where accounting records are located. There are approximately 150 entities to potentially be audited in this lot. **It is anticipated that up to three firms will be selected for these assignments.**

This Lot will include audits related to railroads, utility companies and municipalities. There is at least one large railroad carrier in this geographic area. There are a few small to moderate size railroad carriers located in downstate New York that may require audits of grade crossing elimination, facility improvement or relocation projects when their facilities are affected by NYSDOT highway projects. Public utility companies in this lot range from large regional or national electric and natural gas producers and distributors to local or regional oil and gas distributors.

**Lot 2: Upstate New York**

The work will include audits related to entities for which accounting records are located outside the geographic locations noted in Lot 1. There are approximately 100 entities to potentially be audited in this lot. **It is anticipated that up to two firms will be selected for these assignments.**

There are a number of small to moderate size railroad carriers located in New York State that may require audits of grade crossing elimination, facility improvement or relocation projects when their facilities are affected by NYSDOT highway projects. Public utility companies range from large regional or national electric and natural gas producers and distributors to local or regional oil and gas distributors.

Assignments in both Lots will include audits of small, medium and large business entities, with the majority of auditees being engineering firms.

**C. Audit Assignment Procedure (CAB Assignments to CPA Firms)**

Audit assignments will be made to the highest ranked best value firm selected for each Lot. The highest ranked best value firm in each Lot will have the right of first refusal for each/every assignment in that respective Lot – dependent upon the firm’s quality of performance and any
When CAB makes an assignment, it will adhere to the following procedural steps:

1. Is highest ranked best value firm’s quality of performance and timeliness satisfactory?
   a. If yes, assignment designation continues to the highest ranked best value firm and onto step two below.
   b. If no, no further assignments to the firm until performance issues are rectified or a corrective action plan has been accepted by the CAB Director. Assignment will be considered for the next highest best value firm – procedural process will begin again.

2. Highest ranked best value firm is offered assignment (see above regarding declination by firm if at capacity and resulting actions) pending any special considerations (see below).

3. If special considerations (such as the following) apply:
   a. Conflict of Interest Exists – Lack of Independence
   b. Specialized Expertise Required (e.g. fraud allegation)
   c. High Priority/Urgent Assignment

   If any “special considerations” apply, the firm will be asked how it will handle the “special consideration(s).” If CAB determines the firm is not the appropriate firm to handle the assignment, then the assignment will be considered for the next highest best value firm – procedural process will begin again with the next best value firm.

**D. Anticipated Resource Requirements**

The anticipated level of effort required annually for Lots 1 and 2 is approximately 10,000 and 2,500 hours respectively (although the actual level of utilization will vary by contract based on Best Value ranking and the capacity of the Best Value ranked firm in each Lot). These are expected to include the following:

<table>
<thead>
<tr>
<th>Audit Type</th>
<th>Estimated Effort Per Assignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Closeout Audit</td>
<td>varies</td>
</tr>
<tr>
<td>Field Pre-Award Audits</td>
<td>50-80 hours</td>
</tr>
<tr>
<td>Review of CPA Workpapers for FAR Overhead Audits</td>
<td>40-60 hours</td>
</tr>
<tr>
<td>Desk pre-awards with FAR Overhead Audits</td>
<td>10 hours</td>
</tr>
<tr>
<td>Desk Closeout audits</td>
<td>60-75 hours</td>
</tr>
</tbody>
</table>
E. Electronic Audit Documentation

CAB uses TeamMate for electronic work papers. CPA firms under contract with NYSDOT must use TeamMate to document NYSDOT assignments. NYSDOT shall provide the software and licenses to firms that do not have TeamMate or do not have a version that is compatible with NYSDOT’s version. Prior to initial assignment, NYSDOT will provide the necessary training to any Prime firm awarded a contract as a result of this RFP. Prime consultants will be responsible for providing training/support to subconsultants. If a firm/firm team currently uses/has TeamMate it should be clearly specified in the proposal’s audit services approach.

TeamMate software and licenses provided as a result of this RFP will be rescinded via written notice at the end of the contract or earlier if deemed necessary by NYSDOT (determined on a contract by contract basis solely by NYSDOT).
III. SCOPE OF SERVICES

A. Overview

The CPA firm shall perform audit services in accordance with GAO Government Auditing Standards and/or AICPA Statements of Standards for Attestation Engagements. These services would include: preparing written audit plans, compiling audit documentation and preparing written reports, and attending appeal hearings and meetings to address disagreements related to audit findings.

In addition to competencies and qualifications required for CPA firms to provide auditing services in New York State, firms must demonstrate knowledge and experience with the following regulations and guidance:


- Federal Highway Administration (FHWA) rules for reimbursement of consultant engineering services (23 CFR Part 172 Administration of Engineering and Design Related Services)
  http://www.fhwa.dot.gov/programadmin/consultant.cfm
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title23/23tab_02.tpl

  http://audit.transportation.org/Documents/2010_Uniform_Audit_and_Accounting_Guide.pdf

- Cost Accounting Standards (CAS), (48 CFR Part 99)

- FHWA Rules for Reimbursement of Railroad Work, (23 CFR, Parts 140.9 and 646;)
  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title23/23tab_02.tpl

  http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title23/23tab_02.tpl

- American Association of State Highway and Transportation Officials (AASHTO) Guide for Railroads & Utilities
In addition to the above it would be beneficial to demonstrate any experience related to conducting audits of localities which administer Federally-aided highway projects, Statewide Transportation Operating Assistance recipients, and municipal contracts for snow and ice maintenance services. Information about these programs can be found at the following web addresses.

- Federal Single Audit (Circular A-133 of the US Office of Management and Budget)  
  [http://www.whitehouse.gov/omb/circulars/a133/a133.html](http://www.whitehouse.gov/omb/circulars/a133/a133.html)

- NYSDOT Locally Administered Federal-aid Project Manual  

- Statewide Transportation Operating Assistance  

- Snow and Ice  
  [https://www.dot.ny.gov/divisions/operating/oom/transportation-maintenance/snow-ice](https://www.dot.ny.gov/divisions/operating/oom/transportation-maintenance/snow-ice)

**B. Information and Objectives**

Firms must also be able to conduct financial audits and attestation engagements related to services performed and costs billed by NYSDOT contractors, consultants, or grantees. For all assignments, the CPA firm shall submit a written report which includes a statement of the scope of the audit work, audit findings and where appropriate, an audit opinion. The partner assigned to the contract may also be requested to attend appeal hearings and/or meetings as required to address disagreements related to audit findings.

The following are typical audit activities (please note that other audit services may be assigned):

**Field Closeout Audits** - These are engagements performed in accordance with Government Auditing Standards or AICPA attestation standards. They are attestation examination assignments performed to provide reasonable assurance that final and total billing amounts on engineering agreements conform to agreement terms. The examination generally includes an audit of direct and indirect costs as well as special agreement terms. Audit procedures will be performed based on risk assessment.

**Desk Closeout Audits** - These are attestation agreed-upon procedure assignments performed to provide limited assurance that billed amounts conform to agreement terms and appropriate salary and indirect cost rates.

**Miscellaneous Audits** - Specific criteria and practices will apply to different types of auditees. Utilities and railroads may be subject to periodic examination of controls and billing procedures. Agreed-upon procedures may be assigned to ensure municipal auditee compliance with Office of Management and Budget (OMB) Circular A-133. Other work may be assigned using criteria and agreement terms applicable to aviation, State Transportation Operating Assistance, railroads, utilities and municipalities. The AASHTO Railroad Audit Guide and the
NYSDOT Utility Reimbursement Manual, as well as various single audit guidance, and the NYSDOT Locally Administered Federal Aid Project Guide are available on the NYSDOT website (link provided above). Federal regulations governing railroad and utility work are available on Federal websites under 23 CFR (see references in Section III).

**Other Services** – CPA firms may be requested to provide staff resources for specific assignments, e.g. Single Audit sub-recipient monitoring to meet the requirements of OMB Circular A-133, reviews of Personal Net Worth in accordance with 49 CFR 26, etc. “Other services” may include but are not limited to:

**Field Pre-award Audits** - These are attestation examination assignments performed to provide reasonable assurance that [1] controls over cost accounting and billings are adequate and effective and [2] indirect cost or other rates proposed are fair and reasonable and conform with proposed agreement terms, including Federal Cost Principles.

**Review of CPA Work Papers for Federal Acquisition Regulations (FAR) Overhead Audits** – These agreed-upon procedure assignments are performed to place reliance on the work of other CPAs so that cognizant audit letters may be issued in accordance with Section 307 of the National Highway System Designation Act. Engineering firms generating $1 million or more in revenue annually must provide NYSDOT with an audit of their overhead performed in accordance with FAR. See [http://downloads.transportation.org/Audit-AccountingGuide.pdf](http://downloads.transportation.org/Audit-AccountingGuide.pdf) for additional information.

**Desk Pre-award Reviews with FAR Overhead Audits** – These agreed-upon procedure engagements are based on a review of the Contract Service Firm Annual Financial Ownership and Accounting Practices Report (CONR 385), the financial statements and the FAR overhead audits submitted by the engineering firm.

*As indicated in the Consultant Checklist at the beginning of this solicitation, should this solicitation lead to contract designation (s), the Prime consultant (s) and subconsultant (s) will be required to sign non-disclosure agreements.*

**C. Audit Assignment Process**

CAB will authorize the CPA firm in writing to perform assignments under this agreement. CAB is not obligated to make a minimum number of assignments and will only be liable for services rendered in accordance with specific terms and conditions of approved assignments. The Contract Audit Bureau reserves the right to make a final decision to apply attestation standards and the right to make final determinations regarding the interpretation of all standards in regard to work performed under the contract.

In order to satisfactorily fulfill the above responsibilities, the CPA firm shall perform the following tasks for both desk and field closeout audit assignments:

1. Within 30 days of notification of an audit assignment by CAB, the CPA firm shall perform planning activities. Such activities include reviewing work papers, permanent files, and contract and expenditure files at CAB’s Office in Albany, New York. The CPA firm shall have access to the CAB supervisor/manager, and, as necessary, other CAB staff and NYSDOT accounting, contracts and project management personnel. The
CPA firm explicitly agrees, by responding to this RFP, to maintain the confidentiality of all proprietary information pertaining to assigned auditees and to use such information only for the purposes assigned.

