



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
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NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS

CENTRAL PERMITS OFFICE STAFF AUGMENTATION Contract #C031103

June 28, 2013

To All Concerned:

Enclosed is a copy of the Non-Engineering Request for Proposals (RFP) referenced above. All information necessary for the submission of your proposal is contained in the Best Value solicitation. Any questions regarding this project or proposal should be directed to Al Hasenkopf, the designated contact for this solicitation, of NYSDOT Contract Management Bureau via e-mail at: alfred.hasenkopf@dot.ny.gov.

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

- June 28, 2013: RFP release
- July TBD 2013: Pre-Proposal Conference @TBA (See Note)
- July 19, 2013 @ Midnight ET: Deadline for questions about the RFP
- July 24, 2013: Deadline for release of answers to RFP questions
- July 31, 2013 @ 2:00 PM ET: Deadline for the submission of proposals
- August, 2013: Technical Interviews (Shortlist to be published beforehand; See Note))
- Late August, 2013: Consultant Selection
- October, 2013: Approved Contract

If you are interested in developing a proposal in response to this solicitation, please complete and submit the attached RFP Response Form to the designated NYSDOT contact person. Please note that holding the scheduled Pre-Proposal Conference is contingent upon more than one firm expressing interest in responding to this RFP. Should only the incumbent firm express interest, the Pre-Proposal Conference shall not be held.

In Section 4 of the RFP, a "Checklist for Proposal Submission" is included for reference purposes when submitting your proposal to NYSDOT. *It also contains instructions for*

complying with the Procurement Lobbying Law so that your proposal may be considered for contract award. NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.

NYSDOT estimates that the selected Consultant will commence work on April 1, 2013 (new NYS budget permitting) and continue for a period of five years, with an optional five-year extension, depending on performance.

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including disadvantaged, minority and women-owned business enterprises. A directory of certified Minority Business Enterprises (MBEs) and certified Women-Owned Business Enterprises (WBEs) is available from the following searchable database website: <http://www.esd.ny.gov/MWBE.html>. Information on the availability of New York State subcontractors and suppliers is available from Empire State Development, Division for Small Business (518) 292-5224 or 1-800-STATE NY (1-800-782-8369) or via <http://www.nylovessmallbiz.com/home.asp>.

For Contract #C031103, NYSDOT has set a combined M/WBE participation contract goal of 20%. Only certified M/WBEs subconsultants are eligible for participatory credit in this procurement. Please see the RFP for more information.

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

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

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

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

We look forward to the receipt of your proposal.

Sincerely,

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

Enclosure

RFP RESPONSE FORM:**CPO Staff Augmentation RFP**

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

_____ WE **DO** INTEND TO SUBMIT A PROPOSAL

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

Name and Address of Organization (Include Zip Code):

Signature: _____ Date: _____

Types of Printed Name and Title: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

RFP Title: _____

Please send to:

Al Hasenkopf, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031103
E-Mail: alfred.hasenkopf@dot.ny.gov
Fax: 518-457-8475

INFORMATION FOR THE SELECTED CONSULTANT

CENTRAL PERMITS OFFICE STAFF AUGMENTATION

Contract #C031103

Vendor Responsibility

- _____ The selected firm shall 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 (*)

- _____ Visit NYSDOT Web site (see below) 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 Offeror Disclosure of Prior Non-Responsibility Determinations) included in Attachment 3 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.*** The two forms are available from:
<https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/consultants-repository/1E100A2B8C0ED03EE0430A3DFC05D03E>
https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf
Instructions: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf

Contractor Tax Certification

- _____ All vendors selected for contracts 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). These forms are available via:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Insurance Requirements of this Project

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

Consultant Employment Disclosure Requirements of this Project

- _____ Go to OSC's Web site (<http://www.osc.state.ny.us/agencies/gbull/g-226.htm> or <http://www.osc.state.ny.us/procurement/consultantdisclosure.doc>) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19,

2006. The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment’ (**Form A, Attachment 4**) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (**Form B, Attachment 4**) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

- _____ It is the Consultant’s responsibility to ensure they propose staff that are eligible to work on the subject Project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York Commission on Public Integrity that approves their participation in the subject Project. For an outline of the procedure that applies to this situation, see **Attachment 5**.

Registration with NYSDOT

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

Registration with Statewide Financial System (SFS)

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

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

CENTRAL PERMITS OFFICE STAFF AUGMENTATION

CONTRACT #C031103



Proposal Due Date: July 31, 2013

Proposal Delivery Location and Additional Information:

Al Hasenkopf, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031103
E-Mail: alfred.hasenkopf@dot.ny.gov
Fax: 518-457-8475

RFP Release Date: June 28, 2013

REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
CENTRAL PERMITS OFFICE STAFF AUGMENTATION

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1.0 Introduction

1.1 Purpose of this RFP

The New York State Department of Transportation (NYSDOT) is releasing this Non-A/E Request for Proposals (RFP) to seek proposals from responsive and responsible consultants and to select a qualified vendor to provide staff augmentation services in NYSDOT Central Permits Office to support, receive, review, process and issue oversized and overweight (OS/OW) permits. These services are presently being provided by a Consultant (Cambridge Systematics, Inc.) under Contract #C015691.

1.2 Project Background

1.2.1 Mission of New York State Department of Transportation

It is the mission of NYSDOT to ensure that our customers — those who live, work and travel in New York State — have a safe, efficient, balanced, and environmentally sound transportation system.

To attain its mission, the responsibilities, functions, and duties of NYSDOT include:

1. Coordinating and developing comprehensive transportation policy for the State; coordinating and assisting in the development and operation of transportation facilities and services for highways, railroads, mass transit systems, ports, waterways and aviation facilities; and formulating and keeping current a long-range, comprehensive statewide master plan for the balanced development of public and private commuter and general transportation facilities; and
2. Administering a public safety program for railroads and motor carriers engaged in intrastate commerce; directing state regulation of such carriers in matters of rates and service; and providing oversight in matters relative to the safe operation of bus lines, commuter railroads, and subway systems that are publicly subsidized through the Public Transportation Safety Board.

Today, the New York State transportation network includes:

- A state and local highway system that annually handles over 100 billion vehicle miles, encompassing over 110,000 highway miles, 17,000 highway bridges, and numerous other assets such as large culverts, retaining walls, tunnels, and sign structures.
- An extensive 5,000-mile rail network over which 42 million tons of equipment, raw materials, manufactured goods, and produce are shipped each year.
- 456 public and private aviation facilities through which more than 84 million people travel each year.
- Five major ports, which annually handle 50 million tons of freight.
- Over 130 public transit operators, serving more than 5.2 million passengers each day.
- 12 major public and private ports, which handle more than 110 million tons of freight annually.

1.2.2 Project Background

The transportation and movement of goods, including produce, merchandise, construction materials, equipment and modular homes, is highly dependent upon the trucking industry. In turn, New York State's economy benefits from these vital businesses. Frequently, the loads carried by these vehicles exceed the legal dimensions and weights of the State's highways. To ensure the safe transport of these moves, operators must obtain oversized and overweight (OS/OW) hauling permits issued by the Department.

Laws and regulations governing the issuance of these permits have become increasingly complex as they are engineered to meet the needs of the industry and the State's goals to protect public safety and highway infrastructure. To meet present and future needs, these laws and regulations must continue to change. Currently, the Department is addressing the development of an infrastructure friendly vehicle (IFV), a vehicle constructed in such a way to more evenly distribute the load, thereby reducing stress on State highways and bridges. Vehicles of model year 2006 and newer are subject to the latest laws and regulations, requirements and changing technologies, while older vehicles are allowed several years to adapt equipment to meet the same specifications.

The Central Permits Bureau (Bureau) has taken several steps over the past few years to streamline and improve the issuance of its permits. Current efforts have been bolstered by partial integration of an on-line automated permit application and tracking system. However, the Bureau continues to rely on state and consultant staff to complete the permitting process.

Key needs remain in developing an automated routing tool that includes long term and short term highway restrictions, and route selection based on move criteria to support auto-issuance. Also needed is the ability to automate structural analyses for bridges along a chosen route to ensure safety. Lastly, there is a need to provide a regulatory compliance management tool to assist in identification of violators, issuance of violation notices and tracking violator response.

Efforts are underway to acquire and modify a Commercial Off-the-Shelf (COTS) automated permitting system (HOOCS). However, this effort is not expected to be completed for several years. Therefore, it is necessary for the Department to continue to provide the Bureau with consultant staff augmentation.

Presently the Bureau's oversize and overweight permitting service production and management staff are being augmented for the Department under contract with Cambridge Systematics, Inc. The current contract expires on October 5, 2013.

To assist Consultants in the preparation of their proposals, your attention is drawn to **Attachment 7** which provides the history of current CPO's consultant-provided Management Team personnel, production staff and home office support staff expenses.

Offerors are advised that the information contained in **Attachment 8B** is not intended to limit or restrict any proposals but rather is provided as additional background information indicative of how the Central Permit Office is currently utilizing a consultant to manage and support providing permitting services.

2. PROJECT AND CONTRACT OBJECTIVES

2.1 Project Objectives

The selected Consultant will assist and work together with the Department's Central Permit Bureau (Bureau) management and staff to maintain, manage, support and improve the processing and issuance of permit certificates to vehicles that are of oversize dimensions and/or exceed maximum legal weight in compliance with New York State Vehicle and Traffic Law, New York State Rules, Regulation and Procedures, and Bureau's policies. Recognizing the variable nature and volume of work experienced in the Bureau, the extent of assistance will vary.

The Consultant will structure and utilize proposed personnel to perform a variety of functions to accomplish the goals and objectives of the Department's Permit Section. The Consultant will maintain the current guidelines, requirements and established business goals of the Permit's Section, with the understanding that they may change based on factors and shifting priorities intended to improve the program, including reviewing Special Hauling applications and issuing permits currently completed by each Regional Office. Flexibility regarding assigning the Consultant's production staff is important to the Department.

The specific project objectives of this contract are as follows:

2.1.1 ISSUE PERMITS:

1. To meet or exceed the current daily business production goals, expectations and standards for output of permit certificates of:
 - A. Reviewing approximately seventy Special Hauling (SH) applications per day.
 - B. Issuing routine SH permits within one hour of application receipt.
 - C. Issuing SH permits within two hours if a structural review is required.
 - D. Issuing routine Divisible Load Overweight permits within an average of one (1) day of receipt of application.
2. To collectively and collaboratively work with the Department's staff to review and process applications, and issue permit certificates, meeting or exceeding the daily expectations.
3. To effectively and efficiently provide the more than 300,000 permit certificates issued annually to vehicles that are of oversize dimensions and/or exceed maximum legal weight.

2.1.2 CUSTOMER SERVICE:

4. To consistently assist customers in understanding all requirements so that they may obtain permits in a timely manner.
5. To consistently and promptly provide customer assistance, offering expertise that will allow customers to submit applications with minimal chance for error or rejection.
6. To ensure, upon application and issuance of permit, customers clearly understand the resultant Department and legal action of non-compliance of the requirements and responsibilities associated with a permit.

7. To provide continual outreach to customers.

2.1.3 PERMITTING PROCESS:

8. To understand and continually be well-informed of all laws, codes, rules, regulations and policies as they pertain to the permitting of oversize/overweight vehicles.
9. To review and evaluate permitting procedures for continual improvement.

2.1.4 PERMIT PROCESS MANAGEMENT:

10. To provide program oversight, representation and leadership, both on-site and off-site, as required.

2.1.5 PERMITS PROCESS IMPROVEMENT:

11. To provide program oversight and representation with a focus on improving and simplifying the OS/OW permit policies and processes.
12. To review and evaluate current laws, rules and regulations, proposing changes to improve processes.
13. To provide representation and technical assistance on issues related to protecting the State's infrastructure and protecting the safety of the traveling public.
14. To perform analyses on data, processes and impacts of OS/OW vehicles.
15. To conduct research related to the impact of OS/OW vehicles, including Infrastructure Friendly Vehicles.
16. To prepare reports and presentations related to improving the permit program
17. To develop and review project plans and schedules.
18. To coordinate and review permit programs and IT systems of other states, Federation partners, New York City, research organizations and private companies.

2.1.6 SEAMLESS TRANSITION: If a new firm is selected to provide the requested oversize/overweight permitting staff augmentation services, then the Department wishes to have as near to a seamless transition as possible. NYSDOT may opt to extend its current CPO staff augmentation contract (with OSC permission) for the purposes of making key Management Team personnel available during a transition period.

2.2 Contract Objectives

Minimum RFP Responsiveness Requirements:

2.2.1 Complete Proposal: Any firm that does not provide all components of **Part I and Part II by the RFP deadline** may be determined to be non-responsive.

2.2.2 Procurement Lobbying Law compliance forms (see Attachment 3): Any firm deemed non-responsive shall have its proposal removed from further consideration (prior to the technical evaluation of proposals). It is recommended that each offeror also utilize the checklists provided

(RFP Section 4) to ensure all necessary documentation and attachments are provided as requested/indicated in this RFP for their Part I and Part II submissions.

2.2.3 Minority/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 and/or women-owned business enterprises (M/WBE) in this solicitation. The level of M/WBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of NYSDOT for each contract. 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>.

Since C031103 will be 100% State funded, NYSDOT has set a combined M/WBE participation contract goal of 20% for C031103. Only certified M/WBEs subconsultants are eligible for participatory credit in this procurement. The combined 20% M/WBE goal relates to the total contract cost (total budget). Meaningful participation by a certified MBE or WBE subconsultant will counts toward the combined 20% M/WBE participation goal. Participation by certified M/WBE prime consultant shall not count toward C031103's M/WBE goal. This is a subcontracting program only.

M/WBE services can either be for delegated tasks or for part of the services provided by the prime consultant. Meaningful participation requires a subconsultant **who is certified (at the time of proposal submission)** as an M/WBE in order to count toward the contract 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 M/WBE consultant
- Perform significant tasks which can be considered commercially marketable

Failure of a proposing firm to either meet/exceed C031103's combined 20% M/WBE goal or provide an acceptable good faith effort (for not meeting the goal) may lead in a proposal's dismissal. Questions regarding this aspect of this RFP are encouraged.

2.2.4 Term of the Agreement: The base term of the resultant agreement from this solicitation will be three (3) years, with two optional one-year term extensions. **Attachment 1**, contains the RFP's Draft Contract's Terms and Conditions for C031103.

