



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
50 Wolf Road  
Albany, New York 12232-0203  
<https://www.dot.ny.gov>

JOAN McDONALD  
COMMISSIONER

ANDREW M. CUOMO  
GOVERNOR

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**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT  
For Contract #C030790**

May 16, 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. Any questions regarding this project or proposal should be directed to Al Hasenkopf, the designated contact for this solicitation, of NYSDOT Contract Management at (518) 457-1560 or e-mail via: [ahasenkopf@dot.state.ny.us](mailto:ahasenkopf@dot.state.ny.us)

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

- **May 30, 2012:** Pre-Proposal Conference (2:00 PM to 3:30 PM, NY time)
- **June 6, 2012:** Deadline for the submission of questions about the RFP 5PM (NY time)
- **June 11, 2012:** Deadline to release answers to questions 5PM (NY time)
- **June 20, 2012:** Deadline for the submission of proposals (3:00 PM, NY time)

If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form. ***The RFP contains necessary instructions for complying with the Procurement Lobbying Law so that your proposal may be considered for contract award. NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.***

The N.Y.S. Department of Transportation estimates that work for the successful consultant will commence in the Fall of 2012 and continue for a period of five years depending on performance and the availability of State funds.

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including disadvantaged, minority and women-owned business enterprises. Information on the availability of New York State subcontractors and suppliers is available from Empire State Development, Division for Small Business (518) 292-5224 or 1-800-STATE NY (1-800-782-8369) or via <http://www.nylovessmallbiz.com/home.asp>.

The New York State Department of Transportation (NYSDOT) encourages the participation of certified Minority Business Enterprises and certified Women-Owned Business Enterprises in this solicitation. A directory of certified Minority Business Enterprises (MBEs) and certified Women-Owned Business Enterprises (WBEs) is available from the following searchable database website: <http://nylovesmwbe.ny.gov>.

**For this solicitation, the NYSDOT has set a combined M/WBE Participation Contract Goal of 4%. Only certified MBE and WBE prime consultants and certified MBE and WBE subconsultants listed in Empire State Development's MBE/WBE directory are eligible for participatory credit in this procurement.** Please see the RFP for more information.

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website. By submitting a proposal in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, the selected Consultant (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Offerors are advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any proposal or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

We look forward to the receipt of your proposal.

Sincerely,

*original signed by: Alfred P. Hasenkopf, for*  
WILLIAM A. HOWE  
Director  
NYSDOT Contract Management

Enclosure

## **RFP RESPONSE FORM**

### **JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT C030790**

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

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\_\_\_\_\_ WE **DO** INTEND TO SUBMIT A PROPOSAL

\_\_\_\_\_ WE **DO NOT** INTEND TO SUBMIT A PROPOSAL FOR THE  
FOLLOWING REASONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name and Address of Organization (Include Zip Code):

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Types of Printed Name and Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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Please send to:

\* E-Mail: [ahasenkopf@dot.state.ny.us](mailto:ahasenkopf@dot.state.ny.us)

\* Regular Mail:

New York State Department of Transportation  
Contract Management, 6<sup>th</sup> Floor  
50 Wolf Road  
Albany, New York 12232  
ATTN: Al Hasenkopf, Contract #C030790

\* Fax: 518-457-8475

## INFORMATION FOR SELECTED CONSULTANT

### JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT RFP For Contract #C030790

#### Vendor Responsibility

\_\_\_\_\_ All consultant selected for contract award are 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.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf) (Form ST-220-CA)  
[http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td\\_507\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_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 9 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived. The only Certificate of Insurance NYSDOT accepts is the C218 form. An Acord form is NOT acceptable.

### **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 New York State Ethics Commission 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, including all subconsultant, using the Consultant Selection System web application (CSSWeb). Non-Architectural/Engineering consultant firms are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to, legal firm name, Federal Identification Number (FEIN), ownership type, D/W/MBE status, firm principals and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement. Section VI of this RFP provides more information.

### **Registration with Statewide Financial System (SFS)**

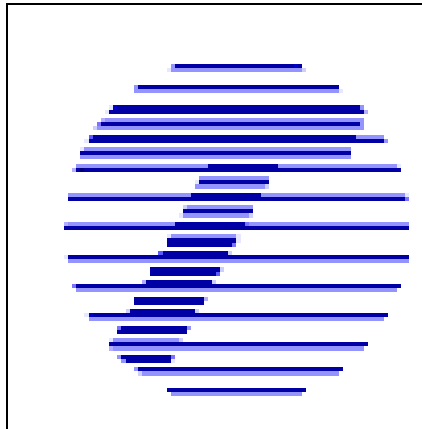
- \_\_\_\_\_ **Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS) - if not already registered.** NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant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

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

**REQUEST FOR PROPOSALS**

**JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT  
For Contract #C030790**

**May 16, 2012**



Proposal Due Date: June 20, 2012

Proposal Delivery Location and  
Additional Information:

Director, Contract Management  
NYS Department of Transportation  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, NY 12232  
Attention: Al Hasenkopf, C030790

**REQUEST FOR PROPOSALS, C030790**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**  
**JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT**

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**REQUEST FOR PROPOSALS**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**  
**JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT**  
**For Contract #C030790**

**I. INTRODUCTION**

A. Purpose

The New York State Department of Transportation (NYSDOT) is seeking proposals from responsive, responsible and qualified consultants to provide a Construction Task Catalog of items associated with contracting for maintenance and repair of highway systems through a Job Order contracting program and to provide support, training, and expertise for such a system. The Department is also seeking to enter into Contract #C030790 with the selected Consultant.

B. Background

NYSDOT is responsible for maintaining a large and aged transportation system while staffing levels have decreased in recent years. Additional resources are necessary to continue to maintain the existing system at an acceptable level of service to the traveling public and in a timely manner. NYSDOT wishes to have these additional resources available on an as-needed basis to undertake the performance of cyclical, preventative, and unscheduled maintenance-related activities along with numerous heavy-highway construction-related activities. (Hereinafter, “maintenance and repair”).

Job Order Contracting is a procurement system that enables owners to accomplish a large number of small maintenance and capital projects with a single, competitively bid contract. It eliminates the time and expense of completing the normal design-bid-construct cycle for each project. It allows owners to decrease project duration and cost, while increasing quality. A Job Order is publically advertised. Potential contractors submit their bids which are applied to the items in the Construction Task Catalog. The apparent lowest bid is selected for work

How Job Order Contracting Works:

1. The Contract Documents

A Job Order Contract consists of three documents. The first is a Construction Task Catalog which contains a catalog of construction and construction related tasks with corresponding pre-set unit prices. For example, a square foot of deck surface treatments, a lineal foot of rigid conduit, and a cubic yard of fill. The unit prices include the direct cost of labor, material and equipment in the local market at the retail level. The unit prices for some tasks are adjusted by volume. The tasks included in the Construction Task Catalog are designed for the type of work the owner generally requires and other work items the owner expects to encounter.

The second document is a set of performance based technical specifications arranged according to the standard sixteen divisions of the Construction Specification Index. The technical specifications reflect the owner's standards with regard to the quality of workmanship and materials. The technical specifications set the standard for the work.

The third document contains contractual information and consists of the information for bidders, bid forms, and general conditions. This document is designed to be similar in structure and substance to the owner's traditional bid package, except for the contract language and procedures that must be modified to reflect the uniqueness of the Job Order Contracting process.

## 2. Guidance to Intending Bidders

During the bidding process the owner is not able to inform the contractors of the exact projects that will be performed. No commitments can be made with regard to the specific construction tasks or the quantities to be ordered from the Construction Task Catalog . However, the contractors are informed of the type of projects that the owner intends to accomplish with the Job Order Contract.

What the owner can specifically tell the contractors is that the contract will have a definitive term, generally one year with three options to extend and that the value of the contract measured in terms of dollars of work ordered will be a range from a nominal amount such as \$50,000 to a maximum amount based on the owner's expected volume of work. The maximum amount of the contract for NYSDOT is typically \$1,000,000. The intending bidders are advised that the owner is only obligated to award the minimum amount during the term of the contract.

It is general practice to conduct at least one pre-bid conferences for Job Order Contracts. The pre-bid conferences provide contractors with an overview of Job Order Contracting and guidance and the mechanics of being a job order contractor. The contractors are instructed how to analyze the Construction Task Catalog , how to calculate adjustment factors, what is involve in developing a price proposal, the personnel requirements to staff a job order contract, and how to be successful under this new system of contracting.

## 3. Contractor Selection Process

Based on the Construction Task Catalog , specifications, and general conditions, the owner invites contractors to bid only two adjustment factors to be applied to the pre-set unit prices. The first adjustment factor is for work performed during normal working hours. The second is for work performed outside normal working hours. The adjustment factors must include the contractor's indirect costs such as overhead, profit, insurance and bonds. The same two adjustment factors apply to every task in the Construction Task Catalog . Depending upon a host of factors such as market conditions and expected volume of work, the adjustment factors could be less than or greater than one. For example, a mark-up on the book of %15 would be bid as an adjustment factor of 1.15. The contractor bidding the lowest adjustment factors is the lowest bidder. The contract is awarded to the lowest, responsible, responsive bidder.

#### 4. Job Order Development Process

When the owner identifies a project to be performed, the owner and the contractor visit the site and jointly develop and review the scope of work. The owner then prepares a scope of work document and sends it to the contractor along with a request for the contractor to prepare a proposal for the project. The level of detail and design included in the scope of work is a function of the difficulty of the particular project. The contractor breaks the scope of work down into individual construction tasks (e.g. repair of concrete pier cap, clean deck, install new culvert pipe, reset coping stones) and prepares the pricing proposal using the unit price data contained in the Construction Task Catalog . The price to be paid for each task is the unit price, multiplied by the quantity, and multiplied by the appropriate competitively bid adjustment factor. Prices are never negotiated. They are fixed by the Construction Task Catalog . The price to be paid for the total project is the sum of the price for the individual tasks. As part of the proposal the contractor also develops a schedule, drawings if required, a list of proposed subcontractors, and MBE/WBE compliance documents.

The owner then reviews the proposal package. The owner can either accept the proposal, request modifications, or cancel the project. If the proposal is accepted, a job order is issued for the project. Each job order is a lump sum contract. Although the price is arrived at using the unit prices, the resulting job order is issued for a lump sum. The contractor must complete the scope of work for the lump sum price without regard to the actual final quantities or the actual tasks required. A job order is not a unit price contract and will not be adjusted upon completion of the project.

Once the work begins, the owner inspects the work, approves payments and closes out the job in accordance with the procedure it develops.

#### 5. Continuing Financial Incentive

The major advantage of the Job Order Contracting system is that the individual job orders give the contractor a continuing financial incentive to provide high quality work on schedule. The incentive exists because each job order only represents a small portion of the total dollar value of the contract. By meeting the owner's expectations for quality and time, the contractor will be awarded additional job orders. If, however, the owner is not satisfied with the performance of the contractor, then the owner may withhold future job orders. The owner's only obligation with regard to the volume of work is to order the minimum dollar value of the contract which is often times met by issuing the first job order.

The structure of the contract distinguishes Job Order Contracting as the first true public sector performance based contracting process. It is in the contractor's best interest to provide the maximum volume of work. The owner has tied future work to current satisfactory performance. Therefore, the contractor is motivated to provide the highest quality work in the most responsive manner.

The structure of the requested JOC System services must allow NYSDOT maintenance managers the flexibility to utilize both State and contracted resources to perform any and all necessary maintenance activities. This requires that an indefinite-quantity, non-specific work location/type contract (i.e., JOC contract) be developed using defined work items and pre-set uniform pricing. For such Job Order Contracts, an easy-to-use, very detailed, location-specific cost estimating and planning system promulgated with up-to-date work items and pricing information for all potential types of maintenance work and repair activities is needed and is the subject of this RFP. Such a Job Order Contracting System would allow for the following:

1. NYSDOT would utilize the JOCS system to assist in the development of job orders for certain maintenance and repair activities (See **Attachment 10**) under certain dollar thresholds.
2. This job order would then be publically advertised.
3. Potential maintenance and repair contractors would submit their bids using work items and quantities based on the applicable JOC System-produced price book.
4. Potential maintenance and repair contractors would then add certain allowable cost adjustment factors.
5. The maintenance and repair contractor with the apparent lowest bid would then be selected for work and engaged in a NYSDOT “D” contract to perform that Job Order.
6. Payment to the JOCS Consultant by NYSDOT would then be based upon usage fee using the pre-set percentage fee of the dollar amount of the actual Job Order Contract let to the maintenance and repair contract by NYSDOT.

Job Order Contracting will be used to enhance NYSDOT’s efforts in maintaining the State’s transportation infrastructure system. The main objective of the JOC system will be to enable NYSDOT to augment maintenance and repair-related activities done by State forces, through the use of contracted services, by providing a flexible, indefinite quantity contract suitable for a wide variety of activities.

The NYSDOT previously utilized a contract with the Gordian Group (C012510), through which that consultant developed and implemented a pilot Job Order Contracting (JOC) system for heavy highway projects in Region 3 and Region 8, which was subsequently expanded statewide. This contract is available via **Attachment 9**.

A NYSDOT’s JOC Users Guide, was developed in conjunction with the NYS Office of the State Comptroller to assist NYSDOT project managers in developing and administering JOC contracts in compliance with NYS purchasing rules and regulations for heavy-highway construction maintenance. **Attachment 10** contains this Users Guide and provides some additional detail on the Job Ordering Contracting process.

#### C. Minimum RFP Responsiveness Requirements

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

1. A Complete Part I of the Proposal – Technical and Management submission.
2. A Complete Part II of the Proposal – Cost and Contract submission.
3. A proposal which either meets/exceeds the combined 4% M/WBE contract goal or offers acceptable Good Faith Effort documentation and Letter of Explanation.

## **II. PROJECT AND CONTRACT OBJECTIVES**

### **A. Project Objectives**

#### **1. Size of Effort**

For proposal development planning and bid purposes, proposers should project that \$200 million worth of maintenance and repair contracts will be made using the JOC system during the five year contract. The average dollar value of a resulting NYSDOT D contract from a job order is \$69,000. JOC orders are capped at no more than \$500,000 per order.

While NYSDOT currently projects the above level of activity for the maintenance and repair contracts, there is no minimum guaranteed number of JOC contract work that will be made during any given year, nor is there a maximum amount of JOC contracts for any given year or for the total contract term.

#### **2. Coverage**

JOC system contracts will be developed to cover maintenance activities statewide (for NYSDOT Regions 1 through 11) related to State-owned highway, bridge, culverts, overhead sign structures and other roadside appurtenances.

#### **3. Program Data Dumps**

The JOC system must be able to provide MS Word/Excel-formatted data on element level, job order level, and contract level for program management usage. The data must be in a format that can be queried, filtered, and sorted to facilitate ad-hoc reporting by NYSDOT managers.

### **B. Contract Objectives**

1. Contract Term. The base term for the resulting will be for a five-year period, with no extensions authorized. The NYSDOT estimates that the work for the successful consultant will commence sometime in the latter third of 2012.
2. Selection of a responsive and responsible consultant.
3. Method of Payment. **Compensation will be a fixed percentage of the total dollar amount of Department JOC maintenance and repair job orders actually contracted out to repair and maintenance contractors. Payment requests may be submitted monthly. Requests for payment must be accompanied by supporting documentation as requested by the Department. Review and approval of payment requests by the Department's Division of Operations is required prior to payment. The fixed percentage shall cover all of the selected consultant's costs under the resulting contract #C030790, including but not limited to all direct or indirect cost, and all costs associated with overhead, travel, training, support and maintenance services provided to NYSDOT and Authorized Users of the JOC System**

The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a NYS FIN 421 payment request forms. Requests for milestone and final payments shall be made by the designated consultant on the basis of NYS FIN 421 payment request forms prepared and submitted by the Consultant together with the deliverable item for which the payment request is being made.

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

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

The New York State Department of Transportation has established **a combined 4 percent M/WBE participation contract goal** for this solicitation. The combined M/WBE goal relates to the labor portion of the project budget. Meaningful participation by either a prime consultant **who is certified as** an MBE or as a WBE, or inclusion of subconsultants **who are certified** as an MBE or as a WBE counts toward the combined M/WBE participation goal.

Meaningful participation is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant's product or service,

- Be for scope of service elements which can be and are completely performed, supervised and managed by the MBE and/or WBE consultant, and/or
- Perform significant tasks which can be considered commercially marketable.

Firms are required to affirm their MBE and WBE offers in **Attachments 6 and 7**.

#### 5. Title VI Assurance

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

### III. SCOPE OF SERVICES

#### A. Overview

The Job Order contracts will be designed to be indefinite quantity contracts, containing all potentially necessary work tasks and items that can be competitively bid on a periodic basis. The selected JOC consultant (“Consultant”) will be responsible for researching and establishing inputting and updating fair-market pricing for all potential maintenance related activities to be done in accordance with NYSDOT practices and NYSDOT Standard Specifications. [A copy of the NYSDOT Standard Specifications may be purchased from NYSDOT’s Plan Sales Unit via <https://www.dot.ny.gov/main/business-center/contractors/plan-sales>.]

The resultant Construction Task Catalog will be used for bidding purposes by prospective construction contractors interested in performing these activities. Bidders will have to accept the prices in the Construction Task Catalog, but will be allowed to submit two adjustment factors, one for the cost to perform the activities during normal work hours and the other for non-normal work hours. This will represent the contractors’ only adjustment to the prices published in the Construction Task Catalog. Indirect costs such as overhead, profit, bonds, insurance, design and contingency costs are to be included in each contractor’s adjustment factors.

NYSDOT will prepare contracts that will be for the specific types of work allowed in NYSDOT's JOC Users Guide (**Attachment 10**). Prices for that work will be based on the JOC System Consultant's Construction Task Catalogs, and will be bid on by various maintenance and repair contractors for the resultant NYSDOT D-contract using two allowable adjustment factors at a level the maintenance and repair contractors offers as part of their bid. These allowable adjustment factors are: one for Normal Work Hours and one for Other Than Normal Work Hours.