2. The CPA firm shall contact the auditee to make all necessary arrangements for conducting the audit. This shall happen no later than 45 days after the date of notification of the assignment.

Field Audit Assignments

For engagements requiring field work, it is expected that the CPA firm shall within 60 days of assignment notification, prepare and submit an audit planning memorandum (APM) to CAB for review and approval. The APM shall include the following:

- Identification of scope of work and audit approach;
- Identification of the audit standards to be followed in performing the engagement and corresponding type of report to be issued;
- An assignment budget which includes identification of estimated hours by individual and job title; and a total cost estimate (by principal cost categories) including anticipated travel costs;
- Dates for initiating and completing work in accordance with the terms of the contract,;
- A recapitulation of costs to be audited by cost category and fiscal year for each contract or overhead year;
- A discussion of sampling approach, including the number and nature of the transactions to be tested;
- Identification of control weaknesses about the accounting system identified in prior audit reports or through audit planning and any proposed follow-up actions required;
- Evaluation and explanation of overall risk and risk for specific cost categories;
- Identification of all interim, overhead, sub-consultant, and any other relevant auditors' reports;
- Identification of Project Identification Numbers (PINs) and any Federal non-participating costs;
• Attestation that there are no conflicts of interest; and

• Identification of any contingencies associated with performing work.

For those assignments in which a visit to the auditee may be necessary to adequately plan the assignment, the CPA firm must notify CAB and obtain pre-approval for the on-site planning visit.

Certain assignments, such as desk closeout audits, will have pre-determined and agreed-upon budgets. Upon receipt of such an assignment, and after a review to determine the budget is appropriate for the circumstances, the CPA firm may submit an APM to include any proposed deviations from these pre-determined and agreed-upon budgets.

CAB will review the APM and provide a response to the CPA firm within 10 calendar days of receipt of the plan. If CAB accepts the APM and budget, CAB will notify the CPA firm to begin fieldwork. Fieldwork shall not be performed prior to receiving CAB approval. This notification will be transmitted by email and should be retained in the audit work papers.

In the event that CAB and the CPA firm cannot agree on the APM, the CPA firm must submit a written explanation of its position. CAB will consider this information when making future assignments. In addition, CAB will require the CPA firm to submit all work performed on the assignment within ten (10) calendar days. All documents pertaining to the assignment are the property of NYSDOT. CAB will determine the value of the work performed by the CPA firm and reimburse the firm, as appropriate.

At the discretion of CAB, an assignment may be recalled and appropriate compensation made for work completed. All work should be turned over to CAB within 10 calendar days of notification that the assignment was recalled.

Upon completion of fieldwork, the CPA firm shall conduct an exit conference with the auditee. A copy of the exit conference notes shall be submitted to CAB within 15 calendar days of the date of the exit conference. The CPA firm shall prepare and submit a draft audit report to the auditee for review of audit findings, including proposed adjustments or other reportable conditions within 30 calendar days of the date of the exit conference or receipt of additional information from the firm whichever is later. Copies of the draft report must also be sent to CAB and any subconsultant of the auditee. The CPA firm will give the auditee and any subconsultants 15 calendar days to reply to the draft report and may afford one time extension of 15 calendar days, if requested. Upon fully responding to any comments raised in response to the draft report, the CPA firm shall prepare the final audit report in accordance with reporting standards. The CPA firm shall provide electronic copies of the final report and work papers to CAB.
**Desk Audits**

For desk assignments, the CPA firm will perform the engagement using Agreed Upon Procedures as provided by CAB. Budgets for desk audits are pre-determined based on the firm’s cost proposal (Part II submission). Occasionally, circumstances may require a budget modification. In those instances, the CPA firm must submit a written justification to support any proposed deviations for CAB approval.

Upon completion of desk work, the CPA firm shall prepare and submit a draft audit report to the auditee for review. Copies of the draft report must also be sent to CAB and any subcontractor of the auditee which may have audit findings, proposed adjustments or other reportable conditions applicable to the contract being audited. The CPA firm will give the auditee and subconsultant(s) 15 calendar days to reply to the draft report and may afford one time extension of 15 calendar days, if requested. Upon fully responding to any comments raised in response to the draft report, the CPA firm shall prepare the final audit report in accordance with applicable reporting standards. The CPA firm shall provide electronic copies of the final report and work papers to CAB within 90 calendar days from the date assigned.

**D. Audit Appeals**

If there is an audit appeal, CAB may request the partner, manager, senior and/or staff who worked on the assignment to attend meetings related to the appeal in Albany, New York. The CPA firm will be required to prepare a written response for each issue identified in the auditee’s statement of facts. NYSDOT will reimburse the firm for actual travel expenses. Staff, senior auditor, and manager’s time spent in preparing for and attending the audit appeal time will be reimbursed up to a maximum to be determined by CAB.

**E. Method of Reimbursement**

Payments to the firm will be based on a lump sum cost developed for each assignment using the methodology below:

1. (Field Assignments) The assignment budget developed by the firm and approved by CAB. Staff hours will be paid at the fully-loaded rate(s) negotiated in the contract (taken from the firm’s proposal to the RFP and as agreed to in contract negotiations).
2. (Desk Assignments) Based on firms’ negotiated lump sum price (taken from the firm’s proposal to the RFP and as agreed to in contract negotiations) for desk closeout audits/reviews or as amended by budget modifications approved by CAB.

**Note:** Direct reimbursement of the cost of a partner’s time will not be allowed in project budgets; the estimated cost of the partner’s time should be included by the CPA firm in the overhead component of hourly rates for proposed staff titles as listed in Attachment 9.
Any necessary travel costs will be limited to the prevailing maximum rates based on the Federal rate schedules and New York State travel guidelines in accordance with the audit budget approved by CAB. Both Federal rate schedules and NYS travel guidelines can be referenced by accessing the links provided below:

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

**Milestone payments for each assignment will be made based on the following deliverables**

**Field Audit Assignments:**

- Thirty percent (30%) of the lump sum budget total will be paid upon CAB approval of the APM.
- Thirty percent (30%) of the approved lump sum budget total will be paid upon CAB acceptance of the exit conference notes (designating the completion of fieldwork).
- Forty percent (40%) of the approved lump sum budget total will be paid upon CAB acceptance of the final report and work papers.

**Desk Audit Assignments:**

- Sixty percent (60%) of the approved lump sum budget total will be paid upon issuance of a draft report, if such draft issuance is considered necessary.
- Forty percent (40%) of the approved lump sum budget total will be paid upon CAB acceptance of the final report and work papers if a draft report was issued.

**Audit Appeals**

In the event of an audit appeal, NYSDOT will reimburse the CPA firm at the completion the appeal process for approved costs up to a maximum to be determined by CAB.

**F. Oversight and Administration**

1. One or more project managers will be designated by CAB to coordinate and monitor work performed by the CPA firms engaged under this RFP. The CAB manager(s) will coordinate and monitor each selected firm's activities. The CPA firm, however, should not consider this individual as a staff resource. The ultimate responsibility for obtaining necessary information and completing each audit is the responsibility of the CPA firm.

2. The CPA firm shall provide written monthly progress reports to the CAB showing the status of all on-going and open assignments, by the 5th of the month. The status report shall include the status of each audit (e.g. draft sent/comments received, final, etc.). CAB will provide the specific format of the report at the beginning of the contract. There is no additional payment for this work item.
3. At the completion of the assignment, the Consultant team (prime and subconsultants) will be required to submit the actual hours expended. This data will be used for planning future assignments.

4. At a minimum, CAB will conduct an annual performance evaluation (supplemented by interim reviews as appropriate and at the Department’s discretion) for each firm (prime and subs if applicable) awarded a contract as a result of this solicitation. The performance evaluation will assess the demonstrated abilities to complete assigned work effectively and promptly in accordance with agreement terms and approved audit plans. CAB will notify the CPA firm of any corrective action required. The CPA firm shall respond in a timely manner, as determined by CAB, to acknowledge and complete any corrective action needed and shall provide written notice to CAB of actions taken and follow-up performed. These performance evaluations will be utilized by NYSDOT to assist in determining assignments made to these contracts, whether to exercise its option to extend the contracts and to assist in future procurements for the same/similar service.
IV. PROPOSAL FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Contract submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits, focusing on the firm’s responsiveness to the RFP, including mandatory requirements and demonstrated experience of the firm. Failure to clearly identify and present the required proposal content, in the designated location, may result in the firm being deemed non-responsive with no further consideration being given to the proposal. Cost information is **not** to be included in the Part I submittal **NOR** should any Technical information be included in the Part II submittal.

As written in Section II of this RFP, a proposing firm **MUST** indicate which of the Work Lots the firm is proposing for. This must be included in the cover letter in the Part I, Technical and Management, submittal. If a firm wishes to be considered for a contract in both geographic Lots, **a separate proposal (both Part I and II) must be submitted for each Lot.** This will allow the firm to present different key personnel and cost information for consideration in each geographic Lot – two separate proposals are required even if the staff and cost information does not differ.

A proposing firm’s proposal should follow the format listed below:

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If an offerer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, offerers need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal (see A.3. below).

A. **Part I: Technical and Management Submittal**

1. **Cover Letter, indicating:**

   Name, address, phone number, and e-mail address of the proposing firm, including a contact person, and name of the person(s) who prepared the proposal (if the contact person differs from the person to whom questions should be asked, then contact information for that individual should also be provided). Indicate in the cover letter for which Lot the proposal relates to. Exceptions to the draft contract’s terms and conditions (Attachment 1) should be included in the cover letter. Additionally, the proposing team’s commitment of 10,000 hours for Lot 1 and 2,500 hours for Lot 2 annually must be included in the cover letter. If proposing on both lots, the proposing firm must include in the cover letter the name of the managing partner who will oversee the work in both lots.
2. Table of Contents

3. Executive Summary

Provide a brief description of the proposed approach and work effort. Confidential and proprietary information should also be identified and addressed in this section.

