



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
www.dot.ny.gov

JOAN McDONALD
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

REQUEST FOR PROPOSALS

OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT Contract #C030788

March 22, 2012

To All Concerned:

Enclosed is a copy of the Non-Engineering Request for Proposals (RFP) referenced above. All information necessary for the submission of your proposal is contained in the Best Value solicitation. The Department of Transportation estimates that work for the successful consultant will commence in August 2012 and continue for a period of five years depending on performance.

Please note the following **dates and deadlines**:

- **April 20, 2012**: Deadline for the submission of proposals on 2:00 PM (Eastern Time)
- **April 9, 2012**: Deadline for questions regarding the RFP is 2:00 PM (Eastern Time)
- **April 13, 2012**: Answers to Questions Released

Any questions regarding this project or proposal should be directed in writing via e-mail to Kathy Fitzpatrick, the designated contact for this solicitation, of NYSDOT Contract Management at kfitzpatrick@dot.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. A directory of certified Minority and Women-Owned Business Enterprises is available from the following website: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>. NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. Please see the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: <http://biznet.nysucp.net/>. **For this solicitation, the NYSDOT has set a DBE Participation Goal of 7%. Only certified Disadvantaged Business Enterprises listed in the NYSUCP DBE Directory are eligible for credit towards meeting the contract goal.**

If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form. We look forward to the receipt of your proposal.

Sincerely,

Original signed by Kathy Fitzpatrick, for
WILLIAM A. HOWE
Director, Contract Management

Enclosure

RFP RESPONSE FORM

**OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS
FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT - Contract #C030788**

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.

_____ 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: _____

TYPED OF PRINTED NAME AND TITLE: _____

PHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

Please send via:

*E-Mail: kfitzpatrick@dot.state.ny.us

Or

*Regular Mail:

New York State Department of Transportation
Contract Management, POD 6-2
50 Wolf Road
Albany, New York 12232
ATTN: Kathy Fitzpatrick C030788

Or

*Fax: 518-457-8475

SELECTED CONSULTANT INFORMATION

RFP: OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT Contract #C030788

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 website via <http://www.osc.state.ny.us/vendrep/index.htm> before negotiation 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.*

Procurement Lobbying Law: Go to NYSDOT Web site (<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>) to read NYSDOT Policy Summation Compliance Procurement Lobbying Law. *Complete and file 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) as instructed when submitting a proposal. This is mandatory in order to be considered for contract award. Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award.*

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

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

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 4**) 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 4**) 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 Consultant’s responsibility to ensure they propose staff that is 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 Joint Commission on Public Ethics that approves their participation in the subject project. For an outline of the procedure that applies to this situation, see **Attachment 5**.

_____ **Registration with NYSDOT**

Should this solicitation lead to a designation, it is the Consultant’s responsibility to electronically register their firm using the NYSDOT Consultant Selection System web application (CSSWeb).

All 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.

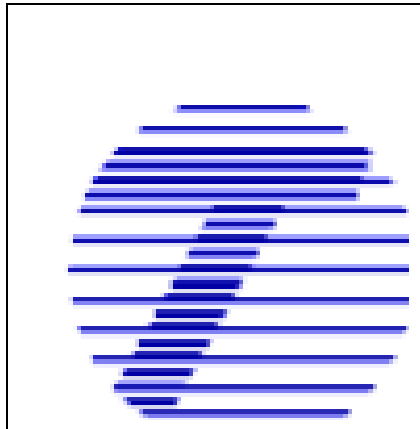
_____ **Government Wide Debarment and Suspension certification and check for FTA funded project.** Should this solicitation lead to a designation, it is the Consultant’s responsibility to complete all required **Federal Certifications**. See **Attachment 10**.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

**OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS
FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT**

Contract #C030788



RFP Release Date: **March 22, 2012**

Proposal Due Date: April 20, 2012

Proposal Delivery Location and
Additional Information:

Director, Contract Management
NYS Department of Transportation
50 Wolf Road, POD 6-2
Albany, NY 12232
Attention: Kathy Fitzpatrick C030788

REQUEST FOR PROPOSALS

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Contract #C030788

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NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT

Contract #C030788

I. INTRODUCTION

A. Purpose

The New York State Department of Transportation (NYSDOT) has issued this Request for Proposals (RFP) seeking proposals to award a contract to a responsive and responsible consultant to oversee drug & alcohol testing on federal programs administered by NYSDOT, including Section 5311/5311(f) (Nonurbanized Area Formula Program for rural transit and intercity bus systems), Section 5316 (Jobs Access Reverse Commute - JARC), and Section 5317 (New Freedoms) recipients and service agents.

NYSDOT currently has a need to conduct Drug and Alcohol Program Compliance Reviews for small/medium transit systems receiving §5311/5311(f) funding, for JARC and New Freedom funding recipients, and the service agents which serve §5311/5311(f), 5316 and 5317 fund recipients. Currently, there are 85 funding recipients in New York State, but that number is subject to change as recipients enter and exit the programs.

B. Background

The New York State Department of Transportation (NYSDOT) is responsible for administering the Federal Section 5311 and 5311(f) Nonurbanized Area Formula Program for rural transit and intercity bus systems and the Federal Section 5316 Jobs Access Reverse Commute (JARC) and Section 5317 New Freedoms programs. One of the many responsibilities in administering these programs includes overseeing funding recipients' compliance with United States Department of Transportation (USDOT) Drug & Alcohol Testing Regulations: 49 Code of Federal Regulations (CFR) Parts 40 & 655 Federal Transit Administration (FTA) or Parts 40 and 382 Federal Motor Carrier Safety Administration (FMCSA) for some Intercity Bus, JARC and New Freedoms recipients.

NYSDOT is seeking an experienced consultant to assist with the performance of these compliance reviews.

C. Minimum RFP Responsiveness Requirements

Any 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) and may be removed from further consideration (prior to the technical evaluation of proposals):

1. A minimum of three (3) years of work experience with FTA's and Federal Motor Carrier Safety Administration's (FMCSA) drug and alcohol testing regulations (see **Attachment 12**). Note: Credit for number of months/years worked will reflect the actual time worked: Overlapping time frames will be counted once. Please contact the designated contact person should any questions arise regarding this rule.
2. A minimum of experience with at least two state department of transportation's or transit or motor carrier operators in administering or overseeing their federal drug and alcohol testing oversight program (see **Attachment 12**).
3. Acceptance of the RFP's Scope of Services as is (see **Attachment 2**).
4. A separate and complete Part I of the Proposal – Technical and Management submission, including all required RFP-specified attachments.
5. A separate and complete Part II of the Proposal – Cost and Contract submission, including all required RFP-specified attachments.
6. 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.**
7. Submission of a proposal which meets/exceeds the seven percent DBE contract subconsultant participation goal or submission of an acceptable DBE Goal Attainment Good Faith Effort and Participation Explanation Letter of Non-DBE Goal Attainment (or partial attainment towards either) along with **Attachment 7** as indicated above.
8. Procurement Lobbying Law compliance forms (see **Attachment 3**).

It is recommended that each offeror also utilize the checklists provided (RFP Section 4) to ensure all necessary documentation and attachments are provided as requested/indicated in this RFP for their Part I and Part II submissions.

D. Disadvantaged Business Enterprise (DBE) Participation

While not indicative of a proposer's individual merit (technical excellence, proposer's ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBE) in its solicitations. The level of DBE

participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. Please visit the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: <http://biznet.nysucp.net/>.

The New York State Department of Transportation has established **a DBE participation goal of seven (7) percent** for this solicitation. Meaningful participation by either a prime consultant **who is certified as** a NYSUCP DBE or inclusion of subconsultant (s) **who is/are certified as** a NYSUCP DBE count toward the DBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

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

To be deemed responsive, proposers shall verify their attainment of the above established DBE participation goal or provide an acceptable good faith effort with a letter of explanation. To count towards the Department's DBE goal, a firm offering DBE participation must be currently certified per the NYSUCP DBE Directory. Additionally, prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that unless DBE outreach efforts by the prime result in proposed DBE subconsultants, that the prime consultant provide evidence of a good faith effort with a letter of explanation. 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 the Department will follow in evaluating a firm's proposed DBE participation.

NYSDOT has posted its final draft DBE Program Plan to its website (subject to change). The draft plan provides background information regarding how the Department conducts its Federally-required DBE program, covering such subjects as contract-level goals, good faith efforts by consultants, DBE certifications, etc:

<https://www.dot.ny.gov/main/business-center/civil-rights>

Title VI Assurance

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title

VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written NYSDOT solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

II. PROJECT SCOPE and CONTRACT OBJECTIVES

A. Project Objectives

1. To hire a responsive, responsible, experienced, knowledgeable and qualified consultant.
2. For the selected consultant to acceptance of the RFP's Scope of Services as is.
3. To assist NYSDOT and its subrecipients to comply with all applicable federal regulations.
4. To train and assist about 85 (+/-) FTA funding recipients and agents.
5. For the selected consultant to assist NYSDOT to perform 28 audits a year/over the five-year contract.
6. To assist NYSDOT to produce annual MIS reports.

B. Contract Objectives

Anticipated Work Start Date: The Department anticipates that the work for the successful consultant will commence in August 2012.

Contract Term: The base term for this contract shall be for five years.

DBE Goal: Selecting a consultant with an acceptable plan to meet the contract's established **seven percent DBE participation contract goal**, or receiving an acceptable good faith effort with a letter of explanation should the goal not be met.

Draft Contract: To enter into a contract with a responsive consultant who accepts all of the terms and conditions in the RFP's draft Contract (**Attachment 1**).