The JOC Consultant will assist NYSDOT's Office of Transportation Maintenance throughout the administration and management of the JOC contracting program. This assistance will include maintenance or preparation of Construction Task Catalogs and technical specifications for each maintenance activity, development of contractual terms and conditions for resultant construction contractor contracts, maintenance and vigorous support of the JOCS software and access systems, and in-depth training of NYSDOT and contractor personnel as needed and as in an amount, type, frequency, and location within in the state of New York as determined in NYSDOT's sole discretion. The Consultant will continue also provide vigorous maintenance and support as well as vigorous promotion of the JOC System to potential maintenance and repair contractors seeking to bid on NYSDOT Job Order contracts. In addition, the JOC Consultant shall be responsible for revising the costs in the Construction Task Catalogs not less than annually to reflect adjustments in labor, material, and construction costs. Further, the JOC Consultant shall be required to prepare and provide NYSDOT with a written annual report summarizing the past 12 months of JOC services.

The Consultant must develop the full set of customized JOC documentation, including NYSDOT specific Construction Task Catalogs, technical specifications, and Job Order contractual terms and conditions.

The following is a summary table which presents a representative sample of Job Order Contracts from a sampling of NYSDOT Regions:

Contract Number	Region	JOC Scope
D261775	6	Bridge
D261756	8	Culvert
D261651	3	Highway
D261490	1	Overhead Sign Structures Combined

## B. Definitions

1. **Construction Task Catalog** – A catalog of pre-priced construction tasks with the recent, up-to-date prices based on local labor, material and equipment costs; each catalog is scoped for a particular repair and maintenance work scopes (see... for JOC scopes). The minimum coverage area for a CTC is a county. The largest is a NYSDOT Region.



2. **Technical Specifications** – explicit set of construction task requirements, including quality of materials and workmanship. NYSDOT specifications must be used as a basis for estimating item costs in the Construction Task Catalog.
3. **Contract Development Phase** – this phase incorporates the activities necessary to establish the structure of NYSDOT’s JOC program, inform internal NYSDOT staff as well as the contracting community about NYSDOT’s JOC program, and assist with procurement of the JOC construction contractors and the development of the execution procedures that NYSDOT will use in executing the JOC program.

#### C. Consultant’s Tasks, Duties and Responsibilities

Below is a list of the selected Consultant’s Duties and Responsibilities as well as the individual tasks to be accomplished under any contract resulting from this RFP.

1. The selected Consultant must provide experienced staff who will be responsible for providing support, training, and expertise in the use of the JOC program in NYSDOT. This staff will report directly to NYSDOT and will be available to assist NYSDOT with any JOC related issues.
2. The selected Consultant will be responsible for the development of JOC documents including the Construction Task Catalog, Technical Specifications, JOC construction contract terms and conditions, and bid documents. The Construction Task Catalog shall contain no fewer than 60,000 individual construction tasks. The Construction Task Catalog shall be modified for required, specific labor, equipment and materials costs for each county in New York State. The Construction Task Catalog shall be customized to meet the needs of NYSDOT through the addition, deletion and modification of individual items. The Technical Specifications shall be similarly customized through the addition, deletion and modification of individual specifications.
3. The selected Consultant will be responsible for providing support, training and expertise to both the contractor and State forces in use of the consultant’s JOC Management Information and Support System (JOC System). The JOC System must allow the development of orders in accordance with the RFP’s requirements and specifications, and must be readily accessible and easy to use web-based system. The JOC System must conform with NYSDOT’s JOC Users Guide (**Attachment 10**). The JOC System must have the ability to generate JOC documents including contractor cost proposals, independent NYSDOT cost estimates, invitations to joint scope meetings, detailed scopes of work, requests for proposals, formal notices to proceed, and the capability of generating custom reports. The JOC System must be capable of providing full project tracking including job order tracking by contract and job order tracking with cost center information. The JOC System must have project scheduling capability, and be capable of providing budget and cost control reports, and customized and ad-hoc reports. The JOC System shall be compatible with NYSDOT’s PC-based operating systems.

4. The selected Consultant will be responsible for installing and testing the JOC System on both NYSDOT and Consultant hardware systems. NYSDOT will have no restrictions on the number of client installations.
5. The selected Consultant will be responsible for testing/debugging any new JOC System implemented under C030790, under actual field conditions prior to implementation of the JOC System. Any JOC System cannot be implemented until accepted by NYSDOT.
6. The selected Consultant must provide the following services:
  - a. Development of the JOC program structure/bidding strategy throughout the contract's life,
  - b. Prepare and conduct pre-bid seminars on all construction contracts let through JOC,
  - c. Prepare and conduct an external marketing program,
  - d. Coordinate and develop the JOC execution procedures, and
  - e. Provide training to construction contractors.
7. The selected Consultant will be responsible for providing NYSDOT staff and Contractor staff with comprehensive JOC System training.
8. The selected Consultant's staff will assist in the actual execution of the contracts by helping NYSDOT staff develop Job Orders. Consultant staff will attend and monitor initial site visits, proposal development and negotiation sessions.
9. The selected Consultant will be responsible for providing comprehensive JOC program support and maintenance to NYSDOT. The Consultant will also monitor the overall program and prepare any status reports required by NYSDOT.
10. At NYSDOT's discretion, the selected Consultant may be requested to perform additional duties, such as development of Construction Task Catalogs for scopes of work for additional maintenance-related activities. Such duties will be completed at NYSDOT's direction, the cost of which is to be included in the fixed fee. The total amount of work for additional duties is estimated to be no more than 200 hours during the term of the contract; however there is no guarantee of work.

#### D. Tasks

1. The Consultant shall develop Construction Task Catalogs by NYSDOT Region and/or by county; by category (work type) covering all maintenance and maintenance related activities and in accordance with NYSDOT's JOC Users Guide (**Attachment 10**).
  - a. The Consultant shall organize and direct a series of meetings with appropriate Department staff to determine the appropriate maintenance activities to be contained in the Construction Task Catalogs.

- b. The Construction Task Catalogs shall contain location specific pricing information for all maintenance related activities (Task Codes), as shown in **Attachment 11 (see changes in Attachment)**. Each unit price shall be developed using local, current labor, equipment, and material rates specific to each county in New York State. The direct labor cost will be developed using local prevailing wage rate tables. The direct material and equipment costs will be determined by conducting a pricing survey of the local market. The use of factors for localizing prices will not be acceptable.
  - c. The Construction Task Catalogs must be revised at least annually to reflect changes in labor, equipment, or material prices during the course of the contract.
  - d. The Construction Task Catalogs must be able to be stored electronically on an NYSDOT-compatible PC and operate in a Microsoft Windows operating system.
- 2. The Consultant shall provide technical specifications that are based on the NYSDOT Standard Specifications and the policies and procedures of the NYSDOT Office of Transportation Maintenance (OTM).
  - a. The Consultant shall organize and direct a series of meetings with appropriate Department staff to evaluate existing Department Standard Specifications and Maintenance procedures.
  - b. The Consultant shall develop a comprehensive set of technical specifications for each of the maintenance and repair activities listed in the Construction Task Catalogs. The technical specifications shall correspond to the activities listed in the Construction Task Catalogs and incorporate the NYSDOT Standard Specifications and OTM practices. The technical specifications are to be compiled, published and stored electronically using NYSDOT current MS Word standard.
  - c. The Consultant shall use NYSDOT's current JOC contractual terms and conditions to form the basis for new Job Order Contracts.
- 3. The Consultant shall provide a fully automated management information and support system.
  - a. The JOC Consultant shall provide NYSDOT with a comprehensive JOC management information and support system. The JOC system must be able to: provide full project tracking; automate development of contractor cost proposals and independent Department estimates; generate all project documentation; provide project scheduling capability along with budget and cost control information; and generate customizable reports. The system shall be able to provide a fully auditable record of items, quantities, and prices for management. The system must also be capable of transferring data files into Microsoft Access and be operable in a Microsoft Windows environment on IBM compatible PCs. Sufficient installations of the software (25-30 estimated) are to be made available to designated Department staff.

- b. The Consultant shall provide continuous systems support to NYSDOT throughout the duration of the contract. This support will include upgrades, debugging, telephonic assistance and other related support.
  - c. The selected Job Order contractors must be furnished with an automated system capable of generating complete JOC cost proposals.
- 4. The Consultant shall provide technical training for Department staff.
  - a. The Consultant will be responsible for developing a comprehensive JOC training program which will include different course modules in order for all levels of designated NYSDOT staff to receive specialized training. Training is to be “hands-on” and include a comprehensive training/reference manual with sample Job Orders, flowcharts, and forms to be used by trainees as a reference tool after completion of the training.
  - b. Should there be a change in the JOC System, the Consultant shall conduct training for up to 30 users of the JOC program, including selected JOC contractors’ staff. NYSDOT estimates that this training will last between 1 and 3 days and be conducted in Albany, New York.
- 5. The Consultant shall provide technical support throughout the development, implementation, execution and evaluation of the JOC maintenance contracts. Expectations will include assisting NYSDOT in establishing procedures, trouble shooting, implementation and continuous system monitoring. Technical support is considered to be an on-going management support for the operational system.
  - a. The Consultant will be responsible to NYSDOT for the actual implementation and execution of the JOC system. The JOC Consultant must be capable of providing NYSDOT with complete technical support (during normal business days and hours only – New York time) during the procurement phase and throughout the life of the contract.
  - b. The Consultant will be required to organize, conduct, and present the concept and methodology to the contracting community at pre-bid meetings held in NYSDOT Regional offices in New York. The Consultant may also be called upon to present the JOC concept and methodology on behalf of NYSDOT to various business and contracting organizations.
  - c. The Consultant shall provide adequate competent supervision at all times during the performance of the contract. To that end, the assigned representative of the Consultant and one or more alternates shall be designated in writing to NYSDOT prior to contract award. The assigned representative of the Consultant shall be readily available to meet with representatives of NYSDOT weekly during the first month of

the contract and as often as necessary thereafter. A mutual effort will be made to resolve any problems identified at these meetings.

6. All prospective JOC System consultants are reminded that all their costs for full provision of all JOC System services to NYSDOT over the entire contract's term must all be covered by the fixed percentage fee. NYSDOT will not reimburse the selected Consultant for any other expenses during the life of the contract.

#### E. Deliverables

1. Automated System components:
  - a. Construction Task Catalogs
  - b. Technical Specifications, including Contractual Terms and Conditions
  - c. Management Information and Support System
2. Technical Training and Manuals
3. Technical Support (for the entire contract term)
4. Annual JOC Usage Report
5. Implementation of JOC System in All NYSDOT Regions

#### F. Schedule

Time Frame	Deliverable
Within 60 days of contract award	Provide to the Department a customized Construction Task Catalog (and accompanying Technical Specifications) containing at least sixty thousand (60,000) construction tasks.
Within 90 days after advertising JOC construction contracts	Provide to the Department access to the JOC system and train the Department staff in the use of the software.
For 90 days after the first JOC construction contract award.*	Remain available to the Department to provide technical assistance.
Within 30 days of JOC construction contract awards.*	Train JOC construction contractor's staff in the use of the JOC system.

\* For the purpose of the above table, "contract award" is defined as being the later of either OSC contract approval or the contract term start date.

## IV. PROPOSAL FORMAT AND CONTENTS REQUIREMENTS

#### A. General

Part I and Part II submissions must be received before the proposal due date/time. Proposals must be delivered in sealed packages and labeled: JOC C030790.

For the purpose of evaluation, each proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Contract submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Proposers are requested to keep their proposals concise and relevant. Unrelated experience, company history or projects should not be included. Cost information is **not** to be included in the Part I submittal and technical information is **not** to be included in the Part II submittal, or your proposal could be deemed unresponsive.

A Table of Contents shall be presented for both Part I and Part II. Sections with Part I and Part II shall be divided by labeled tabs. Part I and Part II submissions must be bound in separate 3-ring binders.

**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 and proprietary” is unacceptable – such proposals will not be accepted unless the proposer relabels 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. 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.

Your proposal should follow the format listed below.

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

<input type="checkbox"/>	Six bound hard copies of Part I in three-ring binders with tabs for each section, plus two copies of Part I on CD
<input type="checkbox"/>	Name, address and telephone number of proposer on cover page
<input type="checkbox"/>	Name, title and e-mail address of person(s) who prepared proposal
<input type="checkbox"/>	Signed Cover Letter on official business letterhead
<input type="checkbox"/>	Table of Contents identifying each major section and initial-page numbers
<input type="checkbox"/>	Executive summary of proposed approach
<input type="checkbox"/>	Narrative Description
<input type="checkbox"/>	Approach, Scope of Services and Schedule
<input type="checkbox"/>	Organization and Staffing
<input type="checkbox"/>	Experience
<input type="checkbox"/>	References
<input type="checkbox"/>	Demonstration of Construction Task Catalog (Price Book) (Sample)

Required Part I sections:

1. **Title Page** Indicate 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: Job Order Contracting (JOC) System Services for NYSDOT, Contract #C030790. Part I: Technical & Management Submittal
2. **Cover Letter**. The Cover Letter must include the following:
  - Present a 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 key 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.
2. **A Table of Contents (for each Part)**. Part I and Part II sections shall be divided by labeled tabs.
3. **Executive Summary**. Provide a brief description of the proposed approach, the proposed work effort and a scan of relevant, important issues to develop and implement a heavy highway-oriented JOC system for NYSDOT.
4. **Narrative Description**. Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYSDOT's project objectives and familiarity with applicable laws, rules, practices, etc.

Provide a discussion of the significant steps involved in the implementation of the JOC System within the NYSDOT Transportation Maintenance Division, including any possible system configuration and/or customization. Include enough substantive discussion to demonstrate an understanding of the types of work performed by a public transportation maintenance organization like NYSDOT. Describe potential problems that may arise during the development and implementation of a JOC system and actions you would take to resolve them.
5. **Approach, Scope of Services and Schedule**. Describe in detail your firm's approach for performing the work to develop and implement a JOC system that will meet NYSDOT's

project objectives, including technical training and support. Provide a detailed scope of services which describes by task what will be done. A general scope of services is outlined under RFP Section III. Present and describe your M/WBE management plan, to ensure the contract's combined 4% M/WBE goal is met over the life of the contract.

You may base your scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYSDOT wants to allow maximum flexibility for the ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed within the framework of the stated objectives and scope of the project. If significant departures from the scope are recommended, fully explain and justify your approach.

6. **Organization and Staffing.** Provide an organizational chart for the project showing the names of the project manager and key personnel. Identify all proposed subconsultants; explain the specific need for outside expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. Describe the level of interaction contemplated with NYSDOT.
7. **Experience.** The qualifications and prior relevant experience of proposing firms and offered key personnel are of great importance to NYSDOT. Direct, prior experience in developing a JOC system for a public agency is highly desirable or similar applications described in this RFP is highly desirable. Of particular interest is work done for agencies and municipalities responsible for the maintenance of public transportation systems and infrastructure, particularly heavy highway construction. Provide a list of projects currently in progress by your firm and those completed within the last three years which are relevant to this effort. Briefly define JOC systems that have been developed by your firm, including system objectives, application, when the system was put in-place, how long the system has been in operation, and if the JOC system is heavy-highway oriented. Provide at least three successfully reachable firm references for previous, relevant work.

Indicate key personnel who are, or have worked, on such projects, and will be assigned to this effort. Include resumes for all key personnel (including any subconsultants) featuring relevant past and on-going project work.

**REFERENCES:** Include names, titles, e-mail addresses, mailing addresses and phone numbers of all offered references and contact points with the listed clients for all proposed key personnel as well as for each firm included in a proposal. At least three, successfully reachable references are to be provided. NYSDOT reserves the right to request information from any reference check source so named, as well as request additional references or contact relevant references of its choosing. Please do not include unrelated experience.

8. **Demonstration of Construction Task Catalog (Price Book) (Sample)**



The Construction Task Catalog sample supplied by the consultant should include a variety of itemized prices for detailed Heavy highway work activities. Itemized prices for work activities should include price differentials for such considerations as quantity price breaks, materials options, and equipment options for a variety of work scopes identified in the J.U.G.

**B. Part II: Cost and Contract Submittal**

<input type="checkbox"/>	Two bound hard copies of Part II in three-ring binders with tabs for each section, plus 2 soft copies on CD, in a format compatible with MS Office 2007 Copies
<input type="checkbox"/>	Required cost information (complete and submit <b>Attachment 11</b> )
<input type="checkbox"/>	Name, title, address and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation
<input type="checkbox"/>	Complete and submit <b>Attachment 2 Consultant Information and Certifications (sign both Sections II and III)</b>
<input type="checkbox"/>	Complete and submit <b>Attachment 3 Procurement Lobbying Law Compliance Forms (see below *)</b> – <b>These forms are required either with the RFP Response Form or if you do not submit an RFP Response Form then the PLL forms are required with the Proposal</b>
<input type="checkbox"/>	Complete and submit <b>Attachment 6 MBE and WBE Participation Information Form</b>
<input type="checkbox"/>	Complete and submit (if applicable) <b>Attachment 7 MBE and WBE Participation Solicitation Log AND Letter of Explanation of Non or Partial Combined M/WBE Goal Attainment</b>
<input type="checkbox"/>	Complete and submit any/all future <b>RFP Modification Acknowledgement Forms</b> as instructed.

Required Part II sections:

1. **Title Page** Indicate 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: Job Order Contracting (JOC) System Services for NYSDOT, Contract #C030790. Part II: Cost & Contract Submittal
2. **Cover Letter**. (copy of Part I Letter)
3. **Cost Proposal**

Firms are instructed to present a fixed percentage usage fee using **Attachment 11** in their cost proposal based on all of the information contained in NYSDOT JOC System RFP for Contract #C030790, basing that fee on the dollar value of each JOC contract. Provide the estimated total cost to the State for the five years of the project based on the fee(s) based on a total JOC contracting amount of \$200M over five years. Explain all assumptions.

The proposed fixed percentage usage fee will remain unchanged throughout the contract period. The fixed fee must be offered as a percentage of the maintenance and repair Job Orders contracted out by NYSDOT via the JOC System value (for example: 1.21% of

the maintenance and repair Job Orders contracted out). The fixed fee must cover all consultant costs for full provision of all JOC System services to NYSDOT over the entire contract's term. NYSDOT will not reimburse the selected Consultant for any other expenses during the life of the contract.