4. Narrative Description

Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYSDOT contract information, scope of services, compliance with mandatory requirements, and familiarity with applicable standards, laws, rules, etc.

5. Experience of Key Personnel and the Firm

The certifications, knowledge, and prior experience of the proposing firm team and key staff are of great importance to NYSDOT. Considerations important to NYSDOT include:

- a demonstrated working knowledge of Federal Cost Principals, Government Auditing Standards and AICPA Statements of Standards for Attestations Engagements;
- experience with financial and compliance auditing of government contracts and contractor overhead rates;
- experience evaluating and analyzing cost proposals, cost accounting systems and procedures for compliance with contract financial agreement terms and applicable requirements;
- prior NYSDOT and non-NYSDOT auditing experience; and
- disclosure of any conflicts or potential conflicts of interest, e.g. one of the staff you propose is currently employed by NYSDOT or another state agency (or was previously employed), or you perform audit work for a consultant engineering firm with which NYSDOT has contracts.

These considerations must be addressed when the proposing firm/team describes the experience of the key personnel and the experience of the firm(s).

a. Experience of Key Personnel

It is the proposing Prime firm’s responsibility to ensure it proposes staff who are eligible to provide the subject services. Before the consultant proposes a former NYSDOT employee, this individual must obtain an opinion from the New York State Joint Commission on Public Ethics which approves his/her participation. For an outline of the procedure that applies to this situation, see Attachment 5.
Key personnel named in your proposal are those individuals who will be available (committed) to do the work described in this RFP.

Proposers must use Attachment 7 to detail the experience of proposed key personnel. Attachment 7 is required in addition to submission of resumes for key personnel. This information will be used for evaluation of criteria as outlined in Section V below. Incomplete submission of Attachment 7 may result in a determination of non-responsiveness. Resumes submitted for proposed key personnel should be no more than two pages in length each. It should be clear from Attachment 7 and the resumes if an individual is a current full-time or part-time employee of the Prime or the subconsultant firm. Attachment 7 and the resumes should not offer conflicting information.

If subconsultants are proposed, provide the same information requested for those key personnel as explained above.

Key personnel are defined by CAB as managing auditors and senior auditors, (described below) who are proposed to do the work outlined in this RFP. Staff auditors to be assigned do not have to be named. Partner experience may be shown.

Please note if a Prime Consultant is proposing on both Work Lots, the Prime Consultant must name one partner (managing partner) who will oversee the work for both Lots.

The minimum experience requirements for managing auditor and senior auditor are as follows:

- Managing Auditor - A minimum of five (5) years professional audit experience with a minimum of four (4) years of supervisory responsibility for subordinate staff.

- Senior Auditor- Three (3) or more years of professional audit experience.

Note: Professional audit experience is defined as experience meeting the requirements established by New York State to be granted a CPA license. This experience is further defined at [http://www.op.nysed.gov/prof/cpa/cpalic.htm#exp](http://www.op.nysed.gov/prof/cpa/cpalic.htm#exp)

The proposing firm is required to submit its proposal in accordance with the above title structure. In addition, the title of staff auditor is required in the cost proposal (see below). Other titles a firm may use, such as “supervisory auditor”, etc. should be re-defined in accordance with the above structure. NYSDOT reserves the right to deem proposals which include a title structure other than the above, which cannot be clearly correlated with those presented above, as non-responsive.
Therefore, the required title structure to use when submitting proposals (for both Prime and Subconsultant firms) in response to this solicitation is:

- Managing Auditor
- Senior Auditor
- Staff Auditor

b. Experience of the Firm

For each office of the firm where proposed staff is located, including subconsultants, affiliates or other personnel, identify the following:

- Offerors permanent office location(s);
- Total annual professional staffing resources (full-time equivalent hours) and the source (staff, out-source, sub-contract) devoted to auditing services, government auditing, and government contract auditing (by category);
- Total professional staff resources available for assignments to be made as a result of this RFP and subsequent contract award;
- Clients serviced currently or during the last three-year period involving government audits or audits of government contracts, including government contract auditing services;
- Clients serviced currently or during the last three-year period which are engineering firms, railroads, utilities, municipalities, public authorities or construction contractors including the nature of services provided (auditing, tax, consulting); and,
- Balance of annual resources devoted to non-audit services categorized by type of service, including affiliates.

List three audit projects currently in progress or completed within the last two years which demonstrate your firm’s auditing experience in accordance with Government Auditing Standards; auditing Federal or State contracts; and analyzing and evaluating accounting systems and procedures for compliance with cost reimbursement agreement terms and applicable requirements. For projects listed provide name, address, telephone number and e-mail address for a contact person (and an alternate) and a description of the project, the duration and the approximate staff resources used (full time equivalent). Please note: Named contact persons must be able to verify the relevance of the project experience offered and their individual relationship to the project. For each of these three projects, the proposer’s project description must include a detailed description of each project including the nature and duration of the work performed and how it is similar to or relates to the work described in this RFP.
If the firm has no direct experience as described above, provide details of three (3) projects and how the firm’s experience relates to the contract auditing services requested in this RFP. Indicate the key personnel (partner, manager and senior level) who worked on such projects.

Please include all relevant experience the firm wants considered in response to this RFP – only information included in a firm’s proposal will be evaluated.

Both NYSDOT and non-NYSDOT experience will be considered and evaluated.

Provide the same information for any subconsultants proposed (for Section IV. A.5 above).

References

NYSDOT requests three references for each firm in the team (Prime plus Subconsultant(s)).

Proposers should reference Attachments 6a and 6b which will be forwarded by NYSDOT to each client organization submitted as a reference. The references may relate to the project information requested above or may be in addition to that project information (NYSDOT is requesting references from three separate entities for each firm proposed on the team).

Contact information for references shall include the organization name, contact name, address, telephone number and e-mail address for each organization submitted as a reference firm. It must be clear whether the reference firm will provide a Transportation related reference or non-Transportation related reference. This information will be used for evaluation of criteria as outlined in Section V below. NYSDOT will be forwarding Attachment 6a and/or 6b to the reference firm – the proposers to this RFP should provide to NYSDOT the contact information as outlined in this paragraph – proposers to this RFP are NOT to forward Attachments 6a or 6b to the reference firm(s).

Incomplete submission of contact information for the project requirement and/or reference requirement will be reflected in the evaluation and scoring as explained in Section V of this RFP.

Reference Section V of this RFP for requirements regarding the reporting of experience history with NYSDOT.

NOTE: The Department reserves the right to contact any and all references provided by the Proposing team as well as any firms cited in the experience section of a proposal but not offered as a reference. Experience attestations may be confirmed in various ways (e-mail, phone, completion of NYSDOT reference form, etc.) using contact information provided in the proposal and as deemed necessary and appropriate by the Department of Transportation.
6. **Audit Services Approach and Management, Quality Assurance and Scope of Services**

a. **Audit Services Approach and Management**

Provide a narrative of the Proposing firm's proposed audit approach for the contract auditing services solicited in this RFP. This must be provided by all proposers including firms currently under contract with NYSDOT. The following should be included in your narrative:

- How the work load assigned under this RFP will be managed;
- How resources will be allocated to the assignments;
- How individual assignments will be supervised;
- Risk factors that will be considered in planning various types of audits;
- Process for reliance on other audit work;
- Use of technology; and,
- Any innovative audit approaches used by the Proposing team.

b. **Quality Assurance**

Provide a quality assurance plan for the proposed work showing how the proposer complies with the Government Auditing Standards. The plan should indicate how the firm conducts audits in accordance with the Standards and has an appropriate internal quality assurance system in place. Include the firm’s most recent peer review report including any corrective actions taken or planned in response to any reported findings.

*Provide the same information for any subconsultants proposed (for Section IV. A. 6 above).*

c. **Scope of Services**

A general scope of services is provided in Section III. State your acceptance of this scope of services. Although NYSDOT encourages acceptance of its Scope of Services, if a consultant is unable or unwilling to indicate such acceptance, the consultant shall identify and explain any exceptions taken or deviations with/from the Scope of Services as outlined in Section III.

NYSDOT is not obligated to accept or approve of any deviation from the scope of services as included in this RFP. Any exceptions or deviations must contain sufficient amplification and justification to permit evaluation. The benefit to NYSDOT shall be explained for each exception/deviation. Such exceptions/deviations will not, by themselves, automatically cause a proposal to be considered non-responsive. However, a large number of exceptions/deviations, or one or more of significance not benefiting NYSDOT, may result in a determination of non-responsiveness and no further consideration may be given the proposal.
B. **Part II: Cost and Contract Submittal**

Part II of the proposal consists of two sections, (1) a cost proposal which sets forth proposed specific hourly rates and lump sum prices applicable to the work specified in the scope of services and (2) the contract section which specifies the proposer’s acceptance of all of the terms and conditions contained in the draft Agreement (included as **Attachment 1**) as well as other contractual items. Each cost and contract proposal should contain the following elements:

1. **Cost Proposal**
   a. **Supporting details for specific hourly rates** (for any audits not listed in “b.” below)

   The Prime consultant shall propose specific hourly rates and submit detailed supporting data (direct labor rate, overhead including fringe benefits, and fee) for the first three years of the contract using the Specific Hourly Rates Chart (**Attachment 9**). Partner’s time is not directly chargeable, but the estimated cost of the partner’s time should be included in the overhead component of hourly rates for proposed staff titles included on **Attachment 9**. Please use the rate charts labeled as **Attachment 9** and **Attachment 11** (which assists with calculating a bid for field assignments) to guide your submission.

