

Michael R. Bloomberg  
Mayor

Department of Transportation  
Staten Island Ferry Division

Janette Sadik-Khan  
Commissioner

## REQUEST FOR PROPOSALS

**Naval Architecture and Related Engineering Services  
In Connection With  
Engineering Service Agreement for  
Ferry Vessels and Floating Equipment '07 – Contracts A & B**

**CONTRACT NUMBERS:** FC- 5584A &  
FC- 5584B

**PIN NUMBERS:** 84107SIPT175 &  
84107SIPT182

**RELEASE DATE OF THE RFP:** January 18, 2008

**CONTRACT TERM:** 1,460 consecutive calendar days for each contract starting from the date of the Notice to Proceed with an option to renew under the same terms and conditions

### AUTHORIZED AGENCY CONTACT PERSON

Proposers are advised that the Authorized Agency Contact Person for all matters concerning this Request for Proposal is:

Earl J. Baim  
New York City Department of Transportation  
59 Maiden Lane, 35<sup>th</sup> Floor  
New York, NY 10038  
Telephone: (212) 487-8369  
Fax: (212) 487-8305  
E-mail: ebaim@dot.nyc.gov



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## SECTION I: TIMETABLE

**A. Release Date of the Request for Proposals:      **January 18, 2008****

All questions and requests for additional information concerning this Request for Proposals (RFP) should be directed to Earl J. Baim, the Authorized Agency Contact Person, at:

Telephone #:           (212) 487-8369  
Fax #:                 (212) 487-8305  
E-Mail Address:       ebaim@dot.nyc.gov

**B. Pre-Proposal Conference:**

**Date:                 February 4, 2008**  
**Time:                10:00 AM**  
**Location:           40 Worth Street Room 814,**  
**New York, New York 10013**

Attendance by proposers is optional but recommended by the Agency. Proposers should submit in writing to the Authorized Agency Contact Person all questions arising out of the pre-proposal conference no later than **February 19, 2008**. All other questions should be submitted no later than 10 consecutive calendar days prior to the proposal due date since the Agency may be unable to respond to questions received after that date.

**C. Proposal Due Date, Time and Location:**

**Date:                 March 4, 2008**  
**Time:                NO LATER THAN 2:00 PM**  
**Location:           proposals shall be submitted to NYCDOT Contract Section located at**  
**40 Worth Street, 8<sup>th</sup> Floor, Room 824A New York, NY 10013**

E-mailed or faxed proposals will not be accepted by the agency.

Proposals should be hand-delivered to NYCDOT Contract Section located at 40 Worth Street, 8<sup>th</sup> Floor, Room 824A, New York, New York 10013.

Note: All Projected Timetable dates are Tentative and subject to change

Proposals received at this Location after the Proposal Due Date and Time are late and will not be accepted by the agency, except as provided under New York City's Procurement Policy Board Rules.

The agency will consider requests made to the Authorized Agency Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the agency issues a written addendum to this RFP that extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above shall remain in effect.

**D. Anticipated Contract Start Date:      **July 1, 2008****

## **SECTION II: SUMMARY OF THE REQUEST FOR PROPOSALS**

### **A. Purpose of the RFP**

The Department of Transportation is seeking appropriately qualified vendors to provide Naval Architecture and Related Engineering Services on a task order basis to assist the Department's workforce and to obtain personnel expertise which are not available in the agency.

### **B. Anticipated Contract Term**

The anticipated contract term for each contract is 1,460 consecutive calendar days starting from the date of the Notice to Proceed, with an option to renew for an additional 730 consecutive calendar days under the same terms and conditions.

### **C. Anticipated Payment Structure**

It is anticipated that the payment structure for the contract(s) which will be awarded from this RFP will be based on a combination of direct technical salary costs times a multiplier, specified direct costs subject to an overall "not-to-exceed" fee (upset amount) and performance outcome measures and related financial incentives and/or disincentives. The multiplier shall be applied only to technical salary costs and shall be considered as including provisions for indirect costs (overhead) and profit. However, DOT will consider proposals to structure payment in a different manner and reserves the right to select any payment structure that is in the City's best interest.

### **D. Award Procedure**

The Agency will make two (2) awards as a result of this RFP.

Assignments under these Contracts will be made on alternating basis, except that, if the Department is not able to reach a final agreement with one Consultant after following the procedures set forth in Section VII, Attachment A – "Proposed Contractual Agreement", Subsection III – "Operations Procedures after Agreement is Executed", of this RFP, it may request a proposal from other Consultant and negotiate a final proposal with such other Consultant by following these procedures.

Of the two contracts (FC-5584A and FC-5584B) that will be awarded from this RFP, Contract FC-5584A will be assigned to the highest technically ranked firm and Contract FC-5584B will be assigned to the second highest technically ranked firm. The first assignment will be given to the contract that will be registered first.

If the two (2) awards from this RFP are simultaneously registered then the first assignment will be given to the highest ranked firm (FC-5584A) and subsequent assignments will be made on an alternating basis between Contracts FC-5584A and FC-5584B, as explained above.

In special circumstances, there may be exceptions to the task assignment process delineated above, where the

Agency's Project Manager issues a request for a project specific proposal to both consultants. The project specific proposals will then be based upon the technical evaluation criteria set forth in the project specific proposal documents as specified and explained in Section VII, Attachment A – "Proposed Contractual Agreement", Subsection III – "Task Order Procedures after Agreement is Executed."

The Agency will issue assignments based on the labor rates submitted by the consultants on their cost proposals. The staffing plan for each assignment shall be agreed upon between the individual consultant and the Agency.

## **SECTION III: SCOPE OF SERVICES**

### **A. Agency Goals and Objectives for this RFP**

The agency's goal and objectives are to acquire quality Naval Architecture and Related Engineering Services, to perform competent engineering and design work, as well as to ensure quality construction and repair, related to Staten Island Ferry vessels, and other Department owned and operated vessels and floating equipment. The Scope of Services can be found under Section I, "General Requirements" in the Proposed Contractual Agreement (See Section VII, Attachment A).

### **B. Agency Assumptions Regarding Consultant Approach**

The agency's assumptions regarding which approach will best achieve the goals and objectives set out above are reflected in the Proposed Contractual Agreement. (See Section VII, Attachment A)

### **C. Proposed Contractual Agreement**

Each successful proposer shall negotiate an agreement based on the proposed contractual agreement (See Section VII, Attachment A). Such agreement shall contain the appropriate United States Department of Transportation and New York State Department of Transportation requirements, including but not limited to the "NYSDOT procedures for Locally Administered Federal Aid Projects."

In addition, the proposers must submit the "Disclosure of Lobbying Activity" and Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters, attached as Section VII G with its technical proposal.

### **D. Opportunity for Disadvantaged Business Enterprises**

The NYC Department of Transportation encourages firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of 11 percent. The successful proposer must show good faith efforts that it attempted to meet the DBE goal. The list of certified DBE firms can be obtained from the following Web site: <http://biznet.nysucp.net/>.

### **E. Compliance with Local Law 34 of 2007**

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the City" as such terms are defined in the local law. In order for the City to obtain necessary information to establish the required database, **vendors responding to this solicitation should complete the Doing Business Data Form (see Attachment H) and return it with this proposal.** The submission of a data form that is not accurate and complete may result in appropriate sanctions.

## **SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL**

**Instructions:** Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8 1/2" X 11" papers. The City of New York requests that all proposals be submitted on paper with no less than 30% post consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). Pages should be paginated.

The RFP package should consist of Three (3) individually sealed components as listed below, each bound in an 8 1/2" x 11" plastic spiral binding. The cover should be hard cardboard or laminated plastic, the cover should feature the name of the responding firm(s) and the contract name and numbers. Responses should be typed using 12 point font. Responses on pre-printed forms should be no smaller than 8 point font, and then only when necessary. The response may include a one page bound transmittal letter, which summarizes the respondent's understanding of the project and its ability to successfully accomplish the job. Each section should be tabbed and labeled to correspond with each section listed (i.e. 1T, 2T, 3T, 4T, 5T, 6T, 7T, Standard Forms 330, Forms 4T1, 4T2 and 4T3.).

The proposal will be evaluated on the basis of its content, not length.

### **A. Proposal Format**

#### **1. Component 1:                      Procedural Forms**

A Procedural Forms packet has been supplied with this Request for Proposals and should be fully completed and ONLY one (1) original set should be submitted and included in your proposal package as follows:

<b>FORM 1P</b>	<b>PROPOSAL COVER LETTER</b>
<b>FORM 2P</b>	<b>ACKNOWLEDGEMENT OF ADDENDA</b>
<b>FORM 3P</b>	<b>AFFIRMATION FORM</b>

The Original Procedural Forms Packet, which should include completion of all Procedural forms, required procedural documents, signed certifications and Supplementary information.