There is uncertainty regarding the schedule for the new on-line, automated permitting system (HOOCS). Therefore, as the end of this contract term nears (with or without extensions), the Department will need to make a decision regarding whether or not to conduct a new solicitation to replace this contract. Implementation of HOOCS has the potential to lessen and/or eliminate the need for contractually-providing Oversize/Overweight Permitting Services. Should a replacement contract be deemed to be necessary and such has yet to be approved in accordance with State law, any contract awarded hereunder (under RFP for Contract C031103) may be additionally extended unilaterally by the State, upon notice to the Consultant, at the same terms and conditions, including all contract pricing, for a period of one to three months, circumstances considered, and with the agreement of the Consultant and the State's control agencies. However, any extension will terminate upon approval of a replacement contract (accounting for a period

for transitioning of contract staff previously provided). Contrary, should HOOCS become fully operational before the end of C031103's term, the Department may terminate C031103 early for convenience with no prejudice to the Consultant.

2.2.5 Conflict of Interest: On June 12, 2013, NYSDOT released a Request for Proposals for 'Highway Oversize/Overweight Credentialing System (HOOCS) Services for NYSDOT' under contract C030786. If a firm chooses to submit proposals for the C031103 and C030786 (or be part of a consultant teaming arrangement), then NYSDOT will examine if a potential or real conflict of interest might be created. Should NYSDOT determine that a potential or real conflict of interest might be created, then the selected consultant(s) shall be requested to address the potential or real conflict of interest situation and propose mitigation measures, subject to NYSDOT approval.

2.2.6 Level of Effort: In addition to the required management team, the Consultant shall provide a minimum of four (4) on-site full-time equivalent production staff, for the initial base three-year contract period. At the discretion of the Department, the Consultant staffing level may be increased up to seven by the addition of Agents at the level deemed appropriate by the Department. The anticipated level of effort includes other home office-based support staff for start up tasks, management team member and production staff personnel recruitment, and other on-site staff support functions. The Department reserves the right to hire additional CPO Consultant staff during C031103's entire duration.

2.2.7 Contract Type: The State anticipates the award of a contract with a fully-loaded specific hourly rate reimbursement method with reasonable reimbursement for allowable out of pocket expenses (present arrangement).

2.2.8 Consultant Arrangements: Only one (1) responsive and responsible Prime Consultant (or team of consultants wherein the contract will be with the Prime Consultant) will be retained through this RFP solicitation (ie, the same prime consultant shall be selected for both contracts). Subconsulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.

2.2.9 Other Contract Objectives:

- A. Selection of a qualified, responsive and responsible consultant via a greatly expedited solicitation schedule.
- B. Fair and equitable treatment of all firms expressing interest in and competing for contract award.
- C. Select a consultant who either meets/exceeds contract #C031103's combined 20% MWBE goal or provides the State with an acceptable good faith effort if the goal is not met.

2.2.10 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.

3. SCOPE OF SERVICES

3.1 Permitting Process

The Department's Permitting Process consists of the activities outlined below. It is expected that firms responding to this solicitation are capable of assuming these types of duties with a minimum amount of preparatory and assimilative transition. The environment in which these tasks must be performed in is fast-paced, with several steps involved in the process and customers expecting quick turn around. The actual steps involved to produce a permit include:

1. Application entry into the system (mail, email, in person, fax, on-line, appointment).
2. Clerical account maintenance, set-up and payment processing.
3. Technical review, resulting in approval, rejection, request for additional information.
4. Coordination with other offices as required (i.e., Structural review).
5. Clerical processing of technical decision, inputting data necessary to produce permit certificates, printing and preparing for mailing.

3.2 Oversize/Overweight Permitting Process Activities

At a minimum, the duties required to support the New York State Department of Transportation's Oversized and Overweight Permitting Process include:

1. Customer Assistance
 - Performing tasks and activities in response to inquiries for technical and non-technical information
 - Offering guidance in completing permit applications and all associated forms
 - Responding immediately to customer concerns or problems, including determining status of applications
 - Provide customer window service, technical application review and telephone customer service in accordance with established hours, currently 3:30 PM for walk-in customers and 5:00 PM for telephone calls
 - Ensuring technical compliance with administrative and programmatic requirements
 - Referring to appropriate internal staff or other concerned agencies (i.e., Thruway Authority, Bridge Authority, Department of Motor Vehicles)
 - Contacting applicant to obtain additional or information that may have been omitted
 - Supporting outreach activities through the preparation of presentation materials and presentations
2. Supervision
 - Overseeing the issuance of permits to assure conformance with all Federal and State laws and regulations, and Department policy and procedures

- Assisting in developing and updating Department policies, procedures, and directives relating to Special Hauling and/or Divisible Load Weight Permits
- Assisting customers in obtaining appropriate information on agency services, required application forms and supporting documentation
- Referring customers to the appropriate agencies to conduct transactions that may be required to obtain an oversize and/or overweight permit
- Providing guidance on filing the appropriate application form(s) to customers, as well as representatives of permit service companies.
- Establishing annual work plans
- Assigning work and projects to staff
- Reviewing and approving staff work for technical accuracy, completeness, compliance with procedures, guidelines and commonly accepted motor carrier safety and highway safety programs
- Providing technical oversight and assistance to program staff,
- Responding to customer issues and concerns
- Conducting trucking company account audits as required
- Coordinating and reviewing documentation relating to the sale or transfer of a business and/or permit, referring to executive management for determination if necessary
- Documenting changes to procedures related to the issuance of permits, and prepare draft correspondence to customers, Regional Permit Offices, and permit service companies
- Evaluating, reviewing, and issuing the more complex permit types
- Responding to verbal, written or e-mailed requests from the public
- Providing guidance and assistance to regional Permit Engineers/Permit Unit staff
- Establishing, maintaining, and updating various informational documents to assist customers in obtaining the proper type permit
- Representing the program(s) to executive management, customers, the trucking industry, partner agencies and/or programs, as well as other states
- Supervision of Permits Section staff required to handle customer phone inquiries, process incoming correspondence received via the U.S. Mail, process insurance documents received via mail and fax, document and log applications and process approved permit applications; prioritize work assignments for clerical staff as required to ensure efficient and effective work flow; and provide training and evaluation of new clerical staff as required
- Staff development, including provide training to a) Central Permit Office staff in the form of guidance on program laws and regulations, permit procedures, customer service, computer software applications, and individual career development, b) Regional Permit staff in the form of guidance on program laws and regulations, use of routing tools, implications of changes to and restrictions to specific regions, and permit procedures

3. Account Maintenance

- Prepare daily receipt log of all funds received for deposit (FIN 400) and the transmittal memoranda to forward the FIN 400 to the Revenue Unit

- Perform the cashier duties required for permit activities, and maintain a cash receipt book for validation with the Revenue Unit
- Monitor and manage the financial status of customer accounts
- Prepare letters to account owners to insure prompt payments if in arrears or if checks are returned for insufficient funds
- Debit carrier accounts for returned checks, late payments, and rejected applications, and place those accounts in arrears on hold when required
- Conducting financial reconciliations of customer accounts, making proper adjustments as warranted
- Assisting in evaluating paper files and database information necessary to conduct the more difficult technical audits of customer accounts
- Reviewing permit applications or account files for technical accuracy and completeness
- Maintaining permit files, oversight of the purging of old account documents, and preparing information for archive in accordance with Departmental record retention policies

4. Technical Liaison

Function as technical liaison to Graphic Arts, Mail Center, Office of Information Services, Office of Legal Services, and other Sections and Units within the Department as required, supporting the technical needs of the Permit Section

5. Development of Forms and Applications

Provide technical support with application forms through the following:

- Assisting in developing, updating and maintaining the forms
- Coordinating with appropriate supervisors on potential changes to forms
- Working with appropriate supervisors and/or Graphic Arts staff to implement changes
- Having the capability to provide the tools and knowledge necessary to convert forms to fillable PDF documents for customer use on the Department's website
- Providing, ordering and coordinating distribution of forms to Regional Permit staff, at customer service counters and on the DIRAD automated phone/faxback system

6. Documentation/Correspondence

- Develop recommendations and/or prepare informational material, notices and correspondence, providing customers with technical information related to legislation changes, Department regulations, policy, procedures and guidelines governing the permit programs to ensure compliance with administrative and programmatic requirements
- Prepare and edit correspondence in response to customer inquiries or concerns related to commercial vehicle size and/or weight issues
- Coordinate review of draft correspondence with the appropriate supervisor signature

7. Project Management

- Evaluate current laws, rules, regulations and procedures to identify and support legislative and regulatory changes that will improve the effectiveness of the permits program

- Serve as a program representative on the Re-Engineering team
- Perform research and analysis related to the impacts of infrastructure friendly vehicles
- Assess automated systems used by other states or companies for applicability to the Department's and Federation's permitting processes
- Develop proposals to coordinate permitting processes of the Federation partners (NYSDOT, NYS Thruway Authority and NYS Bridge Authority) and New York City
- Develop and/or review project plans and schedules for Re-Engineering and IT projects that will improve the permits program
- Provide the technical support required to maintain and update the automated database(s) that record customer account information and activity
- Develop tabulations of data for technical analysis
- Identify and correct data errors and problems
- Monitor and evaluate technical data for deficiencies
- Develop and implement methods of data analysis as required
- Prepare, review, and analyze multiple and complex production reports
- Prepare reports, documents and presentations to describe the technical analyses; and draft recommendations or action plans based upon the analyses
- Develop process recommendations or conclusions that will provide for increased efficiencies

8. Tech Support – Divisible Load

Support the Divisible Load aspect of the Permit Section through the following:

- Methodical evaluation, review and issuance of permits for customers carrying overweight loads on State highways
- Determining appropriate permit fees and collecting these fees
- Responding to customer requests for clarification of Federal or State laws and regulations, Department policy and procedures, or technical requirements related to the issuance of permits
- Reviewing work for accuracy, completeness, compliance with procedures, guidelines and generally accepted traffic engineering and highway safety principles
- Performing calculations of gross axle weights and gross vehicle weights using the Federal Gross Weight Formula
- Managing the more advanced Divisible Load Overweight permit processes, including:
 - Overseeing the issuance of permits to assure conformance with all Federal and State laws and regulations, and Department policy and procedures
 - Assisting, as required, in developing and updating Department policies, procedures, and directives relating to Divisible Load Overweight Permits
 - Assisting the public in obtaining appropriate information on all agency services
 - Informing customers of the necessary statements or documents to support their applications, and referring customers to the appropriate agencies to conduct additional transactions
 - Providing guidance to customers and/or representatives of permit service companies on properly completing the application process

- Providing technical oversight and assistance to program staff, and responding to more complex customer issues and concerns
- Providing assistance, as required, in conducting customer company account audits
- Coordinating and reviewing with the Department's Legal Affairs Office statements or supporting documents regarding the sale or transfer of a business that relate to a permit application
- Evaluating, reviewing and issuing the more complex Divisible Load Overweight permits
- Responding to verbal or written requests from the public or other transportation partners that subordinate staff may not be able to handle
- Reviewing subordinate work for accuracy, completeness, compliance with procedures, guidelines and commonly accepted traffic engineering and highway safety principles

9. Tech Support – Special Hauling

Support the Special Hauling aspect of the Permit Section through the following:

- Methodical evaluation, review and issuance of permits for movement of non-divisible loads on State roads, assuring that infrastructure of approved routes are capable of meeting hauling requirements with the lowest possible damage and minimal risk to the motoring public
- Determining appropriate fees and bonding requirements necessary for permits, and collection of these fees
- Responding to customer requests for clarification of Federal or State laws and regulations, Department policy and procedures, or technical requirements related to the issuance of permits
- Establishing, maintaining, and updating a computerized inventory of road and bridge restriction information and ensuring that this information is posted on the Department's website
- Evaluating and interpreting maps and computer mapping programs
- Using computer mapping programs to prepare maps and/or graphics to serve as attachments for permits with limitations
- Reviewing work for accuracy, completeness, compliance with procedures, guidelines and generally accepted traffic engineering and highway safety principles
- Performing calculations of gross axle weights and gross vehicle weights using the Federal Gross Weight Formula
- Processing technical data entry of crane and big truck file information
- Managing the more advanced Special Hauling permit processes, including:
 - Evaluating, reviewing, and issuing the more complex permits for superloads, cranes and emergencies
 - Providing guidance and assistance to regional Permit Engineers/Permit Unit staff with questions on Federal or State laws and regulations, Department policy and procedures, administrative questions, bonding and insurance requirements, permit issuance questions, and technical requirements related to the issuance of Special Hauling permits

- Reviewing subordinate work for accuracy, completeness, compliance with procedures, guidelines and commonly accepted traffic engineering and highway safety principles
- Coordinating with Regions, performing the review and issuance of the more complex annual and monthly permits, including calculations of gross axle weights and gross vehicle weights using the Federal Gross Weight Formula

3.3 Staff Roles

As stated above, to ensure an effective and efficient permit process, at a minimum the selected Consultant is expected to propose personnel capable of performing the following activities:

1. Customer Assistance
2. Supervision
3. Account Maintenance
4. Technical Liaison
5. Development of Forms and Applications
6. Documentation/Correspondence
7. Project Management
8. Technical Support – Divisible Load
9. Technical Support – Special Hauling

3.4 Federal and State Laws, Rules and Regulations

It is expected that the staff proposed by the Consultant will have at least some working familiarity with the following Federal and State laws, rules and regulations, which are applicable to NYSDOT's Permitting Process:

1. The Federal Highway Administration (FHWA) is responsible for certifying state compliance with Federal standards. Information on Federal standards and guidelines may be obtained by visiting: <http://www.fhwa.dot.gov/resources/legsregs/>
2. New York State Vehicle and Traffic Law, Section 385. Subpart 15 of Section 385 is the controlling statute that establishes legal dimensions and weights of vehicle. The V&T laws may be reviewed at: <https://www.dot.ny.gov/nypermits/repository/vlt-section-385.html>
3. New York State Codes, Rules and Regulations, Subpart 154-1. The rules arising out of a mandate to regulate the use of highways and bridges on the State highway system by vehicles that exceed height, length, width or weight of those statutorily allowed. These rules and regulations may be reviewed at: <https://www.dot.ny.gov/nypermits/repository/nycrr154-1.pdf>
4. New York State Codes, Rules and Regulations, Subpart 154-2. The rules arising out of a mandate to regulate the use of highways and bridges on the State highway system (outside of New York City), by vehicles carrying weights in excess of that statutorily allowed. These rules and regulations may be reviewed at: <https://www.dot.ny.gov/nypermits/repository/nycrr154-2.pdf>

4. PROPOSAL FORMAT AND CONTENT REQUIREMENTS

4.1 General Procedures

Consultants must submit one complete proposal in response to this RFP, using the format and forms provided in this section and the relevant attachments, responding to all scope of service requirements and describing its approach and detailed scope of services to satisfying each requirement. In addition to **Attachment 2's** certifications, submission of the consultant's proposal shall be construed by NYSDOT as the consultant's acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP.