Method of Payment: This is a Best Value (Non-Architecture/Non-Engineering) contract. Payment for services provided under the project shall be a lump sum reimbursement and reasonable compensation for NYSDOT-approved, actual costs incurred in the performance of the approved contract's Scope of Services. Requests for progress and final payments shall be made by the designated consultant on standard payment request forms (FIN 421). Use proper procedure for billing each deliverable: Submit draft billings to NYSDOT's assigned Project Manager via the following sample electronic billing: <https://www.nysdot.gov/main/business-center/consultants/consultants->

[repository/Consultant%20Billing%20Spreadsheets.xls/](#) The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy.

The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS FIN 421 payment request forms.

III. SCOPE OF SERVICES

A. Tasks

The selected consultant shall perform all of the work included in the Scope of Service listed below, which includes: initial policy review, program implementation review, collection facility review and Lab, MRO, SAP and other service agency reviews, training and technical assistance, new recipient assistance, additional policy reviews/updates, annual MIS reports, FTA audit assistance.

1. Review drug & alcohol testing policies and program implementation of all §5311, §5316 and §5317 funding recipients and their service agents (collection sites, labs (DHHS certified only), MRO's, BAT's, STT's, TPA's, SAP's, etc.) to ensure compliance with federal regulations. In addition to review, the successful consultant shall ensure any deficiencies found are corrected. To ensure drug and alcohol testing program compliance, please describe the process you will use to review recipients and their service agents. Firms should also describe the documents and specific items that will be reviewed to ensure compliance and how you will report results to NYSDOT. Also, describe how you will ensure deficiencies are tracked and corrections are made and implemented. Examples of reports and other documentation shall be provided if requested before the RFP's question submission deadline. Deliverable: Compliance process and associated forms; compliance results reports. Reports should be specified as draft and final and any reports requiring multiple levels of review should be sequentially numbered
2. Provide training and technical assistance to funding recipients as needed to refresh recipients on the requirements and update recipients on any program or regulatory changes. Estimate 5 training activities per year and 10 technical assistance activities per year beyond questions related to Tasks 1, 3, 4, 5 & 6. Describe how you provide training and technical assistance; what training courses you have developed or taught; and how often you provide the training or technical assistance. Deliverable: Training materials; technical assistance manuals; technical assistance responses; and reports summarizing each training and technical assistance event.
3. Assist new funding recipients that enter the program after this consultant contract is awarded with policy development and implementation. NYSDOT shall provide the

- policy documents. Describe how you will approach implementation and training with a new funding recipient. Deliverable: Reports summarizing each new recipient training and technical assistance event as draft and final reports and any reports requiring multiple levels of review should be sequentially numbered.
4. Perform additional policy reviews/updates as requested by NYSDOT due to federal program guidance or regulatory changes. Anticipate 85 additional policy reviews/updates over the life of the contract. Deliverable: Policy review and update reports (draft and final).
 5. Manage annual FTA MIS Reporting for recipients of §5311 funding. This includes requesting, reviewing and recommending reports for approval. Stand-alone §5316 and §5317 recipients are not included in the annual FTA MIS reporting process. Describe how you will manage this process to ensure timely report submission and your expectation of NYSDOT in this process. NYSDOT's reports to the FTA are due March 15th of each year. Firms should provide process/timeframes to accomplish timely submission. Deliverable: Annual FTA MIS reports (draft and final).
 6. Provide drug & alcohol program compliance audit assistance as requested by NYSDOT. Describe how you would assist should NYSDOT be selected by FTA for a Drug & Alcohol Testing Program Oversight Audit and if you have previous audit experience. Deliverable: FTA Audit technical assistance. Preparing pre-audit materials requested from FTA, on-site technical assistance during FTA Audit, and post-audit follow up required.
 7. Provide additional agreed upon activities by NYSDOT not included above at a defined hourly rate. This may include additional drug and alcohol testing program related activities such as, but not limited to, research reports, development of new training modules or technical assistance resources, tasks related to improving program efficiencies (ex; statewide TPA), and review/comment on industry changes or federal regulatory changes. There is no guarantee that this "task" will be used during the contract term.

B. Deliverables

All task-specific deliverables are defined above. All reports shall have the following formats: Records/reports must be in Word, Excel, PDF or another form acceptable to NYSDOT. Documents must be available when requested by NYSDOT or automatically shared with NYSDOT in electronic format. Should NYSDOT want to review records pertaining to this contract at the vendor's offices, NYSDOT shall be given access to those files.

The consultant must maintain all oversight records at a location accessible by NYSDOT staff and in an electronic format acceptable to NYSDOT. All records are property of NYSDOT and should the work between NYSDOT and the consultant be terminated, all

records will be turned over to NYSDOT or its designated recipient.

C. Schedule

Work under Task 1 will be completed in less than 3 years. Work under Task 5 will be completed before March 15th of each year. Schedules for all other tasks will be determined and scheduled at mutually agreeable times between NYSDOT and the selected consultant. Work tasks will be subject to NYSDOT approval and payments shall be paid under State Finance Law guidelines.

IV. PROPOSAL FORMAT AND CONTENTS

For the purposes of separate evaluation, each proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management submittal. Part II shall consist of 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. 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. Technical information is **not** to be included in the Part II Cost proposal. Cost information is **not** to be included in the Part I Technical proposal

NOTE: NYSDOT may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law, provided that NYSDOT agrees beforehand to shield the release of proposed information. If an offeror believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as "confidential and proprietary". **Labeling all pages as "confidential" or "proprietary" is unacceptable – such proposals will not be accepted** unless the proposer re-labels their proposal to only identify what specific material to shield from public scrutiny. All offerors shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal (see A.3 below). NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm.

All proposals must follow the format listed below:

A. Part I: Technical and Management Submittal

<input type="checkbox"/>	Five (5) bound (3-ring binders, with section divider tabs) hard copies
<input type="checkbox"/>	Name, address and telephone number of proposer on cover page
<input type="checkbox"/>	Name of person who prepared proposal
<input type="checkbox"/>	Contact person and telephone number

Required Part I sections:

1. **Title page**, indicating the name, mailing and e-mail addresses and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal. Title shall be: Oversight of Drug & Alcohol Testing Programs of Subrecipients Funded by FTA Program Services for NYSDOT, Contract #C000788, Part I Technical & Management Submittal.
2. **Cover Letter**. The Cover Letter must include the following:
 - Signed Cover Letter on official business letterhead.
 - Identify and address any confidential and proprietary information in this section.
 - The signature of an official authorized to bind the offeror to all of the RFP's provisions.
 - A statement that the offered named personnel will be provided once NYSDOT issues a notice to proceed. NYSDOT does not allow unapproved substitutes.
 - Identify any exceptions taken by the offeror on NYSDOT's draft contract. Note that NYSDOT will only consider exceptions if in the state's best interest.
 - Name of offeror's official representative(s), including: Title, Name of company, mailing address, telephone number, FAX number; and E-mail address of the offeror's representative(s).
 - If there are multiple offices of the Consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.
 - The legal names of all Subconsultants involved in the offeror's response.
3. **A Table of Contents**. Part I sections shall be divided by labeled tabs. Provide a Table of Contents identifying each Part I section and subsection plus any attachments.
4. **Executive Summary**. Provide a brief description summarizing the proposed approach and work effort.
5. **Narrative Description**. Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding and comprehension of NYSDOT's project scope of services and objectives and familiarity with applicable laws, FTA regulations, rules, etc.

6. **Experience.** The qualifications and prior experience of the proposer are of great importance to NYSDOT. Direct, prior experience in developing similar applications described in this RFP is highly desirable. Provide a list of projects currently in progress and those completed within the last three years which are relevant to this effort. Indicate personnel assigned to this account who are working, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients. NYSDOT reserves the right to request information from any reference check source so named, as well as contact additional relevant references.

A minimum of three (3) years of work experience with FTA's and Federal Motor Carrier Safety Administration's (FMCSA) drug and alcohol testing regulations, auditing and reporting requirements as well as experience with at least two state department of transportation's or at least two transit or motor carrier operators in administering or overseeing their federal drug and alcohol testing oversight program. Specific examples documenting minimum qualifications must be provided including the name(s) of the entity(ies) where work was performed, the contact person (client), email address and phone number, and a brief description of the work and duration of work. Document experience in **Attachment 12**.

Experience with providing training and technical assistance must be demonstrated and supported by verifiable references.

NOTE: Experience not directly related or comparable to the RFP's Scope of Services will not be evaluated.

NYSDOT reserves the right to request information from any source so named, as well as seek additional references should ones offered fail to verify attested experience. Previous, comparable work experience with NYSDOT is eligible.

7. **Scope of Services, Approach and Schedule.** Describe your approach for preparing for and implementing NYSDOT's Scope of Services for the requested services as outlined in Section III of this RFP. Firm's approach to the scope items must reflect acceptance of the Scope of Services tasks of this RFP with no deviations permitted. Firm's approach should not propose any tasks or work not identified in the RFP's Scope of Services. Indicate in firm's narrative acceptance of the RFP's Scope of Services, as is.

Present a DBE management plan, one which ensures that delivery of the contract's seven percent DBE goal is managed and met over the term of the contract. Discuss the role any subconsultant would have in the delivery of the RFP's Scope of Services. Discuss the proposed consultant staffing plan, as well as maintaining that level of consultant resources over the life of the contract. All consultant replacements are subject to NYSDOT's prior review and approval.