#### **2. Component 2:                      Proposal Forms**

A Proposal Forms Packet has been supplied with this Request for Proposals and should be fully completed, and one (1) original set and five (5) copies should be submitted and included in your proposal package as follows:

<b>FORM 1T</b>	<b>QUALITY &amp; RELEVANCE OF PRIOR EXPERIENCE (FIRM IN GENERAL)</b>
<b>FORM 2T</b>	<b>PROPOSED STAFF RESUMES/EXPERIENCE</b>
<b>FORM 3T</b>	<b>OVERALL PROJECT UNDERSTANDING AND APPROACH</b>
<b>FORM 5T</b>	<b>NYCDOT CURRENT WORKLOAD DISCLOSURE</b>
<b>FORM 6T</b>	<b>DBE PARTICIPATION FORM</b>
<b>FORM 7T</b>	<b>STATEMENT OF UNDERSTANDING</b>
<b>FORM 330</b>	<b>STANDARD FORM</b>

**SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL (Continued)**

**3. Component 3: Cost Proposal**

A Cost Proposal Forms Packet has been supplied with this Request for Proposals and should be fully completed and ONLY one (1) original set should be submitted and included in your proposal package as follows:

**Cost Proposal**

<b>FORM 4T1</b>	<b>LABOR COST PROPOSAL</b>
<b>FORM 4T2</b>	<b>COST PROPOSAL SUMMARY</b>
<b>FORM 4T3</b>	<b>PERFORMANCE OUTCOME MEASURES AND FINANCIAL INCENTIVES AND/OR DISINCENTIVES</b>

**Performance Outcome Measures and Related Financial Incentives and/or Disincentives**

Performance outcome measures and their related financial incentives and/or disincentives should be proposed in Form 4T3. List and describe desired performance outcomes or targets for the work to be performed by the proposer under the contract along with the related financial incentives and/or disincentives that could potentially be applied to the contract. While the proposer's proposed performance outcome measures and related financial incentives and/or disincentives will not be scored, they may be considered by the agency while awarding the contract and structuring its payments to the consultants.

All components should be individually sealed and labeled (i.e., Component 1, Component 2, Component 3) to indicate the contents of each package and placed in an outer envelope or wrapper. Address all component packages, outer envelopes or wrappers as follows:

**Proposer's Name  
Address**

**NYCDOT Contract Section  
40 Worth Street  
8th Floor, Room 824A  
New York, New York 10013**

**Contract No.: FC-5584A & Contract No.: FC-5584B  
Pin No.: 84107SIPT175 & Pin No. : 84107SIPT182  
NAVAL ARCHITECTURE AND RELATED ENGINEERING SERVICES IN CONNECTION WITH  
ENGINEERING SERVICE AGREEMENT, FERRY VESSELS AND FLOATING EQUIPMENT  
PROPOSAL SUBMISSION DEADLINE IS TBD  
NO LATER THAN 2:00 PM**

The individually sealed proposals should be submitted at the time and place as indicated in Section I, Timetable.

**SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL (Continued)**

**B. Proposal Package Contents (“Checklist”)**

**CHECKLIST FOR RFP**

**The Proposal Packet should contain the following materials. Proposers should utilize this section as a checklist to ensure completeness prior to submitting their proposal to the Agency.**

**1. COMPONENT 1 – Submit ONLY one (1) original set**

- 1P Proposal Cover Letter
- 2P Acknowledgment of Addenda
- 3P Affirmation Form
- Disclosure of Lobbying Activity
- Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters
- Confirmation of VENDEX Compliance
- Doing Business Data Form

**2. COMPONENT 2 – Submit one (1) original and five (5) copies**

- 1T Quality and Relevance of Prior Experience (Firm in General)
- 2T Proposed Staff (Resumes)/Experience
- 3T Overall Project Understanding and Approach
- 5T NYCDOT Current Workload Disclosure
- 6T DBE Participation
- 330 Standard Form

**3. COMPONENT 3 COST PROPOSAL – Submit ONLY one (1) original set**

- 4T1 Labor Cost Proposal
- 4T2 Cost Proposal Summary
- 4T3 Performance Outcome Measures and Related Financial Incentives and/or Disincentives

## **SECTION V: PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**

### **A. Evaluation Procedures**

All proposals accepted by the Agency will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the Agency to be non-responsive will be rejected. The Agency's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below.

The ratings by the CSC members will be added and averaged for each firm in order to establish the initial technical evaluation rankings and ratings. Based on these rankings, at least the four (4) top rated proposers and any other proposer whose rating is within five percent (5%) of the sixth ranked proposer will be shortlisted. In the event there are less than four (4) proposals received, NYCDOT will determine whether it will continue the selection process with fewer proposals or re-issue the RFP.

Based on the initial technical rankings, if NYCDOT determines that there are less than four (4) technically viable proposals, then a shortlist of only technically viable firms will be established.

The Agency reserves the right to conduct site visits and/or interviews and/or to request that proposers make oral or visual presentations in support of their proposals or to exhibit or otherwise demonstrate or clarify the information contained in their proposals. Subsequent to any such presentations, the CSC will prepare revised rating sheets.

The agency shall rank proposers by technical merit and pursuant to the Federal/State Method of Procurement, (Brooks Law) the price proposal from ONLY the two (2) highest technically ranked firms will be opened and reviewed by the consultant selection committee (CSC) to determine whether it is responsive or non-responsive. Following analysis of the responsive price proposals by the CSC, the two (2) highest ranked firms will be recommended for award and invited for contract negotiations.

In the event that the agency has chosen to negotiate a fair and reasonable price with the two (2) highest ranked proposers, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next highest ranked proposer(s), as necessary. All unopened price proposals will be returned to the respective proposers upon registration of the contract.

Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best technical and price terms.

### **B. Evaluation Criteria**

Each technical proposal will be evaluated based on the following technical criteria and weights:

<b>1. Quality &amp; Relevance of Prior Experience with Similar Projects</b>	
- Proposed staff (Resumes)	35%
- Firm in General	20%
<b>2. Quality of Proposal</b>	
- Project Understanding & Approach to providing Naval Architecture and Related Engineering Services	30%
- Staffing Including Commitment of Staff for Duration of Project	5%
- Innovation	5%
<b>3. Staff Availability</b>	
- Capacity of the Firm to Perform Staff Availability & Attrition Rate	5%
<b>TOTAL:</b>	<b>100%</b>

### **C. Basis for Contract Award**

A contract will be awarded to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria which are set forth in this RFP. Award of the two contracts shall be subject to the timely completion of contract negotiations between the Agency and the selected proposers.

## SECTION VI: GENERAL INFORMATION TO PROPOSERS

**A. Complaints.** The New York City Comptroller is charged with the audit of contracts in New York City. Any Proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835 New York NY 10007; the telephone number is (212)-669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

**B. Applicable Laws.** This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at 212-788-7820.

**C. General Contract Provisions.** Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A- General Provisions Governing Contract for Consultants, Professional and Technical Services" or if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contract Person.

**D. Contract Award.** Contract award is subject to each of the following applicable conditions and any others that may apply; New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and section 6-108.1 of New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

**E. Proposer Appeal Rights.** Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

**F. Multi-Year Contracts.** Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

**G. Prompt Payment Policy.** Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

**H. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

**I. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secret and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

**J. RFP Postponement/Cancellation.** The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.

**K. Proposers Costs.** Proposers will not be reimbursed for any costs incurred to prepare proposals.

**L. Charter Section 312(a) Certification.**

The Agency has determined that the contract(s) to awarded through this Request for Proposals (contract No's: FC-5584A & FC-5584B; PIN No's 84107SIPT175 & 84107SIPT182) for Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement Ferry Vessels and Floating Equipment 07 A & B will not directly result in the displacement of any New York City employee.

\_\_\_\_\_  
Agency Chief Contracting Officer)

\_\_\_\_\_  
Date

**Message from the New York City Vendor Enrollment Center  
Get on mailing lists for New York City contract opportunities!  
Submit a NYC-FMS Vendor Application- Call 212/857-1680**

## **SECTION VII: ATTACHMENTS**

- A) Proposed Contractual Agreement**
- B) General Provisions (Appendix A)**
- C) Procedural Forms Packet**
- D) Proposal Forms Packet**
- E) Cost Proposal Forms Packet**
- F) VENDEX Requirements & Confirmation of VENDEX Compliance**
- G) Disclosure of Lobbying Activities & Certification of Contractor Regarding Debarment, Suspension and other Responsibility Matters**
- H) Doing Business Data Form and Instructions**

A) PROPOSED CONTRACTUAL AGREEMENT

**GENERAL REQUIREMENTS OF CONTRACT FOR THE SERVICES OF THE  
CONSULTANT**

**FOR**

**NAVAL ARCHITECTURE AND RELATED ENGINEERING SERVICES  
IN CONNECTION WITH  
ENGINEERING SERVICE AGREEMENT  
FERRY VESSELS AND FLOATING EQUIPMENT 07 A & 07 B**

CONTRACT NOS.: FC-5584A and FC-5584B

PIN No.: 84107SIPT175

PIN No.: 84107SIPT182

**CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
STATEN ISLAND FERRY DIVISION**

REQUIREMENTS OF CONTRACT FOR THE SERVICES OF THE ENGINEER

FOR

CONTRACT NO'S: FC-5584A & FC-5584B

PINs: 84107SIPT175 & 84107SIPT182

**I. GENERAL REQUIREMENTS**

This agreement provides funding for survey, marine vessel design, inspection, shop drawing review, value engineering, construction supervision/inspection, and constructability review activities for ferryboats and other vessels and floating equipment. During the term of this Engineering Services Agreement (ESA), projects and work assignments may be identified, associated individual scope of services prepared, and agreement reached with the consultant regarding staffing requirements, cost, and schedule. Work will commence immediately upon registration of individual Project Task Agreements.

