



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
[www.dot.ny.gov](http://www.dot.ny.gov)

JOAN McDONALD  
COMMISSIONER

ANDREW M. CUOMO  
GOVERNOR

**REQUEST FOR PROPOSALS**

**STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT  
Contract #C031104**

November 9, 2012

To All Concerned:

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

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

- **December 7, 2012:** Deadline for the submission of proposals on 2:00 PM (Eastern Standard Time)
- **November 23, 2012:** Deadline for questions regarding the RFP is 2:00 PM (Eastern Standard Time)
- **November 27, 2012:** Answers to Questions Released

Any questions regarding this project or proposal should be directed in writing via e-mail to Kathy Fitzpatrick, the designated contact for this solicitation, of NYSDOT Contract Management at [kathy.fitzpatrick@dot.ny.gov](mailto:kathy.fitzpatrick@dot.ny.gov).

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises. A directory of certified Minority and Women-Owned Business Enterprises is available from the following website: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

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 M/WBE Participation Goal of 20%. 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.

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

Sincerely,

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

Enclosure

**RFP RESPONSE FORM**

**STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT  
CONTRACT #C031104**

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAME AND ADDRESS OF ORGANIZATION (Include Zip Code):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

TYPED OR PRINTED NAME AND TITLE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

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

Please send via:

\*E-Mail: [kathy.fitzpatrick@dot.ny.gov](mailto:kathy.fitzpatrick@dot.ny.gov)

Or

\*Regular Mail:

New York State Department of Transportation  
Contract Management, POD 6-2  
50 Wolf Road  
Albany, New York 12232  
ATTN: Kathy Fitzpatrick C031104

Or

\*Fax: 518-457-8475

## SELECTED CONSULTANT INFORMATION

### **RFP: STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT Contract #C031104**

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

\_\_\_\_\_ **Procurement Lobbying Law:** Go to NYSDOT Web site (<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>) to read NYSDOT Policy Summation Compliance Procurement Lobbying Law. ***Complete and file the two required forms (Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer Disclosure of Prior Non-Responsibility Determinations) as instructed when submitting a proposal. This is mandatory in order to be considered for contract award. Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award.***

\_\_\_\_\_ **Contractor Tax Certification:** All vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency) during negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites:  
[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](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)

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

\_\_\_\_\_ **Consultant Employment Disclosure Requirements of this Project:** Go to OSC's Web site (<http://www.osc.state.ny.us/agencies/gbull/g-226.htm> or <http://www.osc.state.ny.us/procurement/consultantdisclosure.doc>) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete "State Consultant Services – Contractor's Planned Employment" (**Form A, Attachment 4**) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the "State Consultant Services Contractor's Annual Employment Report" (**Form B, Attachment 4**) and submit copies to the Office of the State Comptroller, the Department of Civil Service,

and the Department of Transportation on or before May15th of each year the contract is in effect.

—— **Consultant Responsibility When Proposing to Use a Former NYSDOT Employee:** It is the Consultant's responsibility to ensure they propose staff that is eligible to work on the subject project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the Joint Commission on Public Ethics that approves their participation in the subject project. For an outline of the procedure that applies to this situation, see **Attachment 5**.

—— **Registration with NYSDOT**

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

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

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

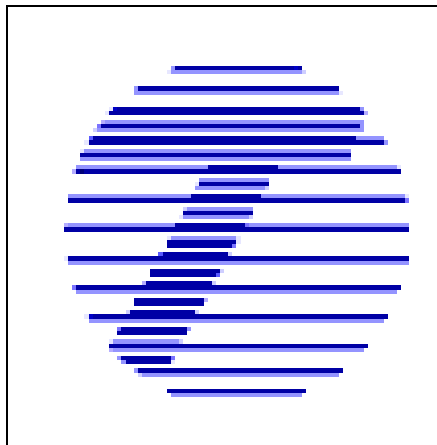
Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS). NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction 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**

**STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT**

**Contract #C031104**



RFP Release Date: **November 9, 2012**

Proposal Due Date: **December 7, 2012**

Proposal Delivery Location and  
Additional Information:

Director, Contract Management  
NYS Department of Transportation  
50 Wolf Road, POD 6-2  
Albany, NY 12232  
Attention: Kathy Fitzpatrick C031104

# REQUEST FOR PROPOSALS

## STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT

Contract #C031104

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# **NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

## **REQUEST FOR PROPOSALS**

### **STATEWIDE DRUG AND ALCOHOL TESTING SERVICES (COMPLIANCE PROGRAM FOR 1991 OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT) Contract #C031104**

#### **I. INTRODUCTION**

##### **A. Purpose**

The New York State Department of Transportation (NYSDOT) has issued this Request for Proposals (RFP) seeking proposals to award a contract to a responsive and responsible consultant to provide statewide drug and alcohol testing services for an already established and highly functional drug and alcohol testing program.

NYSDOT has approximately 4,500 employees who report to approximately 300 work locations throughout New York State, excluding the five boroughs of New York City. Sample collection will occur at either the NYSDOT worksite or a designated collection site (within a 30 mile radius of NYSDOT worksites, see ATTACHMENT 13) for all types of required alcohol and drug tests (random, follow-up, pre-employment, reasonable suspicion/ cause and post-accident). Testing must be accomplished in full compliance with the provisions of the Omnibus Transportation Employee Testing Act of 1991 (OTETA), as administered under the authority of the U.S. Department of Transportation (USDOT) by the Federal Motor Carrier Safety Administration (FMCSA) and is incorporated herein (49 CFR Parts 382, et. al. - Controlled Substances and Alcohol Use and Testing; Rule and Proposed Rule and 49 CFR Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs: (Final Rule)) as ATTACHMENT 10 and ATTACHMENT 11 and the NYSDOT Drug Free Workplace Policy which is incorporated herein as ATTACHMENT 12.

Although NYSDOT will consider worksite collection and/or designated collection site drug and alcohol testing services for our regions/residencies, NYSDOT anticipates making only one (1) award as a result of this solicitation. Proposers may sub-consult or form teaming arrangements in order to provide all necessary services and/or both types of testing services (worksite/designated collection site).

##### **B. Background**

The New York State Department of Transportation is responsible for the repair and maintenance of approximately 42,000 lane miles of highways throughout New York State including conduct of an annual snow and ice control program to preserve and ensure the safety of the state highway system and to assure the mobility of the traveling public. At the operational level, these programs are carried out by 5,000 Transportation Maintenance Division (TMD) employees, approximately 4,500 of whom must possess



and maintain a Commercial Vehicle Drivers license (CDL), as a requirement of their positions.

In addition, NYSDOT employs approximately 300 mechanics who repair and maintain an equipment fleet of about 15,000 vehicles and other pieces of equipment. The mechanics must also possess and maintain a CDL.

There are also about 120 employees in regulatory, inspection, or other job categories, which results in their coverage under OTETA.

The employees in the categories described above are represented by public employee unions, either the Civil Service Employees Association (CSEA) or the Public Employees Federation (PEF). The large majority of NYSDOT employees subject to the testing requirements of OTETA are represented by CSEA. The consultant selected as a result of this solicitation may be required to respond to union inquiries in the labor management meeting process regarding the testing protocols, procedures and technology.

The completion of the first two years of alcohol and drug testing of the safety sensitive employees in the New York State Department of Transportation occurred during 1995 and 1996. This action brought the Department into full compliance with the Federal Omnibus Transportation Employee Testing Act of 1991. Procedures and guidelines were established to administer mandated drug and alcohol testing to approximately 4,500 employees.

The percent of positives during the first two years was below 3%. The Department focused on an intensive evaluation and treatment plan for violators tied to appropriate disciplinary action. The Department worked closely with CSEA and PEF at all stages of the process. We have found that through these cooperative efforts, the Department's safety-sensitive workforce has been provided with a healthier and safer workplace.

In addition, the collective bargaining agreements covering the employees described above provide prescribed administrative due process procedures, which will require best evidence testimony in disciplinary arbitration hearings by the selected consultant's employees or sub-contractors who either collected the sample at issue or performed the sample analysis.

### **C. Minimum RFP Responsiveness Requirements**

Any firm that does not provide **all** of the following **by the RFP deadline** may be determined to be non-responsive (it is NYSDOT's sole discretionary determination as to whether a proposal is complete) and may be removed from further consideration (prior to the technical evaluation of proposals):

1. The proposer must employ or subcontract collection site and laboratory staff certified or otherwise qualified under the terms of OTETA in sufficient numbers and geographic locations as to satisfactorily fulfill the requirements of OTETA in all counties of New York State except New York City. The proposer's plan for staff must include a procedure for sample collection of breath alcohol and drug testing 24

hours a day, 7 days, 365 days per year. Alcohol testing must be conducted by qualified Breath Alcohol Technicians (BAT) and the proposer shall provide details on the Breath Alcohol Technician's satisfaction of the requirements of OTETA.

2. The laboratories utilized by the proposer shall be certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA," formerly "NIDA"). The date of certification and proof of certifications by SAMHSA/NIDA must be submitted with offeror's proposals. Information relating to any certification suspension of the laboratory by SAMHSA/NIDA must also be submitted. If any suspension occurs during the term of the contract, the consultant must notify NYSDOT immediately and provide alternate and equal service within the time frames of the regulations.
3. The laboratory must have a quality control program in accordance with OTETA (FMCSA) regulations and the proposer must submit a description of that quality control program.
4. The proposer must submit the location(s), days of week and hours of operation of the qualified laboratory or laboratories.
5. Acceptance of the RFP's Scope of Services as is (see **Attachment 2**).
6. A separate and complete Part I of the Proposal – Technical and Management submission, including all required RFP-specified attachments. Required number of copies is six (6).
7. A separate and complete Part II of the Proposal – Cost and Contract submission, including all required RFP-specified attachments. Required number of copies is three (3).

For the purposes of evaluation, each proposal part (Part I and Part II) must be submitted separately. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently and the Technical and Management submittal can be evaluated strictly on the basis of its merits. **Cost information is NOT to be included in the Part I submittal. Technical information is NOT to be included in the Part II submittal.**

8. Submission of a proposal which meets/exceeds the twenty percent MWBE contract participation goal or submission of an acceptable MWBE Goal Attainment Good Faith Effort and Participation Explanation Letter of Non-MWBE Goal Attainment (or partial attainment towards) along with **Attachment 7** as indicated.
9. Procurement Lobbying Law compliance forms (see **Attachment 3**).

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

#### **D. Minority-Owned Business Enterprise and Women-Owned Business Enterprise Participation**

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

The New York State Department of Transportation has established a **M/WBE participation goal of 20 percent for this solicitation**. This goal relates to the total contract value of the agreement. Meaningful participation by either a prime consultant **who is certified as** a MBE or WBE or inclusion of subconsultant(s) **who is/are certified** as an MBE or WBE count toward the M/WBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

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

Interested proposers should verify their attainment of the above established M/WBE participation goal by completing **Attachment 6 MBE and WBE Participation Information**. For participation to count towards the Department's M/WBE goal set for this solicitation, the offered M/WBE participating firm must be currently certified by Empire State Development. If the proposal does not meet the 20 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 firm does not meet the specified goal**, the firm must include in its submission a **M/WBE Goal Attainment Explanation Letter** explaining why the firm was unable to meet the applicable 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, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

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

### **Title VI Assurance**

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

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

### **A. Project Objectives**

1. To hire a responsive, responsible, experienced, knowledgeable and qualified consultant.
2. For the selected consultant to accept the RFP's Scope of Services as is.
3. To comply with OTETA drug and alcohol testing in the most efficient and effective manner; to fully meet the intent of the Act and to meet the minimum requirements of the Act.
4. To preserve the integrity and quality of the current NYSDOT drug and alcohol testing program for the term of the agreement and during the transition with a new NYSDOT's third party administrator (new contract award).