NOTE: Approach should not propose any tasks or work not identified in the RFP's Scope of Services. If a firm chooses to offer an approach which proposed tasks or work

not specifically identified in the RFP's Scope of Services, only those RFP Scope of Service deviations which meet the RFP's project and contract objectives shall be considered. Proposed work which does not support the RFP's objectives shall not be considered at all.

8. **Organization and Staffing.** Provide an organizational chart for the project showing the names of the project manager and all proposed personnel. Include resumes for all proposed personnel (including any subconsultants). If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. Describe the level of interaction contemplated with NYSDOT.

B. Part II: Cost and Contract Submittal

<input type="checkbox"/>	Three (3) bound (3-ring binders, with section divider tabs) hard copies
<input type="checkbox"/>	Required pricing information (complete and submit Attachment 8 Cost Proposal –all pages)
<input type="checkbox"/>	Name, title, address and telephone number of person(s) with authority to bind firm
<input type="checkbox"/>	Complete and submit Attachment 2 Consultant Information and Certifications (sign both Sections II and III)
<input type="checkbox"/>	Complete and submit Attachment 3 Procurement Lobbying Law Compliance (complete and sign both forms)
<input type="checkbox"/>	Complete and submit Attachment 6 DBE Participation Information Form
<input type="checkbox"/>	Complete and submit DBE Forms Attachment 7 DBE Participation Solicitation Log
<input type="checkbox"/>	Complete and submit all future Modification Acknowledgement Forms as instructed.

Required Part II sections:

1. **Title page:** indicating the name, mailing and e-mail addresses and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal. Title shall be: Oversight of Drug & Alcohol Testing Programs of Subrecipients Funded by FTA Program Services for NYSDOT, Contract #C000788, Part II: Cost & Contract Submittal
2. **Cover Letter:** (copy of Part I Letter)
3. **A Table of Contents.** Part II sections shall be divided by labeled tabs. Provide a Table of Contents identifying each Part II section and subsection plus any attachments.
4. **Cost Proposal:** Provide an all inclusive cost submission rate chart for Tasks associated with this procurement (RFP Section III) via **Cost Proposal Attachment 8, page 1**. Include a breakdown demonstrating how each Task rate was derived, including breakdown of firm's overhead rate utilizing **Cost Proposal Attachment 8, page 4 and page 5**. The Part II Cost of submitted proposals will be evaluated using the Attachment 8, page 1, Grand Total.

Provide an all inclusive, fully-loaded work type rates (salary, overhead, fee, travel, expenses) which will include a descriptive job title for each employee assigned to this project for Tasks 1-6, his/her current and projected hourly salary rate (regular time), the overhead rate and the consultant's fee, for each year of the contract (for the term of the contract) via **Cost Proposal Attachment 8, page 4**. Explain all assumptions.

Provide an all inclusive, fully-loaded work type rates (salary, overhead, fee) which will include a descriptive job title for each employee assigned to this project for Task 7, his/her current and projected hourly salary rate (regular time), the overhead rate and the consultant's fee, for each year of the contract (for the term of the contract) via **Cost Proposal Attachment 8, page 2**. **These rates will be used for Task 7, Additional Tasks only (RFP Section III). All other Tasks associated with this procurement will be fully inclusive per Task rates. Further provide a breakdown of hourly rate/work rate for Task 7 by completing Cost Proposal Attachment 8, page 5.** Explain all assumptions.

Field Overhead: Where possible, it is expected that Consultants shall offer a reduced field Overhead rate for Consultant staff assigned to provide services in NYSDOT's offices or in the field/at FTA grant recipients' sites.

Direct Non-Salary Costs: Offerors must propose estimates of all related project-relevant, direct non-salary expenses (copying, rentals, office supplies, travel, lodging, meals, etc.) by Scope of Services Task 7. **Direct Non-Salary Costs shall not be evaluated. Any additional direct non-salary costs will be negotiated with the awarded firm.**

Any additional travel shall be limited to NYSDOT directed travel. For proposal submission evaluation purposes, assume 12 trips, from the firm's main office to the following locations NYSDOT: Albany, Buffalo, Elmira, Poughkeepsie, Rochester and Buffalo. Assume three (3) overnights with standard meal reimbursement per trip. Although not anticipated, any potential NYSDOT-directed travel, meals, and lodging reimbursements shall be limited to the prevailing maximum rates established by the NYS State Comptroller. The latest state and nationwide rates are available at the following Web site: <http://www.osc.state.ny.us/agencies/travel/travel.htm>.

NYSDOT shall not directly reimburse the selected Consultant (and any of its subconsultants) for the cost of local living and commuting (such expenses are to be included in the consultant's overhead rate). In addition, any costs associated with general continuing education, certification classes, or educational and professional activities are not reimbursable or chargeable to the project.

5. **Contract Section** Which includes the following:
 - a. Completed **Attachment 2**, which shall specify the proposer's acceptance of the terms and conditions contained in the draft contract enclosed as **Attachment 1** to this

solicitation. The Consultant shall specifically state its acceptance of all Terms and Conditions of the draft contract contained in **Attachment 1** of this Request for Proposals. Offerors should complete and submit the “Consultant Information and Certifications Form,” included as **Attachment 2** to this RFP, to indicate their **acceptance of all** of the terms and conditions contained in the draft Agreement. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. **Should any firm take an exception to any of the draft contract’s terms and conditions, the proper placement of such is in the firm’s cover letter. NYSDOT will not entertain exceptions brought to its attention after the proposal due date or during contract negotiations.** Attachment 2 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 365 days, a statement that the firm accepts the RFP’s Scope of Service ‘as-is’, and a statement that, if awarded the contract, the offeror will comply with all the requirements set forth in the RFP, including the contract terms and conditions in the Contract Provisions section, the New York State and Federal Required Contract Clauses, Proposer Responsibility reporting and filing requirements, Procurement Lobbying Law requirements, and Consultant Disclosure Legislation reporting and filing requirements, except as may be hereinafter modified and accepted by NYSDOT.

b. DBE Participation

Interested proposers should verify their attainment of the above established DBE subconsulting participation goal by completing **Attachment 6 DBE Participation Information**. For participation to count towards NYSDOT’s DBE contract goal set for this solicitation, the offered DBE participating firm must be currently certified and listed on the NYSUCP DBE Directory, <http://biznet.nysucp.net/>. If the proposal does not meet the 7 percent DBE participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 7 DBE Participation Solicitation Log**.

The goal relates to total project budget over the life of the contract. Only Biznet certified DBEs are acceptable. Pending DBEs are not to be offered. Offering a pending DBE may lead to a proposal being deemed non-responsive. Participation by prime consultants who are certified as DBEs may count toward the contract DBE goal.

Additionally, if the proposing prime firm does not meet the contract goal, the firm must include in its submission a DBE Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or if partial), which serves to substantiate the firm’s good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm’s method of accomplishing the work, the subcontracting opportunities associated with the

proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

Additionally, prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that unless DBE outreach efforts by the prime result in proposed DBE subconsultants, that the prime consultant provide evidence of a good faith effort by completing **Attachment 7 DBE Subconsultant Participation Solicitation Log**.

Firms are advised to refer to Proposal Pre-Screening section of the RFP for the procedure NYSDOT will follow in evaluating a firm's proposed DBE participation.

c. RFP Modification Acknowledgement Forms

Included with any/all future Modifications to this RFP will be Acknowledgement forms. All respondents must have an authorized representative of the firm or organization 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 (**Attachment 2**). Firms must also identify if they have been assigned a New York State SFS Vendor Identification Number (if one has yet to be and this firm is selected for contract award, NYSDOT will sponsor requesting an SFS number).

If an offeror does not have a CIN and they are selected for contract award, they will be required to obtain one through the following NYSDOT Web site prior to negotiation of the contract: "How to Register a New Consultant Firm with NYSDOT" at: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions?nd=nysdot>.

e. Procurement Lobbying Law

All proposers should visit the "Business Center" Web page on NYSDOT's Web site to read the NYSDOT Policy Summation for the Procurement Lobbying Law of 2005. The web page is located at: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions?nd=nysdot>
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. Hard copies of the two required forms are included with this RFP (see **Attachment 3**). ***NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.***

Use Contract Number C000788 wherever requested in the forms. Please e-mail the person identified as the contact in the RFP's Administrative Specifications section if you have any questions regarding how to complete this required form.

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

V. CRITERIA FOR EVALUATION OF PROPOSALS

A. Overview of the Proposal Evaluation Process

Proposals will be opened, logged in, and certified and checked for completeness. Following that, proposal will be pre-screened to determine if all minimum RFP proposal responsiveness requirements (reference Section I D) have been met. Those proposals which meet all minimum RFP proposal responsiveness requirements shall be considered further in the proposal evaluation process; those which do not may be deemed non-responsive. All proposals deemed non-responsive shall be removed from further consideration. **It is NYSDOT's sole discretionary determination as to whether a proposal is complete and responsive.**

Proposals which pass pre-screening shall then be evaluated by NYSDOT using a Best Value Method evaluation process (using a 100 point scale), based on the technical and cost criteria described below. Technical considerations (up to 70 points) are of greater importance than cost considerations; however, cost (up to 30 points) is a significant factor in NYSDOT's evaluation of proposals. Technical proposals will be technically evaluated and numerically scored based on the information provided under RFP Section IV A Part I Technical and Management Submittal in accordance with the pre-established criteria listed in Subsection B below. The cost portion of Part II Cost and Contract Submittal will be point scored in accordance with the pre-established criteria listed in Subsection C. below. Cost proposals should be calculated to include all offered work type (task) rates and adding that to an assumed level of effort multiplied by proposed title-specific hourly rates (task 7), to generate total proposed cost. The score for each cost proposal will be based upon submitted Grand Total on **Attachment 8**, page 1.