**II. ENGINEERING SERVICES FOR THIS CONTRACT MAY CONSIST OF THE FOLLOWING**

The work of this contract shall consist in whole, in part, or in combination as directed by the Contract Manager of those engineering services required for specific projects in the Department's program such as, but not limited to the typical assignments listed below:

Vessel Rehabilitation, Retrofit, or Conversion	Value Engineering
Minor/Moderate Vessel Reconstruction	Security Planning and Design
Naval Architecture	Operations Analysis
Marine Engineering	Concept Studies
Electrical/ Electronic Engineering	Constructability Reviews
Structural Evaluations	Transportation Planning
Environmental Engineering (Hazardous Materials, Water and Air Pollution Mitigation)	Program Management
Industrial/ Occupational Safety Analysis and Design	Cost Estimating
Resident Engineering & Inspection	Mechanical Engineering
Power Plant Automation Engineering	Shop Drawing Review
Specialized Technical Investigation	Construction Support Services
Inspection and Certification of Marine Cranes	Special Projects
Liaison with Regulatory Bodies and Class Societies	
Vessel, Equipment, and Systems Inspections	

Work shall be progressed and designed in accordance with the following references and current standards used in the U.S. maritime and public transportation industries and in accordance with all applicable laws of the United States, New York State, and New York City, whether or not specifically named or listed herein:

Code of Federal Regulations (CFR), Title 46 (Shipping)

Code of Federal Regulations (CFR), Title 33 (Navigation and Navigable Waters)

United States Coast Guard (USCG), Navigation and Vessel Inspection Circulars

American Bureau of Shipping (ABS), Rules for Building and Classing Steel Vessels, and Other Applicable Rules, Guides, and Standards of the Bureau

Code of Federal Regulations (CFR), Title 29 (Labor)

Code of Federal Regulations (CFR), Title 40 (Protection of the Environment)

The Residential Lead-Based Paint Reduction Act of 1992, Title X

National Fire Protection Association (NFPA), 70, National Electric Code (NEC)

National Fire Protection Association (NFPA), 312, Fire Protection of Vessels During Construction, Repair, and Lay-Up

United States Public Health Service (USPHS), Publication No. 393, "Handbook on Sanitation of Vessel Construction"

United States Department of Labor, "Safety and Health Regulations for Longshoring"

American Institute of Electrical and Electronic Engineers, Standard No. 45, "Recommended Practice for Electrical Installations on Shipboard"

United States Department of Transportation Federal Transit Administration Procurement Rules

United States Navy Military Sealift Command, Work Item Preparation Guide

United States Maritime Administration Guideline Specifications for Merchant Ship Construction

New York State Department of Environmental Conservation Regulations

AASHTO Standard Specifications for Highway Bridges

AASHTO Guide for the Development of Bicycle Facilities

AISC Properties of Structural Shapes

ASTM Standard Specifications

New York City Procurement Policy Board Rules

Plans, Specifications and Operating Manuals for Existing Vessels

Interfacing Details and Characteristics of Existing Shore Facilities

Equipment and System Operating and Maintenance Manuals Existing Vessel Systems and Equipment

Staten Island Ferry Safety Management System Manuals

International Safety Management Code

New York City Department of Transportation Staten Island Ferry Standard Operating Procedures  
New York City Building Code

VESSEL, SYSTEM AND EQUIPMENT REHABILITATION, RETROFIT, OR CONVERSION DESIGN

The Consultant shall perform an in-depth field inspection and evaluation in accordance with a Project Task Agreement. The Consultant shall prepare and submit a "Rehabilitation Project Report" summarizing its findings, rehabilitation, retrofit, conversion or replacement alternatives, estimated costs, and recommendation of the preferred course of action.

Upon approval of the Rehabilitation Project Report by the Department and receipt of direction to proceed the Consultant shall prepare a "Rehabilitation Preliminary Plan."

Upon approval of the Rehabilitation Preliminary Plan the Consultant shall prepare detailed rehabilitation plans, specifications and estimates. Work will consist of the preparation and submission of Advance Plans and Final Plans, Specifications, and Estimates. For each of these submissions, the Consultant will make revisions in accordance with Department comments. The finished work product shall be suitable for construction and receipt of competitive bids.

## PLANNING OR ENGINEERING ASSIGNMENTS

The Consultant shall perform Planning or Engineering tasks in accordance with the individual scope of services defined by a Project Task Agreement.

## CONSTRUCTABILITY REVIEWS

If required by a Project Task Agreement, or for all design services furnished by the Consultant, the Consultant shall review Advance Plans and other available project information and prepare a report that documents constructability issues that could potentially delay or disrupt the completion of the project. The objective of the review is to assure that contract documents are sufficiently detailed so that the project can be bid rationally and built without significant contract changes or delays. When agreed with or requested by the Department, the Consultant shall engage or employ an approved shipyard construction expert for this task.

## CONSTRUCTION SUPERVISION, RESIDENT ENGINEERING AND INSPECTION

In accordance with a Project Task Agreement, the Department may direct the Consultant to function as "the Engineer or Project Manager" in relation to one or more shipyard construction, shipyard repair, or ship repair or conversion contracts.

The Consultant agrees to provide, to the satisfaction of the Department, all necessary construction supervision, resident engineering and inspection services, and such testing of materials as may be required in connection with the actual construction of the project, which includes all general construction and incidental work, such that the completed construction conforms to the plans, specifications, and requirements of the contract and to good shipbuilding practice.

The Consultant agrees that it will endeavor to safeguard the Department against defects and deficiencies in the work and that it will use reasonable care and reasonable powers of observation and detection in determining that the work conforms to the Construction or Repair Contract documents.

All Construction Supervision, Resident Engineering and Inspection work performed or furnished by the Consultant shall be under the direction of an appropriately educated and/ or experienced New York State Licensed Professional Engineer employed by the Consultant. However a Professional Engineer employed by the Consultant to supervise ship construction or repair work need only personally attend field work periodically as the Consultant deems necessary in order for the Consultant to remain in responsible charge of its field supervision and inspection efforts or when and to the extent the Department agrees or directs that it is necessary to have a person in charge at the site for with the authority and capacity to approve deviations from the plans and specifications or make changes in vessel design (i.e., a "Resident

Engineer”) without referring to the Consultant’s project or home office, or for other reasons deemed necessary by the Department.

Except as noted above, the Consultant’s person in charge at the site (i.e., termed “Chief Inspector” herein) may be unlicensed with the understanding that the Chief Inspector is working under the direction of a responsible Professional Engineer in the Consultant’s home or project office and will otherwise take full charge of the work at the site. Chief Inspectors shall generally meet all of the requirements of an ASCE Grade IV Engineer or higher level Engineer, with the exception of lack of New York Professional Engineer Registration.

All candidates for Resident Engineer or Chief Inspector shall have appropriate education and/ or experience and their credentials shall be submitted by the Consultant and subject to approval of the Department.

## CONSTRUCTION SUPPORT SERVICES

In accordance with a Project Task Agreement the Consultant shall provide specialized engineering services, Working (i.e., Shipyard, Equipment Vendor or Shop) Drawing Review Services and Design Services for emergency repairs when and where directed, with a staff commensurate with the level of construction activity until completion and final acceptance of the Construction or Repair Contract work. The Consultant agrees to provide, to the satisfaction of the Department, Working Drawing Review Services as required by the Contract Manager, such that all working drawings conform to the plans, specifications and requirements of the construction, rehabilitation, or repair contract and to proper shipbuilding practice.

The Consultant also agrees to provide to the satisfaction of the Department, all necessary Specialized Engineering Services, such that the resultant design efforts conform to proper engineering practice.

## VALUE ENGINEERING

Pursuant to a Project Task Agreement, or in the performance of all Resident Engineering and Inspection Services or Construction Support Services, the Consultant should analyze, review and provide recommendations on all changes in materials, design or proposed work, particularly as they may apply to "Value Engineering" that is proposed by the Contractor. When agreed with, or requested by the Department, the Consultant shall engage or employ an approved expert shipbuilding cost estimator to facilitate its work on any particular Project Task Agreement.

## STAFFING AND SERVICES

In accordance with a Project Task Agreement, the Consultant shall provide a project staffing level as approved by the Department until completion and final acceptance of the Project Task Agreement work.

The Consultant agrees to provide, to the satisfaction of the Department, all necessary professional services, engineering services, out of pocket costs, and overhead as may be required in connection with the actual required scope of services, which includes all inspection, testing, access, incidental work, and the hiring of subconsultants, laboratories, or experts as necessary.

## SPECIAL PROJECTS

The Consultant shall provide specified technical services for any Special Projects assigned by the Department. As per directives and guidelines issued by the Department, the Consultant will prepare and submit detailed scope of work for special projects including tasks and manhour estimate for review and approval.

### III. TASK ORDER PROCEDURE AFTER AGREEMENT IS EXECUTED

This agreement is one of two Contractual Agreements, both dated xxxxxx (the "contracts") entered into by the Department pursuant to Contract Number FC-5584A (PIN # 84107SIPT175) and Contract Number FC-5584B (PIN # 84107SIPT182) to provide the services described in this Contract. This contract is with xxxxx, the other contract is with xxxxxx. Assignments under these contracts will be made based upon the process defined below. The maximum of each of these contracts will not exceed \$2,500,000; however there is no guarantee that the Department of Transportation will expend the entire value of these contracts. Specifically, the Department of Transportation does not guarantee that the Consultant will receive a specific volume of work, a specific total contract amount, or a specific task order value. All work will be conducted through task orders for specific pieces of work.