The total anticipated maintenance and repair Job Orders contracted out is estimated to reach \$200M over the period of the contract. Use **Attachment 12 Contract Value Summary By Year** to guide your cost proposal submission. This anticipated total value is based on historic annual usage with an estimated increase usage, as presented in the following table:

YEAR	JOC USAGE CONSTRUCTED VALUE (\$M)
2004	.54
2005	12.2
2006	14.4
2007	16.4
2008	13.8
2009	19.6
2010	36.2
2011	20.0
2012*	2.0
2013*	30.0
2014*	40.0
2015*	60.0
2016*	80.0
2017*	88.0

\*estimated

Note: As mentioned previously, for proposal development planning and bid purposes, proposers should project that \$200 million worth of maintenance and repair contracts will be made using the JOC system during the five year contract. However, while NYSDOT currently projects \$200 million in activity for JOC maintenance and repair contracts, there is no minimum guaranteed number of JOC contract work that will be made during any given year, nor is there a maximum amount of JOC contracts for any given year or for the total contract term.

4. **Contract Section** Which includes the following:

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 Agreement 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. **No exceptions to any of the draft contract's terms and conditions will be entertained by NYSOT. Conditional bids will be deemed non-responsive.**

a. MBE and WBE Participation

Interested proposers should verify their attainment of the established, combined 4% M/WBE subconsulting participation contract goal by completing **Attachment 6 MBE and WBE Participation Information**. For participation to count towards NYSDOT's combined M/WBE goal set for this solicitation, the offered MBE and/or WBE participating firm must be currently certified by Empire State Development. If the proposal does not meet the combined 4 percent M/WBE participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 7 MBE and WBE Participation Solicitation Log**.

**Additionally, if the proposing prime firm does not meet the combined 4% M/WBE goal**, the firm must include in its submission a **M/WBE Goal Attainment Explanation Letter** explaining why the firm was unable to meet the combined M/WBE goal (in full or if partially), which serves to substantiate the firm's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, affirmative efforts to reach out to and retain M/WBE consultant services, and the availability of certified M/WBE firms for the work to be performed by either a prime consultant or via subcontract.

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 M/WBE 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.

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.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>

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.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>

**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 C030790 wherever requested in the forms. Please call or 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 Evaluation of Proposals**

Proposals received on or before the due date shall be opened, logged-in, and examined for completeness and adherence to the RFP’s response requirements. Logged in proposals shall be certified as being received.

Once logged in, proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness requirements. Proposals which meet minimum RFP responsiveness requirements shall be considered further; proposals which do not meet minimum RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

Proposals passing pre-screening shall then be evaluated by NYSDOT using a Best Value Method evaluation process based on the technical and cost criteria described below.

Pricing considerations are of greater importance than technical considerations; however, technical considerations are a significant factor in NYSDOT's evaluation of proposals.

Technical and Management proposal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management subject experts. Technical Evaluation Committee members will be given technical proposals with instructions and scoresheets. Committee members, working as individuals, shall compare each proposal against the RFP, measuring the degree of responsiveness to the RFP's specifications and requirements. Committee members will document their findings, and assign a numerical score for each of the RFP's evaluation criteria using a zero-to-ten point scale. Evaluators may identify clarification questions along the way.

To be considered technically eligible for contract award (i.e. make the short list), a firm's proposal needs an average after group discussion technical score equal to or higher than 22 points.

Once independent evaluation of proposals is complete, the committee shall meet as a group to collectively discuss their findings with possible score changes. Reasons for score changes shall be documented. Offered experience shall be verified by contacting references provided by proposers.

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, evaluators will be allowed to revise their technical scores based on this additional information.

NYSDOT reserves the right to ask clarifying questions regarding each cost proposal (Part II) and M/WBE participation as well. Furthermore, NYSDOT reserves the right to request best and final offers from firms that are determined to be susceptible for contract award.

Should less than three firms submit proposals, NYSDOT shall poll all firms expressing interest in this solicitation to ascertain their reason(s) for not responding.

An award shall be made to the offeror whose proposal receives the highest total Best Value score after considering all technical and cost/price evaluation factors.

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

At the conclusion of the proposal evaluation process, an announcement of NYSDOT's designation will be posted on the NYSDOT Web site (<https://www.nysdot.gov/business> select 'Consulting Service Opportunities'). All firms shall be notified in writing

regarding the results from the solicitation. All non-selected firms will be offered an opportunity to hold a debriefing.

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

**B. Pre-Screening of Proposals - Including Participation in Combined M/WBE Goal**

NYSDOT will pre-screen each proposal to ensure all contents have been submitted in accordance with the minimum proposal requirements as specified in the RFP. RFP specifications include that it is NYSDOT's sole discretionary determination as to whether a proposal is complete (reference "Minimum RFP Responsiveness Requirements"). Proposals which meet minimum RFP responsiveness requirements shall be considered further; proposals which do not meet minimum RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

As part of the pre-screening process, the proposed M/WBE participation percentages offered for Empire State Development (ESD) certified MBE and/or ESD certified WBE prime consultants and/or ESD certified MBE and/or ESD certified WBE subconsultants will be reviewed (**Attachment 6 MBE and WBE Participation Information**). To count towards NYSDOT's combined M/WBE participation goal, each M/WBE firm must be currently listed in the NYSESD's MBE/WBE Directory. If the proposed combined MBE and WBE participation is less than the established 4 percent combined M/WBE goal, then the firm's evidence of a Good Faith Effort (**Attachment 7 MBE and WBE Participation Solicitation Log**) to achieve participation in the combined goal will be reviewed, along with the firm's letter of explanation (**M/WBE Goal Attainment Explanation Letter**) as to why it was unable to meet the combined goal. During the review process, which will include verification of a firm's good faith effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable good faith effort, then the proposal will be deemed non-responsive and will be removed from further consideration.

**C. Technical and Management Proposal Evaluation ( up to 40 Points)**

The technical and management proposal will be evaluated and scored, with up to 40 points available, and will represent 40 percent of the total perfected best value score for a proposal. The major technical evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance.

1. Experience ( up to 15 Points)

- a. Quality, extent and relevance of experience, education and training of key personnel in developing and implementing a JOC System for a public agency, particularly for an agency responsible for the maintenance of public transportation systems. Verification of key personnel experience via reference checks. ( up to 8 Points)
- b. Quality, extent and relevance of current and prior experience of the firm in developing and implementing a JOC System for a public agency, particularly for an agency responsible for the maintenance. Verification of firm experience via reference checks. ( up to 7 Points)

2. Schedule ( up to 15 Points)

- a. Completeness and reasonableness of the Consultant's proposed schedule of delivery for the Construction Task Catalogs. ( up to 15 Points)

3. Quality of Proposal, Approach and Scope of Services ( up to 10 Points)

- a. Quality of approach and scope of services for implementing a JOC system and accomplishing project objectives; Quality of proposer's resources relative to the needs of the project; Initiative and creativity of the proposer; Reasonableness of project assumptions. ( up to 4 Points)
- b. Degree to which the proposal reflects an understanding of general issues impacting JOC system implementation within the NYSDOT Transportation Maintenance Division; Understanding of the types of work performed by a public transportation infrastructure maintenance organization; Degree to which proposal reflects understanding of potential problems to be encountered in implementing, training, servicing, and administration of JOC in a public sector transportation agency and their proposed resolution. Degree to which proposal reflects understanding and comprehension of project scope and objectives. ( up to 3 Points)
- c. Quality of project organization; Ability of prime firm to manage project; reasonableness of staff/task allocations for each task and total effort; Quality of plan for phasing key personnel into the project, including subconsultants, if any; Reasonableness of M/WBE participation management plan. ( up to 3 Points)

D. Cost Proposal Evaluation ( Up to 60 Points)

The cost proposal will be evaluated and point scored, with up to 60 points available of the total perfected best value score given to a proposal. The calculation of a cost score will be

determined by deriving the relative costs of a firm's offer by multiplying the proposed percentage fee for services times the RFP's assumed total JOC contracting of \$200M over the five-years of the resulting contract. This calculation will be performed on each cost proposal received, and the proposer with the lowest total derived cost will receive a perfected cost score of 60 points. Higher derived costs will receive proportionally lower cost scores.

The format for submission of the cost Proposal shall only be in the non-editable form provided in Attachment 11.

## **VI. ADMINISTRATIVE SPECIFICATIONS**

### **A. Proposal Submission**

1. The proposal shall be signed by an official authorized to bind the offeror (Cover Letter, **Attachment 2**).
2. Proposers shall submit six (6) hardcopies of Part I and two (2) hard copies of Part II.
3. Your proposal must be received by NYSDOT by 3:00 PM (New York time) on June 20, 2012. The proposal must be addressed to:  
Director, Contract Management  
NYS Department of Transportation  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, New York 12232  
Attention: Al Hasenkopf, C030790 JOC

### **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 consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. With regard to proposal submitted, NYSDOT asserts the prerogative with regard to proposals submitted:

1. To accept or reject any or all proposals;
2. To correct any arithmetic errors in any or all proposals;
3. To change the proposal's due date upon appropriate notification to interested firms;
4. To eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
5. To adopt any or all of a successful offeror's proposal;
6. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;



7. 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;
8. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
9. To eliminate any requirement that is found to be unmet by all offerors;
10. 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;
11. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
12. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;
13. If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and
14. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

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.rtf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/instructions_cssweb_firm.rtf)

or via:

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/instructions\\_cssweb\\_firm.pdf](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](mailto:css@dot.state.ny.us) or by telephone at 518-457-2600.

#### E. Contractor Tax Certification

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

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA)

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD)

#### F. Inquiries and Information

All questions concerning this solicitation must be submitted in writing by e-mail to [ahaskopf@dot.state.ny.us](mailto:ahaskopf@dot.state.ny.us). The last date to submit questions for this solicitation is: June 6, 2012. All inquiries should be in writing, submitted via e-mail and addressed to:

Director, Contract Management  
NYS Department of Transportation  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, New York 12232  
Attention: Al Hasenkopf, C030790

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

#### G. Protest Procedure

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via:

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/misrep\\_protest.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/misrep_protest.pdf)

#### H. Tentative Schedule of Key Events

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

RFP Release Date:	May 16, 2012
Pre-Proposal Conference	May 30, 2012 from 2:00 to 3:30 PM
Question Submittal Deadline:	June 6, 2012
Answers to Questions Due:	June 11, 2012
Proposals Due:	June 20, 2012
Proposal Evaluation:	June 22, 2012
Recommendation & Designation:	1–2 months after proposal evaluation
Contract Negotiations:	One Month
Contract Award:	4–6 weeks after completion of contract negotiations

#### VIII. **ATTACHMENTS**

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# Attachment 1

## Draft Contract

### NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F. A. NO.: \_\_\_\_\_

P.I.N.: \_\_\_\_\_

#### COMPTROLLER'S CONTRACT NO. C030790

#### PROJECT: JOB ORDER CONTRACTING SYSTEM SERVICES FOR NYSDOT

This Agreement dated date #1 pursuant to Transportation Law §14 is by and between the **New York State Department of Transportation ("NYSDOT"** and/or "STATE"), with Main Office at 50 Wolf Road, Albany, New York 12232, and \_\_\_\_\_, with its principal office and place of business located at \_\_\_\_\_ (the "Consultant").

#### WITNESSETH

**WHEREAS**, pursuant to a request for proposals dated \_\_\_\_\_, **2012**, the State has selected the Consultant to perform and provide to NYSDOT **Job Ordering Contracting System Services** (the "Project") more particularly described in Schedule A, Scope of Service, annexed hereto, and Consultant agrees to provide the required work, licenses and system pursuant to the terms hereof,

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming the Agreement.* This Agreement entitled "Job Ordering Contracting (JOC) System Services for NYSDOT"; consists of the following component documents:

- Terms and Conditions for JOC System Services
- Schedule A – Scope of Service;
- Schedule B – Project Budget, Deliverables Schedule and Compensation (also referred to as the "Payment Schedule");
- Appendix A through Appendix C – New York State and Federal required contract clauses;
- The State's Request for Proposals (RFP) – Job Ordering Contracting System Services for NYSDOT, Contract #C030790 (includes RFP itself, all RFP Modifications, written RFP evaluation clarification question requests and clarification responses (if any), and Best and Final Offer [BAFO] request, if any); and
- The Consultant's Proposal - Firm Name Proposal, dated \_\_\_\_\_ (includes Part I - Technical and Management Proposal, Part II - Cost Proposal Contract: C030790, written RFP evaluation clarification question responses (if any), and any requested BAFO response).

2. *Order of Precedence.* Unless completely mutually inconsistent, all contract requirements shall be given full effect. In the event of any conflict, uncertainty or inconsistency in content, language or requirements within this Agreement, the meaning or interpretation of the Agreement will be in accordance with following order of precedence:

1. The provisions required by state and federal law to be inserted in the Agreement as set forth in Appendix A, Exhibit A, Appendix A-1, Appendix B, and Appendix C;
2. This Agreement (Terms and Conditions for JOC System Services for NYSDOT), including Signature Page, Notary Page and Exhibits;
3. Schedule A (including Exhibits);
4. Schedule B (including Exhibits);
5. The STATE's Request for Proposals for C030790; and
6. The Consultant's Proposal for C030790.

Unless more specific provisions of an Appendix, or Schedule or Exhibit, pertain, the provisions of this core document and any Appendix, Schedule or Exhibit govern. Any conflict in quality or rigor shall be resolved in favor of the higher quality or more rigorous requirement;

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

**"JOC System"** means the Job Ordering Contracting System, developed for NYSDOT, inclusive of (unit price books, technical specifications, software, services, training, and support) to be provided or developed by Consultant, as more fully described in the Scope of Services as defined below, together with the software licensing described in this Agreement.

**"Consultant-Owned Software"** means Software developed and owned by the Consultant or its subcontractors which either pre-exists, or whose development is not funded by this agreement.

**"Commissioner"** means the Commissioner of Transportation of the State of New York or their duly authorized representative.

**"Developed Software"** means any Job Ordering Contracting System Software and associated documentation that are specific to the Project Scope and Deliverables developed under this Agreement.

**"Job Ordering Contracting System"** means the fully developed and deployed system developed under this Contract.

**"Enhancement"** shall mean changes or additions to Software, other than Maintenance Releases, new versions, or modifications, tailoring and/or customizations resulting from Integration Services that improve features or functions, add new features or functions, or improve performance.

**"Equipment"** for Commercial-Off-the-Shelf Software or Consultant-Owned Software, Equipment consists of any computer or computer system on which such software may be used pursuant to the relevant license; for Developed Software, Equipment consists of any computer or computer system.

**"Error"** shall mean any error, problem, or defect resulting from: (i) an incorrect functioning of code, or (ii) any failure of a deliverable to meet specifications.

**"FHWA"** means the Federal Highway Administration, an operating administration of the U.S. Department of Transportation.

**"Licensed Software"** means the Consultant-Owned Software licensed by the Consultant pursuant to this Agreement.

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

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

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

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

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

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

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

**"Project"** means the provision or development of, testing, evaluation, deployment and support of the Job Ordering Contracting System Software hereunder.

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

**"Scope of Services"** means the, Schedule A – Scope of Service, followed by NYSDOT's Request for Proposals for Job Ordering Contracting System Services for NYSDOT for Contract #C030790, which includes the RFP itself, the RFP Modifications, the written RFP evaluation clarification question requests, and clarification questions, and the Best and Final Offer [BAFO] request), followed by the Consultant's Proposal, which includes Part I - Technical and Management Proposal, Part II - Cost Proposal Contract: C030790, written RFP evaluation clarification question responses, and the Consultant's BAFO response).

**"Software"** means the computer programs (including any security devices) in object (and, in the case of Developed Software, also source code) form, in whole or part, provided by Consultant and whether provided on magnetic or optical disk, tape, firmware or otherwise, including all or any portions of the Software incorporated in another program. The Software shall, as appropriate, include Documentation and Maintenance Releases.

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

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

**"Subsystem"** means an automated application or process that incorporates the capabilities, features, data and/or reporting required of a specific business function or process and that may or may not integrate with other subsystems to serve an enterprise need. For example: General Ledger, Purchasing,

Accounts Payable, Accounts Receivable, Inventory Accounting, etc. are all subsystems of an enterprise Finance Information System.

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

**"Support Services"** shall mean the support services provided by Consultant in respect to the software and Maintenance Releases, enhancements and/or new versions made to the Software.

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

**"User Documentation"** means manuals, instructions and other materials acquired, provided or developed by Consultant for the Project.

4. *Performance of Work.* The consultant shall assume responsibility for the cost and timely accomplishment of all obligations and duties required by the Contract in a competent manner whether or not such obligations or duties are performed by the consultant or its subconsultant (s).

4.1 *Notice to Proceed.* Consultant will commence the work of the Project upon NYSDOT's issuance of a Notice to Proceed following the approval of this Agreement by the State Comptroller and if necessary, by the Federal Highway Administration.

4.2 *Consultant Project Management.* Consultant shall appoint a Project Manager who will be responsible for overall management of Consultant's responsibilities hereunder.

4.3 *NYSDOT Project Management.* The work of the Project shall be performed under the direction and contract administration of NYSDOT and in accordance with the New York State Project Management Methodology, as defined in the New York State Project Management Guidebook. NYSDOT will have a Project Manager serving as the representative of NYSDOT. The Project Manager is the consultant's day to day contact for: ensuring performance of the work within the Scope of Services and the Payment Schedule; processing of payment requisitions; and, the initiation and coordination of review of any changes to the Contract Documents. The Project Manager is not the NYSDOT contracting officer, and any amendment to the Contract Documents requires an amended or supplemental agreement signed by the NYSDOT contract officer and any necessary State officials and, if required, from the Federal Highway Administration.

4.4 *Performance of Scope of Services.* Consultant shall perform all of the work required by and associated with the Scope of Services in this Agreement in an efficient and expeditious manner and in accordance with all of the terms and conditions 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 the work of the type described in this Agreement. The consultant shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items, technology and intellectual property as may reasonably be necessary or appropriate to perform the work in accordance with this Agreement.

4.4.1 *Scope Changes.* NYSDOT reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Scope of Services, such changes to be within the general scope of the Contract. NYSDOT may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance.