Technical and Management Proposal evaluation will be accomplished by a representative Technical Evaluation Committee comprised, as appropriate, of technical, program and management subject matter expert personnel. Committee members will determine the

degree of responsiveness of each proposal element to the corresponding RFP specification, and document their findings and score each proposal individually and then meet as a group to discuss the proposals. A zero-to-ten point scale shall be used to evaluate degree of responsiveness. Evaluators will be allowed to revise scores on the basis of the committee discussions.

Proposers responding to this RFP 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 technical evaluation of proposals, firms shall receive clarification requests, and technical evaluators will be allowed to revise their technical scores based on consideration of this additional, clarifying information. The Department reserves the right to ask clarifying questions regarding each cost proposal (Part II) and DBE participation as well. Furthermore, the Department reserves the right to request best and final offers from firms that are determined to be susceptible for contract award. There will not be technical interviews for this solicitation.

An award shall be made to the offeror whose proposal receives the highest total Best Value score after considering all technical and cost proposals against the RFP's specifications and 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) which states: In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the commissioner or agency head to award a contract to one or more of such bidders shall be final. The basis for determining the award shall be documented in the procurement record.

At the conclusion of the proposal evaluation process, an announcement of the Department's designation(s) will be posted on NYSDOT Web site via <https://www.dot.ny.gov/business?nd=nysdot> (click on ‘Consulting Service Opportunities’). All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing upon request (preferably over the phone). Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a proposal submitted in response to this request, or to procure or contract services or supplies. Further, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.

B. Pre-Screening of Proposals, Including DBE Participation

NYSDOT will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. It is NYSDOT's sole discretionary determination as to whether a proposal is complete (reference RFP Section I Minimum RFP Responsiveness Requirements and Disadvantaged Business Enterprise (DBE) Participation). Proposals which do not meet all of the Minimum RFP Responsiveness Requirements section may be deemed non-responsive. All proposals deemed non-responsive by NYSDOT shall not be considered further.

As part of the pre-screening process, the proposed DBE participation plan and percentages offered for NYSUCP certified prime consultants and/or NYSUCP certified subconsultants will be reviewed (**Attachment 6 & Attachment 7**). To count towards the Department's DBE participation goal, each DBE firm offered must be currently listed in the NYSUCP Directory. If the proposed DBE participation is less than the established 7% goal (or where a prime consultant certified as a DBE proposes to meet the contract's DBE participation goal via their meaningful participation), the firm's evidence of a Good Faith Effort (**Attachment 7 DBE Participation Solicitation Log**) to achieve the goal will be reviewed for acceptableness, along with the firm's letter of explanation (**DBE Goal Attainment Explanation Letter**) as to why the offeror was unable to meet the goal. During the review process, which will include verification of a firm's Good Faith Effort evidence, if it is determined by the Department that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive; NYSDOT may request clarifications of a firm's DBE offer. Proposals deemed to be non-responsive will be removed from further consideration and/or subject to FHWA's administrative reconsideration process. Please reference 'Administrative Reconsideration' in the following document: <https://www.dot.ny.gov/main/business-center/civil-rights>

C. Technical and Management (up to 70 Points)

The Technical and Management proposal will be point scored and will represent 70% of the total score for the proposal (out of 100 total possible points). Reference check validations will assist to inform experience considerations. The major criteria and the respective sub-criteria are listed in descending order of importance:

1. Experience (Up to 30 points)
 - a. Quality, extent and relevance of past and current project-relevant experience, education and training of proposed consultant personnel per the specifications contained in the RFP. (Up to 18 points)
 - b. Quality, extent and relevance of current and prior relevant experience of the firm. (Up to 12 points)

2. Quality of Proposal (Up to 20 points)
 - a. Degree to which proposal reflects understanding and comprehension of the RFP's scope and objectives. (Up to 11 points)
 - b. Quality of proposer's resources relative to the needs of the project and the RFP's specifications. (Up to 9 points)
3. Scope of Services, Approach and Schedule (Up to 10 points)
 - a. Acceptance of RFP's scope of services; acceptance of alternative scope of service work items. (Up to 4 points)
 - b. Quality and appropriateness of approach for accomplishing project objectives; initiative and creativity of proposer. (Up to 3 points)
 - c. Completeness and reasonableness of schedule. (Up to 3 points)
4. Organization and Staffing (Up to 10 points)
 - a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort. (Up to 3 points)
 - b. Quality of plan for maintaining consultant resources over the life of the project. (Up to 2 points)
 - c. Extent and quality of interaction with key participants and funding recipients. (Up to 3 points)
 - d. Quality and acceptableness of DBE implementation and management plan. (Up to 2 points)

D. Cost Proposal Evaluation (Up to 30 Points)

The cost portion of the cost and contract proposal will be point scored and will represent 30% of the total score for a proposal. The highest possible score for a cost proposal will be based upon the lowest **Grand Total** cost submitted in **Attachment 8 Cost Proposal, page 1**. The firm with the lowest total cost will receive a perfected cost score of 30 points. All other offered total costs will receive a proportionate lower cost score based on the relation to the lowest offered total cost

VI. ADMINISTRATIVE SPECIFICATIONS

A. Proposal Due Date

To be deemed responsive, all proposals must be received by NYSDOT by **2:00 PM on April 20, 2012**. The proposal must be addressed to:

Director, Contract Management
 NYS Department of Transportation
 50 Wolf Road, POD 6-2
 Albany, New York 12232
 Attention: Kathy Fitzpatrick, Contract #C030788

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. With regard to proposals submitted NYSDOT has the following rights and prerogatives:

- 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 all potentially interested firms
- To eliminate any mandatory RFP specification that is found to be 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, cost and contract terms and conditions with the selected offeror prior to contract award only if such is in the best interest of the State
- To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts
- To revise/amend any provision of this RFP by written notification to all potentially interested firms, prior to proposal submission
- To eliminate any requirement that is found to be unmet by all offerors;
- To make inquiries, by means it may choose, into the offeror's background or statements made in the proposal to determine the truth and accuracy of all statements made therein
- To select and award the contract to the offeror whose proposal represents the best value to NYSDOT
- To begin contract negotiations with the next highest best-value offeror(s) responsive to this RFP (should NYSDOT determine that the negotiations with the selected offeror will not result in a contract) without again requesting proposals
- To begin contract negotiations with the next highest best-value offeror(s) responsive to this RFP if NYSDOT terminates the awarded contract resulting from this RFP without again requesting proposals
- To extend the terms and conditions as well as the contract's scope and pricing terms as is of any contract entered into pursuant to contract award arising from this solicitation to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

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 Office of the State Comptroller website via <http://www.osc.state.ny.us/vendrep/index.htm> before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire.

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:
https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/instructions_cssweb_firm.pdf

Consultant Firm Registration begins at: <https://www.dot.ny.gov/main/business-center/consultants/css-web>

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. Firms should become familiar with these forms by visiting the following Web sites:

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

F. Inquiries and Information

All questions concerning this solicitation must be directed *only* to Kathy Fitzpatrick of Contract Management by e-mail at kfitzpatrick@dot.state.ny.us. The last date to submit questions for this solicitation is April 9, 2012. All inquiries must be e-mailed to: kfitzpatrick@dot.state.ny.us. Should a firm be unable to communicate via e-mail, all questions must be submitted in writing and mailed or faxed to:

Director, Contract Management
NYS Department of Transportation
50 Wolf Road, POD 6-2
Albany, New York 12232
Attention: Kathy Fitzpatrick C030788
Fax: 518-457-2875

Responses to all questions of a substantive nature, as well as copies of the questions, will be made available to all potentially interested parties. NYSDOT reserves the right to consolidate and edit all questions submitted. The identification of inquiring parties shall be withheld.

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.nysdot.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:	March 22, 2012
Question Submittal Deadline:	April 9, 2012
Proposals Due:	April 20, 2012
Proposal Evaluation:	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

1.	Draft Agreement, including Appendices A, B, C	25
2.	Consultant Information and Certification Form	70
3.	Procurement Lobbying Law Compliance	72
4.	Consultant Disclosure Legislation Forms A & B	76
5.	Consultant's Responsibility when Proposing Former NYSDOT Employees	81
6.	DBE Participation Information Form	82
7.	DBE Participation Solicitation Log	83
8.	Cost Proposal-Instructions and Charts	87
9.	Federal Funding Recipients	94
10.	Government Wide Debarment and Suspension Certification Form And Certification and Restrictions on Lobbying Form	99
11.	Common Acronyms for Drug & Alcohol Testing Programs	102
12.	Documentation of Minimum Experience Requirement.....	104

ATTACHMENT 1

DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. NO.: _____

P.I.N.: P020.29.801

COMPTROLLER'S CONTRACT NO. C030788

**PROJECT: OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF
SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT**

This Agreement made this _____ day of _____, 201__ pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the 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 A-1, APPENDIX B, APPENDIX B-1, APPENDIX C, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the CONSULTANT's Proposal, and the STATE's Request for Proposals (RFP) and the CONSULTANT's Proposal.

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees that the base term of the AGREEMENT shall be 60 months from [REDACTED] to [REDACTED].

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 \$[REDACTED] 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.

Item I The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, the maximum amount payable of _____ unless there is a substantial change in the scope, complexity or character of the work to be performed. In such cases, a supplemental agreement will be executed.