### **B. Contract Objectives**

Anticipated Work Start Date: The Department anticipates that the work for the successful consultant will commence on March 1, 2013.

Contract Term: The base term for this contract shall be for three years with two one year extension options.

M/WBE Goal: Selecting a consultant with an acceptable plan to meet the contract's established twenty percent (20%) M/WBE participation contract goal, or receiving an acceptable good faith effort with a letter of explanation should the goal not be met.

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

Method of Payment: This is a Best Value (Non-Architecture/Non-Engineering) contract. Payment for services provided under the project shall be a lump sum reimbursement and reasonable compensation for NYSDOT-approved, actual costs incurred in the performance of the approved contract's Scope of Services. Requests for progress and final payments shall be made by the designated consultant on standard payment request

forms (FIN 421). Use proper procedure for billing each deliverable: Submit draft billings to NYSDOT's assigned Project Manager via the following sample electronic billing: <https://www.nysdot.gov/main/business-center/consultants/consultants-repository/Consultant%20Billing%20Spreadsheets.xls/> The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy.

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

### **III. SCOPE OF SERVICES**

#### **A. Tasks**

The consultant shall provide all drug and alcohol testing services required to achieve compliance with all requirements of OTETA.

The services sought are:

1. Continuation of NYSDOT's established and highly functional drug and alcohol-testing program.
2. Timely notification of all updates/amendments to 49 CFR Parts 382, 40, et al;
3. Pre-employment drug tests for approximately 500 new employees each year (including employees who move into safety sensitive positions requiring testing);
4. Random alcohol tests for at least 10% of the covered NYSDOT population each year, i.e., approximately 450 employees;
5. Random drug tests for at least 50% of the covered NYSDOT population each year, i.e., approximately 2,300 employees;
6. Return to duty tests;
7. Follow-up tests required after employee's positive result and return to duty;
8. Post-accident tests, which are anticipated to number less than five (5) per year within the time limitations, set forth in regulation;
9. Reasonable suspicion tests, which are anticipated to number less than 10 per year.
10. Generate quarterly regional random selections and notify the NYSDOT's Program Coordinator of selected employees using an established system;
11. The NYSDOT Program is to be performed at the worksite(s). The Consultant shall provide a subcontractor who will perform these services, as needed, 24 hours a day, 7 days a week, 365 days a year;
12. Continue the mechanism for employee identification and replacement in the random pool;
13. Continue the method by which managers, supervisors and employees are notified of the employee's selection for testing;
14. Provide specific instruction/information, as necessary, on how testing will be conducted at the collection/test site, ensure process is followed and immediately resolves any issues that may arise;
15. Maintain timeframes for receiving results;
16. Provide a complete listing of mobile and collection site services providing (24 hours a day, 7 days a week, 365 days a year) on-site (NYSDOT worksites) and/or

- collection site specimen collections and alcohol tests in the network developed to meet the terms of this Agreement. This information will be used by NYSDOT, in collaboration with the Third-Party Administrator, in continuing policies and procedures specific to particular regions/divisions;
17. The Consultant will provide 24 hours a day, 7 days a week, 365 day a year onsite collection services at NYSDOT worksites unless the NYSDOT Coordinator determines that circumstances warrant the use of offsite collection services. The onsite/offsite decision will be based on variables such as:
    - a. The number of covered employees in a particular county or at a particular worksite selected through the random process;
    - b. Time of year, weather conditions, work schedules; and
    - c. The accessibility of off-site services, if necessary;
  18. In conformance with OTETA requirements, the services of a Medical Review Officer or Officers (MRO) shall be provided. The MRO(s) shall be a licensed physician(s) certified by one or more of three recognized MRO authorities: the American Association of Medical Review Officers, the American Society of Addiction Medicine or the American College of Occupational and Environmental Medicine;
  19. Personal appearances at administrative hearings by individuals, who collected the specimen samples and/or who analyzed the samples, for the purpose of providing testimony;
  20. Monthly reports providing details on process and results for each category of testing. The proposal must include samples of all reports and forms to be utilized. The documents must comply with OTETA requirements;
  21. Consultant Project Director and OTETA Compliance Staff to confer on a regular basis for the purpose of continuous improvement of the compliance process: by telephone, at least monthly; in person, at least yearly in NYSDOT's Main Office, Albany, New York;
  22. Develop a method to ensure smooth transition of the current NYSDOT web based record-keeping system. This system is used by the present Third-Party Administrator to create, update as necessary, and maintain the candidate pool (by NYS Employee ID Number) for random testing. The system is also used to create a permanent record of each employee's OTETA drug and alcohol testing history. NYSDOT OTETA Compliance Program staff will provide the Third-Party Administrator with the NYSDOT OTETA Employee Database from which the Third Party Administrator system will generate the candidate pool and the random samples;
  23. If current system is not used, then any substitute system must be compatible with the NYSDOT OTETA Employee Database. The NYSDOT OTETA Employee Database includes agency code, location, last name, first name, NYS Employee ID Number, training date, designated manager name, designated manager telephone number, designated manager fax number. The third party administrator system, including all source code, shall become the property of NYSDOT upon completion of the contract;
  24. The Consultant shall designate Substance Abuse Professionals (SAP), for the purpose of providing substance abuse professional services in accordance with OTETA regulations and to work with the NYSDOT's Program Coordinator. The Consultant shall provide these services continuously over the term of the

Agreement. The SAP(s) shall be a licensed physician (Doctor of Medicine or Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or a state licensed or certified marriage and family therapist, or a drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse), or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselors with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## **B. Deliverables**

1. Prior to the start of the contract, the consultant shall attend meetings with NYSDOT representatives to present its proposed work plan, and copies of all forms and record keeping systems necessary for satisfaction of all OTETA requirements and other materials sufficient to satisfactorily demonstrate how the testing, record keeping and reporting will be accomplished.
2. All record keeping systems as well as all records shall be the property of NYSDOT and shall be delivered to NYSDOT upon termination of the contract.

## **C. Schedule**

Schedules for all tasks will be determined and scheduled at mutually agreeable times between NYSDOT and the selected consultant. Work tasks will be subject to NYSDOT approval and payments shall be paid under State Finance Law guidelines.

## **D. Project Organization**

1. The Consultant shall prepare and submit a work plan, which will specify how the transition will be made from the current consultant while preserving the existing drug and alcohol-testing program.
2. The Consultant shall submit a listing of collection sites that will be used for the NYSDOT drug and alcohol-testing program. A work plan shall also be submitted stating how the Consultant will maintain a relationship with collection sites concerning the method, means, and frequency of training for collection site technicians.
3. OTETA Compliance Program staff has been designated by NYSDOT to work with the Consultant. The staff will be available to answer questions and provide overall direction, but the Consultant will be responsible for obtaining necessary information and completing the tasks necessary for OTETA compliance in relation to drug/alcohol testing.
4. Regarding fee and project duration, proposers must provide rates for services in accordance with IV. Proposal Format and Contents, B. Part II: Cost and Contract Submittal. The term of the agreement is anticipated to be for a base term of three (3) years, from March 1, 2013 through February 29, 2016, with an option to renew for two (2) additional one-year periods.

The proposer must state in the cover letter with their submission that the firm meets the minimum qualifications for this RFP as outlined above. Mis-representation of qualifications will be considered a basis for immediate rejection of a proposal from further consideration.

#### **E. Scope of Services**

- A. The consultant shall, at a minimum, be responsible for the following tasks:
1. Produce, develop, supply, and send forms and supplies necessary for the efficient, orderly and complete administration of the requirements of NYSDOT OTETA drug and alcohol testing program.
  2. Maintain a current roster of all NYSDOT employees covered by OTETA requirements. This includes moving employees to and from winter locations in as many as 125 locations bi-annually.
  3. Maintain system for verbally notifying managers of monthly, bimonthly, or quarterly employee follow up tests for approximately 40 employees.
  4. Maintain system for random selection of employees at the following rates:
    - a. alcohol - 10% of NYSDOT employees covered by OTETA, approximately 500 per year.
    - b. drugs - 50% of NYSDOT employees covered by OTETA, approximately 2,300 per year.
  5. Coordination of random alcohol and drug testing is encouraged in order to promote optimum sampling efficiency. Note that testing must be performed on a geographically distributed basis throughout the year, recognizing differences between NYSDOT scheduling of winter operations and those carried out during other seasons.
  6. Maintain system of notifying individual managers at as many as 126 locations of quarterly random employee selections, first by confidential e-mail, or by faxing selection to managers.
  7. Develop a method of collecting urine samples from employees or prospective employees in full compliance with OTETA requirements and protocols to preserve a record of chain of custody to accomplish required tests in the following categories: random, pre-employment, pre-duty, reasonable suspicion, post-accident, return to duty and follow-up.
  8. Establish a process to guarantee timely transmission of urine samples to the SAMSHA-certified laboratory designated to perform the analysis for that location. Such transmission must satisfy all requirements to preserve a record of chain of custody from the site of the urine collection point to the laboratory.
  9. Develop a procedure for timely communication of results between the SAMSHA-certified laboratory and the MRO regarding individual positive results and between the MRO and OTETA Compliance Program staff.
  10. Develop a method of alcohol testing using Evidential Breath Testing (EBT) devices which meet the guideline specifications of the National Highway Safety Administration conforming products list. Test



procedures must conform to OTETA requirements and protocols to preserve the accuracy of the test results for employees in the following categories: random, reasonable suspicion, post-accident, return to duty and follow up.

11. Develop a procedure for timely communication of positive breath alcohol test results between the BAT and the MRO and between the MRO and the NYSDOT OTETA Compliance Program staff.
12. Develop and maintain a record keeping system of all activities conducted in the performance of the contract including, but not limited to, creating a candidate pool for random selections and permanent records of test results by employee and by geographic location. Such records must be kept in accordance with the requirements spelled out in OTETA and such records are the property of NYSDOT and shall be delivered to NYSDOT upon termination of the contract.
13. Prepare and submit monthly reports on the results of all tests completed during the month by employee, location, and type of test.

#### **IV. Proposal Format and Content**

This Section identifies the information that all offerors must include in their proposals to the Department.

For the purposes of evaluation, each proposal must be submitted in two (2) parts. Part I consists 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 evaluation of the Technical and Management submittal can be made strictly on the basis of its merits. Cost information is not to be included in the Part I submittal. Each proposal should follow the format listed below:

All proposals must follow the format listed below:

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

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

1. **Title page indicating:**
  - Name, address and phone number of the proposer (firm) including a contact person with contact phone numbers and email address and name(s) of the person(s) who prepared the proposal.
2. **Cover Letter including:**
  - Signed Cover Letter on official business letterhead.
  - Identify and address any confidential and proprietary information in this section.
  - Name and signature of offeror's official representative(s) authorized to bind the offeror to all of the RFP's provisions, include: 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 for the Consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.
  - The legal names of all Subconsultants involved in the offeror's response.
3. **Table of Contents**  
All sections shall be separated by labeled tabs.
4. **Executive Summary**
  - Provide a brief description of the proposed approach and work effort. Confidential and Proprietary information should be identified and address in this section.
5. **Narrative Description**
  - Provide a discussion on the important issues involved with the effort to achieve compliance with OTETA drug and alcohol testing, including enough substantive discussion to demonstrate an understanding of OTETA, NYSDOT project objectives and scope of services and familiarity with applicable requirements.
6. **Approach, Scope of Services and Schedule**
  - Describe your overall approach for performing this effort and accomplishing project objectives. Specifically discuss how your approach and methodology will provide for the continuation of an established and highly functional drug and alcohol testing program. At a minimum, detail your approach for accomplishing the following:
    - a) Implementation of existing drug attesting (pre-employment, pre-duty, follow-up, random, return-to-duty, post-accident and reasonable suspicion) including, how testing will be provided 24 hours/day, 7 days/week, year round.
    - b) Implementation of existing alcohol testing random, return-to-duty, post-accident, reasonable suspicion and follow-up including how post-accident and reasonable suspicion testing will be provided 24 hours/day, 7 days/week, year round.