4.5 *Extra Work.* If the consultant believes that any work is or may be beyond the scope of the AGREEMENT (extra work), the consultant shall notify the STATE, in writing, via a Project Change

Request, of this fact prior to beginning any of the work. The Project Change Request shall contain all the information required by the NYSDOT, including, but not limited to the following: a short description of the proposed change, a short description of the proposed solution, and the estimated hours to complete the change. The total price of the change shall include both labor and material costs. The labor cost shall not exceed an amount be calculated by the number of labor hours multiplied by the currently applicable hourly rate for each labor category as defined in the Agreement. The consultant shall provide the appropriate documentation to support all material costs stated in the Project Change Request. Detailed estimates for the Project Change Request may need to be developed through Joint Application Development sessions attended by both the consultant and NYSDOT before such a request for approval for extra work can be considered by the STATE.

No extra work shall be started prior to written authorization from the STATE. 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. If the State determines that extra work is warranted, and additional funds are needed, a Supplemental Agreement providing for 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. The State shall determine the proper method and scheduling of payments for such approved extra work. Upon approval of extra work, the consultant will deliver the Project Change Request at the agreed upon cost within reasonably close conformance with projected extra work delivery timeframes. The STATE shall be under no obligation to reimburse the Consultant for any extra work performed without the prescribed notification and authorization.

4.5.1 In the event of any claims being made or any actions being brought in connection with the Project, the Consultant agrees to render to the STATE all assistance required by the STATE. Work which the Consultant is obligated to perform in accordance with the Scope of Services shall be performed without cost to the STATE. Compensation for other work performed and costs incurred by the Consultant in connection with this requirement shall be made in a fair and equitable manner by in accordance with section 4.5, *Extra Work*.

4.6 *Disputed Work*. If Consultant is of the opinion that any work ordered by NYSDOT to be done as contract work is extra work and not contract work, or that any order of NYSDOT exceeds the work requirements of this Agreement, Consultant shall promptly, within ten (10) work days of receipt of the order or direction, so notify NYSDOT's Project Manager in writing, explaining Consultant's contention. Consultant must progress the work as required and ordered. In the meantime, Consultant, if it considers the issue unresolved, shall promptly, within ten (10) work days of receipt of NYSDOT's written decision, notify the Commissioner in writing with copies to the Project Manager of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Project Manager and its rebuttal of the previous findings. The Commissioner or his/her designated representative shall make a finding thereon and notify Consultant of same in writing in a timely manner. If such work is determined by the Commissioner or his/her designee to be extra work pursuant to the provisions of this Section, NYSDOT will initiate a supplemental agreement.

If the Commissioner or his/her designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct Consultant to continue the disputed work and Consultant must promptly comply. Consultant's right to pursue a dispute under this Section for extra compensation will not be affected in any way by Consultant's complying with the directions of the Commissioner, the Project Manager to proceed with the work, provided Consultant continues to keep and furnish documentation of the extra work claimed.

4.7 *Coordination with Other Consultants*. As required or directed by NYSDOT, Consultant shall cooperate with, and coordinate its work with any other consultants that may be involved with the Project.

4.8 *Damages and Delays*. The Consultant agrees that no charges or claim for damages shall be made by the Consultant for any delays or hindrances from any cause whatsoever during the progress of any portion of the work required by this Agreement. Such delays or hindrances, if any, shall be compensated



for by an amendment to the Project Schedule and, as applicable, the Budget, subject to the procedures otherwise applicable herein for changes to the Project Schedule and Budget.

4.9 *Subcontractors.* The work of the Project shall be performed in accordance with the following Subcontract Procedures:

4.9.1 Without relieving it of, or in any way limiting its obligations under the Agreement, the Consultant may enter into subcontracts for the performance of the Project or for the purchase of materials and equipment. The Consultant shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. In the event that competitive bidding or multi-source price review is not feasible, the Consultant shall document an explanation for, and justification of, a sole source selection.

4.9.2 The Consultant shall document the process by which a subcontractor or supplier is selected by making a record summarizing the nature and scope of work, equipment, supplies or materials sought, basis for establishing the source list, the name of each person or organization submitting or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights or proprietary data.

4.9.3 All subcontracts for the performance of work of the Project shall be in writing and subject to the prior approval of NYSDOT and shall contain provisions required by this Agreement for such subcontract, those provisions required by Appendix A, and all other provisions now or hereafter required by law to be contained therein.

4.10. *Accounting and Record Keeping.* The following are the record keeping requirements for State reimbursement for Extra Work under 4.3.

4.10.2 *Progress Billings.* In the event the Extra Work is authorized under 4.3 of Attachment A Contract Provision, Extra Work and the STATE determines such payments are to be made via, the following requirements apply.

4.10.3 After approval of the Agreement, the Consultant may submit progress billings to NYSDOT for the Federal share, to be supported as follows:

- (a) *Contracts/Consultant Agreements* - Separate invoices or billings are required for each subcontract, each subconsultant agreement, and for work performed by employees. Billings for payments made on contracts or consultant agreements will be made on NYSDOT's Form FIN 421, as it may be amended, and supported by a copy of the applicable payment estimate(s) for contracts or consultant agreements.
- (b) *Work by Employees* - Billings for employees will be on NYSDOT's Form FIN 421, supported by an Engineer's Payroll Abstract for the period(s) covered by the billings, copies of payroll time sheets for the applicable billing period and copies of paid invoices or supporting documents for all non-personal service cost items in excess of \$250. Only those direct Project costs as defined in applicable Federal regulations and incurred subsequent to the date of Federal Highway Administration authorization can be included in billings. The supporting documents for personal service and non-personal service costs are to include the following:
  - (1) Payroll Time Sheets - The signature of the employee and approval of the employee's supervisor, or other verification acceptable to NYSDOT, is required on each time sheet. These signatures attest to the employee's assignment and hours worked on the projects indicated, and demonstrate that periods of paid leave are charged to appropriate leave categories or accounts. Employee time for such leave, holidays, vacation or other paid leave cannot be charged directly to

projects on time sheets since such costs must be allocated to Projects by using an approved percentage additive rate applied to direct payroll costs. Time sheets must correspond with applicable payroll records and amount paid for each employee based on a comprehensive payroll/labor cost distribution system.

- (2) Engineer's Payroll Abstract - Leave and fringe benefit additives are to be calculated and charged to Projects at percentage rates previously approved by NYSDOT for provisional billing purposes, subject to final audit.
- (3) Non-Personal Service Costs - Copies of invoices or documentation showing amounts and notations as may be required to clearly identify the purpose of each item. Copies of employee reimbursement vouchers for travel or similar costs are not required with progress billings but must be retained by the Consultant for subsequent audit.

4.10.4 *Source Documents.* The Consultant will retain an official copy of consultant estimates, payroll time sheets, employee travel claims and all other original source documents for transactions listed on the Project Detail Ledger. These will be systematically filed in an order that will facilitate retrieval. All expenditure vouchers or other cost documents must also be traceable through the Consultant's disbursement process to copies of warrants or checks issued and to corresponding documentation maintained in the official accounting records of the Consultant's central finance office.

4.10.5 *Audit/Disallowances.* Costs claimed or previously reimbursed that cannot be supported as outlined herein, are subject to audit disallowance by NYSDOT, the State Comptroller, Federal Highway Administration, and/or the U.S. Department of Transportation, Officer of the Inspector General. Amounts paid to the Consultant by NYSDOT that are subsequently disallowed by the Federal Government are subject to recovery by NYSDOT from the Consultant, or at the option of the State, will be offset or reduced against current or future reimbursement claims on the same or other Projects.

5. *Project Budget, Deliverables, Compensation and Schedule.* A Budget and Schedule of Project Deliverables and Compensation for the entire Project is attached hereto as **Schedule B** (together with applicable sub schedules, supporting documentation or requirements for such documentation, which may be collectively referred to herein as the "**Payment Schedule**"). Consultant shall maintain, and perform within, such Payment Schedule. If at any time the Payment Schedule is exceeded or likely to be exceeded, Consultant shall immediately inform NYSDOT's designated representative. NYSDOT shall determine whether a modification in the work or of the Payment Schedule may be made that is within **Schedules A** and **B** or, if not, whether NYSDOT will seek a modification of **Schedules A** or **B** in accordance with paragraphs 4.4.1 and 4.5 which may require a supplemental agreement that requires further reviews and approvals, including by the State Comptroller and, if required, from the Federal Highway Administration.

6. *Project Cost Compensation Methods.* Compensation under this Agreement shall be paid by the following manner as applied to this Project by, within and according to the Project Budget (**Schedule B**):

6.1 *Fixed Percentage Fee.* Compensation will be a fixed percentage of the total dollar amount of each Department JOC maintenance and repair job order actually contracted out to maintenance and repair contractors. Payment requests may be submitted monthly. Requests for payment must be accompanied by supporting documentation as requested by the Department. Review and approval of payment requests by the Department's Division of Operations is required prior to payment. The fixed percentage shall cover all of the selected consultant's costs under this Agreement, including but not limited to all direct or indirect cost, and all costs associated with overhead, travel, training, support and maintenance services provided to NYSDOT and Authorized Users of the JOC System

## 7.0 *Payment Process, Record Keeping; Audit*

7.1 *Payment Requisitions.* Consultant shall submit to NYSDOT's representative Project payment requisitions for the work performed by or through Consultant, in accordance with the Payment Schedule (**Schedule B**). Requests for payment to NYSDOT shall contain a complete summary statement of charges and costs and billing invoices for the Project.

7.2 *Payment.* The State shall pay the Consultant in accordance with Article 11-A of the State Finance Law (Prompt Payment Statute), subject to a maximum NYSDOT obligation reflected in the Payment Schedule (**Schedule B**), subject to the availability of funds, the approval of NYSDOT and audit by the State Comptroller.

7.2.2 *Maximum Amount Payable.* The maximum aggregate amount payable by the State to the Consultant hereunder for the performance and completion of the work is \$ \_\_\_\_\_ unless increased by a supplemental agreement. It is understood and agreed that the STATE is under no obligation to make a minimum number of work assignments and will only reimburse the Consultant for approved costs incurred in the performance of authorized project assignments.

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.

7.2.2 *Contract Payment - Electronic Payment Requirement.* Consultant shall provide complete and accurate billing invoices to the STATE in order to receive payment. Billing invoices submitted to the STATE must contain all information and supporting documentation required by the Contract, the STATE and the State Comptroller. Payment for invoices submitted by the Consultant shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as "COMMISSIONER"), in the COMMISSIONER'S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONSULTANT shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto: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.

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.

7.3 *Estimated Quantity Contracts.* All quantities or ranges of quantities for provision of goods and services under this Agreement are expressly agreed and understood to be estimates or projections. Payments under this estimated quantity contract are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Agreement term. No guarantee of any quantity(s) is implied or given.

7.3 *Reserved*

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

7.5 *Maintenance of Records* The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost, charges, and fees incurred and make such materials available at its office at all reasonable times during the period of the Agreement and for six years from the date of final payment under the Agreement for inspection by the NYSDOT or any authorized representative of the State. During the course of the Project and for three (3) years thereafter, Consultant agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the State or FHWA may require and to comply with the audit requirements of 49 C.F.R. §18.26 and OMB Circular A-128 and any revision or supplement thereto.

#### 7.6 *Audit: Completion Procedures*

7.6.1 *State's Right to Audit.* Upon reasonable notice Consultant shall permit the Commissioner of Transportation, the State Comptroller or any other duly authorized agent of the State or Federal Government to inspect all books, records and accounts relating to the Project.

7.6.2 *Inspection by Federal Officials.* Consultant agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Consultant and its contractors pertaining to the Project. Consultant agrees to require each third party contractor to allow the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

7.6.3 The application of the audit provisions herein to fixed price work are not for the purposes of price adjustment to such fixed price work, nor shall Consultant's cost information for such work be required to be reported. The State may, however, examine unpriced records related to such work for the purposes of verifying performance.

#### 8. *Consultant's Liability; Indemnification*

8.1 *Consultant's 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.

Negligent performance of service, within the meaning of this Article, shall include in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Consultant's responsibility and indemnity shall also include but not be limited to liability resulting from any infringement violation by Consultant of proprietary rights, copyrights, trademarks or right of privacy, arising out of the intellectual property furnished by Consultant under this Agreement, except when attributable to the fault or negligence of the State, its officers, employees or agents.

Nothing in this section or in this Agreement shall create or give to third parties any claim or right of action against Consultant or the State beyond such as may legally exist irrespective of this section or this Agreement.

8.2 *Indemnification.* In case suit shall at any time be brought against the State, asserting a liability against which Consultant is obligated to indemnify and save harmless the State, Consultant shall, at its own cost and expense and without any cost or expense whatever to the State defend such suit and indemnify and save harmless such parties against all costs and expenses thereof, including reasonable attorney fees and expenses, and promptly pay or cause to be paid any final judgment recovered against the State; provided, however, that the State gives notice to Consultant and thereafter provide all such information as may from time to time be requested by Consultant or its representatives. The State shall furnish to Consultant all such information relating to claims made for injuries, deaths, losses, damage, or destruction of the type covered by this Section as Consultant may from time to time request.

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

Schedule of Refund	
Year 1	100%
Year 2	80%
Year 3	60%
Year 4	40%
Year 5	20%

8.4 *Copyright and Patent Indemnity.* Consultant shall defend, indemnify and shall hold harmless (including reasonable attorneys' fees) the State, NYSDOT, and any employee or agent thereof (each of the foregoing being hereinafter referred to as the "**Indemnified Party**") against all liability to third parties (other than liability solely the fault of the Indemnified Party) arising from and attributable to a breach of

warranty, or negligent or intentional act or omissions of Consultant, its subcontractors, or the respective employees or agents of the aforesaid, or the possession or use by NYSDOT, of the System, including (but not limited to) the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with such System. A party requesting such indemnification shall give Consultant prompt notice of such a claim. Consultant shall conduct the defense in any such third party action arising as described herein and NYSDOT shall fully cooperate with such defense. This indemnification is limited to the System including modifications thereto made by Consultant or with Consultant's knowledge and consent and does not cover third party claims arising from modifications not authorized by or performed with the knowledge of Consultant or the use of the System in a combination or manner not specified by the Consultant.

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

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

9.1.1 *Coverage Types and Policy Limits.* The types of coverage and policy limits required from the CONSULTANT are specified in subsection (9.2) below. Insurance shall apply separately on a per-job or per-project basis.

9.1.2 *Policy Forms.* Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

9.1.3 *Certificates of Insurance/Notices.* Consultant shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract Number C030790. Certificates shall be mailed to the:

Contract Management, 6<sup>th</sup> Floor  
New York State Department of Transportation  
50 Wolf Rd.  
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon thirty (30) days' prior written notice to the Department by Certified Mail, return receipt requested at the stated address. In addition, if required by the Department, the Consultant shall deliver to the Department within Forty-Five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

- a. Be in the form provided by the Department (C218 or successor) unless the Department specifically approves a different form. The ACORD forms of Certificate of Insurance are not acceptable.

- b. Be signed by an authorized representative of the insurance carrier or producer and be acknowledged before a notary public.
- c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
- d. Specify the Additional Insureds and Named Insureds as required herein.
- e. Refer to this Contract by number on the face of the certificate, and
- f. Expressly reference the inclusion of all required endorsements.
- g. If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:
  - (1) Direct the Consultant to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
  - (2) May withhold further contract payments in accordance with Article 7 above, or
  - (3) Treat such failure as a breach or default of the contract.

9.1.4 *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.

9.1.5 *Primary Coverage.* All insurance policies, excepting workers' compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available to the Department for any claim arising from the Consultant's Work under this contract, or as a result of the Consultant's activities.

9.1.6 *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.

9.1.7 *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 (9.1) above.

9.18 *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.

9.1.9 *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.

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

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

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

9.2.2 *Commercial General Liability Insurance.* The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of the 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.

9.2.3 *Commercial Automobile Insurance including Liability and Required Coverage for New York.* In the event that automobiles are used in connection with the Consultant's business or operations with the Department, the Consultant shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of the 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.

9.2.4 *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.

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

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

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

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

10.2.1 Consultant grants a royalty-free, perpetual, transferable, nonexclusive and irrevocable license for all Intellectual Property related to the Licensed Consultant-owned Software for authorized users of the NYSDOT JOC System (including entities outside of NYSDOT).

10.2.2 Such Software licenses shall include in their meaning: (i) any Maintenance Releases, enhancements or New Version of such Software developed by Consultant or its subcontractors during the term of this Agreement within the Scope of Services or otherwise provided by Consultant or its subcontractors to the JOC System and Enhancements related thereto; (ii) and all materials, including but not limited to training materials, documentation and technical information provided to NYSDOT in written form and for use in connection with such Software

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

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

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

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

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

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

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

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

- (i) The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g)(1) of the clause;
- (ii) Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and
- (iii) Paragraph (1) of the clause, entitled "Communications" shall read as follows: "(1) Communications. All notifications required by this clause shall be submitted to the FHWA Division Office."

11.6 *Ownership.* Consultant grants a royalty-free, perpetual, transferable, nonexclusive and irrevocable license to the to reproduce, publish, modify or otherwise use in any media which exists currently or in the future and to authorize others to use any such work, data, information or other Intellectual Property produced under this Agreement for State Government purposes for authorized users of the NYSDOT JOC System (including entities outside of NYSDOT).

11.7 *Backups.* Consultant shall maintain weekly backups of source code developed, content, and files free from passwords, encryption or malicious or time triggered code, in a readily useable and accessible format, and make such backups available upon NYSDOT request.

12. *Reserved (Escrow).*

13. *Training, Support and Maintenance.* Consultant shall provide training in in-depth and frequent support on the use and implementation of the JOC System and any COTS, Developed or Consultant-Owned Software, to NYSDOT staff, consultant and all potential NYSDOT Contractors who will be using the System in accordance with the RFP's Scope of Services, Schedule A of this Agreement, and any other applicable parts of this Agreement.