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

Item III Task Rates of pay as shown in SCHEDULE B (EXHIBIT __) for Scope of Service Task work items in this PROJECT. The Task Rates are not subject to audit, however, the number of tasks are subject to audit.

Item IV Specific Hourly rates of pay shown in SCHEDULE B (EXHIBIT __) for employees assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged are subject to audit. If the AGREEMENT is extended beyond (end date in Article 4), then all of the Specific Hourly Rates of pay shown in EXHIBIT __ are eligible for rate adjustments. They may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413--5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 1.5%, subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

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

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

Item VI The number of months of training provided under Special Provision 11 in Appendix C is __.

ARTICLE 7. CONTRACT PAYMENT.

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

payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

ARTICLE 8. PARTIAL PAYMENTS.

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

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

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

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

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

ARTICLE 9. FINAL PAYMENT.

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

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

b) The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at

all reasonable times during the period of this Agreement and for the period of time specified in Clause No. 10, "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration, or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

ARTICLE 10. EXTRA WORK.

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

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

ARTICLE 11. CONSULTANT LIABILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, 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 12. INSURANCE.

The CONSULTANT shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until 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 NYSDOT evidence of such policies as the NYSDOT 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 NYSDOT, 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:

Director of Contract Management
New York State Department of Transportation
50 Wolf Rd. POD 6-2
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 NYSDOT 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 NYSDOT 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.** 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.** The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a)

business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

ARTICLE 13. INTERCHANGE OF DATA.

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

ARTICLE 14. DISPOSITION OF DATA.

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

ARTICLE 15. DAMAGES AND DELAYS.

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

ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

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

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

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

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

ARTICLE 17. TERMINATION.

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

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

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

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

ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.

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

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

ARTICLE 19. 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 20. INDEPENDENT CONTRACTOR.

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

ARTICLE 21. COVENANT AGAINST CONTINGENT FEES.

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

ARTICLE 22. 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 23. 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 24. 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 25. 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 A-1, APPENDIX B, APPENDIX B-1, and APPENDIX C;
2. This AGREEMENT's provisions, including Signature Page, Notary Page and Exhibits;
3. SCHEDULE A (including Exhibits);
4. SCHEDULE B (including Exhibits);
5. The STATE's Request for Proposals; and
6. The CONSULTANT's Proposal.

ARTICLE 26. 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 – No exceptions.

ARTICLE 27. 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 28. 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 29. 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 30. 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 31. 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, Attachment 4) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

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

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

NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or PDF file via email to: tameche@dot.state.ny.us or his successor.

ARTICLE 32. NOTICES.

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

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

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

New York State Department of Transportation:

Contact Person's Name: William A. Howe, Contract #C030788
Title: Director
Address: NYSDOT Contract Management, 50 Wolf Rd, POD 6-2, Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2875
E-Mail Address: whowe@dot.state.ny.us

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.

IN WITNESS WHEREOF, this **Contract No. C030788** 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

CONTRACT MANAGEMENT

By _____
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 _____, 201____ 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 _____
FIRM NAME

Date: _____

OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT

APPROVALS

THOMAS P. DiNAPOLI

ATTORNEY GENERAL

STATE COMPTROLLER

By _____

By _____

Date _____

Date _____

Acknowledgement for Contract #C030788

For contracts signed in New York State

State of New York)

County of) ss.:

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

NOTARY PUBLIC

My Commission Expires: _____

For contracts signed **outside** New York State

State of)

County of) ss.:

On the _____ day of _____ in the year 201__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), 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, sex, 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 that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at

independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

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

major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §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. (Non-Federal Aid New York State Contracts). In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
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>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. (Non-Federal Aid New York State Contracts). 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.

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

APPENDIX B

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

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

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.

THE CFDA IDENTIFICATION NUMBER

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

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

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

20.215, Highway Training and Education

20.219, Recreational Trails Program

20.XXX, Highway Planning and Construction - Highways for LIFE;

20.XXX, Surface Transportation Research and Development;

20.500, Federal Transit-Capital Investment Grants

20.505, Federal Transit-Metropolitan Planning Grants

20.507, Federal Transit-Formula Grants

20.509, Formula Grants for Other Than Urbanized Areas

20.600, State and Community Highway Safety

23.003, Appalachian Development Highway System

23.008, Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

(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 B-1

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

Energy Conservation – Applicability – All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports– Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of

USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the municipal corporation, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the municipal corporation and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$150,000.

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

(1) The municipal corporation and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the municipal corporation, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part

with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

a. Termination for Convenience (General Provision) the municipal corporation may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the municipal corporation's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation. If contractor is in possession of any the municipal corporation property, contractor shall account for same, and dispose of it as the municipal corporation directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the municipal corporation may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the municipal corporation that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the municipal corporation, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the municipal corporation in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to the municipal corporation's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the municipal corporation setting forth the nature of said breach or default, the municipal corporation shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the municipal corporation from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the municipal corporation elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the municipal corporation shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the municipal corporation, by written notice, may terminate this contract, in whole or in part, when it is in the municipal corporation's interest. If the contract is terminated, the municipal corporation shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in

accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the municipal corporation goods, contractor shall, as directed by the municipal corporation, protect and preserve the goods until surrendered to the municipal corporation or its agent. Contractor and the municipal corporation shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the municipal corporation may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the municipal corporation resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the municipal corporation in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the municipal corporation, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the municipal corporation in writing of the causes of delay. If in the municipal corporation's judgment, delay is excusable, the time for completing the work shall be extended. the municipal corporation's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the municipal corporation's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the municipal corporation may terminate this contract in whole or in part, for the municipal corporation's convenience or because of contractor's failure to fulfill contract obligations. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the municipal corporation all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the municipal corporation's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the municipal corporation may complete the work by contract or otherwise and contractor shall be liable for any additional cost

incurred by the municipal corporation.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the municipal corporation may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the municipal corporation or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the municipal corporation, or property supplied to contractor by the municipal corporation. If termination is for default, the municipal corporation may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the municipal corporation's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the municipal corporation determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the municipal corporation, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the municipal corporation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the municipal corporation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements– Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Breaches and Dispute Resolution – Applicability – All contracts over \$150,000. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the municipal corporation's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the municipal corporation's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation's CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the municipal corporation, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the municipal corporation and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the municipal corporation or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Patent and Rights Data – Applicability – Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contracts Involving Experimental, Developmental, Or Research Work.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work: (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA. (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation,

reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The municipal corporation's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the municipal corporation. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the municipal corporation and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify the municipal corporation whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the municipal corporation.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the municipal corporation to be in violation of FTA terms and conditions.

Full and Open Competition – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the municipal corporation shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the municipal corporation's Procurement Guidelines, available upon request from the municipal corporation.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the municipal corporation to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Federal Single Audit Requirements For State Administered Federally Aid Funded Projects Only

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 '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

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 of 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.
- (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 than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

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

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

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

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

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

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

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

Attachment 2

CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBER: C030788

PROJECT TITLE: OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT

I. CONSULTANT INFORMATION

FIRM NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____

ZIP CODE: _____ - _____

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

E-MAIL ADDRESS: _____

CONTACT PERSON: _____

Consultant's Federal Identification Number (FIN): _____

Consultant's SFS Vendor Identification Number: _____

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 certifications
(Firm Name)

regarding the subject proposal:

- Acceptance of the RFP's Scope of Services as is.
- 365-Day Offer: This proposal is a firm offer for a 365-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.
(<https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>)
- ST-220: If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- 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

By signing below, I, _____, authorized individual
(Name)

of _____ hereby **certify that I have read and**
(Firm)

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

Appendix A, which is included as Attachment 1 to this Request for Proposals.

Signature: _____
(Name of Acceptor)

Attachment 3

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 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.

Refer to “NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES” – see the Consultant's page at NYSDOT's “Doing Business With DOT” web site: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions?nd=nysdot>.

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

- a) **Contacts prior to designation:**

Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

- The Contract Management Designation Contract Analyst
- The Contract Management Designation Analyst Supervisor
- The Contract Management Civil Rights Unit Supervisor
- The Contract Management Assistant Directors
- The Contract Management Director

These are some communications exempted from this restriction:

- Participation in a pre-proposal conference.
- Protests, complaints of improper conduct or misrepresentation

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

- b) **Contacts after designation**

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

- The Contract Management Designation Contract Analyst
- The Contract Management Designation Analyst Supervisor
- The Contract Management Civil Rights Unit Supervisor
- The Contract Management Assistant Directors
- The Contract Management Director
- The Consultant Management Bureau consultant job manager
- The Consultant Management Bureau consultant job manager's immediate supervisor

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

c) Information Required from Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

d) Applicability to an executed contract:

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

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

<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm> (Advisory Council FAQs)

<http://www.nylobby.state.ny.us/>

<http://www.nylobby.state.ny.us/lobbying.html> (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 <https://www.dot.ny.gov/index>

or contact: Kathy Fitzpatrick
NYSDOT Contract Management
50 Wolf Road, POD 6-2
Albany, New York 12232

E-mail: kfitzpatrick@dot.state.ny.us

Tel: (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. C030788

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: C030788

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: _____

(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: _____

(Add additional pages as necessary)

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

By: _____ Date: _____

Signature

Name: _____

Title: _____

Attachment 4

CONSULTANT DISCLOSURE LEGISLATION FORMS A & B

Background:

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement (Request for Proposals, Mini-Bid, or Invitation for Bids) must complete **Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term** upon notification of award. The completed **Form A** must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete **Form B, State Consultant Services Contractor’s Annual Employment Report** annually for each year of the contract term, on a State fiscal year basis. The first report is due on May 15 for the period April 1 through March 31.