For the purposes of evaluation, each proposal must be submitted in two separate parts. A responsive proposal shall consist of a complete Part I Technical and Management Proposal, and a complete Part II Cost and Contract Proposal. Part I shall consist exclusively of the Technical and Management Proposal. Part II is the Cost Proposal, along with other administrative items. Each part must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently. Part I shall be evaluated strictly on the basis of its technical merits and Part II shall be evaluated, in part, on the basis of competitive proposed costs. Cost information is **not** to be included in the Part I submittal, and Technical and Management information is **not** to be included in Part II submittal.

NYSDOT may deem a proposal non-responsive and remove that consultant and its proposal from further consideration for failure to provide the information required or for failure to submit a proposal in the required format. Consultants must deliver proposals to the NYSDOT Contract Management's office no later than 2:00 PM ET on the specified proposal due date. Consultants mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposal. **NYSDOT will not accept faxed or e-mailed proposals. The consultant's proposal must meet the response requirements listed in this Section.**

Consultants must submit complete Part I and Part II in separate, sealed labeled packages. A Table of Contents shall be presented for both Part I and Part II. Part I and Part II submissions must be bound in separate 3-ring binders. Sections with Part I and Part II shall be divided by labeled tabs. Do not submit proposals bound any other way (e.g., stapled, spiral- or cloth-bound). Clearly identify any attachment with the consultant's and the RFP's name on a cover sheet that is firmly attached to the document. Clearly identify any unattached documents with the consultant's and the RFP's name on each page of the document.

In order to promote uniformity of preparation and to facilitate review, proposals should be printed on standard 8½ by 11-inch white paper and be organized in accordance with the format set forth in this RFP. **Proposal text should be 11 point font or larger,** except where necessitated for readability of tables, figures, schedules, or special graphics. 12 point fonts are preferred. Please avoid printing schedules using fonts smaller than 8 point. Illustrations that support the text must be simple and direct and be either sized to fit on 8 ½ by 11-inch paper or printed on 11 inch by 17 inch paper as long as the pages are folded to the 8 ½ by 11-inch size. Illustrations and photographs must be reproducible in black and white without obscuring their distinctive information. Double sided printing is allowed. Color printing is allowed.

NOTE: NYSDOT may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers

Law, provided that NYSDOT agrees beforehand to shield the release of proposed information. If an offeror believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Labeling all pages as “confidential and proprietary” is unacceptable – such proposals will not be accepted unless the proposer relabels their proposal to only identify what specific material to shield from public scrutiny. All offerors shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal. NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm.

Your proposal must follow the format listed below.

4.2 Part I: Technical and Management Proposal Submittal

The Part I proposal response requirements are listed below. Please be sure that these instructions are followed to ensure that your proposal is considered responsive to be eligible for contract award.

Part I - Technical and Management Submittal Checklist	
<input type="checkbox"/>	Five (5) printed and bound hard copies of Part I plus a ‘soft’ copy of Part I on CD/DVD in MS Word compatible format.
<input type="checkbox"/>	Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the words “CPO Technical Proposal C031103”
<input type="checkbox"/>	Name of person(s) who prepared proposal
<input type="checkbox"/>	Contact person(s), email addresses and telephone numbers
<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"/>	Technical and management approach for the delivery of services
<input type="checkbox"/>	Detailed scope of services
<input type="checkbox"/>	Complete and submit Attachment 6 Company Experience and References
<input type="checkbox"/>	Complete and submit Attachment 7 Management Staffing Plan, Resumes, Project Experience and References
<input type="checkbox"/>	Submit an M/WBE Management Plan

The consultant must submit five (5) paper copies of Part I, and one soft copy on a CD/DVD (in Microsoft Office compatible format) — each clearly identified on the cover or label with the consultant’s name and the words: “Part I CPO Proposal C031103” Proposals must be securely sealed and clearly labeled. Any outside packaging containing Part I copies must be clearly marked with the words “Part I CPO Technical Proposal C031103”.

Note: Cost information is **not** to be included in the Part I submittal, and Technical and Management information is **not** to be included in Part II submittal.

NYSDOT reserves the right to make clarifications to the scope of services to be performed under this Agreement, via RFP **Attachment 1**, Exhibit A, Scope of Service Clarifications, during contract negotiations with the selected Consultant.

4.2.1 Cover Letter

The consultant must submit a signed Cover Letter on official business letterhead. The Cover Letter must accompany each volume and include the following:

1. The signature of an official authorized to bind the consultant to all of its provisions.
2. A statement that, if awarded the contract, the consultant will comply with all the requirements set forth in the RFP.
3. A statement that the offered named Management Team personnel will be provided once NYSDOT issues a notice to proceed. The NYSDOT does not allow unapproved substitutes.
4. Any claims of confidential and proprietary information should also be identified and addressed in this section. NYSDOT may protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law, provided that NYSDOT agrees beforehand to shield the release of proposed information. If a proposer believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. **Labeling all pages as “confidential” or “proprietary” is unacceptable – such proposals will not be accepted** unless the proposer re-labels their proposal to only identify what specific material to shield from public scrutiny. All proposers shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal. NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm. The State will only consider those items confidential and proprietary which it agrees are confidential and proprietary based on the proof provided by the consultant and responses to the State’s questions regarding any such claims.
5. The following information regarding the consultant’s official representative for its proposal:
 - a. Name of consultant’s official representative
 - b. Title
 - c. Name of company
 - d. Address
 - e. Telephone number
 - f. FAX number
 - g. E-mail address of the consultant’s representative(If there are multiple offices of the consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.)
6. The full, legal names of all Subconsultants involved in the consultant’s response.

7. A brief description of how the combined 20% M/WBE goal for contract #C031103 shall be managed and met over the life of the contract.

4.2.2 Table of Contents

The Table of Contents should identify each major section of the consultant's proposal, along with its initial-page number. Any offered attachments or addendums shall be cited here.

4.2.3 Executive Summary

Provide a brief and concise description of the proposed approach and work effort. Feel free to concisely discuss emerging trends and relevant issues.

4.2.4 Narrative Description

Briefly outline the substance of your proposal. Highlight the strengths and capabilities of your firm and how they can be used to assist NYSDOT to produce oversize/overweight permits and support the process by which such permits are produced. Provide a discussion on the important issues involved with delivering the requested services. Include enough substantive discussion to demonstrate an understanding of NYSDOT's project objectives and familiarity with applicable State and Federal laws, rules, practices, procedural requirements, risks, etc. Highlight how the M/WBE goal will be met.

4.2.5 Organization and Staffing

Provide a one-page Organizational Chart for the project, showing the names of the proposed Management Team, all on-site Production Staff, and all off-site, home based Support Staff, working on this effort, as well as how the proposed Management Team will interact with NYSDOT management and staff. Your Production Staff job titles should correspond to those titles listed in **Attachment A8** or **Attachment 11**. Include resumes for all Management Team personnel, production staff, and support staff.

The Consultant shall designate a qualified Project Manager for this Contract. This person shall serve as the primary contact with the Consultant Manager designated from the Bureau. The Consultant's Project Manager is responsible for the performance of all Management Team personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as all contractual matters. The Consultant's Project Manager shall make all required submittals and receive all transmittals from the Department.

While the Department is primarily interested in the experience of proposed Management Team while maintaining essential OS/OW permitting services, it desires proposals from firms who can verifiably demonstrate their prior or on-going experience, expertise and background in the area of commercial vehicle Oversize and Overweight highway use permitting. While experience within New York State is specifically desirable, experience within other states or permitting jurisdictions within the United States with comparable programs in general is acceptable. Provide a list of prior or current projects which are relevant to this effort, and explain how these are applicable to this Request. Include reference or contact information for verification purposes. NYSDOT reserves the right to request information from any source so named.

Provide a letter of confirmation from individuals that are being proposed for Management Team positions where that person is not an employee of the offering firm at the time the proposals are submitted confirming that such persons shall be available when the resulting contract is

approved. Firms (primes and subconsultants) that propose Key Staff who are not current employee(s) of the offering firm (prime or subconsultant) at the time proposals are due for this RFP, must obtain written confirmation from each of those Key Staff persons that they will accept employment with the proposing firm should the offering team be designated for contract award. It must further state that they will accept the reimbursement rate provided in the submitted Cost Proposal. These confirmation documents are to be submitted as an attachment to the Technical Proposal. Firms are encouraged to consider whether any staff they are intending to propose are subject to any restrictions from accepting employment with that firm (i.e. non-competition clauses). As a point of clarification, at consultant designation and at the start of the contract, NYSDOT may contact the proposing Prime Consultant/firm to produce the confirmation documentation.

4.2.6 Experience

The qualifications and prior experience of the selected Consultant and its proposed Management Team personnel are of great importance to NYSDOT. Direct, prior and relevant experience in the provision of oversize/overweight permitting is highly desirable. NYSDOT requires substantial relevant experience and expertise, and consultants must demonstrate that experience through past and current project attestations and must provide reachable, verifiable references. Experience information should be provided for all proposed firm(s) and for all proposed Management Team staff.

Provide a list of current and prior references which demonstrate your firm's relevant experience (**Attachment 7**) in the provision of oversize/overweight permitting. Indicate Management Team members and any other proposed Management Team personnel (including subconsultants) who are assigned to, or have worked on, such efforts. Also indicate the extent to which management personnel to be assigned to this project have previously worked as a team. Include names, titles, mailing addresses, e-mail addresses, and telephone numbers of client references.

If subcontracting is required, it is critical that the Consultant demonstrate experience with such an operation, again of comparable scale and scope, and the consultant must demonstrate a sound management plan to ensure subconsultant's compliance with all contract provisions. The consultant is expected to provide reachable references to verify all offered experience. NYSDOT reserves the right to request information from any source so named, and further reserves the right to contact additional references (including appropriate references not specifically named by consultants) to completely verify all offered experience as well as to request additional references. Failure to provide reachable and responsive references will lead to the downgrading of an consultant's experience score. NYSDOT reserves the right to request information from any source so named. NYSDOT also reserves the right to contact additional references should those provided fail to adequately confirm a firm's offered experience.

Provide the following information about the experience of proposed Management Team personnel:

Project Manager The Consultant shall indicate the skills and experience of its proposed Project Manager assigned to handle Program Management, Project Management, Production Supervision, Contract Administration and Training Coordination functions and responsibilities of Management Team personnel by name and title by completing the first portion of **Attachment 7A Staffing Plan**. Propose one position; no more than one position can be proposed. Minimum qualifications include: three (3) years demonstrated experience as a project manager, with one

(1) year being for a Federal, State or local municipal agency; one (1) year experience as an information technology project manager; associates degree in a technical field.

Unit Supervisor (optional): The Consultant shall indicate the skills and experience of its proposed Unit Supervisor assigned to assist with Program Management and Project Management, as well as handle Production Supervision, Contract Administration and Training Coordination functions and responsibilities of Production Personnel by completing the first portion of **Attachment 7A** Staffing Plan (zero positions minimally required; no more than two positions maximally can be proposed). Minimum qualifications include: two (2) years demonstrated experience in a managerial supervisory fast-paced, high pressure position; two (2) years demonstrated analytical experience in a full-time position or an equivalent degree that would demonstrate analytical capabilities; two (2) years demonstrated customer service experience; demonstrated experience with Federal and State laws, rules and regulations.

Production Personnel: By completing **Attachment 7A**, the Consultant shall indicate that the minimally-required skills and experience of the proposed production staff assigned to fill and perform the duties of the following positions are being proposed.

All proposed Production Personnel shall meet or exceed the required minimum performance specifications (**Attachment 11**).

The following minimum staffing is required for proposed on-site Production Personnel staff, and all home office-based support staff:

Divisible Load Program Aide 3 (two positions minimally required; no more than two positions can be proposed).

Divisible Load Program Aide 2 (one position minimally required; no more than two positions maximally can be proposed).

Divisible Load Program Aide 1 (zero positions minimally required; no more than three positions maximally can be proposed).

Special Hauling Program Aide 3 (zero positions minimally required; no more than one position maximally can be proposed).

Special Hauling Program Aide 2 (zero positions minimally required; up to two positions maximally can be proposed).

Special Hauling Program Aide 1 (one position minimally required; up to three positions maximally can be proposed).

Clerk 1 ¹ (zero positions minimally required; no more than two positions maximally can be proposed).

Home Office-Based Support Staff Indicate the names, titles and applicable experiences for all support staff located at the firm(s) home office used to support management team members and production staff assigned to work at NYSDOT's Central Permit office (training, development, recruitment, etc.), or perform other duties associated with the conduct of the contract. Support staff functions may include: off-site training and education of production staff to perform the tasks and services to meet the objectives required to issue permits to meet or exceed current business production goals, expectations and standards of the Central Permit Office (training coordination), the expeditious and effective filling of vacancies (recruiting), various contract administrative work, etc.

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

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

NYSDOT reserves the right to request information from any source so named, as well as seek additional references should ones offered fail to verify attested experience. Previous, comparable work experience with NYSDOT is eligible. NYSDOT reserves the right to hire additional Consultant CPO staff during the entire duration of C031103.

4.2.7 Approach and Scope of Services

APPROACH:

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

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

Describe the approach for issues related to circumstances when the performance of production staff is less than expected or required. Present a production staff performance assurance plan.

The Department is interested in your approach in maintaining flexibility to meet Special Hauling Unit and/or Divisible Load Unit staffing needs (cross-training).

NOTE: Approach should not propose any tasks or work not identified in the RFP's Scope of Services. If a firm chooses to offer an approach which proposed tasks or work not specifically identified in the RFP's Scope of Services, only those RFP Scope of Service deviations which meet the RFP's project and contract objectives shall be considered. Proposed work which does not support all of the RFP's objectives shall not be considered at all.