- c) Transfer of existing records from current consultant third party administrator and the web based record keeping system, implementation and maintenance of record keeping and reporting system (including copies of sample reports and forms to be utilized).

Your proposed approach(es) should, when possible, be based upon practical experience implementing a program for compliance with OTETA in a governmental setting similar to NYSDOT, and should identify problems which may be encountered and propose solutions. Additionally, your proposed approach(es) must demonstrate how quality assurance/quality control will be affected.

Coordination of random alcohol and other drug testing is encouraged in order to promote optimum sampling efficiency. For example, breath alcohol technicians might also collect urine samples. Testing must be scheduled on a geographically distributed basis throughout the year. Scheduling must take into account the NYSDOT highway maintenance operations are conducted around the clock on a 7 day a week 24-hour basis during Snow and Ice control season from November – March 31 each year.

- Provide a detailed scope of services which describes, by task, what will be done. A general scope of services is outlined under Section III. 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. Suggestions of alternative tasks and methodologies are encouraged within the stated objectives and scope of the project. Fully explain and justify your approach, however, if significant departures from the general scope are recommended.
- Provide a detailed schedule in bar chart form which depicts the starting and completion times, in regard to the tasks required in transitioning the NYSDOT testing program from the current third-party administrator, and their relative sequence in time, in terms of weeks or months from contract award. The first NYSDOT Drug and Alcohol random selection will be conducted during the first month of new contract award, anticipated to be in March 2013. Identify milestones, including any proposed meetings, approvals, etc., which may be appropriate for the effort.

#### **7. Organization and Staffing**

- Provide a profile, including information on whether the firm is local, regional or national. This section must indicate the length of time in business (including any previous names by which the company conducted business). Include an organizational chart which identifies the proposing firm, any sub-consultants and all laboratories to be utilized. Provide the geographic location, days of week and hours of operation for such laboratories. Also include evidence of SAMSHA/NIDA certification for all laboratories which will perform sample analyses. Describe the quality control program(s) in place and how they meet OTETA (FMCSA) regulations.

- Include resumes for all key personnel (including sub-consultants). Identify the project manager who will be responsible for communicating with NYSDOT on all project matters and percent of time project manager will dedicate to working with NYSDOT.
- Provide a management plan which identifies and describes the following items:
  - a) how the effort will be planned, directed and controlled;
  - b) arrangements for, and coordination of, any sub-consultants or teaming arrangements/joint ventures;
  - c) how personnel (including sub-consultants) will be phased into the effort;
  - d) the anticipated relationship of NYSDOT management and staff to the consultant/vendor, and the responsibilities of each, including an overall explanation of what NYSDOT staff may be required, utilization and how all coordination between the consultant/vendor and NYSDOT will be achieved; and
  - e) reporting methodology and frequency.

8. **Experience**

The qualifications and prior experience of the proposer (including any sub-consultants) are of great importance to NYSDOT. Direct prior experience in developing and conducting drug and alcohol testing programs mandated by state or federal legislation for other large employers is highly desirable. Such experience involving primarily onsite collection, used in conjunction with multiple collection sites, in a wide geographic area would be most relevant. Provide a list of projects currently in progress and those completed within the last three years which are similar in scope of this effort. Indicate key personnel who are, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients. NYSDOT reserves the right to request reference information from any source named.

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

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

Required Part II sections:

Part II of the proposal consists of two sections: (1) a cost proposal that sets forth lump sum unit process for the provision of drug/alcohol testing and specific hourly rates for expert testimony and substance abuse professional services; and (2) the contract section

which specifies the proposer's acceptance of the Draft Agreement (Attachment 1). The cost proposal will be evaluated to determine such matters as the reasonableness of costs for testing and testimony and the probable total cost to NYSDOT. It is also subject to use as the basis of any subsequent negotiations. Therefore, it is important that cost proposals be complete, accurate and well documented. Any cost conditions or contingencies must be clearly stated.

**NOTE:** Cost information is to be presented using the form/format provided in **ATTACHMENT 8**.

Cost proposal/contract information is not to be included in the Part I Technical and Management Submittal. Cost and contract proposals must include, at a minimum, the following information:

1. A lump sum unit cost, on a per employee basis, for the provision of a pre-employment pre-duty, random, return to duty, follow up, post-accident and reasonable suspicion drug test complaint with all federal requirements as well as for non-federal follow up tests. The unit cost for drug testing shall remain the same for the base term (three years).
2. A lump sum unit cost, on a per employee basis, for the provision of a random, return-to-duty, follow-up, post accident and reasonable suspicion alcohol testing complaint with all federal requirements as well as for non-federal follow-up tests. The unit cost for alcohol testing shall remain the same for the base term (three years).
3. A lump sum unit cost, on a per employee basis, for the provision of a random, return-to-duty, follow-up, post accident and reasonable suspicion combined drug/alcohol test complaint with all OTETA requirements. The unit cost for a combined drug/alcohol test shall remain the same for the base term (three years).
4. A lump sum unit cost, on a per employee basis, for the provision of split specimen compliant with all federal requirements. The unit cost for split specimen shall remain the same for the base term (three years).
5. Specific hourly rates for expert professional and technical testimony services and substance abuse professional services. The specific hourly rates shall be inclusive of all direct costs, indirect costs and fee/profit, **except** for travel. Travel expenses, including meals and lodging will be reimbursed in accordance with guidelines set forth by the New York State Office of the State Comptroller. <http://www.osc.state.ny.us/agencies/travel/travel.htm> .
6. **Contract Proposal**  
The proposer shall specifically state its acceptance of all terms and conditions in the Agreement included **ATTACHMENT 2** to this Request for Proposals.
7. **Minority/Woman-Owned/Disadvantaged Business Enterprise Status**  
Indicate whether you (or any sub-consultant) have status as a certified minority/woman-owned/disadvantaged business enterprise in New York State.
8. **Consultant Identification Number (CIN)**  
All respondents to this solicitation must reference their Consultant Identification Number (CIN) in their Part II proposal.

A CIN may be obtained by contacting the Department's CIN coordinator at (518) 457-2600, or in writing at the address listed on the cover page of the RFP and below. Assignment of a CIN requires the firm's Federal Identification Number, mailing

address(es) with nine-digit zip code(s), contact persons and telephone numbers. The Federal ID Numbers and nine-digit zip code will be used to assign a Consultant ID Number (CIN).

Director, Contract Management Bureau  
New York State Department of Transportation  
50 Wolf Road, POD 6-2  
Albany, New York 12232  
Attention: CIN Coordinator

## **V. CRITERIA FOR EVALUATION OF PROPOSALS**

### **A. Overview of the Proposal Evaluation Process**

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

Proposals which pass pre-screening shall then be evaluated by NYSDOT using a Best Value Method evaluation process (using a 100 point scale), based on the technical and cost criteria described below. Technical considerations (up to 80 points) are of greater importance than cost considerations; however, cost (up to 20 points) is a significant factor in NYSDOT's evaluation of proposals. Technical proposals will be technically evaluated and numerically scored based on the information provided under RFP Section IV A Part I Technical and Management Submittal in accordance with the pre-established criteria listed in Subsection B below. The cost portion of Part II Cost and Contract Submittal will be point scored in accordance with the pre-established criteria listed in Subsection C. below. Cost proposals should be calculated to include all offered work items to generate total proposed cost. The score for each cost proposal will be based upon submitted Grand Total on **Attachment 8**, page 2.

Technical and Management Proposal evaluation will be accomplished by a representative Technical Evaluation Committee comprised, as appropriate, of technical, program and management subject matter expert personnel as determined by NYSDOT. Committee members will determine the degree of responsiveness of each proposal element to the corresponding RFP specification, and document their findings and score each proposal individually and then meet as a group to discuss the proposals. A zero-to-ten point scale shall be used to evaluate degree of responsiveness. Evaluators will be allowed to revise scores on the basis of the committee discussions.

A short-list of proposing firms will be established based upon the committee's scores following these discussions. **Only proposals determined to be susceptible for contract award (short-listed) will be considered further and have their cost proposal included in the selection process. Firms susceptible for contract award shall be those whose proposal receives a minimum raw technical score of 56.00 points or higher (out of the 80 points available) after discussions by the Technical Evaluation Committee. Proposals with raw technical scores lower than 56.00 are considered not susceptible for contract award and will not be considered further in the evaluation process.** The short-list of firms will be posted on NYSDOT's website.

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

An award shall be made to the offeror whose proposal receives the highest total Best Value score after considering all technical and cost proposals against the RFP's specifications and evaluation factors.

**Note:** In the event two or more proposals are found to be "substantially equivalent", the Department reserves the right to award the contract under the terms of State Finance Law §163 (10)(a) which states: In the event two offers are found to be substantially equivalent, cost shall be the basis for determining the award recipient or, when cost and other factors are found to be substantially equivalent, the determination of the commissioner or agency head to award a contract to one or more of such bidders shall be final. The basis for determining the award shall be documented in the procurement record.

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

**B. Pre-Screening of Proposals, Including M/WBE Participation**

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

As part of the pre-screening process, the proposed MBE and WBE participation plan and 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 the Department's separate MBE and WBE participation goals, each firm must be currently listed in the NYS DED MBE/WBE Directory. If the proposed MBE and WBE participation is less than the established 20 percent MWBE goal, then the firm's evidence of a Good Faith Effort (**Attachment 7 MBE and WBE Participation Solicitation Log**) to achieve participation in the goals will be reviewed, along with the firm's letter of explanation as to why it was unable to meet the goal(s). During the review process, which will include verification of a firm's good faith effort evidence, if it is determined by the Department that the firm did not provide an acceptable good faith effort, then the proposal may be deemed non-responsive and may be removed from further consideration. Proposals deemed to be non-responsive will be removed from further consideration and/or subject to FHWA's administrative reconsideration process. Please reference 'Administrative Reconsideration' in the following document: <https://www.dot.ny.gov/main/business-center/civil-rights>.

**C. Technical and Management (up to 80 points)**

The technical and management proposal will be point scored and will represent 80% of the total score for the proposal (out of 100 total possible points). The major evaluation criteria and the respective sub-criteria are listed in descending order of importance.