Specific work under this contract will be performed on a task order basis consisting of individually negotiated task orders. Each task order will provide a specific scope, budget and schedule of the services required. The exact disciplines required and the amount of work for each discipline, have not been determined. The CONSULTANT should be capable of adding, deleting, or substituting disciplines/expertise as necessary to meet the needs of specific task orders. There is no guarantee that all disciplines or services will be utilized.

The CONSULTANT will be expected to respond to short notice requests for technical services to resolve urgent task orders and in response to task orders for development review services. The CONSULTANT should be capable of performing urgent task order assignments while working on several other task orders simultaneously. CONSULTANT task orders will be coordinated with on-going work being performed by the Department.

#### A. TASK ORDERS

1. Issuance of Task Orders by the Project Manager: Throughout the term of the Contract, as the need arises for architectural, engineering and construction related services, the Project Manager shall issue a Task Order to the Consultant(s). The Project Manager may issue separate and/or supplementary Task Orders to the Consultants for the performance of services for different phases or portions of the individual project. Each Task Order issued hereunder shall specify the items set forth below:
  - (i) A description of the individual project for which services are required
  - (ii) The services to be performed by the Consultant
  - (iii) The method of payment for the performance of services
  - (iv) Any requirements for scheduling and/or phasing of the services
  - (v) Time frame for completion of services
  - (vi) An overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount shall be further broken down into various amounts and/or allowances, depending on the required services and the method of payment specified in the Task Order. Such amounts and/or allowances may include the following: (1) Amount for Design Fee (based upon negotiated staffing plan utilizing the consultant's labor rates); and (2) Allowance for reimbursable Services.
2. Supplementary Task Orders: In the event of any changes to the Task Order, the Project Manager shall issue a Supplementary Task Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Task Order issued by the Project Manager.
3. Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Task Order shall take precedence.

4. No Right to Reject a Task Order: The Consultants shall have no right to reject or decline to perform any Task Order issued under the Contract. Accordingly, any rejection of a Task Order by any Consultant, expressly made or implied by conduct, shall constitute a material breach of this Contract.
5. Task by Others: In the event there is a need for Transportation Planning, Engineering and Transportation related services, the Project Manager reserves the right not to issue a Task Order to the Consultant and to have the work performed by another Consultant(s) or by City employees, if the Project Manager, in his sole opinion, determined that the Consultant may be unable to satisfactorily provide the required services in a timely fashion.

## **B. TASK ORDER PROCESS**

1. (i) The Project Manager will notify the Consultant of the Department's intention to develop a Project Task Order for a specific assignment and will forward the draft scope of services. These will be considered Tasks for this Agreement.  
  
(ii) For each individual task order, the Project Manager will issue a written or verbal "Task Order Request" to one of the two consultants. The task request will describe the nature and extent of the project, its scope, preliminary schedule and rough order of magnitude.  
  
(iii) Within 5 days or the timeframe specified in the "Task Order Request", the Consultant will prepare a scope of work, schedule, and fees as well as identify the key staff assignments and potential subconsultants.  
  
(iv) If needed, arrangements will be made for a scope meeting to be held in the most appropriate location. The Consultant shall take minutes and submit them to all attendees within one week of such meeting. If needed, the Project Manager shall present the technical aspects of the project to the Consultant. At the close of the meeting, the definitive due date of the second proposal will be established.  
  
(v) The Consultant will submit the two copies of its first proposal to the Project Manager.  
  
(vi) The Project Manager shall review the proposal and conduct appropriate negotiations with the Consultant that result in a final proposal, submitted by the Consultant as in B(1) (v) above.  
  
(vii) After review, the Project Manager will then recommend that the Project Task Agreement be finalized. The agreement will be sent to the Consultant for signature.  
  
(viii) A copy of the executed task order will be sent to the NYC Office of Management and Budget for Final Approval. Upon such approval, the fully executed task order will be forwarded to all parties.  
  
(ix) Upon encumbrance of the funds for the project, the Project Manager will notify the Consultant when to proceed with work on the assignment.  
  
(x) The consultant shall send billings and progress reports to New York City Department of Transportation, Office of Planning and Sustainability. All extra work elements must be negotiated in writing. If warranted, a supplemental task order for additional work will be processed in the same manner as the original assignment.
2. **Selection Procedure:** The selection of the Consultant to perform services for a project shall be conducted in an alternating basis. One of the two Consultants shall be issued the initial Task Order. Subsequent to such initial Task Order, the next Task Order shall be issued to the Consultant that did not receive the preceding Task Order. This Task Order Process will be followed during the terms of the contracts with the exception of when the Project Manager makes a determination in his/her sole discretion that a particular task or project is of such nature as to require the submission and

evaluation of a Project Specific Proposal (defined below) for the scope of work by each of the Consultants, or in situations where the Department is not able to reach a final agreement with one Consultant after following the procedures set forth above, or where in the Agency's sole opinion and discretion, the consultant cannot satisfactorily provide the services in a timely manner or is otherwise unable to commence the services required in the task order, it may request a proposal from the other Consultant and negotiate a final proposal with such other Consultant by following such procedures. The procedure that will be followed in the event that a determination is made by the Project Manager that the particular task or project is of such nature as to require the submission and evaluation of a Project Specific Proposal for the scope of work by each of the Consultants is set forth below. This selection procedure shall be conducted prior to the issuance of the Task Order. Both the City and the Consultant(s) understand that this alternate Task Order Process may result in a Consultant receiving consecutive Task Orders. Accordingly, the Task Order issued directly after the issuance of a Task Order pursuant to this special selection process shall be issued to the Consultant that is not issued the subject Task Order, unless it is determined by the Project Manager that such subsequent Task Order must also follow the special Task Order Process. Each Consultant shall not be entitled to any claims based on the award of any Task Order by the Project Manager.

a. Project Specific Proposals Documents: As the need for services arises, the Project Manager shall issue project specific proposal documents to each Consultant. Such documents shall include the following: (i) information concerning the individual project for services are required, and (ii) a description of the project specific proposal to be submitted by each Consultant.

b. Project Specific Proposals: The Consultants agree to submit project specific proposals in response to the documents specified in the paragraph above. The Consultants shall not be entitled to compensation for costs incurred in connection with the preparation of their project specific proposal.

c. Evaluation: An evaluation committee will review, evaluate and score all project specific proposals, based upon the technical evaluation criteria set forth in the project specific proposal documents. This evaluation and scoring will determine the Consultants' Technical Rating. The Consultant with the highest technical rating will be selected for the individual project. The selected consultant shall then be required to follow the procedures for negotiating the task order delineated above.

#### **IV. FEES AND PAYMENTS**

##### **A. FEE**

In full payment for all services to be rendered hereunder, the Department may pay to the Consultant and the Consultant agrees to accept a fee not to exceed \$2,500,000.00. The projected maximum annual value of work ordered under the contract is \$625,000.00.

##### **B. BASIS**

###### **1. Office Work:**

The payment for the services rendered herein will be made on the basis of total direct technical office salary costs of the Consultant attributable to the contract times a technical office multiplier, plus direct reimbursement for Principals' Time and certain out-of-pocket expenses.

###### **2. Field Work:**

For field work, payment will be made on the basis of total direct technical field salaries, including applicable weekend/night work differential, times a technical field multiplier, plus direct reimbursement for principals' time, authorized overtime premium pay and certain out-of-pocket expenses.

###### **3. Hourly Rate Schedule:**

Direct technical office and field salary cost rates payable under the contract(s) and technical office and field multipliers shall be as set forth in the Hourly Rate Schedule of the contract(s). The rates stipulated therein shall apply to the Consultant(s) and all Subconsultants, and to all Project Task Agreements awarded under the contract(s).

## C. DEFINITIONS

### 1. Direct Technical Salary Cost

Direct technical salary cost shall include only engineering, surveying and drafting salaries, exclusive of Principals' Time, and shall be derived from direct individual salaries, not including overtime premium pay, vacation pay, holiday pay, social security, unemployment insurance, worker's compensation, sick pay or other fringe benefits. Any salary increases prior to or during the contract period should be within parameters as established in the Engineer Pay Index of the U.S. Bureau of Labor Statistics-Employment Cost Index for Professional Specialty and Technical Workers-Wages and Salaries. \*

### 2. Technical Office or Field Multiplier

The technical office or field multiplier shall be applied to the direct technical office or field salary costs of the Consultant and all Subconsultants in connection with the project, and should be considered as including provisions for indirect costs and profit.