Describe your approach for performing the work, providing the requested services and accomplishing program objectives as identified in this RFP. Describe the level of interaction contemplated between the Consultant's Management Team and NYSDOT management, as well as between the Consultant's production staff and NYSDOT staff. Describe the approach in terms of performing all aspects of NYSDOT's Oversize and Overweight permitting process and how that approach relates to assisting the Department in managing its efforts to improve permitting without impairing the delivery of OS/OW permitting services.

Discuss your plan for maintaining essential permitting services, including an initial transition plan for phasing project personnel into the effort, as well as maintaining supervisory and production staff throughout the term of the contract and filling any vacancy that may occur. It is expected that NYSDOT will have a role in approving any new or replacement of management

team and production staff personnel. In addition to the RFP/s M/WBE participation requirements, this RFP presents an opportunity to train new female and minority hires and train them via **Attachment 1**, Draft Contract's Appendix C's Training Special Provisions (as vacancies occur). These provisions relate to training and upgrading the proficiency of minorities and women, and require the selected Consultant to agree to these special provisions for a period of time, the length of which shall be negotiated (which can occur after contract award).

SCOPE OF SERVICES:

Provide a detailed Scope of Services which describes by task what will be done, and your proposed deployment of management, production and support staff to accomplish program tasks. You must base your Scope of Services on the tasks listed in the RFP. Fully explain and justify your approach however, if significant departures from the general scope are recommended.

In your proposed Scope of Services, you may suggest enhancements or innovations to tasks which could improve the ability of the program to meet the Department's OS/OW permitting service objectives. NYSDOT wants to allow maximum flexibility for the ideas, initiative and creativity of the proposer. Enhancements to tasks and suggestions to improve efficiencies are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of the program.

4.3 Part II – Cost and Contract Proposal Submittal

The Part II proposal response requirements are listed below. Please be sure that these instructions are followed to ensure that your proposal is considered responsive to be eligible for contract award:

Part II - Cost and Contract Submittal Checklist	
<input type="checkbox"/>	Three (3) Printed and bound hard copies of Part II plus Part II on CD/DVD, in MS Excel compatible format
<input type="checkbox"/>	Securely sealed and clearly labeled with the words "CPO Cost Proposal C031103"
<input type="checkbox"/>	Required Cost information - complete and submit Attachment 8A Cost Proposal
<input type="checkbox"/>	Name, title, address, email, and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation
<input type="checkbox"/>	Complete and submit Attachment 2, (sign both Sections II and III) for Contract #C031121)
<input type="checkbox"/>	<p>Complete and submit the Attachment 3 Procurement Lobbying Law Compliance Forms (Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) <u>and</u> Offeror Disclosure of Prior Non-Responsibility Determinations).</p> <ul style="list-style-type: none"> • These two forms are required with a firm's RFP Response. • Enter contract numbers on each form • These forms are also available at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions • <u>Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award</u>
<input type="checkbox"/>	Complete and submit Attachment 9 , M/WBE Participation Information Form
<input type="checkbox"/>	Complete and submit (if applicable) Attachment 10 , M/WBE Subconsultant Participation Solicitation Log AND Letter of Explanation of Non or Partial M/WBE Goal Attainment
<input type="checkbox"/>	Complete and submit all future RFP Modification Acknowledgement Forms as instructed

Part II of the proposal consists of two sections: (1) a Cost Section, which sets forth the proposed labor rates for performing the work in the scope of services under contract #C031103 (Ops) and which also sets forth the proposed fixed management fee for services provided under contract #C031121 (Capital); and (2) the Contract Section, which provides the required State certification and RFP administrative forms. At least one copy must contain original signatures. Cost information is **not** to be included in the Part I submittal, and Technical and Management information is **not** to be included in Part II submittal.

The consultant must submit three (3) paper copies of Part II, and one soft copy on a CD/DVD (in Microsoft Office 2007 compatible format) — each clearly identified on the cover or label with the consultant’s name and the words “CPO Cost Proposal C031103.” All copies of Part II must be packaged separately from Part I. Proposals shall be securely sealed and clearly labeled. Any outside packaging containing Part II copies must be clearly marked with the words “CPO Cost Proposal C031103”.

4.3.1 Cost Section

Complete and submit **Attachment 8A**: present your proposed fully loaded labor rates by year and by person.

4.3.1.1 Proposed Specific Hourly Rate Schedule (C031103)

Present your proposed Salary Schedule, which will list not-too-exceed rates (upper range limits, or not too exceed rates) for each of the RFP’s job titles. Present one table for all proposed staff (prime consultant and all subconsultants). Present by title fully loaded rates by contract year; these rates are broken-down into base salary, overhead additive and fixed labor fee additive. NYSDOT’s overtime policy (time and a half) and no work on holidays payment policies are in effect, which are not subject to change. Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm’s proposed overhead. A firm’s labor fee may not exceed 10 percent. If additional titles are used but are not assigned, they should be listed. All responding firm must use the Specific Hourly Rate Schedule (**Attachment 8A**).

If the contract is extended beyond its base term, out-year rates may be adjusted 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 percent, subject to current market conditions.

The Direct Non-Salary Cost expenses listed in **Attachment 8B** shall be competitively proposed under C031103 (the SFY 2013-14 values presented for informational purposes are contained in **Attachment 8B**). Estimates of direct non-salary expenses shall be added to the selected consultant’s proposal to generate the total budget for contract #C031103. Any additional DNSC items shall be negotiated with and agreed-to with the selected Contractor during contract negotiations. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available via <http://www.gsa.gov/>.

Payment for services provided under the project shall be by fully loaded, specific hourly rates reimbursement and compensation for actual, approved direct non-salary costs incurred in the performance of the scope of services. 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 voucher. Requests for progress and final payments shall be made by the designated Consultant on standard NYS vouchers.

4.3.1.2 Contract Section

The Consultant shall specifically state its acceptance of all Terms and Conditions of draft Contract C031103 contained in **Attachment 1** of this Request for Proposals by completing and submitting the Consultant Information and Certifications Form (**Attachment 2**), to indicate a firm's **acceptance of all** of the terms and conditions contained in the RFP's Draft Contract. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and will lead to the proposal being deemed non-responsive and subsequently dismissed.

4.3.2 M/WBE Participation

Interested proposers should verify their attainment of contract C031103's M/WBE subconsultant participation goal by completing and submitting completed **Attachment 9 M/WBE Participation Information** for Contract #C031103. Provide the full legal names of all certified M/WBE consultants (prime and/or subconsultant). The combined 20% M/WBE goal can be met by either subcontracting opportunities, by delegating a portion of the prime consultant's work, or a combination of these.

To count towards the 20% combined M/WBE goal set for contract #C031103, a firm proposed for M/WBE participation must be currently certified per the NYS EDC's on-line M/WBE directory (<http://www.esd.ny.gov/MWBE.html>). If the proposal does not meet the 20% percent combined M/WBE participation goal for Contract #C031103, the firm must provide evidence of a good faith effort by completing **Attachment 10 M/WBE Subconsultant Participation Solicitation Log** (where the M/WBE goal is not met). **Additionally, if the firm does not meet the specified contract goal, the firm must include in its submission a M/WBE Goal Attainment Explanation Letter** explaining why the firm was unable to meet the M/WBE goal (in full or if partially), which serves to substantiate the firm's good faith efforts. The letter should include sufficient justification as to why the goal was not met or was only met partially and should at a minimum address the following factors:

1. the potential firm's method of accomplishing the work,
2. the subcontracting opportunities associated with the proposed approach and scope of services,
3. and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

Additionally, prime consultants certified as a M/WBE who propose are not relieved from seeking participation of certified M/WBEs for subcontractable services in this solicitation. In these situations, it is expected that unless M/WBE outreach efforts by the prime result in proposed M/WBE subconsultants, that the prime consultant provide acceptable evidence of a good faith effort by completing **Attachment 10**.

The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section 5 for the procedure NYSDOT will follow in evaluating a firm's proposed M/WBE participation.

Consultants are encouraged to ask questions regarding this aspect of the solicitation.

4.4 Other Proposal Considerations

4.4.1 Document Preparation

In order to promote uniformity of preparation and to facilitate review, Proposals must adhere to the following criteria:

- Proposals must be printed on standard 8½ by 11-inch white paper. Pages can be printed double-sided.
- Proposals must be organized in accordance with the format set forth in the RFP document.
- Proposals must be self-contained and should not reference web-links. Should weblinks be unavoidable, you must identify what specific information is being reference via the link and must detail the location/path instructions required to locate this specific information. Non-specific link information shall not be considered.
- Proposals should strive to consistently use 12 point font size. Smaller font sizes are allowed in footnotes or table headers but not the text itself.
- Illustrations that support the text must be simple and direct and be either sized to fit on 8 ½ by 11-inch paper or printed on 11 inch by 17 inch paper as long as the pages are folded to the 8 ½ by 11-inch size, and fold out from the non-bound edge. Illustrations must be reproducible in black and white without obscuring their distinctive information; photographs must be black and white.
- Proposals that make extensive use of color photographs or illustrations, or that include separate brochures and overly elaborate embellishments, are discouraged. NYSDOT may need to reproduce proposals for evaluation purposes and the benefit of color would be lost.
- A request for protecting confidential information must be on case-by-case basis (ie, specific information contained in your proposal). Labeling an entire proposal or sections ‘Confidential’ and/or ‘copyright protected’ is not allowed and may lead to early proposal dismissal.

Consultants must submit Part I (including the Cover Letter) and Part II in separate binders and in separate, sealed packages. Consultants must deliver hardcopy proposals to the NYS Department of Transportation’s Contract Management Bureau no later than 2:00 PM ET on the specified RFP proposal due date. Consultants mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals. NYSDOT will not accept faxed or e-mailed complete proposals. NYSDOT may automatically disqualify any offering that is not in compliance with the submission criteria.

4.4.2 Consultant Identification Number and SFS Vendor ID Number

Each consultant must reference its Consultant Identification Number (CIN) in its Part II proposal. If an consultant does not have a CIN and is selected for contract award, it will be required to obtain one through the following NYSDOT web site prior to negotiation of the contract:

<https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions>

Each consultant must reference its SFS Vendor Identification Number in its Part II proposal. If an consultant does not have an SFS number and is selected for contract award, it will be required to obtain one through NYSDOT sponsorship.

5. PROPOSAL EVALUATION PROCESS

5.1 Overview of the Evaluation of Proposals

Proposals received on or before the RFP's published proposal due date shall be opened, logged-in, and examined for completeness and adherence to the RFP's response requirements. Logged in proposals shall be certified as being received. Proposals received late shall not be opened and shall be returned to sender.

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

Proposals passing pre-screening shall then be further evaluated by NYSDOT using a Best Value Method evaluation process based on separate technical and cost evaluation criteria described below. Technical considerations are of greater importance than cost considerations; however, the competitiveness of proposed costs is a significant factor in NYSDOT's evaluation of proposals.

Consistent with the level of peculiarity set forth in this RFP, proposal evaluation process rules, scales, definitions and instruments shall be internally defined and approved by NYSDOT prior to the receipt of proposals.

NYSDOT shall establish a Technical Evaluation Committee (TEC), which will evaluate the Part I Technical and Management proposal and the Technical Presentation. Cost proposals shall be evaluated by NYSDOT Contract Management. Relevant NYSDOT subject matter experts (technical, program, and management) will staff the Technical Evaluation Committee. Technical and cost proposals will be evaluated separately. Issues which cross technical and cost separation lines or which may arise during these evaluations will be handled by NYSDOT Contract Management, with assistance from NYSDOT Executive Management as required. Technical Evaluation Committee members will be given technical proposals with instructions and scoring instruments. Committee members, working by them selves, shall compare each proposal against the RFP, measuring the degree of responsiveness to the RFP's specifications and requirements. Committee members will document their findings, and assign a numerical score for each of the RFP's evaluation criteria. Evaluators may identify clarification questions along the way.

Once independent evaluation of proposals is complete, the Committee shall meet as a group to collectively discuss their findings with possible score changes. Reason(s) for score changes shall be documented. Offered experience may be verified by contacting references provided by proposers. Evaluators may revise findings and scores based on consideration of reference checks.

Contract Management shall evaluate cost proposals via the method specified below. Firms may be requested in writing to clarify and/or confirm aspects of their cost proposal. Firms are

required to respond to these requests in writing. Any changes or adjustments to a firm's cost proposal shall be brought to that firm's attention, in writing.

Proposers responding to this RFP are not allowed to change their technical proposal after proposal submission (questions are encouraged prior to proposal submission). However, proposers may be requested to clarify issues or to provide additional insights into their proposal through written clarifications and/or technical interviews. If written clarifications are required to complete the technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this additional information. Requiring technical interviews during this proposal evaluation process is contingent upon more than one firm (the incumbent) submitting a valid proposal in response to this RFP. Should only the incumbent firm propose, then technical interviews shall not be required/shall not be held. Should there be interviews, scores after initial technical proposal review shall remain open and are subject to change as a result of completing technical interviews; initial written proposal scores may be changed due to further clarification and insights gained from shortlisted firms which go through technical interviews. After initial technical proposal evaluation, initial cost scores shall be combined to generate an initial best value score, to determine which proposals are mathematically susceptible to contract award/eligible to be invited to attend technical interviews. Technical scores may be adjusted via consideration of Best and Final offers. Final written proposal scores will be generated at the conclusion of the possible technical interviews (plus optional Best and Final Offer requests) or after completion of written proposal evaluation (with no interviews). For those firms which do not make the initial best value shortlist, their final written technical scores will be produced after group discussion and final clarifications have concluded.

Technical interviews may be required to complete the technical evaluation of proposals. Should interviews be required, then there are up to 50 points available for the initial evaluation of written technical proposals and there are up to 10 points available for the in-person technical interview. Cost proposal evaluation results (up to 40 points) shall be considered with initial raw technical score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined short-list of firms (determined to be mathematically susceptible for contract award). NYSDOT will short-list the field of proposals, identifying those proposals subject to contract award (any proposal within 10 points of the top initial best value ranked proposal plus any 'cluster' of proposal surrounding the cut-off line). NYSDOT will publish the short list of firms on its website under this solicitation. Technical interviews will be held at NYSDOT's offices at a date and time to be determined.