Form A must be submitted to NYSDOT as the contracting agency, and Form B must be submitted to NYSDOT (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

Form A, State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term and **Form B, State Consultant Services Contractor’s Annual Employment Report**, are attached to these instructions. Please see these instructions for further information regarding completion and submission of the forms.

Instructions:

FORM A:

Upon notification of contract award, use Form A, State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term, attached to these instructions, to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete **Form A** for contracts for consulting services in accordance with the following:

- **Employment category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at www.online.onetcenter.org to find a list of occupations.)

- **Number of employees:** the total number of employees in the employment category anticipated to be employed to provide services under the contract, including part time employees and employees of subcontractors.
- **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
- **Amount payable under the contract:** the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit completed **Form A** within 48 hours of notification of selection for award to NYSDOT (as the contracting agency) at the address provided in this solicitation.

FORM B:

Use **Form B, State Consultant Services Contractor's Annual Employment Report**, attached to these Instructions, to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit **Form B** to NYSDOT (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete **Form B** for contracts for consulting services in accordance with the following:

- **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at www.online.onetcenter.org to find a list of occupations.)
- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.
- **Number of hours worked:** the total number of hours **worked** during the Report Period by the employees in the employment category.
- **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit the completed Form B annually by May 15th for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

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

By fax: (518) 474-8030 or (518) 473-8808

To DCS:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

To NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or PDF file via email to: tameche@dot.state.ny.us or his successor.

OSC Use Only:

Reporting Code:

Category Code:

Date Contract Approved:

FORM A**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: C030788

Contract Start Date: / /

Contract End Date: / /

O*Net Employment Category & O*NET Employment Title	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

FORM B

OSC Use Only:

Reporting Code:

Category Code:

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

Contracting State Agency Name: Transportation

Agency Code: 17000

Contract Number: C030788

Contract Term: / / to / /

Contractor Name:

Contractor Address:

Description of Services Being Provided: Oversight Of Drug And Alcohol Testing Programs Of Subrecipients Funded By FTA Programs Services For NYSDOT

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐ Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

O*Net Employment Category Number and O*Net Employment Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
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

Attachment 5

CONSULTANT'S RESPONSIBILITY WHEN PROPOSING FORMER NYSDOT EMPLOYEES

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

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

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

Procedure

- Before the consultant proposes an individual, the individual must obtain an opinion from the Joint Commission on Public Ethics that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the consultant's office and available for review by NYSDOT if requested.
- Failure to obtain Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

Attachment 6

DBE PARTICIPATION INFORMATION

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

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

If the combined percentage of total project cost for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, then the proposing prime firm must fill out and submit the **DBE Participation Solicitation Log (Attachment 7)**, and submit a **DBE Goal Attainment Explanation Letter**. Further, prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation, are required to fill out and submit the **DBE Participation Solicitation Log (Attachment 7)** unless their outreach efforts results in proposed DBE subconsultant and this level of participation meets the contract's DBE goal.

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

Firm Legal Name	NYSUCP Certified DBE		7% of Total Project Cost
	DBE	None	
A. Prime Consultant			
B. Sub-Consultants			
Total			100%

Attachment 7

DBE PARTICIPATION SOLICITATION LOG (Good Faith Effort Documentation)

CONTRACT NO. <u>C030788</u>		DBE PARTICIPATION GOAL DBE <u>7%</u>		PAGE NUMBER ____ OF ____	
PRIME FIRM NAME/ADDRESS/ZIP CODE		CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE) E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S)

**INSTRUCTIONS FOR COMPLETING
DBE Participation Solicitation Log
(Good Faith Effort Documentation)**

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

PLEASE NOTE: **Only participation by NYSUCP certified DBE prime consultants as well as NYSUCP certified DBE subconsultants may count toward goal attainment.**

Guidance concerning Good Faith Efforts in meeting DBE participation goals in Federally-funded contracts is located at the end of this section.

The log is to be filled out and submitted with the proposing firm's Cost and Contract Proposal. In order for a proposal to be determined as responsive when the DBE participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a **DBE Participation Solicitation Log**, along with a **DBE Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort.

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

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

DBE PARTICIPATION GOAL: Enter applicable DBE participation goal percentage as stated in the proposal.

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

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

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

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

DBE CONSULTANTS SOLICITED:

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

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

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

WORK TYPE(S) BEING SOLICITED: Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. (NOTE: Work type codes are provided for every certified firm listed in the DBE Registry (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 DBE Solicitation Response. (Attach explanation to the Log.)
- 2 This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.
- 3 The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the DBE participation solicitation inquiry. (NOTE: Indicate In the Types and Dates of Contact column the dates and times at which follow-up was attempted.)
- 4 This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left.)

Guidance Concerning Good Faith Efforts In Meeting DBE Participation Goals In Federally-Funded Contracts

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – <http://biznet.nysucp.net>) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs 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 DBEs – it is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs 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 DBEs to perform the work.
- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE 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 DBEs is not in itself sufficient reason for failure to meet the contract DBE 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 DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

Attachment 8

COST PROPOSAL

Instructions and Charts

OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT, Contract #C030788

Part II Cost Proposal Instructions

1. Provide an all inclusive cost submission rate chart for Tasks associated with this procurement (RFP Section III) via **Cost Proposal Attachment 8, page 1**. The RFP will be evaluated based on **Cost Proposal Attachment 8, page 1, Grand Total**.

Include a breakdown demonstrating how each Task rate was derived by completing **Cost Proposal Attachment 8, page 4 (task 1-6) and Cost Proposal Attachment 8, page 5 (task 7)**. All costs must be included in each work type rate – NYSDOT will not allow these rates to be changed once NYSDOT accepts the selected firm's rates to be reasonable. Explain all assumptions.

Provide an all inclusive, fully-loaded work type rates (salary, overhead, fee, travel, expenses) which will include a descriptive job title for each employee assigned to this project for Tasks 1-6, his/her current and projected hourly salary rate (regular time), the overhead rate and the consultant's fee, for each year of the contract (for the term of the contract) via **Cost Proposal Attachment 8, page 4**.

Provide an all inclusive, fully-loaded work type rates (salary, overhead, fee) which will include a descriptive job title for each employee assigned to this project for Task 7, his/her current and projected hourly salary rate (regular time), the overhead rate and the consultant's fee, for each year of the contract (for the term of the contract) via **Cost Proposal Attachment 8, page 2**. **These rates will be used for Task 7, Additional Tasks only (RFP Section III). All other Tasks associated with this procurement will be fully inclusive per Task rates. Further provide a breakdown of hourly rate/work rate for Task 7 by completing Cost Proposal Attachment 8, page 5.**

Offerors must present one Rate Schedule per firm in its team (prime consultant plus any sub-consultants that are being proposed), **making multiple copies** of the exhibit, as needed. Hourly rates for all sub-consultants must also be included. For staffing plan evaluation purpose, the percent of labor is the amount of time the proposed consultant staff person is assigned to this project (i.e., percent of a full-time equivalent).

All offers are required to submit the percentage of time a consultant resource is dedicated to this account (level of effort) expressed as a percentage of annual full-time equivalent availability. A level of effort percentage shall be submitted for all proposed titles.

2. **Field Overhead:**

Where possible, it is expected that Consultants shall offer a reduced field Overhead rate for Consultant staff assigned to provide services in NYSDOT's offices or in the field/at FTA grant recipients' sites.

3. **Direct Non-Salary Costs**

Offerors must propose estimates of all related project-relevant, direct non-salary expenses (copying, rentals, office supplies, travel, lodging, meals, etc.) by Scope of Service Task 7. **These costs will be used for Task 7, Additional Tasks only** (RFP Section III). **Any additional direct non-salary costs will be negotiated with the awarded firm.**

Travel shall be limited to directed travel. For proposal submission purposes, assume 12 trips, from the firm's main office to the following locations (Albany, Buffalo, Elmira, Poughkeepsie, Rochester and Buffalo) NYSDOT. Assume three (3) overnights with standard meal reimbursement per trip. All NYSDOT-directed travel, meals, and lodging reimbursements shall be limited to the prevailing maximum rates established by the NYS State Comptroller. The latest state and nationwide rates are available at the following Web site: <http://www.osc.state.ny.us/agencies/travel/travel.htm>.

Offerors are reminded that during the contract term any outside services (e.g., equipment rental, etc.) will require procuring through established NYS Procurement Council Guidelines and shall be pre-approved by NYSDOT. **NYSDOT shall not directly reimburse the selected Consultant (and any of its subconsultants) for the cost of local living and commuting** (such expenses are to be included in the consultant's overhead rate).

The Direct Non-Salary expenses are for estimation purposes only and shall not be evaluated during the RFP process, if necessary will be negotiated with the selected firm and an amount will be allocated for DNSC.

Subconsultant direct non-salary costs (if any) shall be shown in the combined and firm-separate schedules. Assumptions and explanations behind each item with all factors leading to the derivations of the cost shall be included in the contract.

In addition, any costs associated with general continuing education, certification classes, or educational and professional activities are not reimbursable or chargeable to the project

4. **Total Proposed Budget**

The total proposed budget will be the maximum amount payable and shall include all expenses necessary to administer this contract. The firm will be paid per task item unless additional tasks are ordered. The firm will be paid an hourly rate to for additional tasks. The number of hours and non-salary expenses will be negotiated between firm and NYSDOT.