### 3. Principals' Time

The words "the Principals" or "the Principals of the firm" are understood to mean those individuals in a firm who possess legal responsibility for its management. They may be owners, corporate officers, associates, partners, etc. With respect to a corporation, a principal is also defined as any person who owns ten (10) percent or more of the voting stock. Principals of the firm shall be compensated for their time when summoned by the Department to provide technical assistance, to the extent that they perform services other than administrative or supervisory services, as follows:

- a) The rate of compensation for Principals' Time as stated herein before, will not exceed One Hundred Dollars (\$100.00) per hour, to be based on actual draw.
- b) The Principals participating in the project should provide the Department with a demonstration certifying his/her actual draw from the firm on an average weekly basis. Where said rate exceeds Fifty Dollars (\$50.00) per hour, the principal participating in the project shall provide the Department with a notarized statement by a certified public accountant that such rate does not exceed the principals' annual direct compensation, excluding profit, computed on an hourly rate. The amount payable for Principals' Time shall not be included in the technical salary cost base and is not subject to any multiplier.
- c) The Principals participating in the project shall maintain a daily log of their participation, which shall be available for inspection by the Department and the NYC Comptroller.
- d) For Principals' time the Department deems directly compensable, the Department will certify that direct participation by the Principals is essential to the effective and economic completion of the project. Principals will only receive direct compensation for technical work performed, and then only at the flat rate of One Hundred Dollars (\$100.00) per hour.
- e) The total compensation for the Principals' Time shall not exceed Thirty Five Percent (35%) of the total not to exceed fee as stated herein before.

- f) In the event that a Principal assumes the specific assignment of responsibilities normally allocated to a technical member of the project team, said Principal shall be compensated at a rate corresponding to the technical salary commensurate with that assignment times an adjusted (where appropriate) multiplier, said multiplier to be established by the Department's Engineering Audit Bureau to avoid duplication of indirect expenses. The adjusted multiplier is calculated by decreasing the Consultant's Multiplier by 10%.

*\* The Annual Employment Cost Index Percent increase times the total yearly salary cost of all current employees working on that project for the prior year, becomes a pool of money from which various raises may be granted. The maximum salary increase per person is limited to the Annual Employment Cost Index plus 50% of the Index. Total of individual raises should not exceed the pool money per contract year*

#### 4. Out-of-Pocket Expense.

- a) The cost of acquiring, on a per diem basis, the services of other experts or engineers as may be required for the performance of the Consultant's services are subject to the same audit rules as the prime consultant.
- b) The costs of the use of motor vehicles, owned by the Consultant or employees of the Consultant or leased and maintained by the Consultant and used specifically for and only for the performance of this contract, shall be compensated on a direct mileage basis in accordance with the standards as established for reimbursement allowances for City personnel by the current edition of Directive #6, NYC Comptroller. The cost of MTA tokens and tolls within the city borders are reimbursable as out-of-pocket costs. However, cost of parking is not reimbursable.
- c) The cost of printing and duplicating for this project by an outside vendor is reimbursable as out-of-pocket costs based on the submitted invoice. However, cost of printing by in-house services is not reimbursable.
- d) The cost of renting any other materials or equipment or acquiring services specifically for, and applicable only to, this project may be submitted for direct payment as out-of-pocket costs. This should not include the purchase of general tools or office supplies whether expendable or reusable.
- e) The costs of the specified registered mailing and/or FEDEX type services directed by the Department are reimbursable as out-of-pocket costs. However, routine postage, messenger service, etc. are not reimbursable.
- f) The cost of project related long distance telephone calls are reimbursable as out-of-pocket costs.
- g) The cost of project specified cellular communications, approved by the Contract Manager, are reimbursable as out-of-pocket costs.
- h) The cost of project specified microfilming services are reimbursable as out-of-pocket costs.
- i) The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs, including the cost of providing digital photographs.
- j) The cost of retaining the services of a qualified contractor, or contractors, to provide for Audiogaging, Non Destructive Testing, Localized Dismantling and Restoration of Structure or Equipment, Electrical or Machinery Testing, Steel Sampling, Underwater Inspection, Specialized Investigation and Testing Services, or means of access for inspection and the like, as required.

k) Living and travel expenses, approved by the Department, for personnel performing Construction Supervision, Resident Engineering or Inspection Services required under this contract outside of the New York Metropolitan Area.

l) The cost of business trips, other than 'k', above, approved by the Department and specifically to perform the services required under this contract.

m) The cost of project specified miscellaneous items approved by the Director of Engineering are reimbursable as out-of-pocket costs.

n) The cost of project specified professional liability insurance for the consultant and subconsultants.

Note: Expenditures for (k) and (l) above shall be in accordance with the guidelines in New York City Comptroller's Directive No. 6 – Travel, Meals, Lodging and Miscellaneous Agency Expenses, of October 23, 1996. Directive No. 6 is available on the NYC Comptroller's website.

Out-of-Pocket expenses shall be subject to audit by the Department, consequently, the Consultant shall maintain, and submit to the Department upon request, time and material records for all Out-of-Pocket expenses incurred and submitted for reimbursement in connection with the services herein contained. Subcontractors and subconsultants are subject to the same rules governing the payment and documentation and reimbursement of Out-of-Pocket expenses as the prime consultant.

5. Not used.

#### 6. Indirect Costs and Overhead

a. Indirect Costs shall include costs of a general nature which could be applied to the Consultant's entire operation and which are not readily attributable to any one project. These shall include: fringe benefits, taxes, insurance premiums, postage, office supplies, motor vehicles, equipment, office machine and computer rentals, depreciation on purchased equipment, maintenance and operation costs, recruitment, temporary facilities, consultant fees, overhead (see below) and any such costs as are necessary to conduct the Consultant's operations with the exception of those cost items which are submitted to direct payment as out-of-pocket expenses.

b. Overhead includes that portion of the Consultant's administrative, clerical and financial costs which are applicable to operations, including, but not limited to: rent, utilities, salary costs of administrative and clerical work (including administrative services of the Principal and Technical Typing), fringe benefits, payroll expenses, taxes, insurance, legal and professional fees, bank service charges, depreciation, office supplies and equipment, maintenance.

#### 7. Overtime Premium

Overtime Premium Compensation shall be those payments over and above straight salary for hours actually worked, which are required either by applicable State and Federal Laws and Regulations or with in accordance with the schedule set up under the Field Survey Union Contract. In no event however, should the rate of overtime premium compensation exceed the Consultant's normal Company Policy relating to such compensation.

#### 8. Weekend/Night Work Differential

Weekend/night work differential should be compensation over and above the daily wage rate as stipulated in the Hourly Rate Schedule of the Contract for normally scheduled non-overtime shift work either on weekends or between the hours of 6:00 P.M. and 8:00 A.M. The weekend/night work differential shall be limited to a maximum of ten percent (10%) of actual base pay for applicable time worked during the differential periods, exclusive of overtime premium pay, and shall be paid in

accordance with the standards as established for reimbursement allowances for Department personnel. In no event however, will the rate of weekend/night work differential exceed the Consultant's normal Company Policy relating to such compensation.

#### 9. Performance Evaluation

Consultant services must be performed in a timely manner. Emphasis should be placed on qualitative and timely submission of required documents and reports. Evaluations of performance will be used in selection of consultants for future work.

#### D. PAYMENTS

1. During the course of the Contract, all payments, including the final payment, should be paid to the Consultant on a monthly basis as they occur, as follows:

a. Payment shall be made based on direct technical office\* or field salaries\* of the Consultant and any Subconsultants as established in the Hourly Rate Schedule of the Contract in, times a technical office or field multiplier of:

\_\_\_ for office work \*\*

\_\_\_ field work\*\*

b. For approved out-of-pocket costs and allowable time for Principals' services, payments shall be made on the basis of direct reimbursement at cost to the Consultant, with no markup for the Consultant's overhead and profit.

\* *Office and field salary rates and titles were proposed by the Consultant in his/her Cost Proposal, Attachment E, and were subject to negotiation between the Consultant and the Department, prior to establishment of a Contract. Agreed upon initial office and field salary rates and titles, established for the contract(s), are based upon the Cost Proposal and negotiations, and are recorded in the completed Hourly Rate Schedule of the Contract. .*

\*\* *Said multiplier was established by the Consultant in his/her Price Proposal, Attachment E, and is included in the Hourly Rate Schedule of the Contract and has been accepted by the Department subject to the review and audit provisions as contained herein. In no event will said multiplier be increased.*

2. The Consultant shall submit to the Contract Manager, not more than once per calendar month, a certified requisition for each Project Task Agreement for which the Consultant requests compensation, and six copies, setting forth in detail the items of work and services performed by the Consultant and the amount of partial payment requested. Requisitions, shall be accompanied by statements prepared and certified by the Consultant setting forth the name and title of each of his/her employees and his/her subconsultants' employees who was engaged in the work during such respective month, the number of hours worked each day, the direct salary and the compensation attributable to the time for which the requisition is submitted. All requisitions shall be accompanied by a report on the progress of the work, properly coded and tabulated to indicate the percentage of completion of each phase of the work. All said requisitions and progress reports shall be subject to review and approval of the Department's Contract Manager.

3. The Department will review the said requisition and if, in its judgment, the work and services therein set forth have been performed, the Department will endorse its approval of payment of said requisition and certify that the work and services have been satisfactorily performed by the Consultant.

4. Out-of-Pocket expenses and compensation for Principals' Time approved by the Department will be paid at cost to the Consultant, with no markup for the Consultant's overhead and profit.

5. The last and final payment to the Consultant shall become due and payable upon the actual completion of the work under this contract and the filing by the Consultant with the Department of all records and documents in connection with the contract.
6. The final voucher shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Consultant attributable to the contract.
7. The fee and all payments hereunder shall be subject to review and audit by the Department and subject to audit by the NYC Comptroller.
8. The fee shall not be increased for any reason except as provided herein or where such increase is due to a material change in scope only.
9. Included hereunder are the major provisions/requirements applicable to all services.