Conversely, should technical interviews not be required to complete the technical evaluation of proposals, then there are up to 60 points available for the initial evaluation of written technical proposals, and there are up to 40 points available for the evaluation of cost proposals, with no shortlisting of the field.

NYSDOT reserves the right to ask clarifying questions regarding each cost proposal (Part II) and M/WBE participation as well. Furthermore, NYSDOT reserves the right to request best and final offers from firms that are determined to be susceptible for contract award. NYSDOT also reserves the right to re-score the remaining technical and cost proposals should a firm either withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring. The appropriate NYSDOT executive will approve the results of the proposal evaluation process and designate the selected consultant.

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

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

A team of NYSDOT subject matter experts, lead by NYSDOT’s Project Manager for contract #C031103, will negotiate the resulting contract with the selected consultant, with NYSDOT Contract Management and Legal facilitation. NYSDOT, the Attorney General, and the State Comptroller must approve any final contract

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation will be posted on the NYSDOT Web site (<https://www.dot.ny.gov/business> select ‘Consulting Service Opportunities’). All firms shall be notified in writing regarding the results from the solicitation. All non-selected firms will be offered an opportunity to hold a debriefing.

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

5.2 Proposal Evaluation Process Steps

Using the proposal evaluation process described herein, NYSDOT will evaluate proposals that are received prior to the deadline and deemed complete. NYSDOT will not consider proposals that are received late or are deemed to be incomplete.

NYSDOT will first pre-screen each proposal to determine whether it was received on time, is complete, and adheres to the required response formats. Early submission of proposals is encouraged. Next, NYSDOT will conduct a mandatory technical requirements review of those proposals that have passed the pre-screening. Proposals that pass the mandatory review will continue to the next step — Technical proposal evaluation and Cost proposal evaluation. NYSDOT will review and score each section of the proposals on a scale that is based upon pre-established evaluation criteria (approved before receipt of proposals; to become part of the procurement record). When the separate Part I and Part II evaluations are complete, the technical and management score will be added to the cost score to develop a composite Best Value score.

At the end of all possible technical scoring:

- Written technical proposals will receive a final perfected Best Value score that will be weighted such that the highest raw technical score will be assigned a max score of 50 points toward the final best value score (with interviews; up to 60 point without interviews)
- 10 perfected technical points shall be allocated to the highest scoring technical interview (contingent; if interviews held)
- 40 perfected cost score points allocated to the lowest proposed total cost.

As part of the technical evaluation process, consultants with a mathematical chance of being awarded a contract shall be invited to and provide an technical presentation at the NYSDOT

Albany-area office. These consultants will be required to bring their Management Team personnel to the technical presentations. The paragraphs that follow describe each phase of the proposal evaluation process in greater detail.

5.2.1 Pre-Screening of Proposals

NYSDOT Contract Management must receive all proposals at the designated address by 2:00 PM ET on the RFP's proposal due date. **It is the sole responsibility of the consultant to assure that its proposal is received on time.** NYSDOT Contract Management will pre-screen all proposals received on time. Late submissions shall be dismissed. Proposals must contain all the information requested in this RFP to be considered complete. All proposals must follow the format outlined in RFP Section 4, Proposal Format and Contents. The pre-screening will ensure that the consultant has submitted all required Part I - Technical and Management proposal, and Part II - Cost proposal components. Failure to provide the proposal in this format may result in it being deemed non-responsive. NYSDOT may remove from consideration and not evaluate any proposal deemed non-responsive. Consultants whose proposals are deemed non-responsive will be notified, in writing, of their elimination.

M/WBE Review. As part of the pre-screening process, the proposed M/WBE subconsultant participation percentages offered for C031103 for NYS certified M/WBE subconsultant participation will be reviewed (**Attachment 9**, M/WBE Participation Information). To count towards NYSDOT's combined 20% M/WBE subconsultant participation goal, each offered M/WBE firm must be currently listed in the NYS's Directory. If the proposed M/WBE participation is less than the combined 20% goal established for C031103, then the firm's evidence of a Good Faith Effort (**Attachment 10**, M/WBE Subconsultant Participation Solicitation Log) to achieve both goals will be reviewed, along with the firm's letter of explanation (M/WBE Goal Attainment Explanation Letter) as to why it was unable to meet the goal. During the review process, which will include examination of the adequacy and the robustness of a firm's Good Faith Effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive and may be removed from further consideration. NYSDOT reserves the right to ask clarification questions on a firm's M/WBE proposal. Pending M/WBEs (not NYS certified at the time of proposal submission) are not allowed.

Review of Mandatory Technical Requirements. All Part I proposals submitted on time will be reviewed to ensure that all requirements identified as Mandatory have been met. NYSDOT will consider proposals that do not meet all Mandatory requirements to be non-responsive and will eliminate such proposals from further consideration. Consultants whose proposals are deemed non-responsive will be notified, in writing, of their elimination. NYSDOT reserves the right to ask clarification questions on a firm's mandatory responses.

The key mandatory requirement is: All proposed Production Staff must meet the RFP's minimum experience and qualification requirements (pass/fail).

5.2.2 Part I and Part II Proposal Evaluations

Each proposal which clears Pre-Screening will have its Part I proposal evaluated further, and will have its Part II proposal evaluated further. NYSDOT reserves the right to ask for clarifications of either proposal. Other than responses made to requests by NYSDOT for clarification of such contents, no consultant will be permitted to alter its proposal after the final filing date and time.

When the Part I and Part II evaluations are complete, the two scores will be added together to develop a composite Best Value score (initial and final).

5.2.2.1 Part I Technical and Management Proposal Evaluation

The Technical and Management Part I written proposal will be evaluated and point scored, and, when perfected and without interviews, will represent up to 60 percent of a total possible Best Value score. With interviews, initial evaluation of the written Technical and Management proposal will account for up to 50 points of the total score while the technical interview will account for up to 10 points of the total score. Technical interview scores will be separately scored and perfected.

All steps and details governing the proposal evaluation process shall be set forth in a proposal evaluation process document, one to be approved by NYSDOT executive management prior to the receipt of proposals. The proposal evaluation process document will become part of the State's official procurement record.

The Technical Evaluation Committee (TEC) will evaluate and point score each section of the Part I Technical and Management proposal on the scale determined by NYSDOT prior to submission of proposals, using the following evaluation criteria:

Written Technical and Management Proposal (up to 60 Points without Interview; up to 50 points with Interviews): The Technical and Management proposal will be point scored and will represent 60% of the total best value score for the proposal (out of 100 total possible points). **Attachment 11** will be used to guide NYSDOT's evaluation of all proposed consultant personnel (on a pass/fail basis). Reference check validations will assist to inform experience considerations. The major criteria and the respective sub-criteria are listed in descending order of importance:

1. Experience of Proposed Management Team (up to 30 Points with Interview; without Interview; up to 40 points with Interviews)
 - a. The proposed Management Team has demonstrated ability to properly manage the delivery of the RFP's requested OS/OW permitting services.
 - b. A general understanding of oversize/overweight permitting was presented; a general understanding of OS/OW guiding laws and regulations was presented; and a general background in the area of commercial vehicle OS / OW permitting was demonstrated.
 - c. Specific experience with Department's OS/OW Permitting program and the guiding laws and regulations in NYS in the area of commercial vehicle OS / OW permitting was demonstrated.
2. Approach and Scope of Services (Up to 10 Points; without Interview; up to 10 points with Interviews)
 - a. The plan submitted for accomplishing program objectives and delivering the services called for in the Scope of Services, including interaction with Department staff, and assisting with OS/OW Permit Re-Engineering, was specified, met the stated objectives, and was considered to be reasonable; reasonableness and effectiveness of M/WBE Management Plan.

- b. A plan for phasing and deploying production staff and filling management and production staff vacancies was presented and considered to be reliable.
 - c. Reasonableness of proposed Production Staff Performance Assurance Plan.
 - d. The flexibility to meet Special Hauling Section and/or Divisible Load Section needs (i.e., cross-training) was given in the proposed Approach and Scope of Services, and sufficiently meets management's needs to operate the Department's Central Permits Bureau.
 - e. Completeness of the proposed Scope of Services, which includes a staffing plan and a support plan, was supplied, meets the program objectives, and provides effective and efficient OS/OW permitting services.
 - f. Degree to which the proposed Approach and Scope of Services provided innovative ideas for OS/OW permitting program improvements.
3. Organization (Up to 7 Points; without Interview; up to 7 points with Interviews)
- a. Reasonableness of Organization and Organizational Chart; provision of a qualified, acceptable Project Manager; presentation of an effective and acceptable Production Supervisor; and reasonableness of support staff plan, especially regarding Production Staff training and development.
 - b. The extent and relevance of experience and reputation of the firm(s) from which the proposed personnel came from, relevant to the OS/OW Permitting Process.
4. Experience of Proposed CPO Staff (Up to 3 Points; without Interview; up to 3 points with Interviews)
- a. The proposed Production Staff has demonstrated ability to meet the RFP's OS/OW permitting service delivery requirements.
 - b. The proposed Support Staff has demonstrated ability to support delivery of the RFP's OS/OW permitting service requirements.

Each TEC member will first independently evaluate each proposal to determine the degree of responsiveness of each area against the requirements and specifications contained in the RFP. Each evaluator shall document their independent findings then determine the appropriate score for each RFP factor using the predefined scale and definitions. Once all independent evaluations are complete, the TEC shall meet and discuss each proposal as a group. Scores may change as a result of group discussions and all reasons for score changes shall be documented. Clarification questions may be requested either during the initial technical proposal evaluation stage or as part of the technical interviews (or both). Scores and findings may be changed as the result of the consideration of clarified material. Firms shall be given a reasonable amount of time to respond to clarification question requests.

Technical Interview Evaluation (Contingent; Up to 10 Points): Proposals which have met the RFP's shortlist requirement (top scoring initial Best Value score plus any proposal within 10 points of the top initial best value ranked proposal plus any 'cluster' of proposal surrounding the cut-off line). Shortlisted Proposers will be called in and have their proposed Management Team interviewed. The Department is also interested in learning more about a firm's managerial experience and philosophy and shall ask firms to make a brief presentation on these subjects. It

is also interested in learning more about any proposed permitting process innovations or process enhancements, as well as hearing more about how to maintain CPO operations over the expected life of C031103.

The proposed Management Team staff identified in the consultant's proposal must attend. Prior to the technical presentations, NYSDOT will provide each consultant with a Technical Interview Package, including an agenda, instructions, and possible additional clarification questions. Consultants shall not change their proposal during the technical interview but responses to requested clarifications are permitted. The interview will be evaluated and scored by the TEC and will account for up to 10 points of the total Best Value score. The TEC will be allowed to revise their earlier Part I written technical proposal scores based on the results of further clarifications and insights gained from the technical interview. The consultant assumes the responsibility of being prepared for and conducting this activity.

Technical interviews will be held at NYSDOT's main office at a date and time to be determined by NYSDOT.

The scoring of the Technical Demonstration shall be based on the following evaluative factors:

1. The degree to which the Consultant adequately and successfully responded to open-ended questions, including management's ability to handle complex, high-pressure, high priority situations where information may be lacking or not provided, yet a response is required within a very short time-frame.
2. The degree to which the Consultant expressed and the Department understood the Consultant's managerial experience and philosophy to providing and maintaining the provision of OS/OW permitting services.
3. The degree to which the Consultant's responses identify permitting process innovations or process enhancements.

In addition to the above, NYSDOT's technical evaluators shall be looking for clarity of presentation, team chemistry, prime and subconsultants ability and understanding of the tasks they will be undertaking as part of the project team, and the responsiveness to questions and concerns raised.

Total Part I Technical Score Calculation and Perfection

Upon conclusion of the contingent technical interview, the interview score will be separately perfected, with the highest average TEC technical interview score receiving a perfect 10 points and all others receiving proportionately lower technical interview scores. After possible rescoring of initial written technical proposal scores (with reasons for re-score changes documented), the proposal with the highest Part I technical score shall receive a perfect 50 points and all others receiving proportionately lower scores. With interviews, perfected interview and written proposal scores shall be added together to generate a total Part I technical proposal score. Should there not be interviews, the proposal with the highest Part I technical score shall receive a perfect 50 points (Part I technical proposal score) and all others receiving proportionately lower scores.

5.2.2.2 Part II Cost Proposal Evaluation

Cost Proposal Evaluation (Up to 40 Points): All proposals passing pre-screening shall have their Cost Proposals evaluated. The cost portion of the cost and contract proposal will be point scored and will represent 40% of the total possible best value score for a proposal. Clarification

questions may be asked. Evaluation of Cost Proposals shall be based upon an evaluation which compares the multiplied proposed rates by three-year's worth of time (1800 hours per FTE per year), sums up the total cost of labor and add in the cost of all proposed direct non-salary costs (using **Attachment 8**). The firm with the lowest total proposed cost will receive a perfected cost score of 40 points. All other offered total costs will receive a proportionate lower cost score based on the relation to the lowest offered total cost.

5.2.2.3 Best and Final Offer (Optional) and Proposal Withdrawal/Dismissal

NYSDOT reserves the right to request best and final offers from firms that are determined to be susceptible for contract award. Best and final offers may be requested after Best Value scores are calculated for firms susceptible for contract award. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals while considering any best and final offer information. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm either withdraw from this solicitation or be deemed non-responsive after initial evaluation and any time during the proposal evaluation process.

5.2.2.4 Consultant Selection Recommendation

Each consultant's final Best Value score will be calculated by adding its total perfected technical score (written and interview) and its perfected cost score. NYSDOT will then rank consultants in descending order of final Best Value score. The results of the proposal evaluation process shall be documented by NYSDOT Contract Management. This report along with a consultant selection recommendation shall be forwarded to NYSDOT Executive Management for approval. The designation will be publically announced on NYSDOT's website.

A tentative contract award shall be made to the consultant whose proposal receives the highest total final Best Value score after considering all technical and cost evaluation factors. Note: In the event two or more proposals are found to be "substantially equivalent", NYSDOT reserves the right to award the contract under the terms of State Finance Law Section 163 (10)(a). Any 'ties' shall be decided by the substantially equivalent rule contained in the approved evaluation process document.

A team of NYSDOT subject matter experts will negotiate the resulting contract with the selected consultant, with NYSDOT Contract Management and Legal facilitation. The final contract is subject to approval by the Attorney General and the Office of the State Comptroller and is not binding until such approval is received.