   *The rates submitted in the cost proposal shall be used by the Prime consultant and any subconsultant(s) proposed and will be referenced during contract negotiations. To clarify further, only one rate per title will be proposed – subconsultants on the team shall adhere to the same rate structure as the Prime consultant.*

   **NOTE:** The composite rate (as calculated on **Attachment 9**) is not to exceed $115.00. A composite rate exceeding $115.00 will NOT be considered or evaluated.

   b. **Proposed Pricing for Desk Closeout Audits/Reviews**

   The Prime consultant shall propose the hours per audit for desk closeout audits. The Prime consultant shall include a proposed price per audit (to include direct labor, overhead including fringe benefits and other indirect costs - except travel which is to be negotiated on each assignment based on NYSDOT travel rules) for the three years of the base contract. The chart labeled as **Attachment 10** shall be used by the Prime to guide its submission.

   c. **The Prime consultant shall complete Attachment 11a** to present its total bid for each of the three base years of the contract and to clearly demonstrate the combined total cost of the base term (a compilation of the information provided on **Attachments 9 through 11a**).
d. **Attachment 8** serves as a fact sheet and general reference for use when completing **Attachments 9 through 11a**.

f. A proposing Prime firm may access the following link to complete Attachments 9 through 11a using formula driven Excel spreadsheets:

   https://www.dot.ny.gov/business

Once the link is accessed, click on “Consulting Services” then select “Opportunities” and then find and click on the respective project document within the correct contract (C030871 “Contract Audit Services for NYSDOT”).

Attachments 9 through 11a must be completed by the proposing Prime firm. **All Attachments are to be included in the Prime firm’s proposal (in hard copy form).** NYSDOT reserves the right to request electronic copies of these documents as well.

Billing rates for years two (2) and three (3) should be escalated by no more than 2.0 percent (if escalation is sought) over the previous year. For the two optional one year extensions beyond the contract’s base term, all proposing firms shall hold annual increases to 2.0 percent or the PPI (whichever is lower). NYSDOT reserves the right to request zero percent rate increases during the term of the contract with a firm under contract.

Overhead rates and fees will not increase during the term of the contract (base or extension years).

**NYSDOT encourages proposers to be competitive when proposing escalation rates, overhead rates and fees.**

*The information included in the cost proposal regarding rates and pricing will be utilized as the basis for negotiations with firms awarded a contract.*

2. **Contract Proposal**

   a. **Acceptance of Terms and Conditions**

The Prime Consultant shall specifically indicate its acceptance of all Terms and Conditions of the draft Agreement contained in **Attachment 1** of this Request for Proposals by completing and submitting with its proposal the “Consultant Information and Certifications Form,” included as **Attachment 2** to this RFP. **Altering Attachment 2 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.**
Should any proposing firm take an exception to any of the draft contract’s terms and conditions, the proper placement of such exception is in the firm’s cover letter. The proposing firm will also make a notation on Attachment 2 for NYSDOT to reference the firm’s cover letter regarding exceptions.

NOTE: the Department will NOT entertain exceptions brought to its attention after the proposal due date or during contract negotiations.

b. MBE/WBE Participation

The proposing firm must complete and submit in Part II of its proposal Attachment 12 (MBE/WBE Participation Information). Provide the legal names of all certified MBE and certified WBE subconsultants that are offered in the proposal – legal names of all firms proposed should be provided.

For proposing firms whose MBE and/or WBE participation submission is less than the established contract goals of 15 percent and 5 percent respectively the proposing firm must also complete and submit in Part II of its proposal an Attachment 13 (MBE/WBE Subconsultant Participation Solicitation Log) for whichever goal was not met. If both goals were not met or met partially, two solicitation logs are necessary – one for the MBE participation goal and one for the WBE participation goal. Submission of an MBE/WBE Goal Commitment Explanation Letter shall be required for either partial goal attainment or no goal attainment. Guidance concerning good faith efforts can be found in Section I.E. and on Attachment 14. Additionally, proposing firms must provide documentation of their MBE and WBE advertisement seeking MBE/WBE firms for the subject services as required by law. This is required of all proposing firms – those meeting the established goals and those not meeting the goals but submitting good faith efforts to do so.

c. Modification Acknowledgement Forms

Included with any and all future modifications to this RFP will be Acknowledgement forms. All respondents must have an authorized representative of the firm acknowledge receipt and acceptance of each of the Modifications by including a signed copy of this/these form(s) with the Part II Cost and Contract Submission.

d. Consultant Identification Number (CIN)

All respondents to this solicitation must reference their Consultant Identification Number (CIN) in their Part II proposal (reference and complete Attachment 2).

If a proposing firm does not have a CIN, and it is selected for contract award, it will be required to obtain one prior to negotiation of the contract by visiting “How to Register a New Consultant Firm with NYSDOT,” at the following NYSDOT website: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions
e. Procurement Lobbying Law


Filing the two required forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer Disclosure of Prior Non-Responsibility Determinations) is mandatory for all consultants in order to be considered for contract award. Copies of the two required forms are included with this RFP (see Attachment 3). NOTE: Failure to submit the required PLL forms will result in elimination from consideration for contract award.

Use Contract No. C030871 wherever requested in the forms. Please call or e-mail the person identified as the contact in the Administrative Specifications section (VI.G) of this RFP if you have any questions regarding how to complete these forms.

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

A. General

Proposals shall be pre-screened to determine if they meet minimum RFP responsiveness (reference section I. D.). Those which do shall be considered further; those which do not may be deemed non-responsive and may be removed from further consideration. It is NYSDOT’s sole discretionary determination as to whether a proposal is complete.

Proposing firms that wish to propose for both Lots must provide a separate proposal (Part I and Part II) for each Lot.

NYSDOT will evaluate proposals using a Best Value Method of evaluation. The process will be based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in the Department’s evaluation of proposals. Technical proposals will be scored based on the information provided under Section IV. A. Part I: Technical and Management Submittal in accordance with the pre-established criteria listed in Section C. below. The cost portion of Part II: Cost and Contract Submittal will be point scored in accordance with the pre-established criteria listed in Section D. below.

The Technical and Management proposal evaluation will be accomplished by subject matter experts/representative committee comprised of technical, program and management personnel as determined by NYSDOT. Committee members will score each Technical proposal (Part I) individually and then meet as a group to discuss their findings. Evaluators will be allowed to revise scores on the basis of the committee discussions. A short-list of proposing firms will be established based upon the committee’s scores following these discussions. Only proposals determined to be susceptible for contract award (short-listed) will be considered further and have their cost proposal included in the selection process. Firms susceptible for contract award shall be those whose proposal receives a minimum raw technical score of 35.00 points or higher (out of the 60 points available) after discussions by the Evaluation Committee. Proposals with raw technical scores lower than 35.00 are considered not susceptible for contract award and will not be considered further in the evaluation process. The short-list will be posted on NYSDOT’s website.

Proposing firms may be requested to clarify issues or to provide additional insights into their proposal through written clarifications. If written clarifications are required to complete the evaluation of technical proposals (Part I), evaluators will be allowed to revise their technical scores based on this additional information. NYSDOT reserves the right to ask clarifying questions regarding each cost proposal (Part II) and MBE/WBE participation as well.
NYSDOT may request best and final offers (BAFOs) from firms that are determined to be susceptible for contract award. Firms should not be led to anticipate the opportunity or requirement of a BAFO in all procurements. NYSDOT reserves the right to utilize the BAFO option on a case by case basis.

NYSDOT shall award contract(s) based on the highest total score(s) after considering all technical and cost/price evaluation factors.

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

At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on NYSDOT’s website at [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business). Once the link has been accessed, click on “Consulting Services” then “Opportunities” and then click on the project line which represents “C030871.” All non-designated proposing firms shall be notified in writing regarding the results of this solicitation and shall be offered a debriefing. It is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Furthermore, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.

### B. Pre-Screening of Proposals

NYSDOT will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal requirements as specified in the RFP. It is NYSDOT’s sole discretionary determination as to whether a proposal is complete (reference Sections I. D and V. A.). Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section may be deemed non-responsive by NYSDOT and may not be considered further.

As part of the pre-screening process, the proposed MBE and WBE contract level participation percentages offered for Empire State Development (ESD) certified MBE and WBE subconsultants will be reviewed (Attachment 12 MBE/WBE Participation Information).

Refer to Section I.E. of this RFP for guidance regarding the offering of MBE and WBE participation. For this solicitation, NYSDOT has established an MBE participation contract goal of 15 Percent and a WBE participation contract goal of 5 percent.
To count toward the contract MBE and WBE participation goals, each MBE and WBE firm offered must be currently listed in the NYS Empire State Development’s directory of certified Minority and Women Owned Businesses (http:www.nylovesmwbe.ny.gov/cf/search.cfm). If the proposed MBE and WBE participation is less than the established 15 percent and 5 percent goals respectively, then the firm’s evidence of Good Faith Efforts (Attachment 13 MBE/WBE Subconsultant Participation Solicitation Log – one submission for MBE and one submission for WBE) to achieve participation in the goals will be reviewed, along with the firm’s letter of explanation as to why it was unable to meet either one or both of the goals. Good Faith Efforts to meet each of the participation goals will be evaluated separately.

Attachment 14 (Guidance Concerning Good Faith Efforts) provides information describing actions a firm should take to demonstrate its good faith efforts. If it is determined by the Department during the review process, which will include verification of a proposing firm’s good faith effort evidence, that the firm did not provide acceptable good faith efforts, the proposal may be deemed non-responsive and may be removed from further consideration.

As required by law, proposing firms must provide documentation of their advertisement seeking MBE and WBE firms for the subject services. This is required of all proposing firms; those meeting the established goals and those not meeting the goals, but submitting documentation of good faith efforts to do so.

C. Technical and Management (up to 60 points)

The Technical and Management Proposal will be point scored and will represent up to 60 percent of the total Best Value score for the proposal. The proposal with the highest final raw technical score will receive a perfected score of 60 points. Other technically acceptable offers, will have their lower technical score also perfected and will receive a proportionately lower final technical score.