Attachment 8
Page 1

PROPOSED COST SUBMISSION RATE CHART
OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY
FTA PROGRAMS SERVICES FOR NYSDOT, Contract #C030788

FIRM NAME: _____

TASK#	WORK TYPE	Estimated Quantity	Unit	Cost Per Work Type	TOTAL
1A	INITIAL POLICY REVIEW	85	Each		
1B	PROGRAM IMPLEMENTATION REVIEW	85	Each		
1C	COLLECTION FACILITY REVIEW	85	Each		
1D	LAB, MRO, SAP, & OTHER SERVICE AGENCY REVIEWS	85	Each		
2A	TRAINING ASSIST	25	Each		
2B	TECHNICAL ASSIST	50	Each		
3	NEW RECIPIENT ASSIST	5	Each		
4	ADDITIONAL POLICY REVIEWS/UPDATES	85	Each		
5	ANNUAL MIS REPORTS	5	Task		
6	AUDIT ASSISTANCE	1	Task		
7	ADDITIONAL TASKS	45	Hourly⁽¹⁾		
				GRAND TOTAL	

Note ⁽¹⁾: Average of Proposed Rate Schedule titles based on level of effort, Attachment 8, page 2

Attachment 8

Page 2

Proposed Staffing/Rate Schedule

OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS SERVICES FOR NYSDOT, Contract #C030788

FIRM NAME:_____

SAMPLE TITLE (³)	Level of Effort (%) (⁵)	NAME	(a) YEAR ONE DIRECT LABOR SALARY	(b) OVER- HEAD (__%)	(c) FEE (__%)	YEAR ONE BILLING RATE (¹)	YEAR TWO BILLING RATE (²)	YEAR THREE BILLING RATE (²)	YEAR FOUR BILLING RATE (²)	YEAR FIVE BILLING RATE (²)
Project Manager										
Auditor/Reviewer										
Trainer										
							Average of years 1-5 billing rate (⁴)			\$ _____ (⁴)

Note (¹): The formula for calculating an annual, fully-loaded rate is (a) plus (a times b) plus (a times c), where (a) is the title/named person's salary annual listed in column (a), where (b) is the annual salary times the associated overhead percentage cited in the top of column (b), and where (c) is the annual salary times the associated fee percentage cited in the top of column (c) in Attachment 8. The same formula must be used for proposed rates for years 2, 3, 4 and 5.

Note (²): Rates proposed for years 2, 3, 4 and 5 cannot exceed the rate adjustment rule stated in Article 5, Item III of the draft contract (Attachment 2).

Note (³): Titles listed in Proposed Staffing/Rate Schedule shall be used in determining costs associated with Task #7 in the Proposed Cost Submission Rate Chart.

Note (⁴): Calculate an average of the five year rate and titles taking into account level of effort for each title to determine one hourly rate applicable for Task 7. Transfer this figure to Attachment 8, page 1, Task 7.

Note (⁵): Level of Effort assumed for each title.

Attachment 8

Page 3

**PROPOSED ESTIMATE OF DIRECT NON-SALARY COSTS
OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY
FTA PROGRAMS SERVICES FOR NYSDOT, Contract #C030788**

FIRM NAME: _____

				PRIME CONSULTANT					
1.	Directed Travel								
								Base	
	Mileage						Annual	Term	
		Miles/Month		Cost/Mile	Months		Cost	Cost	
		0		\$0.00	0		\$0.00	\$0.00	
	Other Directed Travel								
		Air Ticket		Cost/Ticket	Trips/Year				
		0		\$0.00	0		\$0.00	\$0.00	
		Days							
		Per Diem		Cost/Day	Days/Years				
		0		\$0.00	0		\$0.00	\$0.00	
					TOTAL DIRECTED TRAVEL				\$0.00
2.	Other Costs								\$0.00
				TOTAL DIRECT NON-SALARY COSTS					\$0.00

Attachment 8
Page 4

Task Work Type Breakdown of Rate
OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS
SERVICES FOR NYSDOT, Contract #C030788
FIRM NAME:_____

SAMPLE TITLE	work type rate⁽¹⁾	Titles applicable to this work type	⁽¹⁾	⁽¹⁾	⁽¹⁾	⁽¹⁾	⁽¹⁾	⁽¹⁾
Task 1								
Task 2								
Task 3								
Task 4								
Task 5								
Task 6								

⁽¹⁾Provide a breakdown of expenses included in work type rates for tasks 1-6.

Attachment 8
Page 5

Task Work Type Breakdown of Rate
OVERSIGHT OF DRUG AND ALCOHOL TESTING PROGRAMS OF SUBRECIPIENTS FUNDED BY FTA PROGRAMS
SERVICES FOR NYSDOT, Contract #C030788
FIRM NAME:_____

SAMPLE TITLE	Hourly rate/work type rate ⁽¹⁾	OVER- HEAD (____%)	Fee (____%)	(²)	(²)	(²)	(²)	(²)
Project Manager								
Auditor/Reviewer								
Trainer								

⁽¹⁾Provide a breakdown of hourly rate/work type rates for task 7.

⁽²⁾Breakdown of expenses included in the overhead.

Attachment 9

FEDERAL FUNDING RECIPIENTS Oversight of Drug & Alcohol Testing Programs

Contact	Organization	Address	City, State & Zip Code
Ms. Lorraine Harmon	Allegany Chapter NYSARC	240 O'Connor Street	Wellsville, NY 14894
Ms. Carrie Whitwood	Allegany/Western Steuben Rural Health Network Inc.	85 North Main Street, Suite 4	Wellsville, NY 14895
Ms. Cheryl Scott	Amsterdam Transportation Department	345 East Main Street	Amsterdam, NY 12010
Ms. Dawn Dauenheimer	Arthur F. Mulligan, Inc.	2 Tillison Road, PO Box 250	Tillson, NY 12486
Ms. Linda Knox	Batavia Bus Service (B-Line)	153 Cedar Street	Batavia, NY 14020
Mr. Ken Chawgo	Birnie Bus Service Inc. Headquarters Richfield Springs Office	248 Otis Street, PO Box 630	Rome, NY 13442-0630
Mr. Marty Seamon	Birnie Bus Service Inc. (Otsego)	928 County Highway 27	Richfield Springs, NY 13439
Mrs. Lori Rolison	Broome County Department of Public Transportation	413 Old Mill Road	Vestal, NY 13850
Ms. Judy Russell	Brown Coach, Inc.	50 Venner Road	Amsterdam, NY 12010
Ms. Audrey Tucker	Central New York Regional Transportation Authority CNYRTA also has 6 safety sensitive subcontractors in Syracuse.	200 Cortland Avenue, One Centro Center, PO Box 820	Syracuse, NY 13205-0820
Ms. Kathy Kintz	CENTRO of Oswego	512 East Seneca Street	Oswego, NY 13126
Mrs. Cheryl Gustafson	Chautauqua Area Regional Transit System	234 Hopkins Avenue	Jamestown, NY 14701
Mr. Tim Hipwell	City of Mechanicville	36 North Main Street	Mechanicville, NY 12118-1990
Ms. Jamie Willis	City of Port Jervis	1 Franklin Street	Port Jervis, NY 12771

Mr. Wayne Parks	Coxsackie Transport Inc.	11 Wayne Drive,	Coxsackie, NY 12051
Mr. Joseph Mangi	Dutchess County Division of Mass Transit	14 Commerce Street	Poughkeepsie, NY 12603
Ms. Nancy Dougal	Essex County Department of Community Development Essex County Public Transportation/CHAMPS	7533 Court Street, PO Box 217	Elizabethtown, NY 12932
Ms. Diane Hunt	First Student Inc.	23 Browns Crossing Road	Catskill, NY 12414
Mr. Tom Donnarumma	First Transit (Allegany)	23 Woodruff Street	Cuba, NY 14727
Ms. Susan Ridall	First Transit (Chemung)	1201 Clemens Center Parkway	Elmira, NY 14901
Mr. Paul Dougher	First Transit (Chenango)	126 Leilanis Way	Norwich, NY 13815
Ms. Teri Blake	First Transit (Clinton)	226 Arizona Avenue	Plattsburgh, NY 12903
Ms. Susan Ridall	First Transit (Corning)	1201 Clemens Center Parkway	Elmira, NY 14901
Ms. Sara Holl	First Transit (Cortland)	21 Squires Street	Cortland, NY 13045
Ms. Sarah Meredith	M.V. Transportation (Ontario)	2930 County Rd. # 48	Canandaigua, NY 14424
Ms. Karen McKinley	First Transit (Putnam)	841 Fair Street	Carmel, NY 10512
Ms. Susan Ridall	First Transit (Steuben)	1201 Clemens Center Parkway	Elmira, NY 14901
Mr. Bob Tatro	Franklin County Association of Senior Citizens	125 Catherine Street, PO Box 288	Malone, NY 12953
Honorable Mayor. Dayton King	Gloversville City Hall	3 Frontage Road	Gloversville, NY 12078-2897
Ms. Charmaine Rowsam	Guilfoyle Ambulance Service	438 Newell Street	Watertown, NY 13601-3380
Mr. Seth M. Corwin	Hornell Area Transit	132 Thacher Street	Hornell, NY 14843
Ms. Donna Young	Hudson Transit Corporation	4 Leisure Lane	Mahwah, NJ 07430-1038
Mr. Robert Brown	I. Persch Transit, Inc.	139 County Highway 101	Gloversville, NY 12078
Ms. Kelly Fitzpatrick	Livingston Area Transportation Service (LATS)	4390 Gypsy Lane	Mount Morris, NY 14510