At the conclusion of the evaluation period, an announcement of NYSDOT's designation(s) will be posted the 'Consulting Services' listing on the NYSDOT's Web site via: <https://www.dot.ny.gov/business>. All consultants will be notified in writing regarding the results from the solicitation, pending completion of the evaluation process. All non-designated firms will be offered an opportunity to attend a debriefing.

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

5.3 Protest Procedure

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

6. ADMINISTRATIVE SPECIFICATIONS

6.1 Tentative Schedule of Key Events

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

<u>Event</u>	<u>Timeline</u>
NYS Contract Reporter Announcement	June 28, 2013
RFP Release Date	June 28, 2013
Pre-Proposal Conference	TBA (If held)
Question Submittal Deadline	July 19, 2013 @ Midnight ET
Question Response Deadline	July 24, 2013
Proposals Due	July 31, 2013 @ 2:00 PM ET
Proposal Evaluation Begins	August, 2013
Technical Presentations	August, 2012
Consultant Selection	August, 2013
Approved Contract	October, 2013

6.2 Pre-Proposal Conference

To assist firms in preparing proposals in response to this solicitation, and only if more than one firm express interest in this solicitation, a Pre-Proposal Conference shall be held about a week after this RFP's release at a location and time TBA at NYSDOT's main office on 50 Wolf Road, Albany NY 12232. A overview of the RFP shall be given, with opportunities for vendors to pose questions. NYSDOT will either respond to questions or document questions for later response.

Please note that holding the scheduled Pre-Proposal Conference is contingent upon more than one firm expressing interest in responding to this RFP. Should only the incumbent firm express interest, the Pre-Proposal Conference shall not be held.

For security and fairness reasons, firms intending on attending the mandatory site visit must preregister by submitting an e-mail to alfred.hasenkopf@dot.ny.gov with your firm's name and the name, title, telephone number and e-mail address of all representative(s) who will be attending. Each proposer is requested to send no more than five representatives to the conference (if more are needed, please ask). **Please note that Procurement Lobbying Law (PLL) forms (Attachment 3) must be completed, scanned and e-mailed along with your registration request.**

Questions submitted in advance of the conference may be answered during the conference. An opportunity will be afforded for questions and answers during the conference. In the interest of fairness, at the conclusion of the conference, no more questions can be asked and all conversations with State officials about the CPO RFP shall cease.

Interested M/WBE consultants are also encouraged to attend.

6.3 Proposal Submission

The proposal must be submitted and shipped to:

Al Hasenkopf, Contract Management
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
Attention: C031103 CPO RFP

6.4 State's Rights to Proposals

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

1. To accept or reject any or all proposals;
2. To correct any arithmetic errors in any or all proposals;
3. To change the proposal's due date upon appropriate notification to interested firms;
4. To eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
5. To adopt any or all of a successful offeror's proposal;
6. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
7. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
8. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
9. To eliminate any requirement that is found to be unmet by all offerors;
10. To make inquiries, by means it may choose, into the offeror's background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
11. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
12. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;
13. If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and
14. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to

6.5 Affirmative Action Goals

NYSDOT desires to foster and promote the participation of disadvantaged, minority and women-owned business enterprises in its contracting program. Accordingly, such enterprises are encouraged to consider submitting proposals in response to this solicitation and should be encouraged by other consultants to submit subcontract proposals for those portions which may be performed by subcontract (see **Attachment 1**, Draft Contract).

6.6 Inquiries and Information

All questions concerning this solicitation must be directed only to Mr. Al Hasenkopf. The last date to submit questions for this solicitation is indicated in Section 6.7, Schedule of Key Events (below). All inquiries should be addressed to:

Al Hasenkopf, Contract Management Bureau
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232
E-Mail: alfred.hasenkopf@dot.ny.gov Subject: C031103
Fax: 518-457-8475

Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to NYSDOT's website under this solicitation.

6.7 Information Items for Selected Consultant

The following items are presented for consultant information; to make interested parties aware of contract-related items which selected consultant(s) need to pay attention to.

Vendor Responsibility

- The selected consultant will need to go to the following NYSDOT Web site (<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>) to review the vendor responsibility questionnaire. The selected consultant will be required to submit a completed questionnaire within 10 days of being notified of selection for contract award. ***If you are a successful consultant, NYSDOT will not be able to begin negotiations with your firm if this questionnaire is not completed and electronically submitted as required.***

Contractor Tax Certification

- All vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency) during negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites:

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

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

Insurance Requirements of this Project

- Please carefully read the terms and conditions of the draft Contract appended as **Attachment 1** of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in the respective draft Contracts (C031103 – Ops; C031121 – Cap). 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

- The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment’ (**Attachment 4**, Consultant Disclosure Legislation Form A) 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” (**Attachment 4**, Consultant Disclosure Legislation Form B) and submit copies to the Office of the State Comptroller, NYSDOT of Civil Service, and NYSDOT of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

- It is the Consultant’s responsibility to ensure they propose staff that is eligible to work on the subject project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York State Ethics Commission that approves their participation in the subject project. For an outline of the procedure that applies to this situation, see **Attachment 5**.

Registration with NYSDOT

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

Consultant Firm Registration instructions are available at:

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

or via:

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

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

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

Consultant Billing/Reimbursement Request Information

- NYSDOT use a two-step consultant reimbursement/billing procedure (pursuant to the payment method in the resulting contract). Submit draft electronic billings to the NYSDOT Project Manager via: <https://www.nysdot.gov/main/business-center/consultants/consultants-repository/Consultant%20Billing%20Spreadsheets.xls>.

The spreadsheet contains all of the proper, required billing forms, as well as a sample billing information. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy.

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ATTACHMENT 1

Draft Contract: C031103

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F.A. NO.: _____

P.I.N.: _____

COMPTROLLER'S CONTRACT NO. C031103

PROJECT: _____

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

CONSULTANT FIRM NAME

CONSULTANT FIRM ADDRESS

(hereinafter referred to as "CONSULTANT")

WITNESSETH:

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

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

ARTICLE 1. PERFORMANCE OF WORK.

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

CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described therein. Any change of key project personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval, of all necessary state officials.

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

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

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

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees that the base term of the AGREEMENT shall be 36 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 his services under this agreement:

Item 1. Specific Hourly Rates of pay, including up to thirty (30) days severance, times a factor of ____ (not subject to audit) for on-site overhead and fee, shall be shown in SCHEDULE B, EXHIBIT 1, for the duration of this AGREEMENT, for all designated on-site management team member or production staff the CONSULTANT assigns to this PROJECT on a full-time, on-site basis for all or part of the base Term of this AGREEMENT. Actual direct Specific Hourly Rates are not to exceed those Specific Hourly Rates of pay defined in SCHEDULE B, EXHIBIT I of this AGREEMENT and are subject to audit. Specific Hourly rate escalations are shown in SCHEDULE B, EXHIBIT 1 for the salary range of each management team member or production staff or support staff positions listed in EXHIBIT 1, unless otherwise agreed to and specified. The Specific Hourly Rates of pay for the Contract Project Manager and other Home Office Support Staff are separately shown in SCHEDULE B, EXHIBIT 1 (see Item3). Actual hours worked are subject to audit. Should overtime become necessary, a SUPPLEMENTAL AGREEMENT will be negotiated (subject to agreement and approval by the STATE and CONSULTANT, and approved by the Office of the State Comptroller) to add overtime considerations to this AGREEMENT.

If, within the Term of the AGREEMENT stated herein, any direct Specific Hourly Rates paid in excess of the maximums shown in SCHEDULE B, EXHIBIT 1, the excess amount shall be borne by the CONSULTANT without reimbursement unless otherwise agreed to by the STATE and CONSULTANT, and approved by the Office of the State Comptroller.

If the AGREEMENT is extended beyond <End Date In Article 4>, then the Specific Hourly Rates of pay shown in SCHEDULE B, EXHIBIT 1 may be adjusted annually by the higher 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 percent, all subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

Item 2. Actual Direct Non-Salary Costs subject to audit. Any direct non-salary costs incurred in fulfilling the Terms of this AGREEMENT are subject to audit. Such costs shall include, but are not necessarily limited to, those shown in SCHEDULE B, EXHIBIT 2 (excludes cell phones). 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 Office of the State Comptroller. Travel, meals and lodging costs of on-site CONSULTANT employees must be pre-authorized by the STATE's Project Director in writing in order to be eligible for reimbursement.

Items purchased under this AGREEMENT 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 3. In addition to providing on-site management and production personnel, the CONSULTANT is expected to provide other support personnel on an as-needed and as-approved basis to support start-up tasks, recruit replacement personnel (when Management Team personnel and production staff personnel vacancies occur), perform agreed-upon work assignments, and to provide quality assurance and other management oversight during this AGREEMENT. For these and other related tasks, the CONSULTANT shall use home office

support personnel, including the Contract Project Manager. For CONSULTANT support personnel assigned to work on supporting this Project but who will not be on-site management and production staff personnel, the CONSULTANT shall be compensated for hours worked by these support personnel at the Specific Hourly Rates as separately shown in SCHEDULE B, EXHIBIT 1. The hours worked by support staff are subject to audit. The Specific Hourly Rates of pay for support personnel are not subject to audit and review or modification unless there is a substantial change in the scope, complexity or character of work to be performed by support staff.

Item 4. The CONSULTANT represents and warrants to the STATE that Specific Hourly Rates of pay charged for the CONSULTANT for all home office-based support staff are and during the entire term of this AGREEMENT shall remain the lowest rates being offered by the CONSULTANT to others for the performance and delivery of generally similar services and products.

Item 5 The number of months of training provided under Training Special Provision 11 in Appendix C is .

ARTICLE 7. CONTRACT PAYMENT.

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

ARTICLE 8. PARTIAL PAYMENTS.

The CONSULTANT shall be paid in 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 NYSDOT Contract Number C031103. Certificates shall be mailed to the:

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

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any

reason except upon thirty (30) days' prior written notice to the Department by Certified Mail, return receipt requested at the stated address. In addition, if required by the Department, the CONSULTANT shall deliver to the Department within Forty-Five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

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

7. Policy Renewal/Expiration. At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in subdivision (A)(3) above.

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

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

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

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

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

services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than \$250,000 subject to approval by Department, such approval not to be unreasonably withheld, except that it is also agreed that Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on an ISO claims made basis (or a policy form providing equivalent coverage) in an amount of no less than \$5,000,000.00 per claim and not less than \$5,000,000.00 in the aggregate.

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

By mail:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 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 or his successor.

ARTICLE 32. NOTICES.

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

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

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

New York State Department of Transportation:

Contact Person's Name: William A. Howe, Contract #C031103

Title: Director

Address: NYSDOT Contract Management Bur., 50 Wolf Rd., 6th Fl, Albany, NY 12232

Telephone Number: 518-457-2600

Facsimile Number: 518-457-2875

E-Mail Address: bill.howe@dot.ny.gov

Consultant's Name: [REDACTED]

Contact Person's Name: [REDACTED]

Title: [REDACTED]

Address: [REDACTED]

Telephone Number: [REDACTED]

Facsimile Number: [REDACTED]

E-Mail Address: [REDACTED]

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) Section 165-a, effective April 12, 2012. This act may be viewed in its entirety at <http://www.ogs.ny.gov/about/reg/docs/ida2012.pdf>. Pursuant to SFL Section 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.

ARTICLE 36. RESPONSIBILITY PROVISIONS.

General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Suspension or Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant's expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

IN WITNESS WHEREOF, this **Contract No. C031103** has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY

FOR THE PEOPLE OF THE STATE OF NEW YORK

CONTRACT MANAGEMENT

By _____
DEPARTMENT OF TRANSPORTATION

DATE: _____

DATE: _____

Consultant Certifications: I certify that all the information with respect to the "Vendor Responsibility Questionnaire" submitted by (CONSULTANT FIRM NAME) _____ on the _____ day of _____, 201_____ pursuant to the requirements set forth in OSC Bulletin G-221 is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

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

By _____
FIRM

Date: _____

----- CENTRAL PERMITS OFFICE STAFF AUGMENTATION -----

APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI

STATE COMPTROLLER

By _____

By _____

Date _____

Date _____

Acknowledgement for Contract #C031103

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, licenser, 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment 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 person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or

furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been

informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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.

Updated December 2012

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

APPENDIX B

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, NYSDOT is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration undertakes to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT has, in cooperation with FHWA, assembled the body of Federal-aid requirements, together with information, NYSDOT procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: <https://www.dot.ny.gov/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 agency¹ the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA), is an on-line database of all Federally-aided programs available to State, and local governments (including the District of Columbia); federally -recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals. The database is accessible at <http://www.cfda.gov/>.

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.

¹ The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

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

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

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

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

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

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

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

Updated January 2009

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

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

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

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

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

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

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

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

Comptroller's Contract C031103
Central Permit Office Staff Augmentation

SCHEDULE A

SCOPE OF SERVICES
INCLUDING
EXHIBITS

(To come from RFP; To be added during Negotiations with Selected Vendor)

EXHIBIT 1 OF SCHEDULE A

N.Y.S. Official State Holidays

2013 LEGAL HOLIDAYS

The New York State Department of Civil Service has issued the 2013 calendar of legal holidays for State employees in the classified service of the Executive Branch, as contained in New York State's General Construction Law.