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

1. **Experience** (up to 30 points)

   A. Experience of Key Personnel (up to 15 points)

      1. Extent and relevance of key personnel’s experience (including subconsultants) conducting government contract audits and applying Federal Cost Principles. (up to 7 points)
      2. Extent and relevance of key personnel’s (including subconsultants) government auditing experience. (up to 4 points)
3. Extent to which key personnel (including subconsultants) meet the minimum professional auditing experience (reference Section IV.A.5.). (up to 4 points)

B. Experience of Firm (up to 15 points)

1. Quality and relevance of the three (3) verifiable references required for each firm proposed on the team (Prime and Subconsultant (s)) as follows: (up to 8 points)
   a. Two references related to the performance of government contract auditing services provided to NYSDOT and/or other government transportation organizations in the last five years.
      If Prime and/or subconsultant (s) have worked for NYSDOT during the last five (5) years, the NYSDOT CAB Director/Consultant Manager must be submitted by the respective firm (s) as a reference. (up to 6 points)
   b. One non-transportation reference related to the performance of government contract auditing services provided in the last five years. (up to 2 points)

2. Quality, extent and relevance of overall and specific project experience (including subconsultants) providing professional auditing services related to the government and contract auditing experience outlined in Section III (Scope of Services). (Up to 7 points)

2. Audit Services Approach and Management, Quality Assurance and Scope of Services (up to 30 points)

   A. Appropriateness and effectiveness of work load management, resource allocation and supervision of assignments. (up to 10 points)
   B. Completeness and clarity of quality assurance plan and its relevance to the proposed work. Appropriateness of any corrective action needed to address any significant findings. The firm’s (including subconsultants) most recent peer review report. (up to 5 points)
   C. Relevance and appropriateness of risk factors considered when planning the various audits described in the Scope of Services. (up to 5 points)
D. Extent to which the process to be followed when relying on the work of other auditors is appropriate, relevant and complete. (up to 5 points)

E. Application and appropriateness of innovative techniques/approaches being used in providing audit services including the application of technology to facilitate the audit process (e.g. TeamMate, data analysis software, etc). (up to 5 points)

Only firms which are susceptible for contract award will have their cost proposal considered in the Cost and Contract Proposal scoring analysis.

D. Cost and Contract (up to 40 points)

The cost portion of the Cost and Contract Proposal will be point scored and will represent up to 40 percent of the total proposal score. The calculation of a cost score will be determined by comparing the total cost of the base term (“Base Term Total Value/Cost Proposal”) of technically acceptable (short-listed) proposals as provided by each proposing Prime consultant on Attachment 11a.

The proposal with the lowest total cost of the base term of technically acceptable (short-listed) proposals as presented on Attachment 11a, will receive a perfected cost score of 40 points. Other offers with higher-priced cost proposals will receive proportionately lower cost scores.

REMINDER NOTE: Proposals submitted with composite rates exceeding $115.00 will NOT be considered or evaluated.

The information provided on Attachments 9 through 11a will be referenced during negotiations.
VI. ADMINISTRATIVE SPECIFICATIONS

A. Proposal Submission

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

2. Proposers shall submit seven (7) bound hard copies of Part I and four (4) copies of Part II assembled in separate three ring binders. If proposing on both Work Lots a proposing firm shall submit two separate proposals, with the adequate number of copies of each set as indicated above, for each Lot.

3. Your proposal must be received by NYSDOT by 12:00 pm on March 23, 2012. The proposal must be addressed to:
   Director, Contract Management
   NYS Department of Transportation
   50 Wolf Road, Suite ICM
   Albany, New York 12232
   Attention: Ms. Patricia Rowe – Contract No. C030871 “Contract Audit Services for NYSDOT”

B. State’s Rights to Proposals

All proposals, upon submission to NYSDOT shall become its property for use as deemed appropriate. By submitting a proposal, the offeror 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 has the following prerogatives with regard to proposals submitted:

- to accept or reject any or all proposals;
- to correct any arithmetic errors in any or all proposals;
- to change the proposal’s due date upon appropriate notification;
- to eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
- to adopt any or all of a successful offeror’s proposal;
- to negotiate modifications to the scope, fee and contract terms with the selected offeror prior to contract award only if such is in the best interest of the State;
- to request clarification of any and all firms’ proposals.

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 State agency in New York. 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.

C. Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All selected offerors of contracts valued at $100,000 or more will be required to provide vendor responsibility information through the OSC website before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. Firms should become familiar with this form by visiting the following website:

http://www.osc.state.ny.us/vendrep/index.htm

D. Registration with NYSDOT

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

Consultant Firm Registration instructions are available at:
or via:


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

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

F. Inquiries and Information

All questions concerning this solicitation must be directed only to:

Name: Ms. Patricia Rowe, Contract Management Specialist 1
Email: prow@dot.state.ny.us
Telephone: (518) 457-2600
Fax: 518-457-8475

Or questions may be directed to specified management as provided in Attachment 3 (PLL Compliance).

The last date to submit questions for this solicitation is March 2, 2012. All inquiries should be addressed to:

Director, Contract Management
NYS Department of Transportation
50 Wolf Road, Suite 1CM
Albany, New York 12232
Attention: Ms. Patricia Rowe – Contract No. C030871
E-mail: prow@dot.state.ny.us

Responses to all questions of a substantive nature, as well as copies of the questions, will be given to all consultant contractors being solicited.

G. 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/consultants-repository/misrep_protest.pdf
H. **Tentative Schedule of Key Events**

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

- RFP Release Date: February 17, 2012
- Question Submittal Deadline: March 2, 2012
- Proposals Due: March 23, 2012
- Proposal Evaluation Complete: May, 2012
- Recommendation & Designation: 1–2 months after proposal evaluation
- Contract Negotiations: One Month
- Contract Award: 4–6 weeks after completion of contract negotiations
VII. ATTACHMENTS

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NEW YORK STATE DEPARTMENT OF TRANSPORTATION

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

COMPTROLLER'S CONTRACT NO. C030871

PROJECT: _______________________

This Agreement made this ______ day of ___________________, 200__, pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the New York State Department of Transportation (hereinafter referred to as "STATE" or "DEPARTMENT") whose Main Office is located at 50 Wolf Road in the County of Albany, State of New York 12232, and

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

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

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

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

The contract documents shall be deemed to include this AGREEMENT, the provisions required by State and Federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX B, and APPENDIX C, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the CONSULTANT’S Proposal and the STATE’s Request for Proposals (RFP).

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

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

ARTICLE 5. MAXIMUM AMOUNT.

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

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

ARTICLE 6. PROVISION FOR PAYMENT.

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

Item I  Specific Hourly rates of pay shown in EXHIBITS "B-1" and “B-1a” for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged is subject to audit. If the AGREEMENT is extended
beyond ___ (end date in Article 4) __, then the Specific Hourly Rates of pay shown in EXHIBITS “B-1” and “B-1a” may be increased annually by the lower of either the percent change for the Producer Price Index – Offices of Certified Public Accountants – Auditing (Series ID: PCU5412115412114) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 3 percent.

Item II Lump Sum assignment provision for payment shown in EXHIBITS “B-2” and “B-2a” for task assignments under this PROJECT – based upon not to exceed Specific Hourly Rates of pay shown in Exhibits “B-1” and “B-1a” for employees assigned to this PROJECT and shall be agreed to by the STATE and the CONSULTANT.

Item III Actual Direct Non-Salary Costs incurred in fulfilling the terms of this AGREEMENT are subject to audit. Travel, meals and lodging, for those assignments that require such, will be negotiated in advance of any specific assignment and will be included in and will be made part of the lump sum budget for that assignment. Travel, meals and lodging shall be estimated using current NYSDOT travel rules and will be limited to the prevailing maximum rates based on the Federal rate schedules and New York State travel guidelines. All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller.

Items purchased under this PROJECT shall become the property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE. Furthermore, all licenses provided during the term of the contract are the property of the STATE and will be returned to the STATE at the conclusion of the PROJECT.

ARTICLE 7. PARTIAL PAYMENTS.

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

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

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

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to all Subcontractors and Subconsultants within ten (10) calendar days of receipt of payment from the STATE.
Accounts of the CONSULTANT shall clearly identify the costs of the work performed under this AGREEMENT and shall be subject to periodic and final audit by the STATE and, on Federally aided Projects, by the Federal Highway Administration. Such audit shall not be a condition of partial payment.

ARTICLE 8. 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 CONSULTANT is required, if it is a "foreign" (Out of State) corporation or entity, to obtain and submit the required "Tax Clearance" certificate to the STATE at the time of contract signing and again before processing the final payment. It should be noted that any time taken to satisfy or furnish this Tax Clearance certificate shall extend the required payment date by an equal period of time. The Tax Clearance certificate can be obtained by mailing a request to:

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

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

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in ARTICLE 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" on page ____ 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 9. 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 the work is within the scope of the Agreement and whether or not additional work is required. The STATE is to be notified in writing of all extraordinary costs arising in connection with extra work. Expenses for extraordinary costs as so determined shall be reimbursed to the extent they are chargeable to the STATE under this AGREEMENT.
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 10. CONSULTANT LIABILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad, 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 consultant 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 in which the work is being performed, 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 in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or any consultants working for the State.

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 does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or 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 and appurtenances and appliances thereof including moving, demolition and excavating connected therewith.

ARTICLE 11. INSURANCE.

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

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 subsection “B,” below. 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.

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 C Number. Certificates shall be mailed to the:

    Office of Contract Management
    New York State Department of Transportation
    50 Wolf Rd.
    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 thirty (30) days’ prior written notice to the Department by Certified Mail, return receipt requested at the stated address. In addition, if required by the Department, the CONSULTANT shall deliver to the Department within Forty-Five (45) 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 the form provided by the Department (C218 or successor) unless the Department specifically approves a different form. The ACORD forms of Certificate of Insurance are not acceptable.
b. Be signed by an authorized representative of the insurance carrier or producer and be acknowledged before a notary public.
c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
d. Specify the Additional Insureds and Named Insureds as required herein.
e. Refer to this Contract by number on the face of the certificate, and
f. Expressly reference the inclusion of all required endorsements.
g. 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:
   (1) 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
   (2) May withhold further contract payments in accordance with Article 8, or
   (3) 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 (or forms) that provides equivalent coverage.