**1. Approach and Scope of Services (up to 32 points)**

- a. Quality of approach and methodology for performing the effort; extent to which such approach and methodologies clearly demonstrate an understanding of the applicable issues and requirements and will effectively and efficiently accomplish NYSDOT objectives. (up to 16 points)
- b. Quality, clarity and completeness of scope of services, including extent to which alternative approaches/tasks will achieve objectives, and completeness/reasonableness of schedule for accomplishing the work, including the practicality of any suggestions/approaches proposed to condense the project schedule. (up to 16 points)



2. **Experience (up to 32 points)**

- a. Quality, extent and relevance of proposer's experience (including any subconsultants) in conducting similar efforts, particularly of a magnitude and in a setting similar to NYSDOT's. (up to 16 points)
- b. Quality, extent and relevance of experience, education and training of key personnel (including any subconsultants). (up to 16 points)

3. **Organization, Staffing and Management Plan (up to 16 points)**

- a. Quality of project organization and management plan; extent to which they will provide for successful, timely and fully compliant program implementation as evidenced by the: (i) plan for directing and controlling the effort; (ii) coordination of subconsultants, and/or teaming arrangements; (iii) plan for phasing personnel into the effort; (iv) quality of interaction and coordination with NYSDOT; and (v) reporting methodologies. (up to 12 points)
- b. Completeness of information regarding collection site network, laboratory certification and quality control documentation. (up to 4 points)

**D. Cost Proposal Evaluation (Up to 20 Points)**

The cost portion of the cost and contract proposal will be point scored and will represent 20% of the total score for a proposal. The highest possible score for a cost proposal will be based upon the lowest **Grand Total** cost submitted in **Attachment 8 Cost Proposal**. The firm with the lowest total cost will receive a perfected cost score of 20 points. All other offered total costs will receive a proportionate lower cost score based on the relation to the lowest offered total cost.

Only Cost Proposals from proposing Prime firms/offers that have been short listed per section V.A. of this RFP will be evaluated and scored.

Firms are to propose lump sum unit/item costs for the provision of various drug and alcohol testing services.

**VI. ADMINISTRATIVE SPECIFICATIONS**

**A. Proposal Due Date**

To be deemed responsive, all proposals must be received by NYSDOT by 2 PM (Eastern Standard Time) on December 7, 2012. The proposal must be addressed to:

Director, Contract Management Bureau  
NYS Department of Transportation  
50 Wolf Road, POD 6-2  
Albany, New York 12232  
Attention: Kathy Fitzpatrick, Contract C031104

**B. State's Rights to Proposals**

All proposals, upon submission to NYSDOT shall become its property for use as deemed appropriate. By submitting a proposal, the offeror covenants not to make any

claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. With regard to proposals submitted NYSDOT has the following rights and prerogatives:

To accept or reject any or all proposals;  
To correct any arithmetic errors in any or all proposals;

To change the proposal's due date upon appropriate notification to all potentially interested firms;

To eliminate any mandatory RFP specification that is found to be unmet by all offerors in the evaluation of received proposals;

To adopt any or all of a successful offeror's proposal;

To negotiate modifications to the scope, cost and contract terms and conditions with the selected offeror prior to contract award only if such is in the best interest of the State;

To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;

To revise/amend any provision of this RFP by written notification to all potentially interested firms, prior to proposal submission;

To eliminate any requirement that is found to be unmet by all offerors;

To make inquiries, by means it may choose, into the offeror's background or statements made in the proposal to determine the truth and accuracy of all statements made therein;

To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;

To begin contract negotiations with the next highest best-value offeror(s) responsive to this RFP (should NYSDOT determine that the negotiations with the selected offeror will not result in a contract) without again requesting proposals;

To begin contract negotiations with the next highest best-value offeror(s) responsive to this RFP if NYSDOT terminates the awarded contract resulting from this RFP without again requesting proposals;

To extend the terms and conditions, as well as the contract's scope and cost terms as is, of any contract entered into pursuant to contract award arising from this solicitation to any other New York State government agency to include local governments. 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 New York State government 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 will be required to provide vendor responsibility information through the Office of the State Comptroller website via <http://www.osc.state.ny.us/vendrep/index.htm> before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire.

### **D. Registration with NYSDOT**

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

Consultant Firm Registration instructions are available at:

[https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/instructions\\_cssweb\\_firm.pdf](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. Firms should become familiar with these forms by visiting the following Web sites:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](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 directed *only* to Kathy Fitzpatrick of Contract Management by e-mail at [kfitzpatrick@dot.state.ny.us](mailto:kfitzpatrick@dot.state.ny.us). The last date to submit questions for this solicitation is November 23, 2012. All questions/inquiries must be e-mailed to: [kathy.fitzpatrick@dot.ny.gov](mailto:kathy.fitzpatrick@dot.ny.gov). Should a firm be unable to communicate via e-mail, all questions must be submitted in writing and mailed or faxed to:

Director, Contract Management  
NYS Department of Transportation  
50 Wolf Road, POD 6-2  
Albany, New York 12232  
Attention: Kathy Fitzpatrick C031104  
Fax: 518-457-2875

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

**G. Protest Procedure**

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via: [https://www.nysdot.gov/main/business-center/consultants/consultants-repository/misrep\\_protest.pdf](https://www.nysdot.gov/main/business-center/consultants/consultants-repository/misrep_protest.pdf)

**H. Tentative Schedule of Key Events**

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

RFP Release Date:	November 9, 2012
Question Submittal Deadline:	November 23, 2012
Proposals Due:	December 7, 2012
Proposal Evaluation:	December 2012-January 2013
Recommendation & Designation:	1–2 months after proposal evaluation
Contract Negotiations:	One Month
Contract Award:	4–6 weeks after completion of contract Negotiations

## **VII. ATTACHMENTS**

1. Draft Agreement, including Appendices A, B, C
2. Consultant Information and Certification Form
3. Procurement Lobbying Law Compliance
4. Consultant Disclosure Legislation Forms A & B
5. Consultant's Responsibility when Proposing Former NYSDOT Employees
6. MBE and WBE Participation Information Form
7. MBE and WBE Participation Solicitation Log
8. Cost Proposal – Instructions and Charts
9. List of abbreviations used in Request for Proposal
10. 49 CFR Parts 382, et. al. – Controlled Substances and Alcohol Use and Testing; Rule and Proposed Rule
11. 49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Program; Final Rule
12. NYSDOT Drug Free Workplace Policy and Omnibus Transportation Employee Testing Act (OTETA) Compliance
13. Map of NYSDOT Regions and NYSDOT worksites
14. Documentation of Minimum Experience Requirements

# **ATTACHMENT 1**

## **Draft Agreement**

### **NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

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

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

#### **COMPTROLLER'S CONTRACT NO. C031104**

**PROJECT: STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT**

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

CONSULTANT FIRM NAME

CONSULTANT FIRM ADDRESS

(hereinafter referred to as "CONSULTANT")

WITNESSETH:

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

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

#### **ARTICLE 1. PERFORMANCE OF WORK.**

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

to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency or local government in New York subject to the approval, of all necessary state officials.

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

## **ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.**

The contract documents shall be deemed to include this AGREEMENT, the provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX A-1, APPENDIX B and APPENDIX C, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the STATE's Request for Proposals (RFP), and the CONSULTANT's Proposal.

## **ARTICLE 3. INSPECTION.**

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

## **ARTICLE 4. TERM OF THE AGREEMENT.**

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

## **ARTICLE 5. MAXIMUM AMOUNT.**

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

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

## **ARTICLE 6. PROVISION FOR PAYMENT.**

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

Item I Specific Hourly rates of pay and unit costs for testing, training and professional consulting services shown in Schedule A (including EXHIBIT B) for work performed and services provided under this AGREEMENT. The Specific Unit costs are not subject to audit,

however, the number of tests, training and consulting performed is subject to audit. If the AGREEMENT is extended beyond (end date in Article 4), then all of the Specific Hourly Rates of pay shown in EXHIBIT \_\_\_\_ are eligible for rate adjustments. They may be increased annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413--5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor - Bureau of Labor Statistics, or 1.5%, subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

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

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

Item III The number of months of training provided under Special Provision 11 in Appendix C is \_\_\_\_\_.

#### **ARTICLE 7. CONTRACT PAYMENT.**

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

#### **ARTICLE 8. PARTIAL PAYMENTS.**

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



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

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

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

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

#### **ARTICLE 9. FINAL PAYMENT.**

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

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

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

#### **ARTICLE 10. EXTRA WORK.**

a) If the CONSULTANT believes that any work is or may be beyond the scope of the Agreement (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing, of this fact prior to beginning any of the work. The notification shall

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

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

#### **ARTICLE 11. CONSULTANT LIABILITY.**

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

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation

shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or any consultants working for the State, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway or structure and appurtenances and appliances thereof including moving, demolition and excavating connected therewith.

## **ARTICLE 12. INSURANCE.**

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

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

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONSULTANT are specified in subsection "B," below. Insurance shall apply separately on a per-job or per-project basis.
- 2. Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an **occurrence** basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.
- 3. Certificates of Insurance/Notices.** CONSULTANT shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract C Number. Certificates shall be mailed to the:

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

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

- a. Be in the form provided by the Department (C218 or successor) unless the Department specifically approves a different form. The ACORD forms of Certificate of Insurance are not acceptable.
  - b. Be signed by an authorized representative of the insurance carrier or producer and be acknowledged before a notary public.
  - c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
  - d. Specify the Additional Insureds and Named Insureds as required herein.
  - e. Refer to this Contract by number on the face of the certificate, and
  - f. Expressly reference the inclusion of all required endorsements.
  - g. If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:
    - (1) Direct the CONSULTANT to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
    - (2) May withhold further contract payments in accordance with Article 8, or
    - (3) Treat such failure as a breach or default of the contract.
4. **Additional Insureds.** All insurance policies required, by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** with respect to any claim arising from the CONSULTANT's Work under this contract or as a result of the CONSULTANT's activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form (or forms) that provides equivalent coverage.
5. **Primary Coverage.** All insurance policies, excepting workers' compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available to the Department for any claim arising from the CONSULTANT's Work under this contract, or as a result of the CONSULTANT's activities.
6. **Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or**

**employees.** To the extent that any of CONSULTANT's policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.

- 7. Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in subdivision (A)(3) above.
- 8. Self-Insured Retention/Deductibles.** Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, CONSULTANT-administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT's deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of "A minus" or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.
- 9. Waiver of Indemnities.** The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

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

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

- 2. Commercial General Liability Insurance.** CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
- (1) Coverage for liability contractually assumed by the CONSULTANT.
  - (2) All insurance policies required by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to **“the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work,”** using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
- 3. Commercial Automobile Insurance including liability and required coverage for New York** *(applicable to any project where automobiles or other vehicles will be employed to complete the work)*. In the event that automobiles are used in connection with CONSULTANT's business or operations with the Department, CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT's automobiles (including owned, hired and non-owned vehicles) on and around the project. This should be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000.00 each accident.
- 4. Consultant's Risks** *(applicable to all contracts)*. The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.
- 5. Professional Liability/ Errors and Omissions** *(applicable to professional services, including architectural, engineering, appraisals, title searching and estimating)*. The CONSULTANT shall maintain at their own expense or shall require to be

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

- 6. Special Protective and Highway Liability Policy.** *(applicable to any project where Consultant is required to conduct field work where Consultant controls the field location for the work).* The CONSULTANT shall maintain, separate and apart from its umbrella policy, a policy issued to and covering the liability of the People of the State of New York, The State of New York, the Commissioner of Transportation, all employees of the Department of Transportation both officially and personally, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any CONSULTANT inspecting engineer or inspector working for or on the project, and their agents or employees, against damages that the insureds may be held legally liable to pay for property damage, personal injuries, or death that is caused by any occurrence that takes place within any location where work is to be or is being performed by CONSULTANT, including at the location of any of the work. This should be ISO form CG 00 14 12 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 per occurrence and at least \$2,000,000.00 for each aggregate limit.
- 7. Railroad Protective Liability Insurance.** *(applicable to any Work Affecting Railroads).* The CONSULTANT shall maintain at its own expense railroad protective liability policy of insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes on Railroad, or if no limits of coverage are specified, the limits shall be not less than \$5,000,000.00 combined Bodily Injury Liability and/or Property Damage for each occurrence with a \$10,000,000.00 Aggregate Limit applying separately to each annual period. Said policy shall be subject to the approval of the railroad and comply with Federal Aid Policy Guide 23 CFR 646 subpart A.