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

13.1.1 *Terms and Conditions of Maintenance.* The maintenance to be provided by Consultant under §13.1 shall include, but not be limited to, providing new releases or updates if issued, and/or patches or bypasses, to address any known problem, i.e. any substantial deviation of unmodified software or systems from their then applicable specifications. Consultant shall provide access to the current version of such software and systems, Consultant's obligation to provide ongoing maintenance shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same for a period of twelve (12) months after it is first superseded. Subject to such additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall at minimum provide NYSDOT with the same level of maintenance for Consultant's proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

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

13.2.1 *Terms and Conditions of Support.*

- 1) Subject to such different or additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall at minimum provide support through a toll-free "800" telephone number connection to Consultant's technical support staff, and through an Internet web site through which NYSDOT staff may contact Consultant's technical support staff at least during the business hours of 7:30 am to 5:00 pm Eastern Standard Time, Monday through Friday, excluding state holidays, in order to present inquiries and/or requests for support and technical assistance, and obtain such assistance.
- 2) In accordance with the provisions of this Requirements of the RFP, and any other part of this Agreement, providing NYSDOT with access to the current version of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant's obligation to provide ongoing support shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same for a period of twelve (12) months after it is first superseded.

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

default and termination provisions of this Agreement, or may at its sole discretion, afford the Consultant with additional opportunity to cure the default.

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

14.2 *Correction Costs.* The Consultant's correction of the product deficiency shall be at no additional cost to NYSDOT unless the system acceptance failure(s) are the results of Disputed Work within the meaning of Section 4.9 of this Agreement (in which case the remedy within such section applies). The Consultant shall, however, bear sole responsibility for the costs of correction of product deficiencies revealed by such testing, including all previously unanticipated and unscheduled time and effort required for the development of corrective measures.

15. *Warranty Provisions.* Consultant warrants that, for 18 months from the acceptance of the system per the successful completion of the system acceptance, all the JOC Software and Systems including all Service Components, Developed Software, and Consultant-Owned Software furnished hereunder, both as to each individual element and for the overall JOC System shall be free from significant programming and operational errors which shall prevent it from operating in conformity with the standards set forth in this Agreement.

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

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

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

15.4 *Warranty Disclaimer.* Consultant disclaims any and all other promises, representations or warranties not expressly provided for elsewhere in this Agreement and its attachments and exhibits to the maximum extent allowable by law, with respect to the software and systems, either express or implied, including, but not limited to the implied warranties of merchantability and fitness for a specific purpose, and any warranties that the operation of the software will be uninterrupted or error free.

## 16. *Suspension and Termination; Bankruptcy*

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

16.1.1 Contracts between the Consultant and its contractors shall provide for their suspension or termination without cause and for the convenience of the Consultant upon not less than 7 day notice by Consultant to its contractor, and for closeout compensation in such event for work in progress and materials on order prior to termination, work performed, materials delivered, but not lost profit on the

balance of contract work. NYSDOT may without cause and for its convenience upon not less than seven (7) days written notice to the Consultant require the Consultant to suspend or terminate any or all of its contracts pursuant to such provisions.

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

16.2.1 In the event of the termination of this Agreement for failure of a Project element or component, or in the performance of the JOC Software or Services during the Warranty Period as stated in §15.1 above, NYSDOT may: (i) recover from the Consultant all costs, fees and expenses incurred by NYSDOT to remedy such failure, including for elements which are rendered substantially useless as a result of such failure up to the amount paid to the Consultant for the Project element that has so failed; and, (ii) if such failure is integral to the entire JOC Software and Systems, all money paid for the JOC Software and Systems as well as associated services.

16.2.2 In the event of the failure of a Project element, or component, or in the performance of the JOC Software, Systems or Services during the Warranty Period as stated in §15.1 above, NYSDOT may suspend the Consultant's performance in whole or part without terminating this Agreement and contractually or otherwise remedy the failure at costs to be charged to the Consultant or offset against the Consultant's compensation under this Agreement. In the event of such suspension or other remedy, the Consultant's aggregate liability shall not exceed two hundred percent (200%) of the amount stated in § 16.2.1 above.

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

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

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

16.4 *Impact on Project Schedule.* In the event such suspension or termination affects project duration, the impact will be reflected in the project schedule.

16.5 *Suspension or Termination Payments.* In general, suspension of performance or termination of any financial assistance under this Agreement will not invalidate the State's obligation to reimburse Consultant for costs and expenses properly incurred by Consultant and concurred in by the State before the suspension or termination date, to the extent those obligations cannot be canceled. However, if the State determines that Consultant has willfully misused State or Federal assistance funds by the gross negligence

or willful failure to: make adequate progress; make reasonable use of the Project property, facilities, or equipment; or, adhere to the terms of this Agreement, the State reserves the right to require Consultant to refund the entire amount of State funding received by Consultant under this Agreement.

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

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

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

16.7 *Reserved.*

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

16.9 *Limitation of Liability/Exclusion of Damages.* Except for Licensee's breach of confidentiality obligations hereunder, in no event shall either party be liable to the other for any incidental, indirect, special, consequential or punitive damages, related to the software that is not expressly provided for elsewhere in this Agreement and its attachments and exhibits, including without limitation lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from the software's use, even if the party from which such damages are sought has been advised of the possibility of such damages.

17. *Reserved (Title to Equipment).*

18. *Independent Contractors.*

18.1 *Purpose.* The purpose of this Agreement is to promote economic and technical cooperation and efficiencies among the Government, the State, Consultant and private entities, in pursuing mutually advantageous goals. The relationship of the parties to the Agreement is that of independent contractors and not joint venturers, partners, or agents.

18.2 *Officer or employee of State.* Consultant agrees that it will neither hold itself out as nor claim to be an officer or employee of the State, and that it 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.

19. *Taxes.* The following paragraph 60 of General Specifications by the New York State Office of General Services applies:

19.1. *Tax Provisions.* Purchases made by the State of New York are not subject to State or Local taxes or Federal Excise taxes. To satisfy the requirements of the New York State sales tax, either the purchase order issued by an agency or institution of New York State for supplies or equipment, or the voucher forwarded to authorize payment for such supplies and equipment will be sufficient evidence that the sale by a contractor or Consultant was made to the State of New York, an exempt organization under section 1116(a)(1) of the Tax Law. Exemption certificates for Federal excise taxes will be furnished upon request by the Office of General Services, Standards and Purchase. No person, firm or corporation is, however, exempt from paying New York State Truck Mileage and Unemployment Insurance or the Federal Social Security Taxes.

The address of the Office of General Services, Standard and Purchases is:

Tower Building  
38th Floor  
Empire State Plaza  
Albany, New York 12242

In lieu of the NYSDOT furnishing an exemption certificate for excise taxes, Consultant is advised that the New York Registration number 14740026K covers tax free transactions under the Internal Revenue Code.

20. *Entire Agreement.* This Agreement, together with the Exhibits hereto, constitute the entire agreement between the parties with respect to the subject matter covered, and all prior representations or agreements have been merged into this document and superseded by it.

21. *Amendments.* Amendments to this Agreement and amended or Supplemental Exhibits may be made only in writing signed by both parties and specifically referred to as an amendment to this Agreement or Supplemental Exhibit.

22. *Required Clauses.* Attached hereto and made part of this Agreement, are the standard clauses for all New York State contracts (Appendix A).

23. *Executory Clause.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof.

24. *Reserved.*

25. *Successors and Assigns.* All the covenants and obligations of the parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns.

26. *Interpretation.* All Section headings utilized in this Agreement are for convenience only and shall not affect the construction hereof. All Appendices attached hereto are integral parts of this Agreement and the provisions set forth therein shall bind the parties hereto to the same extent as if such provision had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give any person, firm or corporation other than the State or Consultant, any legal or equitable right, remedy or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally. Any supplement or amendment to this Agreement shall be in writing.

27. *Severability.* If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

28. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original.

29. *Term of Agreement.* The base term of this agreement including development, implementation, training, support and maintenance will be **five (5) years** with no extensions. The CONSULTANT agrees that the base term of the AGREEMENT shall be **60** months from date #1 to date #2. The effective date of this Agreement shall be date #1.

30. *Assignment or Transfer of Agreement.*

30.1 *Consent Required.* As required by the State Finance Law, Section 138, Consultant shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its right, title or interest therein, or its power to execute such Agreement, to any other person, company or corporation, without the previous consent in writing of NYSDOT.

30.2 *Violation.* If this restriction be violated, NYSDOT may revoke and annul the Agreement and, in that event, 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.

31. *Certification Required by 49CFR, Part 29.*

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

- 1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- 2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- 3) does not have a proposed debarment pending; and
- 4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

32. *Certification for Federal-Aid Contracts.*

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

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



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

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

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

33. *Application of Federal, State and Local Laws and Regulations.* To achieve compliance with changing Federal requirements, Consultant agrees to include in all its subcontracts and shall require its subcontractors to further contractually provide specific notice that Federal and State requirements may change and the changed requirements will apply to the Project as required.

34. *Subawards to Debarred Parties.* Consultant acknowledges that it must not make any award or permit award of any contract or subcontract at any tier for work covered by this Agreement, to any party which is debarred or suspended or otherwise excluded from participation in Federal assistance programs under E.O. 12549, "Debarment and Suspension."

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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also shall require that the language of this certification be included in all subcontract and lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

35. *Governing Law.* The parties hereto agree that this Agreement shall be governed by the Laws of the State of New York.

36. *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/ SubConsultant 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.

The Consultant shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §889-aa and State Technology Law §208 as

enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, the Consultant shall be liable for the costs associated with such breach if caused by the 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.

36.1 *Non-Disclosure or Confidentiality Agreements.* The Consultant shall agree to execute and be bound by any non-disclosure or confidentiality agreements that NYSDOT or any other agency, consortia, corporation or other entity which requires such non-disclosure or confidentiality agreement to be executed before data, software, code or other information shall be provided to the JOC System. The Consultant's acceptance and execution of such agreements shall not be unreasonable withheld.

37. *Proposer 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.

38. *Compliance with Consultant Disclosure Laws.* The Consultant shall timely, accurately and properly comply with the reporting requirements of State Finance Law Subdivision 17 of Section 8 and Subdivision 14 of section §163 as amended by the Chapter 10 of the Laws of 2006, by submitting the New York State Office of the Comptroller's "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" (available through the NYSDOT's website under Consultant Contract Reporting Requirements at: <https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions> ).

In accordance with Chapter 10 of the Laws of 2006, the Consultant shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B, Exhibit B) 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, 11<sup>th</sup> Floor  
Albany, N. Y. 12236  
**Attn:** Consultant Reporting

**NYS Department of Civil Service**  
Alfred E. Smith Building  
Albany, N. Y. 12239  
**Attn:** Chapter 10

**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](mailto:tameche@dot.state.ny.us) or his successor.

39. *Contract Migration.* In the event the Consultant is awarded a NYS Centralized Contract for the same products or services, NYSDOT shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter, or eliminate any right that the NYSDOT otherwise had under the terms and conditions of this Agreement. .

39.1 *Extension of Use (Piggybacking)*. Any Contract resulting from this bid solicitation may be extended to additional State or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Consultant. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

40. *Notices*. All notices permitted or required under this agreement 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.

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

For the New York State Department of Transportation:

**Contact Person's Name:** William A. Howe, Contract C030790  
**Title:** Director  
**Address:** NYSDOT Contract Management, 50 Wolf Rd, 6<sup>th</sup> Fl., Albany, NY 12232  
**Telephone Number:** 518-457-2600  
**Facsimile Number:** 518-457-2875  
**E-Mail Address:** [whowe@dot.state.ny.us](mailto:whowe@dot.state.ny.us)

For the Consultant: \_\_\_\_\_.

**Contact Person 1 Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Telephone Number:** \_\_\_\_\_  
**Facsimile Number:** \_\_\_\_\_  
**E-Mail Address:** \_\_\_\_\_

**Contact Person 2 Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Telephone Number:** \_\_\_\_\_  
**Facsimile Number:** \_\_\_\_\_  
**E-Mail Address:** \_\_\_\_\_

40.2 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.

40.3 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.

41. *IRAN Divestment Act*. As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective

April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before NYSDOT may approve a request for Assignment of Contract

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

**IN WITNESS WHEREOF**, this **Contract Number C030790** 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      DATE

By \_\_\_\_\_  
DEPARTMENT OF TRANSPORTATION      DATE

Consultant Certification: I certify that all the information with respect to the "Proposer Responsibility Questionnaire" submitted by \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ pursuant to the requirements set forth in OSC Bulletin G-221 is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Proposer Responsibility Questionnaire" submitted that date.

Procurement Certification: Consultant certifies that all information provided to NYSDOT with respect to the requirements contained in State Finance Laws 139j & 139k is complete, true and accurate.

By \_\_\_\_\_  
*FIRM NAME.*

Date: \_\_\_\_\_

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Job Ordering Contracting (JOC) System Services for NYSDOT

### APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI  
STATE COMPTROLLER

By: \_\_\_\_\_

Date: \_\_\_\_\_

## Acknowledgement for Contract #C030790

For contracts signed in New York State

State of New York        )

County of                ) ss.:

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

---

NOTARY PUBLIC

My Commission Expires:

For contracts signed **outside** New York State

State of                    )

County of                ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in \_\_\_\_\_ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

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

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

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

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

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.** 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.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration that enters Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from 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 agency<sup>1</sup> 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/>.

#### **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

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<sup>1</sup> 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.



incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

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

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

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

## **APPENDIX C**

### **SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

#### **Specific Equal Employment Opportunity Responsibilities**

1. **GENERAL**

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

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

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

2. **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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

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

3. **EQUAL EMPLOYMENT OPPORTUNITY OFFICER**

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

4. **DISSEMINATION OF POLICY**

(a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment

opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

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

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

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

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

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

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

#### 5. RECRUITMENT

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

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration.

In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

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

#### 6. PERSONNEL ACTIONS

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

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

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

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

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

7. TRAINING AND PROMOTION

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

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

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

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

8. UNIONS

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

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

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

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

purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

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

9. AFFIRMATIVE ACTION IN SUBCONTRACTING

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

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

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

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

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

10. RECORDS AND REPORTS

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

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

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.

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

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

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

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

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

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

#### 11. TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246. As part of the CONSULTANT's equal employment opportunity affirmative action program, training shall be provided as follows:

- (a) The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.
- (b) The number of months of training to be provided under these special provisions is previously stated in this Agreement.
- (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.

EXHIBIT B  
CDL FORM B

FORM B

OSC Use Only:

Reporting Code:

Category Code:

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

Contracting State Agency Name: Transportation Agency Code: 17000  
Contract Number: C030790  
• Contract Term          to          •          •  
• Contractor Name:  
Contractor Address:  
Description of Services Being Provided: JOC 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 Job 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



Job Ordering Contracting (JOC) System Services for NYSDOT  
Contract #C030790  
Schedule A

Scope of Service Clarifications  
(if needed)

**\*\* Placeholder \*\***

Job Ordering Contracting (JOC) System Services for NYSDOT  
Contract #C030790  
Schedule B

Project Budget, Deliverables Schedule and Compensation  
(also referred to as the “Payment Schedule”)

Shall be taken from Cost Proposal, after a request for best and final offer. No other  
clarifications should be needed

**\*\* Placeholder \*\***

## Attachment 2

### CONSULTANT INFORMATION AND CERTIFICATIONS

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

**CONTRACT NUMBER:** C030790

**PROJECT TITLE:** Job Order Contracting (JOC) System

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#### **I. CONSULTANT INFORMATION**

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_

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

TELEPHONE : (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Consultant's Federal Identification Number (FIN): \_\_\_\_\_

Consultant's NYSDOT Consultant Identification Number (CIN): \_\_\_\_\_

Consultant's New York State SFS Vendor Identification Number: \_\_\_\_\_

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

Preparer's Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Other Authorized Individual(s):

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

## II. PROPOSER CERTIFICATIONS

By signing below, I, \_\_\_\_\_, authorized individual  
(Name)

of \_\_\_\_\_ make the following  
(Firm)

**certifications regarding the subject proposal:**

- 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.dot.ny.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](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) (Form ST-220-CA)  
[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) (Form ST-220-TD)
- The firm is in compliance with the requirements of the Omnibus Procurement Act as described in EXHIBIT A and in APPENDIX 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 the Office of Contract Management (\*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

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>

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 NYSDOT 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. NYSDOT 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.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

(Advisory Council FAQs)

<http://www.jcope.ny.gov/>

<http://www.jcope.ny.gov/law/lob/guidelines.html> (New York State Lobbying Act)

For more information, go to NYSDOT's World Wide Web Site at <http://www.dot.ny.gov/>  
or contact: Al Hasenkopf of NYSDOT Contract Management, 50 Wolf Rd, 6<sup>th</sup> Fl., Albany, New York 12232

E-mail: [ahasenkopf@dot.state.ny.us](mailto:ahasenkopf@dot.state.ny.us)

Tele: (518) 457-1560

**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. \_\_\_\_C030790\_\_\_\_\_

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: \_\_\_\_\_ C030790 \_\_\_\_\_

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 Employment Disclosure Legislation Forms A and B

**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: C030790

Contract Start Date:     /     /

Contract End Date:     /     /

O*Net Employment Category And 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: DOT

Agency Code: 17000

Contract Number: C030790

Contract Term:     /     /     to     /     /

Contractor Name:

Contractor Address:

Description of Services Being Provided: Job Order Contracting (JOC) System 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 Number and O*NET Employment Category	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 New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov/>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

## Attachment 6

### MBE and WBE Participation Information Job Order Contracting (JOC) System Contract #C030790

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm's legal name, checking if they are a Empire State Development (ESD) certified MBE and/or a ESD certified WBE, and indicating each firm's percentage of the total labor for the contract. Please keep in mind that only ESD certified MBE and/or certified WBE prime consultants and/or ESD certified MBE and/or certified WBE subconsultants are eligible to participate toward attainment of this state-funded procurement with a combined 4% M/BE participation goal.

**Participation by a certified MBE and/or WBE prime consultant as well as certified MBE and/or WBE subconsultants may count towards the combined 4% M/BE participation goal.**

If the combined percentage of total labor for all certified MBEs and/or all certified WBEs proposed is less than the combined 4% M/WBE participation goal set for this contract, then the proposing prime firm is required to fill out and submit the **MBE and WBE Participation Solicitation Log (Attachment 7)**, and is also required to submit a **MBE Goal and WBE Goal Attainment Explanation Letter**.