5. Primary Coverage. All insurance policies, excepting workers’ compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available 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 thirty (30) 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 subdivision (A)(3) 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, CONSULTANT-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 minus” or higher. 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.

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

1. **Workers’ Compensation and Disability Insurance.** As required by State Finance Law §142, 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.** 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:

(1) Coverage for liability contractually assumed by the CONSULTANT.
(2) 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,” 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.

3. **Commercial Automobile Insurance including liability and required coverage for New York (applicable to any project where automobiles or other vehicles will be employed to complete the work).** In the event that automobiles are used in connection with CONSULTANT’s business or operations with the Department, 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 should 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 $1,000,000.00 each accident.

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

5. **Professional Liability/ Errors and Omissions (applicable to professional services, including architectural, engineering, appraisals, title searching and estimating).** The CONSULTANT shall maintain at their own expense or shall require to be
maintained, such insurance as is customary to compensate Department for any claims or losses that occur because of CONSULTANT’s errors, omissions, malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than $250,000 subject to approval by Department, such approval not to be unreasonably withheld, except that it is also agreed that Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on an ISO claims made basis (or a policy form providing equivalent coverage) in an amount of no less than $1,000,000.00 per claim and not less than $1,000,000.00 in the aggregate.

6. Subcontractor’s Liability Insurance. In the event that any portion of the work described in this contract is performed by an approved subcontractor, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subcontractor 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 subcontractors. Contractor 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 subcontractor employed by them to do work under this contract.

ARTICLE 12. 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 13. 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 14. 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 15. 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 §365 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 §362 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 16. 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 AGREEMENT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the AGREEMENT.
ARTICLE 17.  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 18.  CODE OF ETHICS.

The CONSULTANT specifically agrees that this AGREEMENT may be canceled or terminated if any work under this AGREEMENT is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for State officers and employees.

The CONSULTANT shall not engage, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this AGREEMENT in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

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
ARTICLE 20.  CONSIDERATION.

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. The provisions required by State and Federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX B, and APPENDIX C;

2. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
3. SCHEDULE A (including Exhibits);
4. SCHEDULE B (including EXHIBITS);
5. The CONSULTANT’s Proposal; and
6. The STATE’s Request for Proposals.

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 Bulletin No. G-221, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, Exhibit XX) 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. Annual employment reports should be submitted to the following addresses. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
ARTICLE 31. NOTICES.

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

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

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

**New York State Department of Transportation:**
Contact Person’s Name: ___________, Contract #C0_________
Title: ___________
Address: ___________
Telephone Number: ___________
Facsimile Number: ___________
E-Mail Address: ___________

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

Item 2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
Item 3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 32. CONTRACT PAYMENT.

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

ARTICLE 33. 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.
IN WITNESS WHEREOF, this Contract No. C030871 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY FOR THE PEOPLE OF THE STATE OF NEW YORK

________________________________  By___________________________________

CONTRACT MANAGEMENT  DEPARTMENT OF TRANSPORTATION

DATE: ____________________      DATE: ____________________

Consultant Certifications: I certify that all the information with respect to the “Vendor Responsibility Questionnaire” submitted by (CONSULTANT FIRM NAME) on the _____ day of ____________________________, 20______ pursuant to the requirements set forth in OSC Bulletin G-221 is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the “Vendor Responsibility Questionnaire” submitted that date.

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

By __________________________________ Date: ______________________________

FIRM

--------Contract Audit Services for NYSDOT --------

APPROVALS

ATTORNEY GENERAL  THOMAS P. DI NAPOLI

STATE COMP.TROLLER

By

Date

---------
Acknowledgement for Contract No. C030871

For contracts signed in New York State

State of New York )

County of ) ss.:

On the _______ day of ______________ in the year 20___, before me the undersigned, personally appeared _______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____________________________________
NOTARY PUBLIC

My Commission Expires:

For contracts signed outside New York State

State of )

County of ) ss.:

On the _______ day of ______________ in the year 20___ before me, the undersigned, personally appeared _______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), 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:
EXHIBIT A

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 proposers, 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
30 South Pearl St -- 7th Floor
Albany, New York  12245
Telephone:  518-292-5220
Fax:  518-292-5884
http://www.empire.state.ny.us

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
30 South Pearl St -- 2nd Floor
Albany, New York  12245
Telephone:  518-292-5250
Fax:  518-292-5803
http://www.empire.state.ny.us

Proposers located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The Omnibus Procurement Act requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than $1 million:

1. The successful contractor shall document efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.

2. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:
   a. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned business, or
b. Contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or

c. Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or

d. Participated in bidder outreach conferences.

e. If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.

f. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.

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

4. 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 Community Services 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.

Bidders are hereby notified that if their principal place of business is located in a state 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 amendments (Chapter 684, Laws of 1994) require that they be denied placement on bidders mailing lists and contracts for which they would otherwise obtain. Bidders of construction services must be denied the award of a contract if their principal place of business is located in a state that discriminates or imposes a preference against New York State firms.

A current list of states which penalize New York State firms is available from the office letting this contract, or from the Procurement Assistance Unit, NYS Department of Economic Development, Albany NY (518-292-5224).

Last Updated: Monday, April 27, 2010
APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, 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
The Contractor certifies and warrants that all wood in informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, 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;

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

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; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

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.

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

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.

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.

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.

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

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

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

- NYS Department of Economic Development  
  Division for Small Business  
  30 South Pearl St -- 7th Floor  
  Albany, New York 12245  
  Telephone: 518-292-5220  
  Fax: 518-292-5884  
  [http://www.empire.state.ny.us](http://www.empire.state.ny.us)

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  
  30 South Pearl St -- 2nd Floor  
  Albany, New York 12245  
  Telephone: 518-292-5250  
  Fax: 518-292-5803  
  [http://www.empire.state.ny.us](http://www.empire.state.ny.us)

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

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

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

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

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

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

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

23. **COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.
24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.
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) **Incorportation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, 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 undertakes to proceed in compliance with all the applicable Federal-aid requirements.

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

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

NON DISCRIMINATION/EOO/DBE REQUIREMENTS

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

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

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

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

**FEDERAL SINGLE AUDIT REQUIREMENTS**
Non-Federal entities that expend $500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, “Audits of States, Local Governments, and Non-Profit Organizations”. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than $500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ 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 database is accessible at [http://www.cfda.gov/](http://www.cfda.gov/).

**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

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.
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

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

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
   (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
   (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.
   (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

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

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

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

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

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

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

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

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

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

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

   The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program.

   "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

4. **DISSEMINATION OF POLICY**
   (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:
   
   (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
   
   (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
   
   (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

   (b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:
   
   (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

       (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

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

(c) The CONSULTANT will submit to the New York State Department of Transportation, a monthly report Form (AAP-46) for the first three months after beginning work, thereafter upon request, indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work.

(d) 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:

(a) The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.
(b) The number of months of training to be provided under these special provisions is previously stated in Article __.
(c) 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.
(d) 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.
EXHIBIT “B”

ENGAGEMENT TIME LINE (subject to change at time of contract award or upon issuance of assignment – at NYSDOT’s discretion)

It is imperative that NYSDOT advance all audit work as effectively and expeditiously as possible.

For Audits Requiring Field Work

The following time frames reflect the expected schedule for advancing a typical audit engagement that involves field work. It is expected that all field work assignments will be completed within 270 calendar days from the date assigned. The 270 days is intended to be a maximum, broken down as show below. Some assignments will have shorter time frames negotiated at the time they are issued.

<table>
<thead>
<tr>
<th>Milestone Time Frame</th>
<th>Number of Calendar Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipt of Assignment to Submission of APM</td>
<td>90</td>
</tr>
<tr>
<td>Approval of APM to Completion of Field Work</td>
<td>45-120</td>
</tr>
<tr>
<td>Completion of Field Work to Issuance of Final Report</td>
<td>60</td>
</tr>
<tr>
<td>Total</td>
<td>195 - 270</td>
</tr>
</tbody>
</table>

If the CPA firm is unable to meet the above schedule, they will notify the appropriate NYSDOT Project Manager as quickly as possible so that steps can be taken to assure timely completion of the assignment.

NYSDOT intends to adhere to a 10 business day turnaround time on review and concurrence/non-concurrence for APM’s. NYSDOT will promptly notify the CPA firm of any change to the turnaround time and will adjust its expectations as appropriate.

For Desk Audits

NYSDOT expects that a desk audit assignment will be completed within a maximum of 60 calendar days from the date assigned.
Attachment 2

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

CONTRACT NUMBER:  [INSERT CONTRACT NUMBER]____
PROJECT TITLE:  [INSERT RFP TITLE]

I. CONSULTANT INFORMATION

FIRM NAME: ______________________________________________________________
ADDRESS:_________________________________________________________________
CITY:_________________________________________ STATE: ___________
ZIP CODE: __ __ __ __ __ - __ __ __ __
TELEPHONE : (_____) _____ - __________ FAX: (_____) _____ - __________
E-MAIL ADDRESS: _________________________________________________________

CONTACT PERSON (name and telephone number): ______________________________________
Consultant’s Federal Identification Number (FIN):________________________
Consultant’s NYSDOT Consultant Identification Number (CIN): ___________________

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

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

Other Authorized Individual(s):

Name/Title:________________________________________________________________
Address:____________________________________________________________________
Telephone: (_____) _____ - _________  FAX: (_____) _____ - _______
II. PROPOSER CERTIFICATIONS

By signing below, I, ____________________________, authorized individual
(Name)
of ______________________________________ make the following
(Firm) certifications regarding the subject proposal:

• 180-Day Offer: This proposal is a firm offer for a 180-day (or more) period from the date
of submission.
• The firm has read and will follow the procedure outlined in Attachment 5 if it proposes
the services of a former NYSDOT employee(s).
• Vendor Responsibility: If selected for contract award, the firm will complete and submit
the required Vendor Responsibility forms to NYSDOT within 10 days of notification of
designation both electronically and in hard copy per the NYSDOT Web site.
(http://www.osc.state.ny.us/vendrep/index.htm)
• ST-220: If selected for contract award greater that $100,000, the firm will complete and
submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to
negotiation with NYSDOT. You should make yourself familiar with these forms by
visiting the following Web sites:
• The firm is in compliance with the requirements of the Omnibus Procurement Act as
described in EXHIBIT A which is found in the Draft Contract attached to this RFP.