FOR CY2013 THE LEGAL HOLIDAYS WILL BE:

DATE	DAY	HOLIDAY
January 1	Tuesday	New Year's Day
January 21	Monday	Dr. Martin Luther King, Jr. Day
February 12	Tuesday	Lincoln's Birthday
February 18	Monday	Washington's Birthday (Observed)
May 27	Monday	Memorial Day
July 4	Thursday	Independence Day
September 2	Monday	Labor Day
October 14	Monday	Columbus Day
November 5	Tuesday	Election Day
November 11	Monday	Veterans' Day
November 28	Thursday	Thanksgiving Day
December 25	Wednesday	Christmas Day

SCHEDULE B

EXHIBIT 2:
Salaries
For
Years One Through Three
For
Management Personnel (On-Site),
Production Personnel (On-Site), and
Support Staff (Home-Based)

(To be Added from Selected Consultant's Cost Proposal After
Negotiations)

SCHEDULE B

EXHIBIT 3: Direct Non-Salary Costs For Years One Through Three

(To be Added from Selected Consultant's Cost Proposal After
Negotiations)

Attachment 2

CONSULTANT INFORMATION AND CERTIFICATIONS

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

CONTRACT NUMBER: C031103

PROJECT TITLE: Central Permits Office Staff Augmentation Services for NYSDOT

I. CONSULTANT INFORMATION

FIRM NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____

ZIP CODE: _____ - _____

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

E-MAIL ADDRESS: _____

CONTACT PERSON: _____

Consultant's Federal Identification Number (FIN): _____

Consultant's NYSDOT Consultant Identification Number (CIN): _____

Consultant's New York State SFS Vendor Identification Number: _____

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

Preparer's Name/Title: _____

Address: _____

Telephone: (____) ____ - _____ FAX: (____) ____ - _____

Other Authorized Individual(s):

Name/Title: _____

Address: _____

Telephone: (____) ____ - _____ FAX: (____) ____ - _____

II. PROPOSER CERTIFICATIONS

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

of _____ make the following
(Firm)

certifications regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
- The firm has read and will follow the procedure outlined in **Attachment 5** if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility forms to NYSDOT within 10 days of notification of designation both electronically and in hard copy per the NYSDOT Web site.
(<https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>)
- ST-220: If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- The firm is in compliance with the requirements of the Omnibus Procurement Act as described in APPENDIX A which is found in the Draft Contracts attached to this RFP.

Signature: _____

III. ACCEPTANCE OF CONTRACT

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

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

accept all terms and conditions contained in the draft Contract for C031103 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) **“Offeror Disclosure of Prior Non-Responsibility Determinations”.**

2. **NYSDOT Guidelines and Procedures**

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

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

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

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

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

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

These are some communications exempted from this restriction:

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

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

- 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 Offerors 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 offeror. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. NYSDOT may identify other contact persons for each of these processes.

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

<http://www.ogs.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 <http://www.dot.ny.gov> or contact: Al Hasenkopf of NYSDOT Contract Management, 50 Wolf Rd, 6th Fl., Albany, New York 12232

E-mail: Alfred.Hasenkopf@dot.ny.gov

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

Offeror 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. C031103

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Offeror 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: C031103

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)

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

By: _____ Date: _____

Signature

Name: _____

Title: _____

Attachment 4

Consultant Employment Disclosure Legislation Forms A and B

OSC Use Only:

Reporting Code:

Category Code:

Date Contract Approved:

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

State Agency Name: Transportation

Agency Code: 3900283

Contractor Name:

Contract Number: C031103

Contract Start Date: / /

Contract End Date: / /

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

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

Attachment 5

Consultant's Responsibility When Proposing Former NYSDOT Employees

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

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

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

Procedure

- Before the consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov/>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

Attachment 6

Consultant Experience and Company References

CONSULTANT EXPERIENCE:

- Provide relevant experience on separate pages.
- Two page limit – no smaller than 11 point font for text.

COMPANY (Firm) REFERENCES:

- Provide at least three Firm references.
- Use below form. Fill one out for each Firm reference (fill in number blank – ie, ‘Firm Reference #1; Firm Reference #2, etc.)
- Form is expandable – be concise.
- Reference check evaluation criteria provided below

Firm Reference Number:	# _____
Client/Firm Name:	
Project Name:	
Project Cost (total \$):	
Name & Title of Contact:	
E-Mail Address & Telephone Number:	
<i>Provide a brief description of a recent relevant project for which they are serving to reference:</i>	
<u>Reference Evaluation Criteria:</u>	
Describe the nature of the project and the work that this vendor performed for you.	
What was the size of the effort (budget, duration, etc)?	
Was the work completed within budget?	
Did the vendor meet expected timeframes and deliverable deadlines?	
Was the vendor able to adapt to obstacles on the project?	
Was there continuity with the project staff proposed and assigned to the planning and execution phases of the project?	
How well did the vendor staff respond to your needs?	
How pleased are you with the work the vendor has performed/is performing for you?	
Would you contract with this vendor again ?	

SUBCONSULTANT (Firm) REFERENCES:

- Provide at least two Subconsultant Firm references.
- Use below form. Fill one out for each Firm reference (fill in number blank – ie, ‘Firm Reference #1; Firm Reference #2, etc.)
- Form is expandable – be concise.
- Reference check evaluation criteria provided below

Subconsultant Firm Reference Number:	# _____
Client/Firm Name:	
Project Name:	
Project Cost (total \$):	
Name & Title of Contact:	
E-Mail Address & Telephone Number:	
<i>Provide a brief description of a recent relevant project for which they are serving to reference:</i>	
Reference Evaluation Criteria:	
Describe the nature of the project and the work that this vendor performed for you.	
What was the size of the effort (budget, duration, etc)?	
Was the work completed within budget?	
Did the vendor meet expected timeframes and deliverable deadlines?	
Was the vendor able to adapt to obstacles on the project?	
Was there continuity with the project staff proposed and assigned to the planning and execution phases of the project?	
How well did the vendor staff respond to your needs?	
How pleased are you with the work the vendor has performed/is performing for you?	
Would you contract with this vendor again ?	

Attachment 7

Management Staffing Plan, Resumes, Project Experience & Personnel References

ATTACHMENT 7A

MANAGEMENT AND OPERATIONS STAFFING PLAN

Proposers are required to complete a Staffing Plan that provides the following:

- Two page limit (excluding tables and charts)
- Identify individual resources assigned to carry out the RFP's Scope of Service work elements.
- Describe the strategy that will be used to acquire human resources with the appropriate skills and experience to staff the project.
- Provide a description of how the Proposer proposes to utilize the proposed Management Team personnel to meet the obligations of this engagement as described in this RFP.
- Using the provided table below, include an estimate of total effort hours contributed by each of the Management Team personnel to each task and an estimate of total effort hours for each task.
- Describe the strategy that will be used to acquire human resources with the appropriate skills to staff the project if sub-consultants are to be used in the staffing plan.
- Describes the specific need for the expertise and describe the arrangements describes the offeror's plan for phasing project personnel into the effort and the level of interaction contemplated with NYSDOT indicates the degree to which it is anticipated that staff will be located on site at the NYSDOT offices. Any work to be conducted off site must be so indicated.
- Include a staffing schedule for each phase of the project.
- Present other staffing plan-related documentation to support your proposed staffing plan.

ATTACHMENT 7B

STAFFING HOURS BY TITLE

Year is defined as a C031103 contract year, beginning April 1st and ending March 31st.

Present a Staffing Hours Table by Scope of Services Task for your proposed Management Team (only; do not present a staffing hours table for CPO production staff). There is no pre-defined format. Limit is one page.

Attachment 7C

Consultant Management Team Personnel Resumes & References

Consultant Management Team Personnel Experience and Resumes:

- Complete a profile form for each proposed Consultant Management Team personnel.
- One form is provided below. Use additional pages as needed.

<i>Staff Name and Title:</i>	
<i>Professional Associations, Degrees, and Certifications:</i>	
<i>Number of Years of Relevant Experience in the Proposed Project Role:</i>	
<i>Description of Relevant Experience:</i>	

Consultant Management Team Personnel References:

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

<i>Staff reference Number:</i>	# _____
<i>Client Name (Reference Company):</i>	
<i>Reference Main Line of Business:</i>	
<i>Project Name:</i>	
<i>Name & Title of Contact:</i>	
<i>E-Mail Address & Telephone Number:</i>	
<i>Provide a Brief Description of Recent, Relevant Project for which they are Serving to Reference</i>	
Staff Reference Check Evaluation Criteria:	
Describe the nature of the project and the work that this staff member performed for you.	
How would you rate the staff member's experience and qualifications?	
How well did the staff member respond to your needs?	
How pleased are you with the work the staff member has performed/is performing for you?	
Would you contract with this staff member again ?	

Attachment 8

Cost Proposal

PROPOSED SPECIFIC HOURLY RATE SCHEDULE

Present table by year for all proposed staff (prime consultant and all subconsultants). Instructions:

- Present by person-specific, by title, fully loaded rates by contract year by completing **Attachment 8**. These rates are broken-down into base annual salary, overhead additive and fixed firm fee additive.
- NYSDOT's overtime and holiday payment policies are shown (Specific Hourly Rate times 1.5; separate OT rate tables shall be added to resulting contract during contract negotiations), which are not subject to change.
- Employee benefits, such as leave, health insurance, retirement, etc., shall be included in a firm's proposed overhead.
- A firm's labor fee may not exceed 10 percent.
- If additional titles are used but are not assigned, they should be listed.
- For titles with multiple positions, you must propose one rate per person.
- For titles with multiple positions, you must propose one rate per person.
- Based on 1800 hours per contract year.
- Overhead MUST be either for consultant home-based or a FIELD rate for persons working on NYSDOT's premises. Indicate which overhead method is being used. Fringe, leave, health benefits, retirement, etc., must be included in the proposed overhead. THESE ARE NOT DIRECT EXPENSES.
- Rates for the draft contract's out-years may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, 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.).
- For the purposes of this RFP, the first contract year shall be April 1, 2013 to March 31, 2014. Firms with different accounting periods may present rates by their accounting periods (a weighted rate shall be used for evaluation purposes).
- Direct Non-Salary Cost expenses shall be competitively proposed under C031103 (the SFY 2011-12 values for such are contained in Exhibit 1 in **Attachment 1A**). They shall be added to the selected consultant's proposal to generate the resulting CPO Staff Augmentation contract #C031103. DNSC items shall be confirmed with the selected Consultant during contract negotiations. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available via <http://www.gsa.gov/>.
- Offerors must use one table per firm in its team (prime consultant plus any subconsultants that are being proposed), making multiple copies of the table as needed.

Payment for services provided under the project shall be by fully loaded, specific hourly rates reimbursement and compensation for actual, approved direct non-salary costs incurred in the performance of the scope of services. 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 voucher. Requests for progress and final payments shall be made by the designated Consultant on standard NYS vouchers.

**ATTACHMENT 8A
C031103
PROPOSED SPECIFIC HOURLY RATES TABLE**

Salary Schedule

Firm Name _____ CENTRAL PERMITS OFFICE STAFF AUGMENTATION Contract C031103

TITLE	(a) 2013-14 DIRECT LABOR ¹	(b) 2013-14 OVERHEAD (%)	(c) 2013-14 FEE (%)	(a)+(b)+(c) 2013-14 BILLING RATE	2014-15 BILLING RATE	2015-16 BILLING RATE
Project Manager						
Unit Supervisor						
Divisible Load Program Aide 3						
Divisible Load Program Aide 2						
Divisible Load Program Aide 1						
Special Hauling Program Aide 3						
Special Hauling Program Aide 2						
Special Hauling Program Aide 1						
Clerk						
<u>SUPPORT STAFF:</u>						
Support Staff I						
Support Staff II						

¹ : Not to exceed rates

ATTACHMENT 8B (To be updated with more current info)

**C015691 SA#1
Exhibit I
Salaries for Year Four**

Comptroller's Contract C015691 – OS/OW Permitting Services

On- Site Personnel Salary Rates

<u>Staff</u>	<u>Hourly Rate</u>
William Morris – Project Manager	\$ 127.21
John Vannie – Agent III	\$ 82.90
Amanda Myers – Agent III	\$ 77.88
Brandon Rivenburg – Agent II	\$ 67.50
Stan Hull – Agent I	\$ 58.83
Jennifer Szesnat – Agent I	\$ 46.90

Home Office Salary Rates

<u>Staff</u>	<u>Hourly Rate</u>
Brad Wright – Principal-in-Charge	\$ 319.18
Jennifer Moynihan/Production	\$ 133.13

C015691-01 Exhibit II

Direct Non-Salary Costs For Years 4

Comptroller's Contract C015691 – OS/OW Permitting Services

Cost Component	Estimated Costs
Travel/Per Diem	\$ 0
Postage and Shipping	\$ 150
Telephone	\$ 0
Other	\$ 800
Protective Liability Insurance	\$ 5,000
Recruiting	\$ 3,000
Subtotal	\$ 8,950

Rates & Direct Non-Salary Cost Information From Original C015691 Contract

Contract Rates:

<u>On-Site Personnel</u>	<u>Entry Hourly Rate¹</u>	<u>Top Hourly Rate¹</u>
Supervisor		
Special Haul	\$ 95.03	\$ 116.16
Supervisor		
Divisible Load	\$ 85.44	\$ 104.92
Permit Service		
Agent III	\$ 69.22	\$ 85.78
Permit Service		
Agent II	\$ 55.76	\$ 70.63
Permit Service		
Agent I	\$ 47.09	\$ 60.01

Home Office	
<u>Support Staff</u>	<u>Hourly Rate¹</u>
Project Manager	\$ 204.29
Principal	\$ 183.35
Analyst	\$ 90.85
Production Staff ²	\$ 85.00

Direct Non-Salary Costs: (estimated)

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Travel/Per Diem	\$5,000	\$3,000	\$3,000
Communications	\$500	\$500	\$500
Advertising ³	\$10,000	\$5,000	\$5,000
Computer	\$1,029	\$500	\$500
Printing/Copying	\$1,500	\$1,500	\$1,500
Excess Liability Insurance	<u>\$30,000</u>	<u>\$30,000</u>	<u>\$30,000</u>
TOTAL Direct Non-Salary Costs	\$48,029	\$40,500	\$40,500

Notes:

- 1: Hourly rates based on cost of service rate and include overhead and fee.
- 2: One blended rate has been used for all support production staff.
- 3: Advertising need subject to rate of Management Team and Production personnel turnover.

Attachment 9

MBE and WBE Participation Information

CENTRAL PERMITS OFFICE STAFF AUGMENTATION Contracts # C031103

Please complete the following table for the prime firm and all proposed subconsultants (consultant team composition). All MBEs and WBEs must be Empire State Development certified at the time of proposal submission and must be listed in ESD's searchable database website: <http://www.esd.ny.gov/MWBE.html>. Only certified M/WBEs are eligible to count towards the applicable contract goal. Using the tables provided below, please identify each firm's full legal name and indicate each firm's percentage of the proposed total dollar amount for contract #C031103.