Firm Legal Name	NYS ESD Certified MBE/WBE			% of Total Salary
	MBE	WBE	None	
<b>A. Prime Consultant</b>				
<b>B. Sub-Consultants</b>				
<b>Total</b>				<b>100%</b>

## Attachment 7

### MBE and WBE Participation Solicitation Log (Good Faith Effort Documentation)

CONTRACT NO. <u>  C030790  </u> JOB ORDER CONTRACTING (JOC) SYSTEM		COMBINED PARTICIPATION GOAL:  M/WBE: 4%		PAGE NUMBER <u>  </u> OF <u>  </u>	
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  
MBE and WBE Participation Solicitation Log  
(Good Faith Effort Documentation)**

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

PLEASE NOTE: **Only participation by certified MBE and/or certified WBE prime consultants as well as certified MBE and/or certified WBE subconsultants may count toward participation goal attainment.**

Guidance concerning Good Faith Efforts in meeting M/WBE participation goals in state-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 combined M/WBE participation goal is not fully attained or is partially attained, then the proposer must complete all sections of this form and submit one **MBE and WBE Participation Solicitation Log**. In addition, the firm must also submit a **MBE and WBE Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort.

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

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

**INSTRUCTIONS:**

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

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

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

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

**MBE and WBE CONSULTANTS SOLICITED:**

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

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

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

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

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

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

**\*\*\* USE ADDITIONAL PAGES AS NEEDED \*\*\***

A description of the codes to use is as follows:

**CODE DESCRIPTION:**

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

**Guidance Concerning Good Faith Efforts  
In Meeting M/WBE Goals  
On Solely State-Funded Contracts**

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the Empire State Development Corporation M/WBE Directory- <http://nylovesmwbe.ny.gov> ) the interest of all certified M/WBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the M/WBEs to respond to the solicitation. The bidder must determine with certainty if the M/WBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate M/WBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested M/WBEs– it is the bidder’s responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for M/WBEs to perform the work.
- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding M/WBEs is not in itself sufficient reason for failure to meet the contract M/WBE goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.
- Do not reject M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry,



membership in specific groups, organizations, or associations and political or social affiliations (for example union vs non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

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

## **Attachment 8**

### **Current NYSDOT JOC System Contract #C012510: Main Contract and Project Work Plan**

(Two separate files posted to NYSDOT Website)

<https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-ads#1165>

## **Attachment 9**

### **JOC Users Guide**

## **JOB ORDER CONTRACTING – NYSDOT/OSC AGREEMENT SUMMARY**

### **OBJECTIVES FOR THE USE OF JOB ORDER CONTRACTING**

The main objective for a Job Order Contract (JOC) is to enable the New York State Department of Transportation (NYSDOT) to augment maintenance activities performed by State forces. A JOC provides a flexible, non-specified quantity, non-specified location(s) contract, suitable for identified maintenance needs within the scope of the contract. In reference to the non-specified quantity, non-specified location aspect, the Department has identified some projects it would like to perform with this contract before the contract is advertised, but this information is not shared with the Contractor at the time of the letting. Additional projects are identified as possible JOC projects during the course of the contract. The Department is responsible for maintaining an ever expanding transportation system while undergoing significant reductions in the resources available to perform cyclical, preventive, element specific replacement in kind and unscheduled maintenance activities. Additional resources that can be called upon to perform the necessary maintenance activities identified below, in a timely manner, are necessary to maintain the existing system at an acceptable level of service to the traveling public. A JOC allows NYSDOT maintenance managers the flexibility to deploy both State and contracted resources to perform a variety of maintenance activities. Currently, the Federal and State Job Order Contracting contracts are a pilot program for the NYSDOT. The pilot program is scheduled to end on 12/3/2011. Any decision by the OSC to agree to its permanency will be made only upon receipt, analysis, and acceptance, by OSC, of a report, to be produced by NYSDOT, in concurrence with the Federal report that demonstrates if the anticipated benefits of the JOC Pilot Program have been achieved.

### **DESIGN**

JOC types (scopes of work) are limited to Bridge, Highway, Overhead Sign Structures, Culverts, and Combined. They will be used when other existing DOT contracts are not practical or cost beneficial. No additional types will be allowed without prior approval from OSC.

- Highway Maintenance – work on highways or appurtenances (ex. paving, drainage, guide rail, signs). Highway maintenance work includes maintaining the traveled lanes, shoulders, drainage structures and drainage surfaces, guiderail, safety hardware (for example signs or impact attenuators) and other appurtenances within the ROW.
- Bridge Maintenance – work on bridges (ex. maintenance, cleaning, repair, element specific replacement in kind). Maintenance work is defined as actions that deter or correct deterioration of a bridge asset to extend its useful (service) life; it does not entail

structural or operational improvement of an existing bridge beyond its originally designed strength or capacity. Element specific replacement refers to, for example, replacement of all of the bridge joints on a bridge or bridges. A JOC will not be used to construct complete replacements of existing structures.

- Overhead Sign Structures – work on sign structures over highways. The work will be performed to address structural condition flags which have been issued on these types of structures based on the Department’s inspection program.
- Culvert Maintenance – work on culverts under or along a highway. A culvert is a structure with a span up to 20 feet (over 20 feet is considered a bridge).
- Combined –includes any combination of the above. (This type will not be allowed if it includes any of the types above that are included in a current JOC contract for the county/region unless prior approval is granted by OSC).

NYSDOT will limit the JOC’s to one per county or Region per type. The smallest jurisdictional (project limits) area of a JOC contract will be the County level. This will allow the Regions to meet the needs of the infrastructure without overlapping project limits. For replacement (new contract with the same scope) JOCs, there may be some overlap during the letting and award process, but new job orders cannot be issued through the current JOC once the replacement JOC has been awarded.

**Initial Project Proposal (IPP)** Include the Main Office – Office of Transportation Maintenance on all correspondence relating to JOC projects. Of particular importance is the Regional IPP/FDR Approval memo which the designer sends out once Regional approval of the IPP/FDR (Design Approval) has been received. The Office of Transportation Maintenance thereupon will notify the consultant to begin to prepare the Construction Task Catalog (CTC).

The Construction Task Catalog is developed by and provided to the NYSDOT by The Gordian Group. The Construction Task Catalog (CTC) is a location specific document which contains a series of work items with preset unit prices. Each task in the CTC contains a description, unit of measurement, and a unit price. Each unit price contains locally developed direct costs for material, labor, and equipment. The CTC follows the 16 Divisions of Construction format of Construction Specifications Institute (CSI). The CSI is a nationally recognized organization that maintains and advances the standardization of construction language as pertains to building specifications. The CTC Items have also been modified to reflect heavy/highway work such as the NYSDOT performs. The prices in the CTC should be used as the basis for the contractor to bid contract adjustment factors.

As mentioned, upon receipt of an approved IPP/FDR from the Region, the Main Office, Office of Transportation Maintenance, will notify the Job Order Contracting consultant The Gordian Group regarding the proposed contract. The consultant will be informed of the Region, the PIN number, the proposed scoping and the PS&E (Plans, Specifications, and Estimate) due date.

Each contract has a unique Construction Task Catalog (CTC). The CTC is prepared by the Gordian Group in the time between notification by the Department (receipt of the IPP/FDR) and the PS&E due date. Draft copies of the CTC are forwarded to the Region for review prior to final publication. The CTC is applicable for the life of the contract.

## **FUNDING AND DURATION**

### **STATE FUNDED JOCS**

All types of JOC contracts are eligible for State funds.

The base term is one year, with the completion date being one year (365 days) from the date the contract is awarded (approved) by the New York State Office of the State Comptroller (NYS OSC). The contract proposal will be published to indicate this one year completion date. There are 3 separate one year bilateral (mutually agreed upon) option periods, called terms. Both the NYSDOT and the Contractor must mutually agree to extend the contract into the next term. An additional term cannot be entered into until the current term has completed its complete 12 month lifespan. The initial contract value of all state-funded JOCs is capped at \$1.2 Million. There are 3 separate bilateral (mutually agreed upon) increases in funding, called fund replenishment. Both the NYSDOT and the Contractor must mutually agree to extend the contract by fund replenishment. Again, no contract replenishment will be approved until the current contract term has exhausted its complete 12 month lifespan.

The contract cannot extend beyond 4 years from the date of award, or four times (4 x) the original contract value (\$4.8 Million), whichever comes first.

### **FEDERAL AID BRIDGE JOCS, 3 YEAR PILOT PROGRAM**

NYSDOT was given approval from the FHWA to use Federal Aid on Bridge JOCs on December 21, 2007 (12/21/07) under Special Experimental Project 14 (SEP 14), Innovative Contracting Practices pilot. The original approval was modified in February, 2009. The duration of the SEP 14 pilot project is 3 years, beginning on 12/4/2008 (the letting date of the first FA Bridge JOC) and ending on 12/4/2011. As of April 2010 the Department has awarded four (4) ARRA funded Bridge JOC contracts. The Department has elected not to use ARRA funding for JOCs in the future.

The initial contract value of Federal Aid Bridge JOCs is capped at \$1 Million for one year in Regions 1, 2, 3, 4, 5, 6, 7, and 9 (upstate Regions). Total contract value can be \$2 Million in these upstate Regions (two years). The initial contract value of Federal Aid Bridge JOCs is capped at \$2.5 Million for one year in Regions 8, 10, and 11 (Metro Regions), or a total value of \$5 Million after two years.

Federally funded (FA) JOC contracts can be extended once during this pilot period. If the initial contract dollar value is exhausted prior to the end of the first term (first 12 month contract period), additional funds will not be approved until the 12 month term is expired.

## **LETTING**

**Naming Convention:** It is very important to use consistent naming with all JOC contracts across the Department. All Job Order Contracts will use an appropriate contract description from the list below from the IPP to the final acceptance of construction:

Job Order Contract: Bridge Maintenance

Job Order Contract: Highway Maintenance

Job Order Contract: Overhead Sign Structures  
 Job Order Contract: Culvert Maintenance  
 Job Order Contract: Combined\*.

\*As noted earlier, Combined will not be allowed if an existing type mentioned above is an already approved JOC contract for the existing county/region unless prior approval is granted by OSC.

### Typical Design Milestones

<i>Bid Opening date</i>	<i>PS&amp;E Deadline</i>			<i>Special Spec Deadline</i>			<i>Follow up ROW Cert. deadline</i>			<i>Newspaper Ad Published</i>			<i>Amendment Deadline</i>
	6 Wk Ad	5 Wk Ad	4 Wk Ad	6 Wk Ad	5 Wk Ad	4 Wk Ad	6 Wk Ad	5 Wk Ad	4 Wk Ad	6 Wk Ad	5 Wk Ad	4 Wk Ad	
April 1, 2010	Dec 17	Dec 24	Dec 31	Nov 19	Nov 25	Dec 3	Jan 27	Feb 3	Feb 10	Feb 17	Feb 24	Mar 3	March 3, 2010
Letting Date	15 Wks before letting	14 Wks before letting	13 Wks before letting	19 Wks before letting	18 Wks before letting	17 Wks before letting	9 Wks before letting	8 Wks before letting	7 Wks before little	6 Wks before letting	5 Wks before letting	4 Wks before letting	4 Wks before letting

**Advertisement:** Design Quality Assurance Bureau (DQAB), the Project Letting and Management Bureau, and the Contracts Management Bureau work together to ensure that the project is properly advertised. As applicable, Project Letting and Management Bureau either authorizes advertisement or obtains FHWA's authorization to advertise. The naming (title) used in the advertisement shall be in accordance with the naming convention.

**Pre-Bid Meeting:** A pre-bid meeting is typically held at the Regional Office, 3 to 4 weeks prior to the letting date. The meeting is held to provide the prospective bidders with an overview of how a JOC contract with the Department works, as it is different from traditional construction contracts. The overview is provided by the Departments JOC consultant, with assistance from appropriate Department staff, including Regional and Main Office personnel.

**Preconstruction Meeting:** The Contractor, EIC, maintenance staff, and other interested parties involved in the contract meet to discuss the contract scope, work plan and schedule and review administrative procedures necessary to begin work. Potential job orders should be discussed and at least one job scope field review should be scheduled.

## CONTRACT ADMINISTRATION

All recordkeeping will be maintained in accordance with Manual for Uniform Recordkeeping (MURK), Part 1A *Contract Administration Manual* (CAM). In addition to the typical recordkeeping performed using CEES or Site Manager, contract management also includes using the consultant's web-based contract management program "PROGEN". An electronic version of the "PROGEN User's Guide" is available on line at [www.egordian.com](http://www.egordian.com). Typically, the proposed candidates (work type and locations) are selected by Regional Maintenance staff, while the field construction is monitored by an Engineer in Charge (EIC) from the Regional Construction Group. Therefore, during the construction phase, a strong working relationship

between the Regional NYSDOT Construction group and the Regional NYSDOT Maintenance group is crucial to the success of the contract.

## **JOB ORDERS**

All Job Orders are to be consistent with the scope of work listed in the proposal.

Individual job orders are capped at \$500,000. Approval to exceed this threshold must be obtained from the Office of the State Comptroller prior to ordering the work. Notice of this provision will be included in the contract proposal.

Individual Job Orders in excess of \$150,000 where the aggregate Non Pre-priced task value is in excess of 10% of the Job Order value, the Non pre-priced task will require the prior approval of the OSC. All requests for this approval will be through the Main Office -Office of Transportation Maintenance, JOC Program Manager.

All job orders are to be reviewed for compliance to NEPA, SEPA, ROW, Railroad FA, Traffic control, permit requirements, etc.

Job Orders should not be issued if the Contractor cannot complete the work, including allowances for weather delays, by the contract completion date.

Field personnel managing Job Order Contracts will work out of State owned facilities whenever possible. However, if space in a State owned facility is not available, or if a majority of the proposed work is in a remote area, an Engineers Field Office may be necessary. If an Engineers Field Office is required for the contract, payment will be made as follows:

- For an anticipated construction inspection staff of 1 to 3 employees, the office furnished shall meet the requirements of Standard Specification Item 637.11, Engineers Field Office- Type 1.
- An Item is contained in the Construction Task Catalog to mirror this DOT Standard Specification.
- Basic office supplies such as printer paper, pens, envelopes, etc. are to be supplied by the Regional office.
- Cell phones and other personal communication devices are to be supplied by the Regional office.

## **ORDERS-ON-CONTRACT**

### **Time Extensions.**

Requests for a contract time extension must be submitted in an OOC. If the contract is to be extended for a new term, the EIC or Project Manager must include Form CONR 250 Application for Extension of Completion Date signed by the Contractor in the OOC, in accordance with the Contract Administration Manual (CAM). This OOC will be submitted to the OSC up to 30 days prior to the current completion date.

### **Fund Replenishment**

Fund replenishment is done through an Order on Contract (OOC). The value of the OOC is limited to the original contract amount. Increasing the dollar value of the contract will be approved only after the current term has completed, i.e. you must complete the current 12 month period of the existing term before replenishing funds for the contract.

In order to achieve a smooth transition from one term to the next and not experience any gaps in the time available to perform work, the Department will submit OOC's to the OSC up to 30 days prior to the current completion date. This will allow the OSC sufficient time to review, and approve, the OOC and prevent any lost time toward actual field construction. This approval is based on the OSC receiving a complete OOC package.

Both contract time extensions and fund replenishments will be performed via an OOC. If both a time extension and fund replenishment are requested simultaneously, the Department will submit both requests to the OSC at the same time (OSC cannot approve fund replenishment without a time extension).

### **Bid Factor Adjustment**

Allowable adjustments made to the Contractor's bid adjustment factors will be made through an OOC. These adjustments will be made at the written request of the Contractor, not more frequently than annually, on the contracts anniversary date. Adjustments will be calculated as stated in the Special Note, Job Order Contract, found in the contract proposal.

### **Job Order Tracking Report**

All OOCs shall include a list of all Job Orders which have: (1) been completed, (2) are in progress, and (3) are planned to be performed during the extended period (this will not be an all inclusive or complete list). *An easy way to document this information is by including a copy of the "Job Order Tracking by Status" report from PROGEN, or by including a copy of the "Job Order Tracking by Region" report from PROGEN. This report should be exported into Excel, and the other contracts should be deleted from the report.*

## **DEVELOPMENT OF A JOB ORDER**

Work needs are typically identified by Regional Maintenance staff. The EIC, in conjunction with the appropriate NYSDOT Maintenance staff, will investigate the work to be accomplished, the availability of the use of existing DOT non JOC related contracts (where practical or cost beneficial), the availability of information and documents concerning the site and the existing conditions (as built drawings), the availability of information and documents concerning the proposed work (drawings, sketches, etc...), and will review items to be discussed at the Joint Scope Meeting. Following this preliminary investigation, the EIC and the appropriate maintenance personnel will prepare a preliminary Scope of Work. The EIC will then schedule a Joint Scope Meeting with the Contractor and all other stakeholders. The EIC will send a Notice of Joint Scope Meeting to all invitees.

**A. The Joint Scope Meeting** is held on site of the proposed work. The EIC and the appropriate NYSDOT Maintenance staff will explain the preliminary Scope of Work to the Contractor. During the Joint Scope Meeting, the following, at minimum, should be discussed: the overall intent of the work and the specific tasks to be performed; a duration for the construction in days and a possible start date; the hours of the day during which the work can



be performed; access to the site and requirements for work zone traffic control; the presence or absence of any hazardous materials, and testing required for such hazardous materials; sketches, drawings, catalog cuts, shop drawings, technical data on materials, material samples, or other submittals which may be required; necessity of permits or special inspections; requirements for as-built drawings; whether liquidated damages will apply, and the due date for the Proposal. During the Joint Scope Meeting, NYSDOT personnel and the Contractor should take any necessary measurements of key project conditions. This will assist in developing and approving the Contractor's Price Proposal.

**B. Detailed Scope of Work.** Following the Joint Scope Meeting, the EIC and the NYSDOT Maintenance staff will prepare the Detailed Scope of Work. The Detailed Scope of Work may reference drawings, sketches, Standard Specifications, Standard Sheets, or other documents, and should also include any work zone traffic control requirements and/or reference to a standard MUTCD plan. The EIC will then forward the Detailed Scope of Work to the Contractor along with a **Request for Proposal (RFP)** which will set forth the date on which the Proposal is due and indicates whether Liquidated damages will apply.