The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown in the Hourly Rate Schedule of the contract(s).

10. Partial Payments:

- a. The Consultant shall be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with Section IV of this RFP. The consultant shall submit a breakdown of costs for each specific task provided with request for payment. Payment requests are subject to the approval of the Commissioner, or his/her duly authorized representative.
- b. The Consultant shall inform the Department and all Sub Contractors and Sub Consultants of the Consultant's schedule for submitting monthly requisitions to the Department, said schedule should be strictly adhered to by the Consultant.
- c. All Sub Contractor and Sub Consultant requisitions 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 Sub Contractor or Sub Consultant of the date the requisition was submitted to the Department and the amount included for the Sub Contractor or Sub Consultant.
- d. The Consultant is required to make partial payments to all Sub Contractors and Sub Consultants within (10) calendar days of receipt of payment from the Department.
- e. 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 Department and, on Federally aided Projects, by the Federal Transit Administration and the New York State Department of Transportation, or their consultants engaged for performing such audits. Such audit should not be a condition of partial payment.
- f. The Consultant shall not be entitled to any additional compensation as a result of any sum or sums paid to Construction or Ship Repair Contractor(s) in settlement of claims for additional compensation or of any judgment for damages under contracts awarded for the execution of the plans and specifications of the project. It is agreed, however, that in the event of the necessity of reletting a Construction Contract or Contracts or in the event of any claims being made or any action brought on a Construction or Repair Contract or Contracts, the Consultant shall render the Department any and all assistance required by the Commissioner, at an additional compensation to be agreed upon.

## V. TERM

- A. The total length of this ESA Contract should be **1,460 consecutive calendar days** from notice to proceed
- B. Proposers will be asked to submit proposals for a 4-year contract at a value of \$ 2.5 million. At its sole discretion, the Department has the option to renew this contract one time, for a renewal duration not to exceed 2-years.

## VI. INSURANCE

### A. Professional Liability Insurance

Professional liability insurance coverage, furnished by the Consultant and Subconsultants will be required by the Department on a case by case basis for all Project Task Agreements deemed to involve the provision of professional services wherein the safeguarding of life, health, or property is involved, as judged by the Department. Such tasks may include, but not be limited to those involving investigation, evaluation, design, supervision of construction, or supervision of repair. The detailed requirements for professional liability insurance coverage will be included in Article 4 of the "General Provisions" of the contract(s), Appendix A of this RFP. The cost to the consultant for professional liability insurance coverage, when required for a particular project task agreement, will be reimbursed by the Department as an out of pocket cost.

Consultant cost claims for Professional Liability Insurance, incurred pursuant to the requirements stipulated herein, shall be subject to audit by the Department. Only the actual cost to the Consultant of furnishing Professional Liability Insurance to cover the work of a Project Task Agreement wherein the Department requests such coverage shall be reimbursable. For Consultants with Professional Liability Insurance already in place at the time a Project Task Agreement requiring such coverage is executed, only the cost of Professional Liability Insurance actually apportionable to such Project Task Agreement will be reimburseable in payment for such Project Task Agreement, and then only when the Department has requested coverage.

### B. Other Insurance

With the exception of Professional Liability Insurance, no separate payment will be made to the Consultant by the Department for furnishing the insurance coverage required under Section 4.3 of Appendix A for the Consultant or for Subconsultants: the Consultant shall be solely responsible for all costs related to furnishing such insurance, as detailed in Section 4.3.B3h of Appendix A.

## VII. SPECIAL REQUIREMENTS

- A. Project office to handle the work of this contract shall be located within 150 miles of Times Square, New York City.
- B. This RFP is for the drafting of specifications for subsequent solicitations. No selected proposer from this RFP nor any subconsultants will be allowed to participate, whether as a contractor or sub-contractor, in response to a subsequent solicitations utilizing the plans or specifications they drafted, except as provided under New York City's Procurement Policy Board Rules.
- C. All personnel proposed to be placed in responsible charge of technical work, including design and supervision of construction (see also "CONSTRUCTION SUPERVISION, RESIDENT ENGINEERING AND INSPECTION," pp GR-3 & GR-4), shall be currently Registered Professional Engineers in the State of New York.

**B)**

**GENERAL PROVISIONS (APPENDIX A)**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES**

**ARTICLE 1. DEFINITIONS**

**1.1** As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "City" shall mean the City of New York, its departments and political subdivisions.
- B. "Comptroller" shall mean the Comptroller of the City of New York.
- C. "Department" or "Agency" shall mean the New York City Department of Transportation.
- D. "Commissioner" or "Agency Head" shall mean the Commissioner of the Department of Transportation or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
- E. "Law" or "Laws" shall include but not be limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.

**ARTICLE 2. REPRESENTATIONS AND WARRANTIES**

**2.1 PROCUREMENT OF CONTRACT**

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Agency shall have the right to annul this Contract without liability, entitling the City to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Contract.

**2.2. CONFLICT OF INTEREST**

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of the Contract no person having such interest or possible interest shall be employed by it. No

elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part from the City Treasury, shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof.

### **2.3 FAIR PRACTICES**

The Contractor and each person signing on behalf of any contractor represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

- A. The prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this Contract and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the bid or proposal opening, directly or indirectly, to any other bidder/proposer or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a bid or proposal for the purpose of restricting competition. The fact that the Contractor (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.

### **ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY**

- 3.1** All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as orders and regulation promulgated pursuant thereto.
- 3.2** The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.
- 3.3** All books, vouchers, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the City of New York, the State of New York, the Federal Government and any other person duly authorized by the City. Such audit may include examination and review of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.
- 3.4** The Contractor shall not be entitled to final payment under the Contract until all requirements have been satisfactorily met.

## **ARTICLE 4. COVENANTS OF THE CONTRACTOR**

### **4.1 EMPLOYEES**

- A. All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Contract are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Contract. Nothing in the Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, disability benefits and social security, or, except as specifically stated in this Contract, to any person, firm or corporation.
- B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this Contract resulting from any negligent or wrongful act of omission or commission or error in judgement of any of its officers, trustees, employees, agents, servants, of independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.
- C. Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Contractor in the performance of this Contract shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

### **4.2 INDEPENDENT CONTRACTOR STATUS**

The Contractor and the Department agree that the Contractor is an independent contractor, and not an employee of the Department or the City of New York, and that in accordance with such status as independent contractor, the Contractor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

### **4.3 INSURANCE**

- A. Required Insurance Coverage: Before performing any work on the Contract, the Contractor shall procure and maintain for the duration of the Contract, insurance against any claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work in this Contract by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall procure the required insurance from companies licensed and authorized by the New York State

Department of Insurance to do business in New York State and with a Best's rating of A-7 or better.

1. Commercial General Liability. Before performing any work on the Contract, the Contractor shall procure Comprehensive General Liability Insurance in the Contractor's name and naming the City of New York and the Department of Transportation as additional insured thereunder and endorsed to cover the liability assumed by the Contractor under the indemnity provisions of this Contract. This insurance policy shall be maintained during the term of this Contract and shall protect the City of New York, the Contractor and/or its subcontractors performing work under this Contract from claims for property damage and/or bodily injury, including death, which may arise from operations under this Contract, whether such operations are performed by the Contractor or anyone directly or indirectly employed by the Contractor. The coverage provided shall not be less than \$1,000,000 per occurrence. The coverage provided must be "occurrence" based; "claims-made" coverage will not be accepted.
2. Workers' Compensation Insurance. Before performing any work on this Contract, the Contractor and each Subcontractor shall provide Workers' Compensation Insurance in accordance with the Laws of the State of New York, and the United States Longshoremen's and Harbor Workers' Act where applicable, on behalf of all employees providing services under this Contract.
3. Employers' Liability Insurance. Before performing any work on this Contract, the Contractor shall procure Employers' Liability Insurance, in the amount of at least \$1,000,000 per accident, providing compensation for bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his/her employment by the Contractor.
4. Automobile Liability. Before performing any work on this Contract, the Contractor shall procure commercial auto liability insurance covering all owned, non-owned, hired and borrowed vehicles to be used in connection with this Contract. The City of New York and the Department shall be named as additional insureds. Coverage shall be in an amount of at least \$1,000,000.00.
5. Unemployment Insurance. Before performing any work on this Contract, Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.
6. Professional Liability. Before performing any work on this Contract, the Contractor shall procure Professional Liability Insurance covering as insured the Contractor, with a limit of liability of not less than \$1,000,000. All sub-consultants to the Contractor providing professional services under this Contract shall also provide evidence of Professional Liability Insurance to the Commissioner at limits appropriate to the exposures of the sub-consultant's work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to the City.
7. The Contractor agrees to indemnify and hold harmless the City of New York and each officer, agent and employee of the City of New York against any and all claims for personal injury or wrongful death or damage to personal property arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. General Requirements for Insurance Policies:

1. All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New York by the New York State Department of Insurance. The Contractor must first obtain the written approval of the City's Risk Manager of the Mayor's Office of Operations, or its delegate, in the event it wishes to maintain any type of required insurance with a company not licensed to do business in the State of New York.
2. The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City is an insured under the policy.
3. All insurance policies shall include, without limitations, the following endorsements/requirements.
  - (a) Notice under the Policy to the City as Additional Insured shall be addressed to each of the following: (1) the Commissioner; (2) Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and
  - (b) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the City as Additional Insured of any occurrence, offense, or claim, if such notice is required, will be deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Comptroller; however, in no event shall notice be deemed untimely so long as it is given within 180 days of the filing of the Notice of Claim; and
  - (c) Any notice, demand other writing by or on behalf of the Contractor to the Insurance Company relating to any occurrence, offense, claim or suit shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured, and any response thereto on behalf of the Insurance Company shall be sent to the Contractor, to the City at New York City Law Department, Insurance Law Unit, Affirmative Litigation Division, 100 Church Street, New York, NY 10007, and to the Comptroller at Insurance Unit, NYC Comptroller's Office, 1 Centre Street, Room 1222, New York, NY; and Notice of Cancellation of Policy: In addition to any other requirements concerning notice of cancellation, this policy shall not be cancelled, terminated, modified or changed by the Insurance Company unless sixty (60) days' prior written notice is sent to the Named Insured by Registered Mail and also sent to the Commissioner and to the Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007, nor shall this policy be cancelled, terminated, modified or changed by the Named Insured without the prior consent of the said Commissioner; and
  - (d) It is agreed that the Insurance Company, in the event of any payment under these policies, will waive its rights of recovery, if any, against the City; and
  - (e) The Insurance required for this contract must be on forms acceptable to the City and offered by Insurers acceptable to the New York State Insurance Department; and

- (f) Where circumstances warrant, the Commissioner may, at his discretion and subject to acceptance by the Law Department and/or the Office of the Comptroller, accept letters of credit or custodial accounts in lieu of specific insurance requirements; and
  - (g) The Contractor shall be solely responsible for payment of all premiums for Insurance requirements, and shall be solely responsible for the payment of all deductibles to which such policies are subject whether or not the City of New York is an insured under the policy; and
  - (h) Claims-made policies will only be accepted for professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the Contractor agrees to purchase the extended reporting period on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year; and
  - (i) The policies shall contain no exclusions or endorsements which are not acceptable to the City; and
  - (j) Should the policies providing for any of the Insurance coverage required by the Contract expire during the Contract term, certificates confirming renewal of such insurance coverage shall be presented the Commissioner not less than thirty (30) days prior to the expiration date of coverage. In addition, a copy of the actual renewal policy, with all endorsements, shall be provided to the Commissioner no later than thirty (30) days after the expiration of the policy previously provided to the Commissioner. Failure to provide any renewal policy shall be ground to suspend payments to the Contractor; and
  - (k) Submission of Insurance Certificates and Policies. For all insurance coverage required under the Contract, two (2) certificates of such insurance shall be furnished to the Commissioner not later than twenty (20) days after receipt of the Notice of Award, unless otherwise directed by the Commissioner. In addition, with respect to all insurance coverage required by the contract, with the exception of Workers' Compensation and Employer's Liability Insurance, two (2) executed copies of the insurance POLICIES shall be provided to the Commissioner as soon as is practicable, but in not event later than thirty (30) days after the commencement of work. No Contract payments will be accepted for processing until such policies are received and approved, and failure to provide the required policies shall be ground for declaring the Contractor in default.
- C. Materiality/Non-Waiver: The Contractor's failure to secure policy(ies) in complete conformity with this article, or to give the Insurance Company timely notice of an occurrence, offense, claim or suit on behalf of the City, shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

#### 4.4 PROTECTION OF CITY PROPERTY

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City,

used in the performance of this Contract and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as an expert, consultant, specialist or subcontractor hereunder.

- B. In the event that any such City property is lost or damaged, except for normal wear and tear, the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover such loss of damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection 4.4A above.
- D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Contract.

#### **4.5 CONFIDENTIALITY**

All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Contract are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.

#### **4.6 BOOKS AND RECORDS**

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

#### **4.7 RETENTION OF RECORDS**

The Contractor agrees to retain all books, records, and other documents relevant to this Contract for six years after the final payment or termination of the Contract, whichever is later. City, State and Federal auditors and any other persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period.

#### **4.8 COMPLIANCE WITH LAW**

Contractor shall render all services under this Contract in accordance with applicable provisions of Federal, State and Local laws, rules and regulations as are in effect at the time such services are rendered.

#### **4.9 INVESTIGATION CLAUSE**

The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

- A. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York or;
- B. If any person refused to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is an interested party in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation with the City, then;
- C. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- D. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (G) below without the City incurring any penalty or damages for delay or otherwise.
- E. The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
  - 1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - 2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- F. The Commissioner or Agency Head shall consider and address, in reaching his or her determination and in assessing an appropriate penalty, the factors listed in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph (3) and (4) below in addition to any other information which may be relevant and appropriate:
  - 1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the

discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
  3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
  4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (F) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in (D) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- H.
1. The term "license" or "permit" as read herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
  2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.
  3. The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or permits from or through the City or otherwise transacts business with the City.
  4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- I.
- In addition to and notwithstanding any other provision of this Contract the Commissioner or Agency Head may in his or her sole discretion terminate this Contract upon not less than three (3) days' written notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

#### **4.10 ASSIGNMENT**

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Contract, unless the prior written consent of the Agency shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Agency; and if so terminated, the City

shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the Contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor's employees.

- C. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.
- D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

#### **4.11 SUBCONTRACTING**

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:
  - 1. That the work performed by the subcontractor must be in accordance with the terms of the Contract between the Department and the Contractor.
  - 2. That nothing contained in such Contract shall impair the rights of the Department.
  - 3. That nothing contained herein, or under the Contract between the Department and the Contractor, shall create any contractual relation between the Subcontractor and the Department, and
  - 4. That the Subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Contract between the Department and the Contractor.
- C. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
- D. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- E. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

#### **4.12 PUBLICITY**

- A. The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Contract, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Contract.
- B. If the Contractor publishes a work dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, the Department shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

#### **4.13 PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of the Contractor or a substantially-owned affiliated company thereof for participation in international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render this Contract forfeited and void.
- C. The Contractor shall comply in all respects, with the provisions of § 6-114 of the Administrative Code of the City of New York and the rules and regulation issued by the Comptroller thereunder.

#### **4.14 INVENTIONS, PATENTS AND COPYRIGHTS**

- A. Any discovery or invention arising out of or developed in the course of performance of this Contract shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Contract.
- C. In no case shall subsection A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Contract.

#### **4.15 INFRINGEMENTS**

The Contractor shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Contract.

#### **4.16 ANTI-TRUST**

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the City under this Contract.

**ARTICLE 5. TERMINATION**

- A. The Department and/or City shall have the right to terminate this Contract, in whole or in part:
  - 1. Under any right to terminate as specified in any section of this Contract.
  - 2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Contract.
  - 3. Upon the Contractor's becoming insolvent.
  - 4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.
  - 5. Upon the Commissioner's determination that termination is in the best interest of the City.
  
- B. The Department or City shall give the Contractor written notice of any termination of this Contract specifying therein the applicable provisions of subsection A of this section and the effective date thereof, which shall not be less than ten (10) days from the date the notice is received.
  
- C. The Contractor shall be entitled to apply to the Department to have this Contract terminated by said Department by reason of any failure in the performance of this Contract (including any failure by the Contractor to make progress in the execution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or any other case beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Contract terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.
  
- D. Upon termination of this Contract the Contractor shall comply with the Department or City close-out procedure, including but not limited to:
  - 1. Accounting for and refunding to the Department or City within thirty (30) days, any unexpended funds which have been paid to the Contractor pursuant to this Contract.
  - 2. Furnishing within thirty (30) days an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Contract carrying out any Department or City directive concerning the disposition thereof.
  - 3. Not incurring or paying any further obligation pursuant to this Contract beyond the termination date. Any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after such date shall be paid by the Department or City in accordance with the terms of this Contract. In no event shall the "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.

4. Turn over to the Department or City or its designees all books, records, documents and material specifically relating to the Contract.
  5. Submit, within ninety (90) days, a final statement and report relating to the Contract. The report shall be made by a certified public accountant or a licensed public accountant.
- E. In the event the Department or City shall terminate this Contract, in whole or in part, as provided in paragraphs 1, 2, 3, or 4 of subsection A of this section, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Contract to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this Contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's breach of the Contract, and the City may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- G. The provisions of the Contract regarding confidentiality of information shall remain in full force and effect following any termination.
- H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Contract.

## **ARTICLE 6. MISCELLANEOUS**

### **6.1 CONFLICT OF LAWS**

All disputes arising out of this Contract shall be interpreted and decided in accordance with the laws of the State of New York.

### **6.2 GENERAL RELEASE**

The acceptance by the Contractor or its assignees of the final payment under this Contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the City from any and all claims of liability to the Contractor arising out of the performance of this Contract.