## **ARTICLE 13. INTERCHANGE OF DATA.**

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

#### **ARTICLE 14. DISPOSITION OF DATA.**

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

#### **ARTICLE 15. DAMAGES AND DELAYS.**

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

#### **ARTICLE 16. NOTICE OF BANKRUPTCY, VENUE, AUDITS.**

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

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

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

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

#### **ARTICLE 17. TERMINATION.**

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



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

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

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

#### **ARTICLE 18. DEATH OR DISABILITY OF THE CONSULTANT.**

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

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

#### **ARTICLE 19. CODE OF ETHICS.**

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

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

## **ARTICLE 20. INDEPENDENT CONTRACTOR.**

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

## **ARTICLE 21. COVENANT AGAINST CONTINGENT FEES.**

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

## **ARTICLE 22. TRANSFER OF AGREEMENT.**

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

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

## **ARTICLE 23. PROPRIETARY RIGHTS.**

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

## **ARTICLE 24. SUBCONTRACTORS/SUBCONSULTANTS.**

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

## **ARTICLE 25. ORDER OF PRECEDENCE.**

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

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

## **ARTICLE 26. CERTIFICATION REQUIRED BY 49CFR, PART 29.**

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

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

### **EXCEPTIONS -**

## **ARTICLE 27. CERTIFICATION FOR FEDERAL-AID CONTRACTS.**

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

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

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

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

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

## **ARTICLE 28. RESPONSIBILITY OF THE CONSULTANT.**

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

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

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

(d) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder; and as such, each acts both as principal and agent of the CONSULTANT and of each of the others hereunder. Each further

acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this agreement shall be jointly and severally liable to third parties, including but not limited to the STATE, for the acts or omissions of the CONSULTANT or any other entity, partner or joint venturer hereunder.

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

#### **ARTICLE 29. SECURITY AND CONFIDENTIALITY OF INFORMATION.**

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

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

#### **ARTICLE 30. VENDOR RESPONSIBILITY.**

The Department of Transportation has undertaken an affirmative review of the proposed consultant's responsibility in accordance with the applicable standards outlined in Comptroller's Bulletin No. G-221, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

#### **ARTICLE 31. CONSULTANT DISCLOSURE LEGISLATION.**

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B, Exhibit \_\_\_\_ ) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and

the Department of Transportation on or before May15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

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

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

NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or pdf file via email to: [timothy.ameche@dot.ny.gov](mailto:timothy.ameche@dot.ny.gov) or his successor.

## **ARTICLE 32. NOTICES.**

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

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

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

**(1) New York State Department of Transportation:**

**Contact Person's Name:** William A. Howe, Contract #C031104

**Title:** Director

**Address:** NYSDOT Contract Management, 50 Wolf Rd, POD 6-2, Albany, NY 12232

**Telephone Number:** 518-457-2600

**Facsimile Number:** 518-457-2875

**E-Mail Address:** [william.howe@dot.ny.gov](mailto:william.howe@dot.ny.gov)

(2) **Consultant's Name:** \_\_\_\_\_

**Contact Person's Name:**

**Title:**

**Address:**

**Telephone Number:**

**Facsimile Number:**

**E-Mail Address:**

Item 2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

Item 3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

### **ARTICLE 33. TITLE VI ASSURANCE.**

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

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

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

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to

nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

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

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

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

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

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

#### **ARTICLE 34. 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. This act may be viewed in its entirety at <http://www.ogs.ny.gov/about/regs/docs/ida2012.pdf>. Pursuant to SFL § 165-a(3)(b), the Commissioner of the Office of General Services (OGS) has developed and maintains a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). The list may be found on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that, it will not utilize, on such Contract, any subcontractor that is identified on the prohibited entities list.



Additionally, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this 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 the New York State Department of Transportation (NYSDOT) receive information that a Bidder/Contractor (or any assignee) is in violation of the above-referenced certification, NYSDOT will offer the Bidder/Contractor (or any assignee) an opportunity to respond. If the Bidder/Contractor (or any assignee) 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 bid 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.

**IN WITNESS WHEREOF**, this Contract No. C031104 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY

FOR THE PEOPLE OF THE STATE OF NEW YORK

\_\_\_\_\_  
CONTRACT MANAGEMENT

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

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Consultant Certifications: I certify that all the information with respect to the "Vendor Responsibility Questionnaire" submitted by (CONSULTANT FIRM NAME) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2012 pursuant to the requirements set forth in OSC Bulletin G-221 is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

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

By \_\_\_\_\_  
FIRM

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

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-----STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT -----

### APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI  
STATE COMPTROLLER

By \_\_\_\_\_ By \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

---

**Acknowledgement for Contract #C031104**

For contracts signed in New York State

State of New York        )

County of                ) ss.:

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

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

For contracts signed **outside** New York State

State of                    )

County of                ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 201\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in \_\_\_\_\_ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
(Signature and office of individual taking acknowledgement.)

My Commission Expires:

## 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) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

**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  
625 Broadway  
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  
625 Broadway  
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.nysdot.gov/portal/page/portal/divisions/operating/opdm/community-assistance-delivery-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/1273.htm>).

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

#### **NON DISCRIMINATION/EEO/DBE REQUIREMENTS**

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and 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.

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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.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

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

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

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

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

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

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

## **APPENDIX C**

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

#### Specific Equal Employment Opportunity Responsibilities

1. **GENERAL**

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

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

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

2. **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

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

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

3. **EQUAL EMPLOYMENT OPPORTUNITY OFFICER**

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

4. **DISSEMINATION OF POLICY**

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

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

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

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

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

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

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

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

## 5. RECRUITMENT

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

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

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

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

## 6. PERSONNEL ACTIONS

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

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

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

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take

corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

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

#### 7. TRAINING AND PROMOTION

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

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

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

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

#### 8. UNIONS

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

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

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

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

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or

qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING

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

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

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

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

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

10. RECORDS AND REPORTS

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

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

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

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

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

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

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

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

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

(1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or

(2) cancellation, termination or suspensions of the agreement in whole or in part.

#### 11. TRAINING SPECIAL PROVISIONS

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

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

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

The number of months of training to be provided under these special provisions is previously stated in Article 6.

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

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

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

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

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the



classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

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

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

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

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

## Attachment 2

### CONSULTANT INFORMATION AND CERTIFICATIONS

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

**CONTRACT NUMBER: C031104**

**PROJECT TITLE: STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR  
NYSDOT**

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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 SFS Vendor Identification Number: \_\_\_\_\_

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

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

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

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

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

Other Authorized Individual(s):

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

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

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

#### II. PROPOSER CERTIFICATIONS

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

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

regarding the subject proposal:

- Acceptance of the RFP's Scope of Services as is.
- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
- The firm has read and will follow the procedure outlined in **Attachment 5** if it proposes the services of a former NYSDOT employee(s).

- Vendor Responsibility: If selected for contract award, the firm will complete and certify the required Vendor Responsibility Questionnaire within 10 days of notification of designation 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. • 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 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 agreement, including Appendix A,  
which is included as Attachment 1 to this Request for Proposals.

**Signature:** \_\_\_\_\_  
(Name of Acceptor)

## Attachment 3

### PROCUREMENT LOBBYING LAW COMPLIANCE

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

2. **NYSDOT Guidelines and Procedures**

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

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

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

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

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

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

These are some communications exempted from this restriction:

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

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

- b) **Contacts after designation**

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

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

The Consultant Management Bureau consultant job manager's immediate supervisor

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

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

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

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

**d) Applicability to an executed contract:**

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

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

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

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

<http://www.nylobby.state.ny.us/lobbying.html> (New York State Lobbying Act)

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

For more information, go to NYSDOT's World Wide Web Site at <https://www.dot.ny.gov/index>

or contact: Kathy Fitzpatrick  
NYSDOT Contract Management  
50 Wolf Road, POD 6-2  
Albany, New York 12232  
E-mail: [kathy.fitzpatrick@dot.ny.gov](mailto:kathy.fitzpatrick@dot.ny.gov)  
Tel: (518) 457-2600

**Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)**

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

Contract Procurement No. C031104

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

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: C031104

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

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

(Please circle): No Yes

If yes, please answer the next three questions:

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

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

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

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

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Attachment 4

### CONSULTANT DISCLOSURE LEGISLATION FORMS A & B

#### **Background:**

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

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

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

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

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

#### **Instructions:**

##### **FORM A:**

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

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

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



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

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

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

### **FORM B:**

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

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

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

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

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

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

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

**To DCS:**

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

To NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or PDF file via email to: [timothy.ameche@dot.ny.gov](mailto:timothy.ameche@dot.ny.gov) or his successor.

**OSC Use Only:**

Reporting Code:

Category Code:

Date Contract Approved:

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

State Agency Name: Transportation

Agency Code: 17000

Contractor Name:

Contract Number: C031104

Contract Start Date:     /     /

Contract End Date:     /     /

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

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared:     /     /

(Use additional pages, if necessary)

Page     of

**FORM B****OSC Use Only:**

Reporting Code:

Category Code:

**State Consultant Services  
Contractor's Annual Employment Report**

**Report Period: April 1,                      to March 31,**

Contracting State Agency Name: Transportation

Agency Code: 17000

Contract Number: C031104

Contract Term:     /     /     to     /     /

Contractor Name:

Contractor Address:

Description of Services Being Provided: Statewide Drug And Alcohol Testing Services for NYSDOT

**Scope of Contract (Choose one that best fits):**

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐ Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

O*Net Employment Category Number and O*Net Employment Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Phone #: \_\_\_\_\_

Date Prepared:     /     /

Use additional pages if necessary)

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## **Attachment 5**

### **CONSULTANT'S RESPONSIBILITY WHEN PROPOSING FORMER NYSDOT EMPLOYEES**

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

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

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

#### Procedure

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

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

## Attachment 6

### MBE AND WBE PARTICIPATION INFORMATION

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 salary 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 separate MBE and/or WBE participation goals.

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

If the combined percentage of total salary for all certified MBEs and/or all certified WBEs proposed is less than the MBE participation goal and/or WBE participation goal, respectively, 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)**; one for each goal not attained), **and** is required to submit a **MBE Goal and WBE Goal Attainment Explanation Letter**.

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

## Attachment 7

### 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 MBE and/or 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 MBE participation goal is not fully attained or is partially attained and/or when the WBE participation goal is not fully attained or is partially attained, then the proposer must complete all sections of this form and submit one **MBE and WBE Participation Solicitation Log** for each goal not fully attained. In addition, the firm must also submit a **MBE and WBE Goal Attainment Explanation Letter**, documenting the firm's Good Faith 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***

**CONTRACT NO:** Enter New York State DOT contract number (Example: C012345).

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

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

**PRIME NAME/ADDRESS/ZIP CODE:** Enter 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 NYS Department of Economic Development/Empire State Development M/WBE Directory- <http://www.esd.ny.gov/MWBE.html>) 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 cost and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a 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.