**C. Contractor's Proposal.** Following the Joint Scope Meeting, and a Request for Proposal from the owner (NYSDOT), the Contractor will begin putting together a cost proposal for performing the work. The Contractor will use items and prices found in the Construction Task Catalog. Design, estimating, and coordination work in developing the project (developing the cost proposal for the Job Order) will be performed using the Departments JOC consultant's web-based software called "PROGEN". The consultant will provide assistance for both the NYSDOT and the Contractor in learning and familiarizing themselves with this program throughout the duration of the contract.

The Contractor's Proposal Package should include a Price Proposal (with cover sheet and back-up for all Non Pre-priced tasks) and a construction schedule expressed in number of days, not dates. The Contractor shall prepare, and be ready to provide to the NYSDOT, all back-up calculations, diagrams, etc. used to determine quantities included in the Price Proposal.

When a work task has been identified but a corresponding item is not available in the Construction Task Catalog, the proposed work will be developed using a Non Pre-priced task. The documentation supporting each Non Pre-priced task should include a cover sheet setting forth in detail the calculation appearing in the Special Note in the contract proposal and copies of all material and subcontractor quotes.

**D. Owners Proposal Review.** When the Contractor has developed an acceptable Proposal package, the Contractor will submit the Proposal Package to the EIC for review. The EIC and the appropriate NYSDOT Maintenance staff will review the Proposal, keeping in mind the following steps in the review process: review the Detailed Scope of Work and Standard Specifications, drawings, or other materials referenced therein; review the Contractor's proposed schedule; determine whether all necessary documents and information have been submitted; request any information which is missing. For each Pre-priced task (for which there is an Item in the CTC) the reviewer should consider the following when reviewing: is this task required?; is the task used the most appropriate task in the CTC for the work specified?; is the task part of another task?; are the quantity(ies) correct? (ask for

calculations, conversions, sketches, etc... to clarify); has the Contractor used the correct Adjustment Factor in calculating the proposal?

For each Non Pre-priced task included in the Contractor's proposal, the reviewer should consider the following during review: is this task required? Should the Contractor have used a Pre-priced task from the CTC? If not, then is there any task in the CTC that covers a portion of this item of work?; is the required back up provided, including the calculation from the Special Note and three independent quotes for material and subcontractor prices (which should be verified as independent); and has the Contractor used an Adjustment Factor of 1.0 for this Non Pre-priced task calculation.

Following this initial review of the Contractor's Proposal, the EIC should transmit comments to the Contractor with an explanation. The reviewer should not approve a task or quantity if he/she is not sure it is appropriate. All quantities should be verified in the field or from approved drawings.

**E. Proposal Review Meeting.** If the NYSDOT and the Contractor feel a Proposal Review Meeting is necessary, NYSDOT should follow these guidelines: before the meeting, NYSDOT should document clearly and specifically changes which have been made/suggested to the Contractor's original Proposal. NYSDOT should be knowledgeable of and ready to explain all requested changes to the Proposal. Also, prior to the meeting the EIC should forward a marked up copy of the Contractor's Proposal to the Contractor. This will make the Contractor aware of the proposed changes. During the proposal Review meeting, NYSDOT should be prepared to make changes to the Price Proposal and/or the Detailed Scope of Work. The Contractor should have his supporting documentation available and be prepared to explain the tasks he selected and calculations performed. If an agreement on specific tasks or quantities cannot be reached, a second site visit with all interested parties is suggested.

**F. Issue Job Order:** When the NYSDOT has reviewed the Contractor's Proposal and has determined that it is fair and reasonable compensation for the proposed work, then the DOT will issue a Job Order. Once an acceptable Proposal is received and accepted by the NYSDOT, the EIC, or NYSDOT's Project Manager, will approve the Price Proposal in PROGEN, schedule the start date for construction, enter the Job Order Issued date in PROGEN, and print out the approved Job Order. The EIC, or NYSDOT's Project Manager, will obtain the required signatures for the Job Order and will forward a signed copy of the Job Order to the Contractor. The EIC, or Project Manager, should maintain at a minimum the following information in the files for each approved Job Order: copies of the Notice of Joint Scope Meeting, Detailed Scope of Work, Request for Proposal, Price Proposal with all back up, and the approved Job Order. As work progresses, it is crucial that the EIC or project Manager update the tracking dates in PROGEN with accurate information (construction start date, construction completion date, etc.)

No Job Orders will be issued if an OOC for additional funding is required and not approved. No Job Orders will be issued if a time extension is required to reasonably complete the work.

**G. Perform Work:** All work performed via Job Orders which are issued on a Job Order Contract shall conform to all NYSDOT Standard Specifications, Standard Sheets, etc. or as per specific information contained in the approved Job Order.

**H. Supplemental Job Orders.** If, after the Job Order is issued, the EIC or Project Manager determines that additional, extra, or changed work is or has been required in connection with the construction of the approved Job Order, a supplemental Job Order will be developed. This supplemental can be either a positive quantity or a negative quantity depending on the situation involved (extra work performed or work in the original approved Job Order which was not performed). The development and approval of the Supplemental Job Order will follow the same guidelines as used when developing the original Job Order (Detailed Scope of Work, submittal and review of Proposals, issuing a Supplemental Job Order, etc.) The original Job Order and Detailed Scope of Work, and all related documentation, shall not be modified and shall be retained in its original condition as part of the permanent Job Order File records.

**I. Payments.** Payments to the Contractor will be made at the completion of the work identified in each Job Order. Semi monthly or monthly payments will generally be made to the contractor in accordance with the provisions of Section 109-06 of the NYSDOT Standard Specifications.

## GLOSSARY

The following are definitions of key words, or phrases, used throughout the JOC process:

**Adjustment Factor:** is the competitively bid adjustment to the pre-set Unit Prices appearing in the Construction Task Catalog. There are two adjustment factors for each contract. One factor is to be applied to tasks performed during Normal Working Hours. The second adjustment factor is to be applied to tasks performed during Other Than Normal Working Hours (see Special Specification 21636.01 and 21636.02 for more info regarding Normal Working Hours and Other Than Normal Working Hours).

**Construction Task Catalog:** the unit price book containing all Pre-priced Tasks.

**Detailed Scope of Work:** is a document prepared by the EIC after the Joint Scope Meeting describing in detail the work the Contractor will perform in connection with a particular Job Order.

**Job Order:** is a document prepared by the EIC and issued to the Contractor authorizing the Contractor to proceed with the Detailed Scope of Work and setting forth the Job Order Price and the Job Order Completion Time.

**Job Order Price:** is the lump sum price appearing on the Job Order to be paid to the Contractor for completing the Detailed Scope of Work.

**Job Order Completion Time:** is the period of time, expressed in calendar days, set forth in the Job Order within which the Contractor must complete the Detailed Scope of Work.

**Job Order File:** is a file containing the documents generated as part of the Job Order development process.

**Joint Scope Meeting:** is a meeting held at the site of the proposed work during which the EIC, Contractor, and appropriate others review the proposed work and any other issues relating to the Job Order.

**Non Pre-priced Task:** is a construction task for which a pre-set price is not contained in the Construction Task Catalog.

**Notice of Joint Scope Meeting:** is a document prepared by the EIC and sent to the individuals invited to the Joint Scope Meeting.

**Pre-priced Task:** is a construction task for which a pre-set price is contained in the Construction Task Catalog.

**Price Proposal:** is a PROGEN generated document prepared by the Contractor containing the unit priced tasks required to accomplish the Detailed Scope of Work multiplied by the quantities multiplied by the appropriate Adjustment Factor.

**PROGEN:** is the internet based software developed by the Gordian Group and used by the Department to manage the development of Job Orders and to assist in the administration of the Job Order Contracts.

**Project:** the services and construction necessary to accomplish a specific and identified work requirement, of which a Job Order may be all or part. A Project may require multiple Job Orders.

**Proposal Package:** is all documents submitted by a Contractor in response to a Request for Proposal including: (1) Price Proposal and (2) construction schedule.

**Request for Proposal (RFP):** is a document prepared by the EIC and sent to the Contractor requesting the Contractor to prepare a Proposal Package for the Detailed Scope of Services.

## REFERENCES

NYSDOT Standard Specifications for Construction and Materials, May 1, 2008  
NYSDOT Standard Sheets  
The Gordian Group PROGEN Users Manual

## ADDENDUM

This section has been added to address areas of concern that the DOT and the OSC may have with existing JOC contracts.

In cases where the needs justify a second JOC of the same work type within similar or overlapping project limits, approval to overlap counties must be obtained from OSC prior to letting the contract. If there are multiple JOC's in the same region for the same type of work, the

DOT will include language within the bid and resulting contract to explicitly state how work will be assigned among the multiple JOC contractors. DOT will submit draft language to the OSC within 45 days of the next letting of a JOC contract in the same region for the same type of work.

Federally funded JOCs with an initial contract value of more than \$1 Million cannot have funds replenished. An exception has been granted for contracts D261152 (R7) and D261205 (R3). Again, this note is for existing contracts as of April, 2010. Use of existing overlapping JOCs: use the JOC with the lower adjustment factor.

## **Attachment 10**

### **TASK CODES**

#### **TRANSPORTATION MAINTENANCE DIVISION**

##### **Introduction**

###### **Policy on the Required Use of Work Orders**

Work orders are required to track the following categories of work. The following lead (first) character must be used for numbering work orders.

- Support to Organizations Outside Transportation Maintenance (Cooperative Work.) Work order lead character “K.” Note: Cooperative work is for any work outside of highway or bridge maintenance including maintenance and protection of traffic for: bridge inspection, core drill teams, traffic signal crews and organizations other than the Department of Transportation.
- Institutional Roads. Work order lead character “I”
- Paving projects. Work order lead character “B”
- Indian Reservation Roads. Work order lead character “R”
- Flood and Storm Damage. Work order lead character “V”

Work order conventions for tracking costs associated with declared State Emergencies must follow procedures established to meet the requirements of SEMO. Note that paving Institutional Roads or Indian Reservation roads should be tracked using either the Institutional or Indian Reservation Roads work orders and not the Paving project type of work order. Paving projects are tracked by work order for bonding purposes and these types of facilities are not bondable.

###### **Task Types**

For direct maintenance activities there are four task types: Mobility, Appearance, Preservation and Safety. These reflect the most likely reason for performing the individual task. These are included for later use in budgeting, quality assurance and customer surveys.

## **HIGHWAY MAINTENANCE DIVISION**

### **TASK CODES**

<b>PROGRAM</b>	<b>TASK</b>	<b>TASK CODE</b>	<b>UNIT OF MEASURE</b>	<b>TASK TYPE</b>	<b>DESCRIPTION</b>
<b>Pavement Maintenance Code B thru C</b>	<b>Single Course Overlay</b>	<b>B01</b>	<b>Metric Tons AND Lane Miles Treated</b>	<b>Preservation</b>	<b>Overlaying and compacting pavement surfaces with a single layer of plant mixed bituminous material. Preliminary work such as sweeping, leveling or repairing potholes is not included and should be charged to its respective code. Include shoulder paving only when done simultaneously with mainline paving.</b>
	<b>Re-establishing Intersections, Driveways and Aprons</b>	<b>B06</b>	<b>Each</b>	<b>Preservation</b>	<b>Re-establishing intersection cross slopes and radii, driveways (asphalt, gravel, stone or concrete), parking lot transitions, aprons and radii to meet mainline grades should be charged here. Paving entire parking lots should be charged to B01. Paving DOT facilities is charged to W01.</b>
	<b>Mechanical Pavement Patching</b>	<b>B07</b>	<b>Metric Tons AND Linear Feet of Lane Patched</b>	<b>Preservation</b>	<b>Spot patching of asphalt concrete pavement using a paver, grader or drag box to re-establish a smooth pavement surface.</b>
<b>Pavement Maintenance Code B thru C (continued)</b>	<b>Paver Placed Surface Treatment</b>	<b>B10</b>	<b>Square Meters AND Lane Miles Treated</b>	<b>Preservation</b>	<b>Paver placed surface treatment of pavement surfaces including spraying a thin bituminous emulsion over the pavement surface and application and compaction of a thin hot mix cover. Preliminary work such as leveling or repairing potholes is not included and should be charged to its respective code.</b>
	<b>Surface Treatment</b>	<b>B11</b>	<b>Square Meters AND</b>	<b>Preservation</b>	<b>Surface treatment of pavement surfaces including spraying a bituminous emulsion over the</b>

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
			Lane Miles Treated	ation	pavement surface and application and compaction of an aggregate cover. Preliminary work such as leveling or repairing potholes is not included and should be charged to its respective code.
	Slurry Seal	B12	Metric Tons AND Lane Miles Treated	Preservation	Quick set slurry seal is the overlay of pavement surfaces with a thin project mixed cold applied treatment. Preliminary work such as leveling or repairing potholes is not included and should be charged to its respective code.
	Microsurfacing	B13	Metric Tons AND Lane Miles Treated	Preservation	Microsurfacing of pavement surfaces is the covering of the pavement with an ultra thin layer of project mixed slurry seal. Preliminary work such as leveling or repairing potholes is not included and should be charged to its respective code.
	Cold-In-Place Recycling	B14	Square Meters AND Lane Miles Treated	Preservation	Cold-in-place recycling includes milling of existing pavement, mixing that material with additional liquid bituminous material and repaving using the mixed material and compaction.
	Cold Milling	B20	Square Yards	Preservation	Cold milling includes the removal of existing pavement or shoulders using a milling machine, collection of the milled material, hauling and disposal of the waste.
	Temporary Pothole Repair	B31	Metric Tons	Safety	Patching with stockpile material.
	Permanent Pothole Repair	B32	Metric Tons	Preservation	Permanent repair of potholes includes cleaning, edge preparation, squaring of edge cuts, priming, filling with suitable material and compacting as required.
	Repair Frost Heaves	B37	Each	Safety	Repair of frost heaves include the removal of unsuitable material, pavement repair and



PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Pavement Maintenance Code B thru C (continued)					provision for drainage, if required.
	Truing and Leveling	B41	Metric Tons	Preservation	Leveling, recrowning, or banking travel lanes or shoulders to re-establish pavement cross slopes.
	Pavement Grooving	B51	Each Location	Safety	Machine grooving of pavements to improve coefficient of friction and to reduce the potential for hydroplaning.
	Repair Portland Cement Concrete Pavement	B52	Each Repair	Safety	Repair of portland cement concrete surface using rapid setting concrete, epoxy or similar materials including cleaning and preparation of the pavement surface.
	Repair Pavement Blow-ups	B53	Each Blow-Up	Safety	Repair of pavement blow-ups include the removal and replacement of pavement, foundation courses, and joint structures, as required. One lane width equals 1 joint.
	Repair Pressure Relief Joints and Bumps	B54	Each Joint or Bump	Safety	This is the removal of excess asphalt concrete from the joint and leveling the remaining material. One lane width equals 1 joint.
	Repair or Replace Pavement Joints – Full Concrete Repair	B58	Each Joint	Safety	Includes removal of pavement adjacent to joint, squaring of edge, fine grading subbase, placing load transfer devices and joint ties where necessary and replacement with concrete. This work involves only pavement replacement caused by normal wear and tear over a period of time, not due to blow-ups.
	Repair or Replace Pavement Joints – Asphalt Concrete Repair	B59	Each Joint	Safety	Includes removal of pavement adjacent to joint, squaring of edge and replacement with asphalt. Installation of pressure relief joints should be reported under this task.
	Construct or Widen	B60	Square	Preserv	This pertains to building new or widening existing pavement including: excavation, grading, placing

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
	Pavement		Yards	ation	subbase course, and subsequent asphalt concrete pavement courses and compacting each course.
	Spray Patching	C21	Square Yards	Preservation	Includes surface preparation and cleaning, and application of appropriate bituminous material and aggregate blotter material.
	Seal Cracks and Joints	C41	Liters AND Lane Miles Treated	Preservation	Includes removal of unsatisfactory joint material, moisture and debris. This work also includes the preparation of the joint material, its application and, if required, blotter aggregate.
	Sweeping -- Pick up Sweeper	C61	Sweeper Miles	Safety	Work performed by self-propelled pick up sweeper. NOTE: A sweeper mile is a mile traveled while sweeping.
	Sweeping -- Draw Broom	C62	Sweeper Miles	Safety	Work performed by drawn broom. NOTE: A sweeper mile is a mile traveled while sweeping.
	Sweeping -- Manual	C63	Each Location	Safety	Work performed manually. When sweeping large locations report 1 location for each 100 S.Y. swept.
Shoulder Maintenance Code D	Grade Unstabilized Shoulders	D01	Shoulder Miles	Safety	Correcting irregularities in unstabilized shoulders without the addition or removal of material. Rolling as necessary is included. NOTE: Shoulder mile is a measure for one side of a road only. One pavement centerline mile will usually have two shoulder miles.
	Prepare Stockpile Shoulder Material	D29	Cubic Yards	Preservation	Hauling to stockpile, mixing with bituminous material and maintaining the stockpile. Report Cubic Yards available for use after material has been mixed.
	Patch Shoulders	D30	Metric Tons	Preservation	Manual patching of shoulders.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
	Remove Material Under Guide Rail	D31	Linear Feet	Safety	Mechanical or manual removal of vegetation and gravel under guide rail and re-establishment of drainage.
	Pave or Wedge Shoulders	D32	Shoulder Miles	Preservation	Mechanical paving or wedging of shoulders. Paving shoulders as part of mainline paving should be charged to the appropriate paving task code. Simultaneous paving of shoulders as part of the mainline paving operation should be charged to B01.
	Backing-Up Shoulders	D33	Shoulder Miles	Safety	Includes placing embankment material or asphalt concrete and grading the material to eliminate shoulder drop-off.
	Eliminate Shoulder Drop-Offs – Spot Locations	D34	Linear Feet of Drop-Off Eliminated	Safety	Includes placing embankment material and grading the material to eliminate shoulder drop-off. Do not charge time between locations to mobilization.
	Grade and Remove Material Behind Stabilized Shoulders	D36	Linear Feet	Safety	Grading and removing excess material including vegetation and gravel to re-establish drainage. (see D31 for work under guide rail).
	Construct or Widen Shoulders	D55	Square Yards	Preservation	Involves placing shoulder material per NYSDOT specifications. Covers removal of existing material and replacement with selected material. Also includes backslope and other earthwork, seeding, etc. to complete the job.
Roadside Maintenance Code E thru F	Pick-Up Litter	E01	Shoulder Miles	Appearance	This consists of pickup and removal of litter and trash from a section of highway. This includes support for the Adopt-a-Highway Program.  It also includes costs for contract trash removal