Signature: ______________________________________________

III. ACCEPTANCE OF CONTRACT AND SCOPE OF SERVICES

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

Signature: ______________________________________________
(Name of Acceptor)
Attachment 3

Procurement Lobbying Law Compliance

1. Required Forms: The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant’s proposal.
   a) “Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)”
   b) “Offerer Disclosure of Prior Non-Responsibility Determinations”.

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


3. Summary of the policy and prohibitions regarding permissible contacts
   a) Contacts prior to designation:
      Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:
      The Contract Management Non A/E Contract Management Specialist
      The Contract Management Non A/E Contract Management Supervisor
      The Contract Management Civil Rights Unit Supervisor
      The Contract Management Assistant Directors
      The Contract Management Director

      These are some communications exempted from this restriction:
      Participation in a pre-proposal conference.
      Protests, complaints of improper conduct or misrepresentation

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

   b) Contacts after designation
      NYSDOT identifies its primary negotiation contacts. The designated contacts include:
      The Contract Management Non A/E Contract Management Specialist
      The Contract Management Non A/E Contract Management Supervisor
      The Contract Management Civil Rights Unit Supervisor
      The Contract Management Assistant Directors
      The Contract Management Director
      The NYSDOT consultant job manager
The NYSDOT consultant job manager’s immediate supervisor

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

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

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

4. Rules and regulations and more information on this law, please visit:
http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm (Advisory Council FAQs)
http://www.nylobby.state.ny.us/ (New York State Lobbying Act)
http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

For more information, go to NYSDOT’s World Wide Web Site at http://www.dot.ny.gov or contact: Patricia Rowe
NYSDOT Contract Management
50 Wolf Road, Suite 1CM
Albany, New York 12232
E-mail: prowe@DOT.STATE.NY.US
Tele: (518) 457-2600
Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

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

Contract Procurement No. ________________

By: ________________________________ Date: ________________________________

Name: ________________________________

Title: ________________________________

Contractor Name: ________________________________

Contractor Address: _______________________________________________________

______________________________________________________________________

______________________________________________________________________
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: ________________________________

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 three 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: _____________________________________________
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   (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 Termination or Withholding of Contract: ____________________________________
   Basis of Termination or Withholding: _____________________________________________
   ______________________________________________________________________________
   ______________________________________________________________________________
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   ______________________________________________________________________________

   (Add additional pages as necessary)

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

By: __________________________ Date: __________________________

Signature

Name: ____________________________________

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

State Agency Name: Transportation  
Agency Code: 17000  
Contractor Name:  
Contract Number:  
Contract Start Date: / /  
Contract End Date: / /  

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

Grand Total

Name of person who prepared this report:

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

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

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

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

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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)  
Page of 91
Consultant’s Responsibility When Proposing Former NYSDOT Employee(s)

It is the proposing firm’s responsibility to ensure it proposes staff who are eligible to provide the subject services and work on the proposed project. It is an individual’s responsibility to comply with the Public Officer’s Law.

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

- It is two years or less between the date that the individual is proposed and the individual’s date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

Procedure

- Before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York State Ethics Commission that approves his/her participation in the project as it is being proposed.
- A copy of this opinion must be on file in the consultant’s office and available for review by NYSDOT if requested.
- Failure to obtain New York State Ethics approval for an individual’s participation in a project may jeopardize the firm’s designation for that project.
## Reference Check Form

**Government Contract Auditing for NYSDOT and/or Other Government Transportation Organizations**

**RFP: Contract Audit Services for NYSDOT - Contract No. C030871**

Please complete all areas in grey.

<table>
<thead>
<tr>
<th>Date:</th>
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<tbody>
<tr>
<td>Contact Name and telephone number:</td>
</tr>
<tr>
<td>Reference Firm:</td>
</tr>
<tr>
<td>Reference Project:</td>
</tr>
<tr>
<td>Auditing Firm This Reference Relates to (Legal Name of Firm):</td>
</tr>
</tbody>
</table>

Please rate the consulting firm above on the factors below using the following 0 - 10 scale:

- 0 - 1: Unacceptable
- 2 - 3: Minimally Acceptable
- 4 - 5: Satisfactory
- 6 - 7: Good
- 8 - 9: Very Good
- 10: Outstanding

<table>
<thead>
<tr>
<th>1. Competence of Personnel:</th>
</tr>
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<tbody>
<tr>
<td>2. Timely Performance of Work:</td>
</tr>
<tr>
<td>3. Accuracy &amp; Completeness of Project Records:</td>
</tr>
<tr>
<td>4. Project Management:</td>
</tr>
<tr>
<td>5. Experience with auditing in accordance with Generally Accepted Government Auditing Standards (GAGAS)</td>
</tr>
<tr>
<td>7. Effectiveness of communication with reference firm:</td>
</tr>
<tr>
<td>8. Effectiveness of communication with audited firms:</td>
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<tr>
<td>9. Conduct as a Professional:</td>
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<tr>
<td>10. Overall performance:</td>
</tr>
</tbody>
</table>

Please provide comments on the firm's performance as it relates to government contract auditing services for NYSDOT and/or other government transportation organizations as well as any other information which may prove useful to future employers:

Thank you for taking the time to complete this reference. Your assistance is greatly appreciated!
<table>
<thead>
<tr>
<th>Reference Check Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Contract Auditing NOT Related to Transportation</td>
</tr>
<tr>
<td>RFP: Contract Audit Services for NYSDOT - Contract No. C030871</td>
</tr>
</tbody>
</table>

Please complete all areas in grey.

<table>
<thead>
<tr>
<th>Date:</th>
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<table>
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<tr>
<th>Contact Name and telephone number:</th>
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<table>
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<tr>
<th>Reference Firm:</th>
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Please rate the consulting firm above on the factors below using the following 0 - 10 scale:

- 0 - 1: Unacceptable
- 2 - 3: Minimally Acceptable
- 4 - 5: Satisfactory
- 6 - 7: Good
- 8 - 9: Very Good
- 10: Outstanding

1. Competence of Personnel:
2. Timely Performance of Work:
3. Accuracy & Completeness of Project Records:
4. Project Management:
5. Experience with auditing in accordance with Generally Accepted Government Auditing Standards (GAGAS)
7. Effectiveness of communication with reference firm:
8. Effectiveness of communication with audited firms:
9. Conduct as a Professional:
10. Overall performance:

Please provide comments on the firm’s performance as it relates to government contract auditing services which do not relate to transportation as well as any other information which may prove useful to future employers:

Thank you for taking the time to complete this reference. Your assistance is greatly appreciated!
STATEMENT OF EXPERIENCE FOR KEY PERSONNEL - PARTNERS, MANAGERS AND SENIORS (Complete for each individual proposed)

<table>
<thead>
<tr>
<th>NAME:</th>
<th>FIRM TITLE:</th>
<th>MANAGING AUDITOR</th>
<th>SENIOR AUDITOR</th>
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<tbody>
<tr>
<td>CPA LICENSE: YES ☐ NO ☐</td>
<td>STATE:</td>
<td>YEAR:</td>
<td>LIST OTHER CERTIFICATIONS AND YEAR EARNED:</td>
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<tr>
<td>LICENSE NO.: ________________</td>
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<td>LOCATION FROM WHICH DEPLOYED:</td>
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IN THE SECTION BELOW DESCRIBE UP TO FIVE ENGAGEMENTS IN THE LAST FIVE YEARS WHERE RELEVANT AUDIT EXPERIENCE IS CLAIMED

<table>
<thead>
<tr>
<th>TITLE, EMPLOYER, REFERENCE CONTACT, &amp; PHONE NUMBER</th>
<th>CLIENT NAME, CONTACT &amp; PHONE NUMBER</th>
<th>FROM YEAR</th>
<th>TO YEAR</th>
<th>HOURS</th>
<th>DESCRIBE EXPERIENCE INCLUDING RELEVANCE TO RFP</th>
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</tbody>
</table>
Proposing Prime firms shall complete **Attachments 9 through 11a using the formula driven Excel worksheets at the following link:** [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business) Once the link is accessed, click on “Consulting Services” then select “Opportunities” and then find and click on the respective project document within the correct contract (C030871 “Contract Audit Services for NYSDOT”). **All Cost attachments/worksheets must be included in hard copy form in the one Cost proposal per Lot submitted by the Prime proposing firm.**

As already stated, one technical and one cost proposal shall be submitted for each Lot that a Prime firm is proposing on.

For ease of explanation, the columns in the attachments are lettered sequentially straight through from Attachment 9 to 11a.

**Only high-lighted cells in Attachments 9 through 11a shall be completed – all other cells are formula driven.**

**The estimated level of effort for Lot 1 is 10,000 hours and the estimated level of effort for Lot 2 is 2,500 hours.** Minimum commitment per Prime firm/team for each Lot shall be the estimated level of effort as stated (10,000 for Lot 1 and 2,500 for Lot 2).

The estimated number of desk audits/reviews (required on **Attachment 10**) is 45 hours for Lot 1 and 11 hours for Lot 2. **This information is formula driven and will be based on the Lot selection submitted by the firm on Attachment 9.**

Range of hours for typical Desk Closeout Audits and Reviews are 60 – 75 – proposing Prime firms shall propose a number of hours based on this information.

**Prime firm and subconsultant firms on the same team shall adhere to the same rate per title for that team.**

Billing rates for years two (2) and three (3), including Desk Closeout Audits/Reviews should be escalated by no more than 2.0 percent over the previous year (if escalation is sought). For the two optional one-year extensions beyond the contract’s base term, all proposing firms shall hold annual increases to 2.0 percent or the PPI (whichever is lower). NYSDOT reserves the right to request zero percent rate increases during the term of a contract with a firm under contract.

Overhead rates and fees proposed will not increase during the term of the contract (base or extension years).