Mr. Michael J. Dowd	Niagara Falls Coach Lines	120 13th Street	Niagara Falls, NY 14302-2186
Mr. Frank Capuano	Niagara Frontier Transportation Authority NFTA also has 4 safety-sensitive subcontractors.	181 Ellicott Street	Buffalo, NY 14203-2221
Mr. Paul Patterson	Oneonta City Hall	258 Main Street	Oneonta, NY 13820-2589
Mr. Gary Mashaw	Oswego County Opportunities, Inc. Transportation Division	239 Oneida Street	Fulton, NY 13069-1288
Mr. Wayne Griffith	Otsego ARC Transportation Coordinator	3641 State Hwy 205	Hartwick, NY 13348
Mr. Bill Carpenter	Rochester-Genesee Regional Transportation Authority	1372 East Main Street	Rochester, NY 14609-6912
Mr. Jerry Filiatrault	St. Lawrence County NYSARC	6 Commerce Lane	Canton, NY 13617
Ms. Christine Kraemer	Schoharie County Public Transportation	114 Rock Road, RR 3 Box 255	Cobleskill, NY 12043
Ms. Jennifer Mong	Schuyler County Transit – ARC of Schuyler	203 12 th Street	Watkins Glen, NY 14891
Mr. William White	Seneca Transit Services (STS)	5537 Route 96A, Bldg. 103, PO Box 7	Romulus, NY 14541
Mr. Lee Downey	Serafini Transportation Corp. (Subcontractor for BC Transit)	375 State Street	Binghamton, NY 13901
Ms. Debra Gleason	Steuben County Chapter, NYSARC, Inc.	1 Arc Way	Bath, NY 14810
Mr. Edward McAndrew	Sullivan County Division of Mobility Management County Government Center	100 North Street, PO Box 5012	Monticello, NY 12701-5012
Mr. Charles Chapman	Tioga Transport Inc.	4 Clinton Street	Newark Valley, NY 13811-5714
Mr. Joseph Turcotte	Tompkins Consolidated Area Transit	737 Willow Avenue	Ithaca, NY 14850
Mrs. Michele Radakovits	Town of Goshen	44 Police Drive, PO Box 217	Goshen, NY 10924
Mr. William Ferebee	Town of Keene	PO Box 89	Keene, NY 12946-
Mr. Peter Galati	Town of Montgomery	110 Bracken Road	Montgomery, NY 12549

Mr. Kurt Wickham	Town of Warwick Town of Warwick DAB	132 Kings Highway, PO Box 408	Warwick, NY 10990
Mr. Robert DiBella	Ulster County Area Transit	1 Danny Circle	Kingston, NY 12401-6453
Ms. Teri Barown	Village of Cooperstown Trolley Services	22 Main Street	Cooperstown, NY 13326
Ms. Peggy Mousaw	Village of Lake Placid	2693 Main Street	Lake Placid, NY 12946
Ms. Kathy Webster	Watertown Citibus	544 Newell Street	Watertown, NY 13601-3380
Mr. Robert Jordan	Wayne Area Transportation Service (WATS) County Highway Bldg.	7227 Route 31	Lyons, NY 14489
Mr. Ron Smith	Wyoming Transit Service (WYTS)	18 West Buffalo Street	Warsaw, NY 14569
Mr. John Tobin	Yankee Trails Inc.	569 Third Avenue Extension	Rensselaer, NY 12144
JARC/NF Add- Ons			
Mr. John Prospero, Director of Transportation	Livingston-Wyoming Counties Chapter, NYSARC, Inc.	18 Main Street	Mount Morris, NY 14510
Mr. William Castiglione, Executive Director	Ontario County Chapter ARC	3071 County Complex Drive	Canandaigua, NY 14424
Ms. Nancy Hares,	Seneca-Cayuga Counties Chapter, NYSARC, Inc.	1083 Waterloo-Geneva Road	Waterloo, NY 13165
Ms. Jackie Carlton, Executive Director	Seven Valleys Health Coalition, Inc.	50 Clinton Avenue,	Cortland, NY 13045
Ms. Kate Shackford, Executive Vice President	Bronx Overall Economic Development Corp.	851 Grand Concourse, Room 123	Bronx, NY 10451-2937
Mr. John Salo, Executive Director	Rural Health Network of South Central NY, Inc.	PO Box 416	Whitney Point, NY 13862
Ms. Tracy Crisafulli, General Manager	Cattaraugus Rehabilitation Center Inc.	1439 Buffalo Street	Olean, NY 14760
Mr. Alan Jones	Adirondack Community Action Programs, Inc.	7572 Court Street, Suite 2, PO Box 848	Elizabethtown, NY 12932
Ms. Catherine Wynkoop, President	Active Living Over Fifty, Inc (ALOFT)	487 East Main Street #204	Mount Kisco, NY 10549
Ms. Marguerite Fuller	College of Staten Island	2800 Victory Blvd.	Staten Island, NY 10314
Dr. Sue McNamara, Executive Director	Chautauqua Works	23 East Third Street,	Jamestown, NY 14701

Ms. Robin Gaige, Mobility Manager	Institute for Human Services Inc.	6666 County Road 11,	Bath, NY 14810
Mr. Jim O'Loughlin, Transportation Director	Occupations, Inc.	15 Fortune Road West	Middletown, NY 10941- 1625
Ms. Lauren Ryan	TEAM Services Inc.	200 Dunham Avenue #101	Jamestown, NY 14701-2520
Ms. Lauren Le Febvre, Executive Director	Tri Lakes Center for Independent Living	43 Broadway, Suite 1	Saranac Lake, NY 12983
Mr. Steven Riordan	Family Services of Westchester, Inc.	One Summit Avenue	White Plains, NY 10606
Mr. John Lynch, CEO	Suffolk County United Veterans	PO Box 1045	Riverhead, NY 11901
Ms. Kristina Younger, Deputy Executive Director of Business Development	Capital District Transportation Authority	110 Watervliet Avenue	Albany, NY 12206

Attachment 10

Government Wide Debarment and Suspension Certification Form and Certification and Restrictions on Lobbying Form

GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29, Executive Orders 12549, 12689, and 31 U.S.C.6101 (Contracts over \$25,000)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the municipal corporation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the municipal corporation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor _____

Signature of Authorized Official _____ Date ____/____/____

Name and Title of Contractor's Authorized Official _____

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of authorized representative _____ **Date** __/__/__

Signature of notary and SEAL _____

Attachment 11

Common Acronyms for Drug & Alcohol Testing Programs

AA	Alcoholics Anonymous
AAMRO	American Association of Medical Review Officers
ACOEM	American College of Occupational and Environmental Medicine
ADA	Americans with Disabilities Act
ASAM	American Society of Addiction Medicine
ASD	Alcohol Screen Device
ATF	Alcohol Test Form
BAC	Breath Alcohol Concentration
BAT	Breath Alcohol Technician
CCF	Federal Drug Testing Custody and Control Form
CDL	Commercial Driver's License
CESAR	Center for Substance Abuse Research
CFR	Code of Federal Regulations
CPL	NHTSA Conforming Products List
C/TPA	Consortia/Third Party Administrator
DAMIS	Drug and Alcohol Management Information System
DAPM	Drug and Alcohol Program Manager
DER	Designated Employer Representative
DFWA	Drug-Free Workplace Act
DHHS	Department of Health and Human Services
EAP	Employee Assistance Program
EAPA	Employee Assistance Professional Association
EASNA	Employee Assistance Society of North America
EBT	Evidential Breath Testing (device)
EMIT	Enzyme Multiplied Immunoassay Technique
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FPIA	Fluorescein Polarization Immunoassay
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GC	Gas Chromatograph
GC/MS	Gas Chromatography/Mass Spectrometry
HHS	Department of Health and Human Services
ICRC	International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse
MIS	Management Information System
MPO	Metropolitan Planning Organization
MRO	Medical Review Officer
MROCC	Medical Review Officer Certification Council
MS	Mass Spectrometer

NAADAC	National Association of Alcoholism and Drug Abuse Counselors Certification Commission
NCADI	National Clearinghouse for Alcohol and Drug Information
NHTSA	National Highway Traffic Safety Administration
NOPE	Notice of Public Interest Exclusion
NPRM	Notice of Proposed Rulemaking
NIDA	National Institute on Drug Abuse
NTSB	National Transportation Safety Board
NYSDOT	New York State Department of Transportation
ODAPC	Office of Drug and Alcohol Policy and Compliance
OST	Office of the Secretary of Transportation
OTC	Over-the-Counter Medication
PCP	Phencyclidine
PIE	Public Interest Exclusion
PM	Program Manager
RFP	Request for Proposal
RIA	Radio Immunoassay
RSPA	Research and Special Programs Administration
SAID	Substance Abuse Information Database
SAMHSA	Substance Abuse Mental Health Services Administration
SAP	Substance Abuse Professional
SAPAA	Substance Abuse Program Administrators Association
SS	Safety-Sensitive
STT	Screen Test Technician
THC	delta-9-tetrahydrocannabinol (marijuana)
TSI	Transportation Safety Institute
USDOT	United States Department of Transportation
UMTA	Urban Mass Transportation Administration
USCG	United States Coast Guard

Attachment 12
DOCUMENTATION OF MINIMUM EXPERIENCE REQUIREMENTS
FIRM NAME_____

Name of Agency	Agency Address	Contact Person	Email	Phone	FTA or FMCSA Work Description	Dates of Work ⁽¹⁾ include number of months

Note ⁽¹⁾: Credit for number of months/years worked will reflect the actual time worked: Overlapping time frames will be counted once. Please contact the designated contact person should any questions arise regarding this rule.