**MBE AND WBE PARTICIPATION SOLICITATION LOG**  
**(Good Faith Effort Documentation)**

CONTRACT NO. <u>C031104</u>			PARTICIPATION GOALS (SELECT ONE) MBE % ____ WBE % ____		PAGE NUMBER ____ OF ____	
PRIME FIRM NAME/ADDRESS/ZIP CODE			CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE)  E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S)	

## Attachment 8

### INSTRUCTIONS AND CHARTS

#### COST PROPOSAL INSTRUCTIONS

##### Part II Cost Proposal Instructions

###### 1. Items Costs:

**Collection Site Testing (Drug and Alcohol Test during normal hours and off hours)**

**On-Site Testing (Scheduled and Emergency Drug and Alcohol Test)**

**Expert Testimony**

**Split Specimen**

**Substance Abuse Professional Services**

Provide an all inclusive cost submission rate chart for items associated with this procurement (RFP Section III) via **Cost Proposal Attachment 8, page 1 and 2**. The RFP will be evaluated based on **Cost Proposal Attachment 8, page 2, Grand Total**.

- a. A lump sum unit cost, on a per employee basis, for the provision of a pre-employment pre-duty, random, return to duty, follow up, post-accident and reasonable suspicion drug test complaint with all federal requirements as well as for non-federal follow up tests. The unit cost for drug testing shall remain the same for the first three years.
- b. A lump sum unit cost, on a per employee basis, for the provision of a random, return-to-duty, follow-up, post accident and reasonable suspicion alcohol testing complaint with all federal requirements as well as for non-federal follow-up tests. The unit cost for alcohol testing shall remain the same for the first three years.
- c. A lump sum unit cost, on a per employee basis, for the provision of a random, return-to-duty, follow-up, post accident and reasonable suspicion combined drug/alcohol test complaint with all OTETA requirements. The unit cost for a combined drug/alcohol test shall remain the same for the first three years.
- d. An all inclusive hourly rate for expert testimony and substance abuse professional services.

###### 2. Direct Non-Salary Costs

All direct non salary expenses are to be included in the rates offered for each item. Expert testimony and Substance Abuse Professional Services cost per hour is inclusive of all direct costs, indirect costs and fee/profit, the only exception is for travel which will be reimbursed in accordance with NYS travel/per diem rates. The latest state and nationwide rates are available at the following Web site: <http://www.osc.state.ny.us/agencies/travel/travel.htm>.

**NYSDOT shall not directly reimburse the selected Consultant (and any of its subconsultants) for the cost of local living and commuting** (such expenses are to be included in the consultant's overhead rate).

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

### **3. Total Proposed Budget**

The total proposed contract budget (Grand Total from Attachment 8) will be the maximum amount payable and shall include all expenses necessary to administer this contract. The firm will be paid per item in accordance with a schedule of services to be coordinated with NYSDOT program manager and the selected firm.

## Attachment 8

### INSTRUCTIONS AND CHARTS

#### COST PROPOSAL

Page 1

STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT, Contract #C031104

Item	Cost Per Item	Estimated Quantity (base term)	Estimated Cost
<b>COLLECTION SITE TESTING</b>			
<u>Testing During normal collection site hours:</u>			
Drug test, affiliated lab (e.g. ACM, Quest)	ea	3,600	
Drug test, non-affiliated lab	ea	450	
Alcohol test	ea	720	
<u>Testing During off-hours <sup>1</sup></u>			
Drug test	ea	6	
Alcohol test	ea	6	
<b>ON-SITE TESTING</b>			
<u>Scheduled tests (e.g. random)</u>			
Drug test	ea	6,600	
Alcohol test	ea	1,200	
<u>Emergency tests (e.g. post-accident)</u>			
Drug test	ea	6	
Alcohol test	ea	6	

## Attachment 8

### INSTRUCTIONS AND CHARTS

#### COST PROPOSAL

Page 2

**STATEWIDE DRUG AND ALCOHOL TESTING SERVICES FOR NYSDOT, Contract #C031104**

<b>EXPERT TESTIMONY<sup>2</sup></b>			
Professional (Physician)	hr	6	
Technical (Other)	hr	6	
<b>SPLIT SPECIMEN</b>	ea	9	
<b>SUBSTANCE ABUSE PROFESSIONAL SERVICES<sup>2</sup></b>	hr	75	
<p style="text-align: center;"><b>GRAND TOTAL</b></p> <p style="text-align: center;">(basis for cost evaluation)</p>			\$ _____

Notes:

<sup>1</sup> When collection site is normally closed, e.g. post accident test.

<sup>2</sup> Expert testimony and substance abuse professional services cost per hour is inclusive of all direct costs, indirect costs, and fee/profit EXCEPT for travel which will be reimbursed in accordance with NYS travel guidelines and subject to NYSDOT's approval.

Costs quoted for all drug and alcohol tests, on site or off site and during regular business hours or outside regular business hours, are inclusive of all consultant costs, fees, travel expenses or charges associated with collection, analysis, administration, and reporting of those test.

## **Attachment 9**

### **COMMON ACRONYMS USED IN THIS RFP**

OTETA	Omnibus Transportation Employee Testing Act
FMCSA	Federal Motor Carrier Safety Administration
HMD	Highway Maintenance Division
CDL	Commercial (Vehicle) Driver's License
CSEA	Civil Service Employees' Association
PEF	Public Employees' Federation
MRO	Medical Review Officer
SAMHSA	Substance Abuse and Mental health Services Administration
NIDA	National Institute on Drug Abuse
EBT	Evidential Breath Testing (device)

## **Attachment 10**

### **49 CFR Parts 382, et. al. – Controlled Substances and Alcohol Use and Testing; Rule and Proposed Rule**

Attachment 10, 49 CFR Parts 382, et. al. – Controlled Substances and Alcohol Use and Testing; Rule and Proposed Rule is an accompaniment to this RFP and may be accessed at the following website:

[http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsguide.asp?section\\_type=D](http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsguide.asp?section_type=D)



## **Attachment 11**

### **49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Program; Final Rule**

Attachment 11, 49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Program; Final Rule is an accompaniment to this RFP and may be accessed at the following website:

[http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsguide.asp?section\\_type=D](http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsguide.asp?section_type=D)

## **Attachment 12**

### **NYSDOT Drug Free Workplace Policy and Omnibus Transportation Employee Testing Act (OTETA) Compliance**

This bulletin outlines the New York State Department of Transportation's standards on the prohibition of alcohol and drugs in the workplace and compliance with the Omnibus Transportation Employee Testing Act (OTETA). It will assist employees in guiding their conduct, thereby promoting workplace safety and productivity and protecting the Department from criticism and liability. It also provides instruction to supervisors on actions to take when an employee appears impaired at work. All of these efforts will contribute to a safer workplace.

The Department's requirements are based upon the Department's long standing practice and policy prohibiting the use of alcohol and drugs on the job, the Federal Drug-Free Workplace Act of 1989, the State of New York's Policy on Alcohol and Controlled Substances in the Workplace, the NYSDOT Drug-free Workplace Policy (MAP 4.15-4) and the Omnibus Transportation Employee Testing Act and the DOT policy on compliance with OTETA (MAP 4.15-4-1). Specifically, OTETA mandates alcohol and drug testing of employees in various positions and assignments requiring the possession of a Commercial Drivers License and defined as safety sensitive under the following circumstances: pre-employment/pre-duty drug testing; alcohol and drug testing for reasonable suspicion, post-accident, random, return to duty and follow-up. See attached list of safety sensitive positions.

At the time of hire or first time promotion to an OTETA safety sensitive position, employees are notified of their status, drug tested and required to participate in training which explains their responsibilities and the details of the testing process prior to their inclusion in the random testing pool. An OTETA Compliance Manual is located at each Regional Director's Office, Administrative Services Office, Regional Safety Office, Regional Program Office, Residency, Fleet Administration and Support and Bridge Maintenance Shops as well as Employee Relations and executive offices located in the Main Office. The manual can also be found on the Employee Relations Bureau page on the Intradot under the OTETA tab. This manual contains details on the testing process and should be considered part of the policy.

The New York State Department of Transportation will assist employees who have a drug or alcohol dependency problem to recover from such addictions provided the employees seek and accept assistance. The Department maintains an Employee Assistance Program (EAP) to help, refer and advise employees with respect to drug and alcohol abuse. This program is confidential and unrelated to the alcohol and drug testing process (OTETA). It is important to emphasize that employees with alcohol and/or drug problems who wish to avail themselves of rehabilitative services under the EAP or any other rehabilitation program should pursue help before they are determined to be in violation of the Department's Drug-Free Workplace Policy and OTETA. Employees who test positive for drugs or alcohol are subject to disciplinary action. This includes employees who provide a substituted or altered specimen, and employees who are considered to have refused to test. Disciplinary action taken to resolve drug and/or alcohol related misconduct and/or incompetency issues can include penalties up to and including termination of employment.

## **EMPLOYEE RESPONSIBILITIES**

It is the policy of the New York State Department of Transportation that:

1. No employee shall use, sell, distribute, dispense, possess or manufacture any alcoholic beverage or illegal drug or any other intoxicating substance or drug paraphernalia on a job site or Department property, or while in a State vehicle, a vehicle leased for State business or a privately owned vehicle being used for State business during the employee's work hours.
2. No employee shall be at work unfit for duty, including reporting for duty at the beginning of a shift or upon returning from any break, lunch or rest period as a result of consuming alcohol, illegal drugs or other intoxicant. Further, no employee in a safety sensitive position shall report to work in a condition that violates OTETA and corresponding rules. The Act defines unfit for duty as having a Breath Alcohol Content (BAC) of .02 or greater or having a positive drug test that shows the presence of amphetamines, opiates, marijuana, cocaine or PCP in their system.
3. An employee on paid standby status shall remain fit for duty at all times in accordance with this policy.
4. An employee notified of being in a safety sensitive position as defined by the rules of the OTETA is further prohibited from the use of alcohol four (4) hours prior to operating a Commercial Motor Vehicle (CMV). No supervisor having knowledge that an employee in a safety sensitive position has used alcohol within four (4) hours shall permit that employee to operate a CMV. Employees so notified should refer to the OTETA training materials for further detail and as questions arise, contact the Department's OTETA Compliance Program staff at (518) 485-7131.
5. While the use of prescription drugs are not prohibited, they should not render an employee unfit for duty. Situations where prescription drugs may affect an employee's ability to perform their assigned job should be brought to the supervisor's attention by the employee. This is especially important if the employee's job responsibilities have an impact on the health and safety of others and/or has been identified as a safety sensitive position. The specific prescriptions involved and the nature of the employee's health condition requiring the use of a drug do not need to be disclosed. However, a supervisor may request a physician's certification that the employee is fit for duty. It may also be necessary to confirm the employee's fitness for duty in accordance with Section 72 of the New York State Civil Service Law through a medical examination performed by a State physician at the Department's expense. Supervisors should consult with the management chain and the appropriate Administrative Services Office or the Employee Relations Bureau for further directions on the Section 72 process.
6. Any work related accident or injury involving State vehicles, equipment and/or property where it can be demonstrated that the use of alcohol, drugs, or other intoxicants may have been a contributing factor, will result in formal discipline which can include penalties up to and including termination of employment. Employees serving in a safety sensitive position shall be required to take post-accident alcohol and drug tests under certain circumstances as required by OTETA. A safety sensitive employee shall not use alcohol for eight (8) hours following an accident or until they undergo a post-accident alcohol test, whichever occurs first. Employees notified that they are in a safety sensitive position should refer to the OTETA training material for further details and as questions arise, contact the Department's OTETA Compliance Program staff at (518) 485-7131.