**NYSDOT encourages proposers to be competitive when proposing escalation rates, overhead rates and fees.**

Partner’s time is not chargeable directly. It should be included in overhead.
Attachment 9
Contract Audit Services for NYSDOT C030871

Firm Name:  LOT #:  

**SPECIFIC HOURLY RATES CHART**
These rates (Managing auditor, Senior Auditor, Staff Auditor) will be used when determining the cost negotiated as the assignment budget for field assignments.

<table>
<thead>
<tr>
<th>TITLE</th>
<th>(a) Year #1 Hourly Rate (Direct Labor Rate)</th>
<th>(b) OVERHEAD (i) (a) x (i)</th>
<th>(c) FEE (ii) ((a) + (b)) x (ii)</th>
<th>(d) Year #1 (a) + (b) + (c)</th>
<th>(e) Year #2 (d) x (1 + (iii))</th>
<th>(f) Year #3 (e) x (1 + iii)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing Auditor</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Senior Auditor</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Staff Auditor</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>COMPOSITE RATE *</td>
<td>(Manager Rate x 25%) + (Senior Auditor Rate x 50%) + (Staff Auditor Rate x 25%)</td>
<td></td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

(i) Overhead rate ___%
(ii) Fee ___%
(iii) Escalation rate ___%

Information provided on Attachment 9 is to be used to develop a composite hourly rate (and ultimately a budget) to be applied to the hours on Attachment 11 to get a proposal price for field assignments for the base term of the contract.

For directions for completion of Attachment 9, please access the excel worksheet at [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business)

*The composite rate equals 25% of the Manager rate plus 50% of the Senior Auditor rate plus 25% of the Staff Auditor rate.

*Proposals submitted with composite rates exceeding $115.00 will NOT be considered or evaluated.

The information proposed on Attachment 9 will be used in negotiations and resulting contracts.
### Calculation of bid for Desk assignments

<table>
<thead>
<tr>
<th>Task Assignment Type</th>
<th>Estimated Number of Audits</th>
<th>Proposed Hours per Audit</th>
<th>Proposed Total Hours</th>
<th>Proposed Price per Audit</th>
<th>Year #1</th>
<th>Year #2</th>
<th>Year #3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desk Closeout Audits / Reviews</td>
<td>45 or 11</td>
<td></td>
<td>(g) x (h)</td>
<td>(g) x (k)</td>
<td>(l) x (1+ (iii))</td>
<td>(m) x (1+ (iii))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0</td>
<td>0</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td></td>
</tr>
</tbody>
</table>

**Hours available for field assignments** is the difference between the total hours the firm is expected to commit to DOT projects annually (10,000 for Lot 1 and 2,500 for Lot 2) and the hours committed to the desk assignments.

For directions for completion of Attachment 10, please access the excel worksheet at [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business)

*The information proposed on Attachment 10 will be used in negotiations and resulting contracts.*
**Attachment 11**

Contract Audit Services for NYSDOT – C030871

**Firm Name:**

**LOT #:**

Calculation of bid for Field Assignments

<table>
<thead>
<tr>
<th>Assignment Type</th>
<th>Composite Rate</th>
<th>Available Hours</th>
<th>Year #1 ( (o) \times (p) )</th>
<th>Year #2 ( (q) \times (1 + (iii)) )</th>
<th>Year #3 ( (r) \times (1 + (iii)) )</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Assignments</td>
<td>$0.00</td>
<td>0</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

All cells of Attachment 11 are formula driven.

The excel worksheet can be accessed at [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business)

Proposals submitted with composite rates exceeding $115.00 will NOT be considered or evaluated.

(Reference RFP Section I.D. “Minimum RFP Responsiveness)."

*The information proposed on Attachment 11 will be used in negotiations and resulting contracts.*
### Base Term Total Value/Cost Proposal

<table>
<thead>
<tr>
<th>Assignment Type</th>
<th>(t)</th>
<th>(u)</th>
<th>(v)</th>
<th>(w)</th>
<th>Base Term Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Desk Closeout Audits/Reviews</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Field Assignments</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL COST</strong></td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td></td>
</tr>
</tbody>
</table>

All cells of Attachment 11a are formula driven.

The excel worksheet can be accessed at [https://www.dot.ny.gov/business](https://www.dot.ny.gov/business)

The following statement is also formula driven and compiles the information from Attachments 9 through the table on Attachment 11a as provided and agreed to by the proposing Prime firm:

“The Base Term Total Value/Cost Proposal for Lot: ________ is: $______________ as represented by the Base Term Total Cost of column (w) above. This final dollar value will be used for evaluation purposes as explained in Section V.D. of the RFP.”

*The information proposed on Attachment 11a may be used in negotiations and resulting contracts.*
Please complete the following table for the prime firm and all subconsultants (consultant team composition). Please identify each firm’s legal name, checking if they are a Empire State Development (ESD) certified MBE and/or an ESD certified WBE, and indicating each firm’s percentage of participation in the contract.

Please keep in mind to count toward the contract MBE and WBE participation goals in this state-funded procurement with separate MBE and WBE participation goals, each MBE and WBE firm offered must be currently listed in the NYS Empire State Development’s directory of certified Minority and Women Owned Businesses (http://www.nylovesmwbe.ny.gov/cf/search.cfm).

If the percentage of all certified MBEs or all certified WBEs proposed is less than the MBE/WBE participation goals (15% and 5% respectively) then the proposing prime firm is required to complete and submit the MBE and WBE Participation Solicitation Log (Attachment 13 – one for each goal not attained or attained only partially), and is required to submit an MBE Goal or WBE Goal Attainment Explanation Letter.

<table>
<thead>
<tr>
<th>Firm Legal Name</th>
<th>NYS DED Certified MBE/WBE</th>
<th>% of Overall Contract Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MBE</td>
<td>WBE</td>
</tr>
<tr>
<td>A. Prime Consultant*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Sub-Consultants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*A prime consultant that is certified as both an MBE and a WBE can propose to meet only one of the goals via its own participation, the prime consultant cannot propose to utilize its own participation to meet both goals. Therefore, a prime consultant that proposes to meet either the MBE or WBE contract goal through its own participation must offer subconsultant participation to meet the other goal, or demonstrate that it made adequate, acceptable GFE to meet that goal even though it did not succeed.
<table>
<thead>
<tr>
<th>CONTRACT NO.</th>
<th>PARTICIPATION GOAL (SELECT ONE)</th>
<th>PAGE NUMBER ___ OF ___</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MBE % ____  WBE % ____</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRIME FIRM NAME/ADDRESS/ZIP CODE</th>
<th>CONTACT PERSON</th>
<th>TELEPHONE NUMBER (INCLUDE AREA CODE)</th>
<th>E-MAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOLICITED COMPANY NAME AND CONTACT PERSON</td>
<td>TELEPHONE (WITH AREA CODE)</td>
<td>FEDERAL EMPLOYER ID #</td>
<td>WORK TYPES BEING SOLICITED</td>
</tr>
</tbody>
</table>
INSTRUCTIONS FOR COMPLETING
MBE and WBE Subconsultant Participation Solicitation Log
(Good Faith Efforts Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed MBE participation and WBE participation does not meet the established MBE participation goal and/or the WBE participation goal must document and report their Good Faith Efforts to solicit participation by certified Minority Business Enterprises and/or certified Women-owned Business Enterprises in this Non-Architecture/Non-Engineering contract. The MBE and WBE Participation Solicitation Log is used for this purpose.

PLEASE NOTE: Only participation by certified MBE and/or certified WBE prime consultants as well as certified MBE and/or certified WBE subconsultants may count their participation toward contract level goal attainment. If a prime consultant is certified as an MBE and a WBE, it may only use its participation to satisfy one of the goals – a prime consultant cannot propose to utilize its own participation to meet both goals. Reference Section I. E. for more information.

Guidance concerning Good Faith Efforts in meeting MBE and/or WBE participation goals in state-funded contracts is located in Attachment 14.

The log is to be filled out and submitted with the proposing firm’s Cost and Contract Proposal. In order for a proposal to be determined as responsive when the MBE participation goal is not fully attained or is partially attained and/or when the WBE participation goal is not fully attained or is partially attained, the proposer must complete all sections of this form and submit one MBE and WBE Participation Solicitation Log for each goal not fully attained. In addition, the firm must also submit a MBE and WBE Goal Attainment Explanation Letter, documenting the firm’s Good Faith Efforts.

*** MBE and WBE Certification is a New York State Program. ***

IT IS SEPARATE AND DISTINCT FROM THE FEDERAL DBE CERTIFICATION PROGRAM. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS

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

MBE and WBE PARTICIPATION GOALS: Enter applicable MBE and WBE participation goal percentages as stated in the proposal.

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

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

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

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

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

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

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

**WORK TYPE(S) BEING SOLICITED:** Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. (NOTE: Work type codes are provided for every certified firm listed in NYS DED’s MBE/WBE Registry (see RFP cover letter).

**TYPES AND DATES OF CONTACT:** Enter dates on which your firm contacted the solicited firm, either by mail (date solicitation sent), telephone (including date and time of call) or other person-to-person contacts. Identify the type of contact by prefacing each date with ‘M’ if a mail contact; “T” if a telephone call; and “D” if a direct meeting with the firm.

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

*** USE ADDITIONAL PAGES AS NEEDED ***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

1. This firm is unavailable to participate in the contract for the reason(s) stated on the MBE and WBE Participation Solicitation response. (Attach explanation to the Log.)
2. This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.
3. The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the MBE and/or WBE participation solicitation inquiry. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which follow-up was attempted.)
4. This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left.)
Attachment 14  
Guidance Concerning Good Faith Efforts  
In Meeting M/WBE Goals on Solely State-Funded Contracts

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the Empire State Development Corporation M/WBE Directory- [http://nylovesmwe.ny.gov](http://nylovesmwe.ny.gov)) the interest of all certified M/WBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the M/WBEs to respond to the solicitation. The bidder must determine with certainty if the M/WBEs are interested by taking appropriate steps to follow up initial solicitations.

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

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

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

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

- Do not reject M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal.

- Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.