For Contract #C031103			
Firm Legal Name	MBE or WBE (As Applicable)		% of Total Budget
	MBE	WBE	
A. Prime Consultant			
B. Sub-Consultants			
Total			100%

ADDITIONAL ATTACHMENT 9 INSTRUCTIONS:

If the combined percentage of total dollar contributions for all proposed, certified MBEs and WBEs is less than the 20% combined M/WBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the M/WBE Subconsultant Participation Solicitation Log (**Attachment 10**), and provide a M/WBE Goal Attainment Explanation Letter. Further, prime consultants certified as a M/WBE are not relieved of meeting the combined M/WBE contract goal solely via their participation, as this is a subconsultant program opportunity. M/WBE primes need to either meet the combined M/WBE subconsultant participation goal, or submit the M/WBE Subconsultant Participation Solicitation Log (**Attachment 10**) and the M/WBE Goal Attainment Explanation Letter.

Attachment 10

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

CONTRACT NO. <u> C031103 </u>			COMBINED PARTICIPATION GOAL: M/WBE: 20%		PAGE NUMBER <u> </u> OF <u> </u>	
PRIME FIRM NAME/ADDRESS/ZIP CODE			CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE) E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S)	

INSTRUCTIONS FOR COMPLETING ATTACHMENT 10
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 WBE subconsultants may count towards the contract participation goal. Participation by a certified MBE or WBE prime consultant does not count towards meeting the contract goal (participation by a certified MBE or WBE prime consultant helps to meet the Department's corporate M/WBE goal.**

Guidance concerning Good Faith Efforts in meeting M/WBE participation goals in state-funded contracts is located at the end of this section.

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

***** MBE and WBE Certification is a New York State Program. *****
IT IS SEPARATE AND DISTINCT FROM THE FEDERAL DBE CERTIFICATION PROGRAM.
PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE
PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS

INSTRUCTIONS:

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

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

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

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

MBE and WBE CONSULTANTS SOLICITED:

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

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

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

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

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

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

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

A description of the codes to use is as follows:

CODE DESCRIPTION:

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

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

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

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

Attachment 11

MINIMUM STAFF DUTIES, RESPONSIBILITIES AND ABILITIES

General

The Consultant shall provide a knowledgeable and capable management team (on-site and home office-based), flexible on-site production staff and home-office based support staff to perform the required management, technical and non-technical functions, services and support necessary to issue permits to oversize and/or overweight vehicles in a timely manner. At the onset of the contract one-year extension, the Consultant will provide on-site and home-based support as outlined below to perform the described duties, as well as those duties or services that become necessary to support the activities of the Central Permit Office. If the need for assistance in processing permits increases due to increased demand or the inability of the NYSDOT to timely process permits during the term of this contract, the NYSDOT will determine the nature of any additional permit services required from the Consultant. Likewise, should the need for assistance in processing permits and providing support services decrease during the term of this contract, the NYSDOT will reassess and determine the nature of a reduction in permit services required from the Consultant.

During the term of the contract, the Consultant shall provide the following personnel:

1. A Management Team, which shall include on-site support to manage the duties of the on-site staff working in the Permits Section as well as assist with other Permitting Program management duties, functions and responsibilities. The on-site management staff will include one Project Manager and may include one Unit Supervisor. On-site managers will also assist the Department with managing the CPO program. Additionally, this Management Team will include home office-based support staff assigned to carry out Program Management, Contract Administration and Training Coordination functions and responsibilities, as well as ongoing support to various initiatives that are targeted at improving the efficiency and effectiveness of the Central Permit Office. The home-based management support staff will exceed no more than two positions.
2. On site production Staff, which not to exceed SEVEN (7) Program Agents, to perform a variety of functions to accomplish the production goals and objectives of the Department's Permit Section. The Production Staff will work collaboratively with the Department's staff to review applications and issue permit certificates, maintaining the current guidelines, requirements and established business goals of the Permit's Section with the understanding that they may change based on factors and shifting priorities intended to improve the program. Agents will be utilized and cross-trained to provide flexibility in issuing Special Hauling and Divisible Load Overweight permits, including reviewing Special Hauling applications and issuing permits currently completed by Regional Offices.

Flexibility regarding assigning the Consultant's Production Staff is important to the Department. Maintaining flexibility to meet Special Hauling Unit and/or Divisible Load Unit staffing needs (cross-training) was given great emphasis in the Request for Proposal

for this Agreement. Therefore, the Department and the Consultant have agreed to combine the duties of the Special Haul Program Aid titles by series with the Divisible Load Program Aid titles by series, and including any unique job duties pertinent to any program aid position.

Consultant's Production Staff required to perform the duties and tasks described herein shall, at a minimum initially include the following:

- a) **Agent III** (**TWO** positions initially required; not to exceed three positions)
 - b) **Agent II** (**ONE** position initially required; not to exceed two positions)
 - c) **Agent I** (**ONE** positions initially required; not to exceed to four positions)
3. Clerk 1 Position, based on the Department's need for Clerical staff, the Consultant may be required to provide **ONE** clerical position to provide the on-site support services necessary to issue OS/OW permits.
 4. Support Staff, which shall provide support to the management team and on-site production staff providing permitting services in the Central Permit Office of the Department. Support staff functions may include: off-site training and education of production staff to perform the tasks and services to meet the objectives required to issue permits to meet or exceed current business production goals, expectations and standards of the Central Permit Office (training coordination), the expeditious and effective filling of vacancies (recruiting), various contract administrative work, etc.

MINIMUM STAFF DUTIES, RESPONSIBILITIES AND ABILITIES

The duties, abilities and responsibilities required of the on-site Management Team (on-site and home office-based), on-site Production Staff and Clerical Support Staff described below represent minimum tasks and functions, and are not limited to the duties, abilities and responsibilities that may be required of each position. Duties for home-based Support Staff are outlined at the end of this section. As the needs of the Department and Central Permit Office change, staff functions will be reviewed and duties refined to meet these changes.

CLERK 1:

1. Maintain records and files.
2. Receive, screen, review, and verify documents.
3. Search for data and compile information.
4. Answer questions about the activities of the organization orally or by correspondence (i.e., e-mail).
5. Prepare and issue documents, including verification of validity.
6. Ability to understand and use common office record keeping and filing systems and processes.
7. Ability to code and decode data for permit processing.
8. Ability to read, understand and interpret regulations, procedural manuals, and other documents used in the permit program.

9. Ability to use common office equipment including equipment having alphanumeric keyboards, photocopiers, calculators and computers.
10. Ability to perform tasks accurately within prescribed time frames; and ability to communicate effectively, orally and in writing.

Agent I:

1. Understand the permit program and mission, and to provide input into its operation.
2. Understand and apply, where necessary, various OS/OW State and Federal laws, rules, regulations, procedures, policies and guidelines, including technical interpretations.
3. As instructed by supervisor, independently prepare written technical summaries and reports and apply agency procedures as required.
4. Promptly process customer applications received via fax, mail, e-mail or walk-in, carefully reviewing and issuing permit or requesting additional information accordingly.
5. Train clerical support staff as required.
6. Perform under the supervision of an Agent II or III and exercise a considerable amount of independent technical judgment in performing duties.
7. Ability to effectively and frequently communicate with customers and other staff.
8. Ability to communicate orally and in writing with individuals representing various local, State, and Federal agencies, non-governmental organizations, specific interest groups and carriers the laws, rules and regulations that govern the permitting of OS/OW vehicles.
9. Oral communication may be via telephone or person-to-person to provide or gather information, give reports, request or inquire about change.
10. Written communication may be in the form of reports, general correspondence or fax
11. Ability to evaluate and interpret maps and photographs.
12. Ability to provide customer service in a professional and courteous manner to both internal and external customers, understanding the need for diplomacy and direction in assisting external customers with the apprehensions often associated with the permit application process.
13. Strong computer skills, with Microsoft Office products, Novell GroupWise, the Internet and trip routing tools.
14. Ability to prepare, in final form, technical narrative, tabular, and graphic material.
15. Working knowledge of mathematics, including algebra.

Agent II:

1. Perform all functions of an Agent I.
2. Independently determine the needs and priorities required to support the professional and technical staff of the Permit Section.
3. Serve as a team leader, organizing, assigning and monitoring work.
4. Independently prepare written and electronic technical summaries and reports and apply agency procedures as required.
5. Conduct team meetings.
6. Trouble shoot minor application processing errors with the Divisible Load computer system.
7. Perform Divisible Load customer account audits and reviews.

8. Perform under the supervision of a technical program manager and exercise a considerable amount of independent technical judgment in performing duties.
9. Schedule and meet, as required, with customers to offer guidance and information to aid in the application process.
10. Promote the customer technical support program, contacting customers for additional application requirements or to offer explanation of determination of application.
11. Oral and visual presentation to staff, executive management, regional staff and industry, as required.
12. Written communication in the form of reports, charts, spreadsheets, general correspondence or fax.
13. Ability to prepare, in final form, technical narrative, tabular, and graphic material.
14. Strong mathematical skills, including algebra.
15. Ability to work under pressure and meet program deadlines.
16. Strong supervisory skills.

Agent III:

1. Perform all functions of a Agent II.
2. Completely understand the OS/OW permit program and mission, and routinely provide input into its operation.
3. Have a clear knowledge and understanding of mathematics, including algebra and engineering calculations.
4. Support the continuing evolution of the permit program in such areas of logistics planning, multi-modal planning, manufacturer coordination and anticipated or future manufacture of oversize/overweight components.
5. Work with relative independence and little technical supervision in performing duties and completing assignments.
6. Supervise subordinate technical and clerical support staff.
7. Provide staff training, selecting appropriate methodology, reviewing work for technical accuracy, completeness and compliance with agency and program policies and procedures, and resolving work problems.
8. Frequently communicate with program staff, agency staff, staff of other local, State, and Federal agencies, carriers and members of the public regarding OS / OW matters being handled by the Permit Section.
9. Provide daily support to the Production Supervisor(s) and Project Manager.
10. Ability to effectively communicate and facilitate meetings.
11. Ability to speaking before large groups of people to provide or gather information, give reports, or seek change.
12. Provide written documents, charts, and analytical reports for review by Unit and Section managers.
13. Assist in preparing, revising and maintaining permit operation manuals.
14. Communicate with the general public on a frequent basis.
15. Understand the computer logic used to issue OS/OW permits.
16. Handle forum customer outreach efforts.

Unit Supervisor:

1. Complete knowledge and understanding of the permit program and mission.

2. Complete understanding of the needs and requirements necessary to efficiently and effectively provide permits to the billion dollar trucking industry.
3. Manage the workload volume, ensuring that applications are processed in an expeditious manner, and in conformance with all Federal and State laws and regulations, and Department policy and procedures.
4. Develop, update and maintain policies and procedures to continually provide for process improvements and efficiencies.
5. Continually meet with team leaders, seeking ideas and feedback for continued process improvements, and to resolve issues or concerns that may slow down production.
6. Represent program at staff meetings, customer outreach and informational sessions, to executive management, to the trucking industry and other partner agencies.
7. Provide oversight of superload moves, often in the field.
8. Develop program and staff work plans.
9. Prepare monthly production and revenue reports for presentation to Permit Sections Manager and Bureau Director.
10. Provide continuous staff evaluation for process improvements.
11. Assign special assignments as required.
12. Strong communication skills.
13. Oral communication may be via telephone or person-to-person and will require speaking before large groups of people to provide and/or gather information, give reports, or seek change.
14. Prepare written communication the form of reports, charts, or general correspondence.
15. Provide professional, courteous assistance to the public and other organizations or partner agencies.
16. Prepare, in final form, technical narrative, tabular, and graphic material.
17. Strong computer skills, with Microsoft Office products, Novell GroupWise, the Internet and the Department's database management systems.

Project Manager:

1. Continually develop knowledge and understanding of the effects of oversize and overweight vehicles to the State's highway infrastructure system.
2. Complete knowledge and understanding of the permit program and mission.
3. Complete knowledge and understanding of laws and regulations as they relate to permitting OS/OW vehicles.
4. Complete understanding of the billion dollar trucking industry related to obtaining OS/OW permits efficiently and in a manner that will promote economic development in New York State, yet not compromise the State's highway infrastructure system or the safety of the traveling public.
5. Represent the program, both in the Central Permit Office and in the field, in developing the engineering and other principles and guidance needed for establishing and communicating permit policies that minimize the impact of OS/OW loads on the state's infrastructure and are consistent with good asset management.
6. Represent the program on the structural and pavement technical studies and testing to minimize potential damage of OS/OW vehicles.
7. Represent the program on initiatives related to the review and proposed changes or rule making activities to the Vehicle and Traffic Laws and permit related regulations.
8. Continually develop, update and maintain program policies and procedures to provide for process improvements and efficiencies.

9. Represent the program at meetings related to: process improvement, automation, customer outreach and informational sessions, executive management presentations, the trucking industry, FHWA, NASTO, other partner agencies, and internal Department units (i.e., Structures, Office of Information Services, etc.).
10. Serve as focal point of contact with the Information Technology Division for all technology projects and issues related to the program.
11. Coordinate and delegate assignments as they relate to information technology projects.
12. Develop and/or review project plans and schedules for projects related to program improvement.
13. Working knowledge of mathematics, including algebra, geometry, trigonometry, engineering calculations.
14. Knowledge of the research methods.
15. Experience with project management of a technical and IT nature.
16. Ability to prepare, understand and interpret technical material.
17. Ability to prepare, understand and interpret complex data.
18. Ability to understand and interpret complex legislation and regulations.
19. Ability to prepare, in final form, technical narrative, tabular, and graphic material.
20. Strong communication skills, including written, oral and formal presentations.
21. Understanding of and ability to perform activities related to business and process analysis.
22. Strong knowledge of quality assurance test planning, scripting and execution.
23. Strong working knowledge of Microsoft Project and understanding of standard program languages of the Department of Transportation and Office for Technology.
24. Strong computer skills, including Microsoft Office products, Novell GroupWise, the Internet.

Home Office Support Staff Positions:

1. Provide ongoing computer training for personnel, enabling staff to provide essential permitting services.
2. Provide ongoing customer service training for staff to continually allow better communication (telephone, e-mail, customer service window) with customers,
3. Provide professional development training that will enable staff to support the goals and objectives of the Permits office.
4. Provide project management and contract oversight.
5. Provide quality assurance, ensuring contract requirements are fulfilled, including staff to be utilized to perform a variety of functions. Timely recruitment of replacement proposed personnel when vacancies occur (developing and advertising positions, interviewing candidates, hiring, orientation and training).