7. In accordance with the Federal Drug-Free Workplace Act, an employee shall notify their supervisor of any criminal drug statute conviction which results from a violation occurring in the workplace no later than five days after the date of such conviction. A supervisor notified of such a conviction shall relay that information through the management chain to the Director of the Employee Relations Bureau in the Main Office. This requirement applies to all NYSDOT employees.
8. Any NYSDOT employee may be directed to undergo a medical examination including alcohol and/or drug testing at the Department's expense if a supervisor has reasonable suspicion that the employee is not able to perform their duties as a result of the use of alcohol and/or a controlled substance.

An employee identified as being in a safety sensitive position, as defined by OTETA, must be directed to undergo alcohol and drug testing when the supervisor has "reasonable suspicion" to believe the employee violated the alcohol or drug prohibitions of the Act. Specific requirements and directions for requesting such testing are found in the OTETA Compliance Manual and the Department's Reasonable Suspicion training materials for supervisors.

Reasonable suspicion must be based on specific reliable observations about the employee's appearance, behavior, speech, or body odors. Some examples would be: unsteady gait, odor of alcohol on the breath, thick or slurred speech, aggressive or abusive language or behavior, disorientation or lethargy. Other factors to consider include: employee's time and attendance patterns, on-the-job accidents, difficulty remembering instructions or conversations, poor relationships with coworkers and supervisor, and other variations in productivity. Usually reasonable suspicion will be based upon a combination of these factors. However, under OTETA if the odor of alcohol is detected, testing is required. It is the only time when a single indicator warrants testing.

9. An employee identified as being in a safety sensitive position as defined by OTETA is required to cooperate with the provisions of OTETA which mandate testing of employees for alcohol and other drugs. This means that the employee must participate in the required training, sign the receipt of information form and make themselves available for testing should their name be selected. Failure to cooperate fully with the random, pre-employment, pre-duty, reasonable suspicion, post-accident, return to duty or follow-up testing procedures will be considered insubordination and will be considered to be a positive test result and will warrant appropriate disciplinary action.
10. Violations of these rules may result in disciplinary action up to and including termination of employment.

## **SUPERVISOR RESPONSIBILITIES**

It is the policy of the New York State Department of Transportation that:

1. Supervisors are responsible for determining through direct observation whether an employee is capable of performing their assigned duties. Symptoms of being under the influence of alcohol and drugs include incoherent or belligerent speech, smell of alcohol, difficulty working, or erratic or unusual behavior uncommon to the employee. Under OTETA, if the odor of alcohol is detected, testing is required. It is the only time when a single indicator warrants testing. (See Section #8 of the Employee Responsibilities section of this bulletin.)
2. Any NYSDOT employee who is suspected of being unfit for duty shall not remain at the workplace. All such incidents and situations as described in #1 above should be witnessed and documented in writing on the Reasonable Suspicion Observation Form. Being unfit for duty is a form of employee misconduct. The Department may take disciplinary action against any manager or supervisor who knowingly allows an employee suspected of being unfit for duty to remain at the workplace.
3. Safety sensitive employees who are suspected of being unfit for duty as a result of alcohol or drug use must be tested in accordance with OTETA. Specific directions are located in the OTETA Compliance Manual and the Department's Reasonable Suspicion Training Materials for Supervisors.

Further, any non-safety sensitive employee who is suspected of being unfit for duty as a result of alcohol or drug use should be directed for a medical examination which may include alcohol or drug testing in accordance with Section 72 of the Civil Service Law.

The Department has the ability for immediate fitness for duty testing on a 24/7 basis under an established protocol available through the Employee Health Service (EHS). For further information visit the EHS website at <http://www.cs.ny.gov/ehs> or contact the Employee Relations Bureau at (518) 457-3543.

Clearly, any employee who appears to be unfit should not be allowed to drive to a collection site for testing or to drive home from the workplace.

4. After reasonable suspicion testing issues have been resolved, the supervisor should arrange to send the unfit employee home with a member of the employee's family or friend of the employee or in a taxi at the employee's expense. If all other alternatives are exhausted, a supervisor may allow an employee who appears to be unfit for duty to be driven home in a State vehicle by another employee.
5. The fact that an unfit employee under the influence of alcohol or other drugs was not allowed to remain at the workplace is not necessarily considered a disciplinary suspension. After removal is achieved, the supervisor or manager should discuss the specifics of the situation with the Administrative Services Office or the Main Office Employee Relations Bureau to review whether disciplinary charges and suspension or other administrative actions are appropriate. Each situation will be evaluated on a case-by-case basis.
6. When an employee displays dangerous, aggressive or abusive behavior which constitutes a danger to that employee or others and the employee resists voluntarily leaving the workplace, clearance to suspend

under the disciplinary procedure should be immediately sought through appropriate channels from the Employee Relations Bureau. In cases where the employee does not comply with disciplinary suspension or due to the time of day disciplinary suspension approval could not be obtained and the employee continues to display aggressive and/or abusive behavior which constitutes a danger in the workplace, the supervisor may have to contact local law enforcement authorities to remove the employee from the workplace. Law enforcement intervention should only be taken if it is believed an immediate danger to persons or property exists and the other measures described above were unsuccessful in controlling the situation.

7. An employee who reports to work unfit for duty and is sent home may be subject to medical examination by a physician at the State's expense as a condition of returning to work. In such cases the appropriate Administrative Services Office or the Employee Relations Bureau should be consulted for advice.
8. In accordance with OTETA, supervisors of safety sensitive employees are responsible for assisting management in the process of notifying and transporting, if necessary, selected employees to alcohol and drug testing.

## MANAGEMENT RESPONSIBILITIES

It is the policy of the New York State Department of Transportation that:

1. A drug and alcohol free workplace be maintained through the efforts and personal example of management.
2. Appropriate corrective actions be taken with subordinate managers and supervisors who fail to perform their duties and responsibilities as outlined in this bulletin and the Department Policy and Manual of Administrative Procedures.
3. Managers and supervisors should discuss with subordinate employees any behavior or job performance factors that may indicate the use of drugs, alcohol or other violations of the NYSDOT Drug-Free Workplace Policy and when appropriate, recommend that employees seek assistance through the Employee Assistance Program (EAP). Managers and supervisors should not attempt to diagnose or treat the problem, but remain focused on the work-related issues and problems.
4. Designated managers will direct employees in safety sensitive positions to mandatory pre-employment/pre-duty, reasonable suspicion, random, post-accident, return-to-duty, and follow-up testing in accordance with OTETA. Managers should also refer other employees believed to be unfit for duty for medical examination and possible alcohol and drug testing in accordance with Section 72 of the New York State Civil Service Law. Managers should contact the appropriate Administrative Services Office or the Employee Relations Bureau for direction.
5. In accordance with OTETA procedures, designated managers of safety sensitive employees are responsible for receiving the list of individuals who are selected for random alcohol and drug testing, and for assuring that selected employees are sent to testing. The names of those individuals must be held in confidence until the individuals are notified and onsite testing occurs or individuals are sent to a designated collection site. (All selected individuals must be sent for testing as soon as possible after the manager is notified. See OTETA Compliance Manual for specifics.)
6. All employees, supervisors and managers be made aware of the Department's Drug-Free Workplace Policy and OTETA Compliance policies and procedures. The New York State Department of Transportation will also train supervisors and managers on how to recognize behaviors and complete necessary documentation that support reasonable suspicion for requesting medical examinations, and/or alcohol and drug testing.

In summary, it is the policy of the New York State Department of Transportation that **all employees** remain free of any drug or alcohol induced impairments while on duty; refrain from the use of illegal drugs and/or alcohol while on duty and while serving in a safety sensitive position; undergo any drug and alcohol testing requested in accordance with OTETA and/or Section 72 of the New York State Civil Service Law and comply fully with the requirements of the testing processes.



## NYS C.D.L. REASONABLE SUSPICION OBSERVATION FORM

### EMPLOYEE INFORMATION

### EMPLOYEE IDENTIFICATION NUMBER:

Employee Name:

Title:

Date:

Time of Observation:

A.M./P.M.

Employee Task Performed when Observed:

Observing Supervisor:

Location:

**CHECK ALL THAT APPLY. WRITE ANY ADDITIONAL INFORMATION IN THE SPACE PROVIDED.  
PLEASE PRINT CLEARLY WITHIN DESIGNATED AREAS**

**I. Physical Indicators - If the odor of alcohol is detected,  
2. employee must immediately be sent for testing**

### Breath Odor:

☐ Alcoholic Beverage  
☐ Strong

☐ Chemical  
☐ Mild

☐ Faint  
☐ Nothing Noticeable

NOTES:

### Appearance:

☐ Burns on Person or Clothing  
☐ Messy  
☐ Dirty/Stained Clothing

☐ Ripped/Torn Clothing  
☐ Partially Dressed

☐ Odor on Person/Clothing  
☐ Appears Normal

NOTES:

### Eyes:

☐ Watery  
☐ Bloodshot

☐ Glassy  
☐ Droopy Eye Lids

☐ Closed  
☐ Appears Normal

NOTES:

### Face:

☐ Red  
☐ Slobbering  
☐ Appears Normal

☐ Pale  
☐ Cuts, Abrasions

☐ Sweaty  
☐ Dry Mouth

☐ Runny Nose  
☐ Grinding Teeth

NOTES:



### SPEECH INDICATORS

**Speech:**

- ☐ Shouting
- ☐ Profane
- ☐ Incoherent

- ☐ Silent
- ☐ Slow
- ☐ Thick, Slurred

- ☐ Whispering
- ☐ Rambling
- ☐ Appears Normal

- ☐ Repetitive
- ☐ Rapid

NOTES:

### BEHAVIORAL INDICATORS

**Demeanor:**

- ☐ Cooperative
- ☐ Drowsy
- ☐ Talkative
- ☐ Fighting

- ☐ Polite
- ☐ Crying
- ☐ Excited
- ☐ Anxious

- ☐ Calm
- ☐ Silent
- ☐ Sarcastic
- ☐ Appears Normal

- ☐ Disoriented
- ☐ Inattentive
- ☐ Mood Swings

NOTES:

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**Actions:**

- ☐ Fighting
- ☐ Profane

- ☐ Erratic
- ☐ Hostile

- ☐ Threatening
- ☐ Hyperactive

- ☐ Non-Communicative
- ☐ Appears Normal

NOTES:

### PERFORMANCE INDICATORS

**Standing:**

- ☐ Unbalanced
- ☐ Feet Wide Apart

- ☐ Swaying
- ☐ Locked Knees

- ☐ Sagging at Knees
- ☐ Rigid
- ☐ Appears Normal

NOTES:

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**Walking:**

- ☐ Stumbling
- ☐ Unsteady
- ☐ Stiff Legged

- ☐ Staggering
- ☐ Rapid
- ☐ Appears Normal

- ☐ Falling
- ☐ Holding On

- ☐ Swaying
- ☐ Rigid

NOTES:

---

**Skills:**

YES	NO	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Performed a thorough pre-op inspection and preventive maintenance.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Started and idled the vehicle properly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Put vehicle in motion safely and smoothly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shifted transmission smoothly and efficiently.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Drove on roadway safely and properly, observed all traffic laws.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Passed other vehicles safely, legally and only when necessary.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Properly turned vehicle.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Proceeded through intersections properly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Proceeded through railroad crossing properly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Followed safe backing procedures.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Transported and dumped material correctly.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Operated vehicles safely while towing equipment.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Parked and shut down vehicle properly.