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
					and dump charges.
Roadside Maintenance Code E thru F (continued)	Remove Graffiti	E02	Square Feet	Appearance	Graffiti removal includes all work necessary to remove or cover over defaced areas.
	Remove Dead Deer	E05	Each Deer	Appearance	Each dead deer removed.
	Remove Dead Animals (Other than Deer)	E06	Each Stop	Appearance	Each stop to make a removal.
	Remove Debris	E08	Each Stop	Appearance	Each stop to make a removal.
	Remove Encroachments	E09	Each Stop	Safety	Each stop to make a removal. Includes removal of signs on or off the R.O.W.
	Remove Storm Damage Debris and Flood Control	E10	None	Safety	All time spent removing storm damage debris or performing flood control activities should be charged to this code. Storms include: hurricanes, tornadoes, ice storms, localized events and any declared storm related emergencies.
					NOTE: A work order is required to track work reported to this code only when FEMA reimbursement is possible.
	Mow Interstates and Urban Arterials	E22	Shoulder Miles Mowed to Mowing Limits	Appearance	All types of highway mowing on interstate or urban arterial highways should be reported to this task. Includes small machine, large machine and over-the-rail mowing. Number of passes should not be factored into the measurement. Charge rest area mowing to T03 and maintenance facility mowing to W01.
			Shoulder	Appear	All types of highway mowing on parkways should

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Roadside Maintenance Code E thru F (continued)	Mow Parkways	E24	Miles Mowed to Mowing Limits	ance	be reported to this task. Includes small machine, large machine and over-the-rail mowing. Number of passes should not be factored into the measurement. Charge rest area mowing to T03 and maintenance facility mowing to W01.
	Mow Rural Arterials, Secondary and Local Roads	E25	Shoulder Miles Mowed to Mowing Limits	Appearance	All types of highway mowing on secondary or local roads should be reported to this task. Includes small machine, large machine and over-the-rail mowing. Number of passes should not be factored into the measurement. Charge rest area mowing to T03 and maintenance facility mowing to W01.
	Manual Mowing and Weed Removal	E26	Each Location	Appearance	Any mowing or weed trimming by manual means.
	Apply Herbicides	E41	Shoulder Miles	Safety	This involves the application of herbicides to control vegetation on highway rights-of-way.
	Maintain Slopes	E51	Square Yards	Safety	Filling, grading, stabilizing or otherwise repairing slopes.
	Maintain Landscape Plantings	E61	Each Location	Appearance	This covers seeding, fertilizing, mulching, care of plantings and any other landscaping activities.
	Remove Brush	E81	Shoulder Miles	Safety	Includes cutting and disposal of brush, woody growth less than 3 inches in diameter. Report accomplishment only when brush is cut. Do not duplicate accomplishment for clean up work if done at a later date. Includes chemical treatment of stumps.
	Remove Brush – Spot Locations	E82	Each Stop	Safety	Includes spot cutting and disposal of brush, woody growth less than 3 inches in diameter.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
					Report accomplishment only when brush is cut. Do not duplicate accomplishment for clean up work if done at a later date. Includes chemical treatment of stumps.
	Remove Trees - No Topping Required	E91	Each Tree	Safety	This is the removal of trees when no topping or prior removal of limbs is required. Report accomplishment only when trees are cut so as not to duplicate accomplishment for work done after the cutting operation.
	Remove Trees - Topping Required	E93	Each Tree	Safety	This is the removal of trees when topping or prior removal of limbs is required. Report accomplishment only when trees are cut so as not to duplicate accomplishment for work done after the cutting operation.
	Trim Trees	E95	Each Tree	Safety	Report all tree trimming activities to this task.
	Remove Stumps	E97	Each Stump	Safety	Report each stump removed to this task.
	Maintain Fences	F11	Linear Feet	Safety	This includes repairing, replacing or installing fence.
	Maintain Noise Walls	F21	Square Feet	Preservation	Includes installing, repairing, replacing noise walls. Graffiti removal should be reported as E02.
	Maintain Cable Guide Rail	F62	Linear Feet	Safety	This covers all cable guide rail and median barrier maintenance costs and activities -- without regard to the type of post. Maintenance of end sections which should be reported to F67. It covers straightening, repairing, replacing, installing, and painting. Adjusting cables should be reported as 5 L.F. per turnbuckle. Use of the guide rail straightening machine should be reported with no accomplishment.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Roadside Maintenance Code E thru F (continued)	Maintain Corrugated Beam Guide Rail	F63	Linear Feet	Safety	This covers all corrugated beam and three beam guide rail and median barrier maintenance costs and activities -- without regard to the type of post. Maintenance of end sections which should be reported to F67. It covers straightening, repairing, replacing, installing, and painting. Use of the guide rail straightening machine should be reported with no accomplishment.
	Maintain Box Beam Guide Rail	F65	Linear Feet	Safety	This covers all box beam guide rail and median barrier maintenance costs and activities including run outs -- without regard to the type of post. It covers straightening, repairing, replacing, installing, and painting. Use of the guide rail straightening machine should be reported with no accomplishment.
	Maintain Wood Guide Rail	F66	Linear Feet	Safety	This covers all wooden guide rail and median barrier maintenance costs and activities -- without regard to the type of post. It covers repairing, replacing, installing, and painting.
	Maintain End Sections	F67	Each End Section	Safety	This includes installing, replacing, repairing or maintaining end sections for cable and corrugated beam guide rail and median barrier.
	Maintain Concrete Barrier	F68	Linear Feet	Safety	This includes installing, replacing or repairing concrete barrier.
	Maintain Guide Rail Posts	F69	Each Post	Safety	Use this code only when the rail itself is not being maintained, repaired or replaced. This includes replacing, straightening, or reconnecting any guide rail posts.
	Maintain Impact Attenuators	F81	Each Location	Safety	Report all impact attenuator maintenance activities to this task.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Drainage Code G	Clean Culverts & Pipes	G01	Linear Feet	Preservation	Cleaning any culverts or pipes, including driveway pipes, cross culverts and closed drainage systems. Any inlet and/or outlet sumps required for this task are reported under G61. Large culverts, through which a bulldozer might pass, should be reported under G61.
	Maintain Culverts & Pipes	G07	Linear Feet	Preservation	Any culverts or pipes, including driveway pipes, cross culverts and closed drainage systems, which are repaired or maintained are reported to this code. Report cleaning to G01.
	Install or Replace Culverts and Pipes	G09	Linear Feet	Preservation	Any culverts or pipes, including driveway pipes, cross culverts and closed drainage systems, which are installed, replaced or extended are reported to this code.
	Clean Grates	G10	Each Grate	Preservation	Report cleaning surfaces of grates, field inlets or manhole covers not requiring the removal of the grate to this code.
Drainage Code G (continued)	Clean Drainage Basins	G11	Each Basin	Preservation	Removing accumulations of dirt and debris from within catch basins and drop inlets is reported here. Cleaning off the top of grates should be reported to G10.
	Maintain Drainage Basins	G15	Each Basin	Preservation	This task includes the repair and maintenance of manholes, field inlets, catch basins and drop inlets. Adjusting catch basins, drop inlets and manholes to new pavement grades is also included here.
	Install or Replace Drainage Basins	G19	Each Basin	Preservation	This task includes the replacement and new installations of catch basins and drop inlets.
	Maintain Recharge Basins	G20	Each Basin	Preservation	This task includes the repair, cleaning and maintenance of recharge basins.



PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
	Install or Replace Subsurface Drainage (Underdrains, Edge Drains, Weep Drains or French Drains)	G21	Linear Feet	Preservation	This task includes the replacement and new installations of underdrains, edge drains, weep drains or french drains.
	Maintain Roadside Ditches	G31	Linear Feet	Preservation	Removing dirt and debris from existing roadside ditches and digging new roadside ditches is reported here.
	Clean Gutters	G51	Linear Feet	Preservation	Removing sand and debris from gutters by hand, or any other method, is reported here. Cleaning pavement and shoulders adjacent to curbs should be reported to C61, C62, or C63 as appropriate.
	Maintain Gutters & Curbs	G55	Linear Feet	Preservation	Repairing, replacing and/or installing new gutters and curbs. Both concrete and asphalt is reported here.
	Maintain Stream Channels	G61	Linear Feet of Stream Channel	Preservation	This task includes maintaining stream channels on proper alignment, constructing new stream channels, installing and maintaining culvert inlets and outlets.
	Maintain Bank Protection and Walls	G81	Square Yards	Preservation	This code includes constructing and/or maintaining stream bank protection, retaining walls and cribbing.
Bridge Maintenance Code H	Inspection Support	H01	Each Bridge	Safety	Includes all work required to provide support for inspections of structures.
	Bridge Watch	H05	Each Bridge	Safety	Includes all work required to perform flood watch activities.
	Clean Substructure	H11	Each Bridge	Preservation	Clean substructure elements to remove salt, dirt, and grit.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Bridge Maintenance Code H (continued)	Seal Substructure	H13	Each Bridge	Preservation	Prepare substructure elements and apply a penetrating or coating type protective sealer.
	Lubricate Bearings	H29	Each Bearing	Preservation	Lubricate bearings and pin and hanger connections. Jack, spot paint and perform other related work, as necessary.
	Repair Bearings	H31	Each Bearing	Preservation	Repair or replace bearings. Jack, remove and recondition or replace non-functioning parts, grease or oil moving parts, prepare and spot paint non-wearing surfaces, reposition bearings and perform other related work, as necessary.
	Repair Steel Superstructure	H33	Each Bridge	Preservation	Repair or replace damaged or deteriorated steel primary/secondary members. Include heat straightening and other related work.
	Repair Concrete Members	H34	Cubic Yards	Preservation	Repair or replace damaged or deteriorated concrete primary/secondary members. Includes removal of existing materials, placement of new materials and other related work, as required.
	Repair Other Members	H35	Each Member	Preservation	Repair or replace damaged or deteriorated primary/secondary members constructed of material other than steel or concrete.
	Clean Superstructure and Deck	H38	Each Bridge	Preservation	Clean superstructure and deck elements to remove salt, dirt and grit.
	Repair Seats and Pedestals	H41	Cubic Yards	Preservation	Repair or replace deteriorated portions of bridge seats, pedestals and the top of pier cap. Remove unsound material, thoroughly clean existing materials to remain, replace missing or deteriorated reinforcement, place new materials, finish and perform other related work, as necessary.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Bridge Maintenance Code H (continued)	Repair Columns and Cap Beams	H42	Cubic Yards	Preservation	Repair or replace deteriorated portions of columns, cap beams and stem solid piers. Remove unsound material, thoroughly clean existing materials to remain, replace missing or deteriorated reinforcement, place new materials, finish and perform other related work, as necessary.
	Repair Abutments and Wingwalls	H43	Cubic Yards	Preservation	Repair or replace deteriorated portions of abutments and wingwalls. Remove unsound material, thoroughly clean existing materials to remain, replace missing or deteriorated reinforcement, place new materials, finish and perform other related work, as necessary.
	Repair Steel Substructure	H44	Each Bridge	Preservation	Repair or replace damaged or deteriorated steel pier bents or other steel substructure members. Include heat straightening and other related work.
	Maintain Erosion and Scour Protection	H45	Each Bridge	Preservation	Repair, replace or place appropriate slope and scour protection.
	Repair Foundations	H47	Each Foundation	Preservation	Repair or replace substructure footings and piles.
	Repair Decks	H51	Square Feet	Preservation	Repair or replace deteriorated portions of the deck.
	Repair Joints	H53	Linear Feet	Preservation	Repair or replace joints. Remove deteriorated or damaged sections of joints and surrounding material, clean and prepare the surrounding surfaces, install new materials and perform other related work, as necessary.
	Remove Wearing Surface	H58	Square	Preservation	Remove asphalt concrete or portland cement

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
			Feet	ation	concrete wearing surface and existing membrane, if appropriate. Deck repairs should be reported under item H51 Deck Repair.
	Place Wearing Surface	H59	Square Feet	Preservation	Place asphalt concrete or portland cement concrete wearing surface on a prepared deck.
	Place Waterproof Membrane	H60	Square Feet	Preservation	Place waterproof membrane on prepared deck.
	Repair Curbs	H61	Linear Feet	Preservation	Repair or replace deteriorated or damaged sections of curb. Include repairs to steel curbing, but not painting.
	Repair Fascia	H62	Linear Feet	Preservation	Repair or replace deteriorated portions of fascia.
	Repair Sidewalks and Medians	H63	Square Feet	Preservation	Repair or replace deteriorated sections of sidewalk and median.
	Repair Parapets	H64	Linear Feet	Preservation	Repair or replace deteriorated sections of parapet.
	Repair Railings	H65	Linear Feet	Preservation	Repair or replace damaged or deteriorated sections of the railing system or fencing. Include minor concrete and other related work. Report railing painting under code H83.
	Maintain Light Standards and Fixtures	H67	Each Standard or Fixture	Preservation	Repair or replace damaged light standards and fixtures.
	Seal Deck	H69	Square Feet	Preservation	Prepare the deck surface and apply a penetrating type protective sealer.
	Seal Curb, Sidewalk and Fascia	H72	Gallons	Preservation	Prepare the curb, sidewalk and fascia, and apply a penetrating type protective sealer.

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
Bridge Maintenance Code H (continued)	Fill Cracks and Joints	H73	Linear Feet	Preservation	Prepare and fill cracks and joints in the bridge wearing surface or in approach slabs.
	Clean Drainage Systems	H75	Each System Cleaned	Preservation	Unplug and clean the drainage system (scupper, joint troughs and down spouts) on the bridge.
	Repair Drainage Systems	H76	Each Repair	Preservation	Repair or replace damaged or deteriorated components of the drainage system. Includes related work on surrounding concrete.
	Spot Painting	H81	Square Feet	Preservation	Prepare and paint selected areas of paintable structural steel.
	Paint Railings	H83	Linear Feet	Preservation	Prepare and paint bridge railing.
	Paint Concrete	H85	Square Feet	Preservation	Prepare and paint concrete.
	Paint Bridge Curb	H87	Linear Feet	Preservation	Prepare and paint bridge curbs.
	Paint Bridges	H89	Square Feet	Preservation	Prepare and paint all paintable steel. This code applies primarily to cyclical painting of the entire bridge.
	Maintain Electrical and Mechanical Equipment	H97	None	Preservation	Maintain and repair electrical and mechanical equipment.
	Operate Moveable Bridges	H98	None	Mobility	Operate Moveable Bridges.
Traffic Control Codes X and Y	Maintain Signs	X11	Each Panel	Safety	Report number of sign panels repaired, replaced, or installed. Report one unit for each sign panel worked on. Work on overhead, cantilever or slip-

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
					base signs should be reported under Task X81. Sign inventory is charged to W21.
					Note that time spent cutting z-bars and assembling signs, whether in the shop or in the field should be charged as Work Crew time.
	Inspect Signs	X29	Miles Inspected	Safety	The measure is miles inspected in one direction.
	Maintain Delineators, Reference Markers, or Glare Foils	X41	Each Delineator, Reference Marker or Glare Foil	Safety	Report number of delineators, reference markers, or glare foils actually installed, repaired or replaced.
	Maintain Large Signs and Sign Structures	X81	Each	Safety	Includes overhead, cantilever, and slip-base signs. Report number of sign assemblies repaired or replaced. Report <u>each assembly</u> as 1 unit.
	Maintain Variable Message Signs	X91	Each	Safety	Includes all effort to place, maintain, program and monitor variable message signs.
Pavement Marking Code Z	Pavement Marking	Z01	Miles of Line	Safety	Report total miles of marked line regardless of color or type using the meter totals on the striping machine. Pavement Marking Crew Supervisors should continue to submit the Supervisor's Weekly Pavement Marking Report in accordance with previous instructions. This code is for use by Pavement Marking Crews.
	Special Pavement Marking	Z11	Each Location	Safety	Includes special pavement markings such as stop lines, railroad crossings, crosswalks, etc.. Report number of special markings applied. <u>Consider each approach to an intersection as 1 location</u> , except for traffic islands approaching intersections, which should also be reported as

PROGRAM	TASK	TASK CODE	UNIT OF MEASURE	TASK TYPE	DESCRIPTION
					separate units.

## Attachment 11

### COST PROPOSAL

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FIRM NAME: \_\_\_\_\_  
CONTRACT NUMBER: C030790  
CONTRACT NAME: JOB ORDER SYSTEM (JOC) SERVICES FOR NYSDOT

PROPOSED FIXED FEE PERCENTAGE: \_\_\_\_\_ Percent

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#### NOTES:

1. Firms are instructed to present a fixed percentage usage fee in their cost proposal based on all of the information contained in NYSDOT JOC System RFP for Contract #C030790.
2. Consultant reimbursement under Contract #C030790 shall be the proposed fixed fee percentage multiplied by on the dollar value of each resulting JOC contract.
3. The estimated total cost to the State for the five years of the project based on the fee(s) shall be based on an assumed total JOC contracting amount of \$200M over five years. .
4. The proposed fixed percentage usage fee will remain unchanged throughout the contract period.
5. The fixed fee must be offered as a percentage of the maintenance and repair Job Orders contracted out by NYSDOT via the JOC System value (for example: 1.21% of the maintenance and repair Job Orders contracted out).
6. The fixed fee must cover all consultant costs for full provision of all JOC System services to NYSDOT over the entire contract's term.
7. NYSDOT will not reimburse the selected Consultant for any other expenses during the life of the contract.
8. The total anticipated maintenance and repair Job Orders contracted out is estimated to reach \$200M over the period of the contract. This anticipated total value is based on historic annual usage with an estimated increase usage.
9. There is no minimum guaranteed number of JOC contract work that will be made during any given year, nor is there a maximum amount of JOC contracts for any given year or for the total contract term.



## **Attachment 12**

### **Contract Value Summary By Year**

(Separate file posted to NYSDOT Website)

<https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-ads#1165>