**NOTES:**

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On the above date and time, I completed this form based on my direct observation of this employee.

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Signature of Observing Supervisor

Based upon review of the reasonable suspicion observation form, the employee:

- ☐ Should be tested  
☐ Should **not** be tested

---

Print Observing Supervisor's Name

---

Print Reviewing Supervisor's Name

---

Observing Supervisor's Signature

---

Reviewing Supervisor's Signature  
(If by phone call, note time and date of call.)

---

Print Employee's Name:

**SAFETY SENSITIVE TITLES**  
**ELIGIBLE FOR ALCOHOL AND DRUG TESTING**

*Safety sensitive employees are people in positions that require a Commercial Driver's License (CDL).*

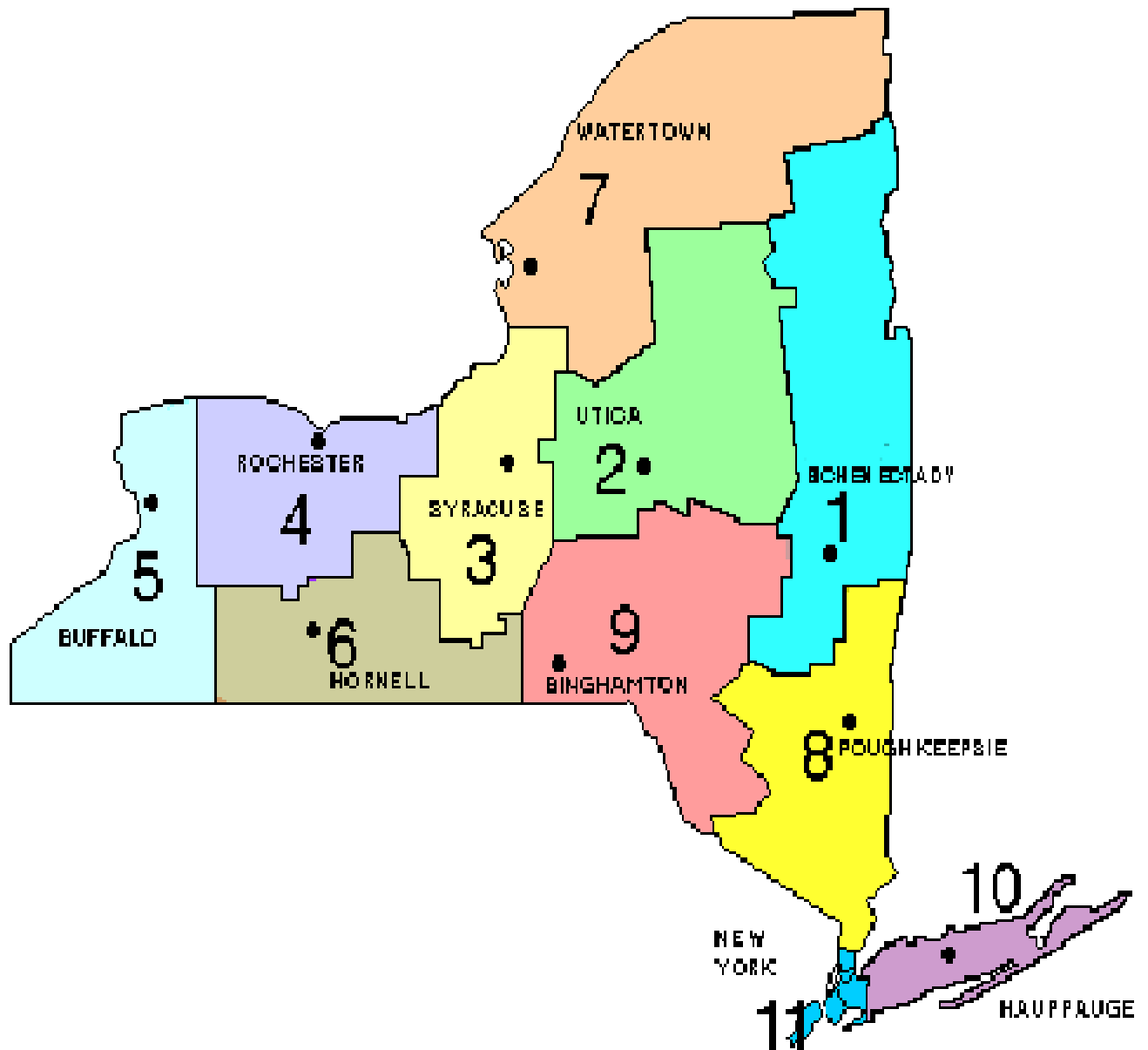
Bridge Repair Assistant	Maintenance Assistant (Residency Sign Crew)
Bridge Repair Assistant Trainee 1	Maintenance Assistant (Parks)
Bridge Repair Assistant Trainee 2	Motor Equipment Maintenance Supervisor 1
Bridge Repair Mechanic	Motor Equipment Maintenance Supervisor 2
Bridge Repair Supervisor 1	Motor Equipment Mechanic
Bridge Repair Supervisor 2	Pavement Marking Supervisor
Construction Equipment Mechanic	Sign Crew Supervisor
Construction Equipment Operator	Traffic Signal Mechanic, Assistant
Crane and Shovel Operator	Traffic Signal Mechanic, Supervising
Drill Rig Operator, Assistant	Traffic Signal Mechanic
Drill Rig Operator	Traffic Systems Technician 1
Equipment Operator Instructor	Traffic Systems Technician 2
Equipment Operator Instructor, Supervising	Tree Pruner
Highway Equipment Operator	Tree Pruner Supervisor
Highway Maintenance Supervisor 1	
Highway Maintenance Supervisor 2	
Highway Maintenance Worker 1	
Highway Maintenance Worker 2	
Highway Maintenance Worker Trainee 1	
Highway Maintenance Worker Trainee 2	
Maintenance Assistant	

*\*\*Other titles should be included when job assignment requires that the employee function in a safety sensitive capacity.\*\**

*(updated 8/3/2010)*

## Attachment 13

Map of NYSDOT Regions and NYSDOT worksites



## NYSDOT residencies/worksites

### Region 1

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Voorheesville	1-1	16 Maple Rd	Voorheesville	Residency
Elizabethtown	1-2	7735 NYS Rt 9N	Elizabethtown	Residency
Cairo	1-3	Rte 23 at Bross St. (107 DOT Rd.)	Cairo	Residency
Defreestville	1-4	288 Troy Road	Defreestville	Residency
Saratoga	1-5	351 West Ave.	Saratoga Spr	Residency
Schenectady	1-6	3008 Chrisler Ave.	Rotterdam	Residency
Warrensburg	1-7	4021 Main Street	Warrensburg	Residency
Hudson Falls	1-8	3716 Burgoyne Ave. Hudson Falls	Hudson Falls	Residency

### Region 2

FACILITY	RES NO	911 ADDRESS	CITY	Facility Type
Indian Lake	2-2	Rt. 28	Indian Lake	Residency
Herkimer	2-3	131 5th Avenue	Herkimer	Residency
Fultonville	2-5	3059 St. Hwy. 5S	Fultonville	Residency
Utica	2-6	2436 Chenango Rd.	Utica	Residency
Rome	2-7	6515 State Route 26	Rome	Residency

### Region 3

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Waterloo	3-1	78 E River Road	Waterloo	Residency
Cortland	3-2	3668 NYS Rt 281	Cortland	Residency
North Syracuse	3-3	5430 South Bay Road	N Syracuse	Residency
Camillus	3-4	5700 Devoe Road	Camillus	Residency
Mexico	3-5	5846 Scenic Ave (Rte 3)	Mexico	Residency

## Region 4

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Batavia	4-1	5441 East Main St	Batavia	Residency
Lakeville	4-2	Rt. 20A, I-390, Exit 8	Lakeville	Residency
East Rochester	4-3	938 W. Linden Ave	E Rochester	Residency
Spencerport	4-4	2441 South Union St.	Spencerport	Residency
Warsaw	4-7	Rt. 19	Warsaw	Residency
Newark	4-8	1140 E Union St.	Newark	Residency

## Region 5

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Salamanca	5-1	4474 Route 353	Salamanca	Residency
Mayville	5-2	109 E. Chautauqua St.	Mayville	Residency
Depew	5-3	Indian Road at Broadway	Depew	Residency
Hamburg	5-4	3754 Lakeview Road	Hamburg	Residency
Lockport	5-5	5055 Junction Road	Lockport	Residency

## Region 6

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Friendship	6-1	South Branch Street	Friendship	Residency
Coopers Plains	6-2	3863 Meads Creek Rd	Coopers Plns	Residency
Watkins Glen	6-3	Rt. 414 & Co. Rd. 16	Watkins Glen	Residency
Hornell	6-4	7100 County Rd. 70A	Hornellsville	Residency

**Region 7**

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Plattsburgh	7-1	81 Soth Peru Street	Plattsburg	Residency
Malone	7-2	15003 State Rte. 3	Malone	Residency
Watertown	7-3	22430 State Route 342	Watertown	Residency
Lowville	7-4	5527 Bostwick St.	Lowville	Residency
Potsdam (New)	7-5	7280 US Rte. 11	Potsdam	Residency

**Region 8**

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Hudson	8-1	307 Union Tpke, Hudson	Hudson	Residency
Fairview	8-2	334 Violet Ave	Fairview	Residency
Lake Carmel	8-3	106 Ludingtonville Rd	Kent	Residency
Newburgh	8-4	112 Dickson Ave	Newburgh	Residency
Middletown	8-5	Rt. 6	Middletown	Residency
New City	8-6	275 Ridge Road	New City	Residency
Kingston	8-7	11 Quarry Street	Kingston	Residency
Katonah	8-8	85 Rt. 100	Katonah	Residency
Valhalla	8-9	Int Rt 9A & Dana Rd	Valhalla	Residency

**Region 9**

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Binghamton	9-1	112 Barlow Road	Binghamton	Residency
Oxford	9-2	4480 St. Rte. 12	Oxford	Residency
Hancock	9-4	80 Golf Course Road	Hancock	Residency
Oneonta	9-5	4359 St. Rte. 7	Oneonta	Residency
Cobleskill	9-6	310 Mineral Springs Road	Cobleskill	Residency
Monticello	9-7	935 East Broadway	Monticello	Residency
Tioga	9-8	1497 State Rte 96	Owego	Residency

**Region 10**

FACILITY	RES NO	ADDRESS	CITY	Facility Type
Syosset	10-1	500 Robbins Lane	Syosset	Residency
Garden City	10-2	925 Stewart Ave	Garden City	Residency
Riverhead	10-3	1900 Co. Rd., Rte 58	Riverhead	Residency
Central Islip	10-4	371 Carleton Ave	Central Islip	Residency
Melville South	10-5	1400 Walt Whitman Rd, N Service Road	Melville	Residency
North Merrick	10-6	1234 Meadowbrook Road	North Merrick	Residency



Attachment 14

DOCUMENTATION OF MINIMUM EXPERIENCE REQUIREMENTS

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

Name of Agency	Agency Address	Contact Person	Email	Phone	Work Description	Dates of Work <sup>(1)</sup> include number of months

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