### **6.3 CLAIMS AND ACTIONS THEREON**

- A. Any claim, which is not subject to the Dispute Resolution provisions of the PBB Rules, against the City for damages for breach of contract shall not be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as hereinbefore provided.
- B. No action or proceeding shall be instituted or maintained on any such claims unless such action or proceeding be commenced within six (6) months after the date the Commissioner issues a Certificate of Substantial Completion except that:
1. Any claims arising out of events occurring after the date the Commissioner issues a Certificate of Substantial Completion and before Final Acceptance of the work shall be asserted within six (6) months of Final Acceptance of the work;

2. Any claims for monies deducted, retained or withheld under the provisions of this Contract shall be asserted within six (6) months after the date when such monies become due and payable hereunder; and
  3. If the Commissioner exercises his/her right to terminate the Contract Pursuant to Article 5, any such action shall be commenced within six (6) months of the date of filing in the Office of the Comptroller of the City of the Certificate for Final Payment hereunder.
- C. In the event any claim is made or any action brought in any way relating to the Contract herein, the Contractor shall diligently render to the Department and/or the City of New York, without additional compensation, any and all assistance which the Department and/or the City of New York may require of the Contractor.
- D. The contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Contract.

**6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

No claim whatsoever shall be made by the Contractor against any officer, agent, or employee of the City for, or on account of, anything done or omitted in connection with this Contract.

**6.5 WAIVER**

Waiver by the Department of a breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Contract unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original Contract.

**6.6 NOTICE**

The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by Certified Mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice of process in the institution of an action or proceeding as provided by law, including the Civil Practice Law and Rules.

**6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED**

It is the intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**6.8 SEVERABILITY**

If this Contract contains any unlawful provision not an essential part of the Contract and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall upon notice by either party, be deemed stricken from the Contract without affecting the binding force of the remainder.

**6.9 POLITICAL ACTIVITY**

There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Contract, nor shall any of the funds provided under this Contract be used for such purposes.

**6.10 MODIFICATION**

This Contract may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.

**6.11 PARAGRAPH HEADINGS**

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Contract and in no way affect this Contract.

**6.12 NO REMOVAL OF RECORDS FROM PREMISES**

Where performance of this Contract involves use by the Contractor of departmental papers, files, data or records at departmental facilities or offices, the Contractor shall not remove any such papers, files, data or records, therefrom without the prior approval of the Department's designated official.

**6.13 INSPECTION AT SITE**

The Department shall have the right to have representatives of the Department or the City, State or Federal governments present at the site of the engagement to observe the work being performed.

**6.14 MERGER**

This written Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

**6.15 CONDITIONS PRECEDENT**

This contract shall neither be binding nor effective unless:

- A. Approved by the Mayor pursuant to the provisions of Executive Order No. 42 dated October 9, 1975, in the event the Executive Order requires such approval; and
- B. Certified by the Mayor (Mayor's Fiscal Committee created pursuant Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and
- C. Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.

- D. It has been authorized by the Mayor and the Comptroller shall have endorsed his or her certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this Contract.

The requirement of this section of the Contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Contract to be effective and for the expenditure of City funds.

**6.16 PPB RULES**

The Contract is subject to the Rules of the Procurement Policy Board of the City of New York effective September 1, 1990, as amended. In the event of a conflict between said Rules and a provision of this Contract, the Rules shall take precedence.

**6.17 STATE LABOR LAW AND CITY ADMINISTRATIVE CODE**

- A. As required by New York State Labor Law § 220-e:

1. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified as available to perform the work to which the employment relates;
2. That neither the Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex or national origin;
3. That there may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract;
4. That this Contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.
5. The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

- B. As required by New York City Administrative Code § 6-108

1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
3. Disobedience of the foregoing provisions shall be deemed a violation of a material provision of the Contract.
4. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

**6.18 FORUM PROVISION CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

- A. This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Court") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Contract and intent, the Contractor agrees:
  1. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing;
  2. With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
  3. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
  4. If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

**6.19 E.O. 50 APPENDIX A RIDER**

A. This Contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O. 50") and the Rules and Regulations promulgated have been complied with in their entirety. By signing this Contract, the Contractor, agrees that it:

1. Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
2. Will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;

Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and

5. Will furnish all information and reports including an Employment Report before the award of the Contract which are required by E.O. 50 rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services ("Bureau"), and will permit access to its books, records and accounts by the Bureau for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the Contract and noncompliance with the E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the Contractor;
- (ii) suspension or termination of the Contract;
- (iii) declaring the Contractor in default;
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

C. The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

D. The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such

provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

- E. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

## **6.20 NOISE CONTROL CODE PROVISIONS**

- A. The Contractor agrees to comply with the provisions of Section 24-216, Noise Abatement Contract Compliance, of Chapter 2 of Title 24 of the Administrative Code of the City of New York which stipulates the following:
  - 1. Devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the New York City Noise Control Code shall be operated, conducted, constructed or manufactured without causing a violation of the Code.
  - 2. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection. Regulations promulgated pursuant to Section 24-216 after the proposal received for this Contract shall not alter its terms, conditions and specifications.

## **6.21 LIQUIDATED DAMAGES**

- A. In case the Contractor shall substantially fail to complete the work within the times fixed in the General Provisions of this Contract or within the times to which such completion may have been extended by agreement, the Contractor must pay to the City the sum of one hundred (\$100) dollars for each and every calendar day that the time consumed in completing the work exceeds the time allowed, provided, however, that the delay in completing the work is within the control of the Contractor and is caused solely by the Contractor's acts or failures to act. Delays beyond the control of the Contractor shall include, but not be limited to, those caused by the following:
  - 1. On the part of the City, its agencies, employees and representative acts or failures to act, to provide necessary information, prompt reviews, expeditious decisions and other matters essential to the progress of the project.
  - 2. On the part of private utilities and agencies, acts or failure to act to provide necessary information, prompt reviews, expeditious decisions and other matters essential to the progress of the project.
  - 3. Unavoidable casualties, including Acts of God.
  - 4. The enforcement of laws and regulation by the City, the State of New York and/or Federal Government enacted subsequent to the date of this Contract.
- B. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the completion of the work hereunder, the sum of one hundred (\$100) dollars is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

- C. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification or the Contractor's obligation to indemnify the City, or any other remedy provided for by contract or by law.
- D. The Comptroller will deduct and retain out of the monies which may be due hereunder, the amount of any such liquidated damages; and in case the amount which may be due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the Comptroller.

**6.22 COPIES OF REPORTS**

A copy of each report submitted by the Contractor to any official or to any officer, employee, agent or representative of a City department, agency, commission or body or to any corporation, association or entity whose expenses are paid in whole or in part from the City treasury, shall be furnished to the Commissioner of the Department to which such report was submitted or, if not a City department, then to the chief controlling officer or officers of such other office or entity. A copy of such report shall also be furnished to the Director of the Mayor's Office of Construction for matters related to construction or to the Director of the Mayor's Office of Operations for all other matters.

**6.23 CONTRACTOR'S PERFORMANCE EVALUATION**

The Contractor's performance shall be evaluated by the City upon Contract completion. A copy of the evaluation will be sent to the Contractor not later than fifteen (15) calendar days after the occurrence of this event and the Contractor may respond in writing to the performance report. Such response shall be submitted to the Commissioner not later than fifteen (15) calendar days after a copy of the evaluation is sent to the Contractor. The response will be affixed to the evaluation. Failure to respond may result in review of the Contractor's performance when a proposal is evaluated without the benefit of the Contractor's response to the evaluation.

**6.24 CONTRACT CHANGES**

- A. Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or the Agency Chief Contracting Officer's designee. Contractors deviating from the requirements of an original purchase order or Contract without a duly approved change order, do so at their own risk. All such changes, modifications and amendments will become part of the original Contract.
- B. Contract changes will be made only for work necessary to complete the work included in the original scope of the Contract, and for non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of the work.
- C. Changes may include any one or more of the following:
  - 1. Specification changes to account for design errors or omissions;
  - 2. Changes in Contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten percent of the original Contract amount or \$100,000 shall be approved by the City Chief Procurement Officer (CCPO) (for non-construction contracts) or the Director of the Office of Construction (for construction and construction-related contracts);

3. Extensions of a Contract term for good and sufficient cause for a cumulative period not to exceed one (1) year from the date of expiration of the current Contract. Requirements contracts shall be subject to this limitation;
  4. Changes in delivery location;
  5. Changes in shipment method; and
  6. Any other changes not inconsistent with the PPB Rules.
- D. Any Contractor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the Contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension to time of performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

## **6.25 RESOLUTION OF DISPUTES**

- A. All disputes between the City and the Contractor of the kind delineated in this section that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this section and the Rules of the Procurement Policy Board ("PPB Rules"). The procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.
1. This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
  2. For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract documents, the amount to be paid for extra work or disputed work performed in connection with the Contract, the conformity of the Contractor's work to the Contract, and the acceptability and quality of the Contractor's work; such disputes arise when the Engineer makes a determination with which the Contractor disagrees.
- B. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.
- C. During such time as any dispute is being presented, heard, and considered pursuant to this section, the Contract terms shall remain in full force and effect and the Contractor shall continue to perform work in accordance with the Contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this section and a material breach of contract.
- D. Presentation of Disputes to Agency Head.
1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein or, if no time is specified, within thirty (30) days of receiving

notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract.

The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Contract, and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the Contractor initiating the dispute.
  3. **Agency Head Determination.** Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the Engineer, together with a statement concerning how the decision may be appealed.
  4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
- E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the written decision of the Agency Head, and; (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
  2. Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.
  3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.
  4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in E (1) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.
- F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
1. The chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
  2. The City Chief Procurement Officer ("CCPO") or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and

3. A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons companies, or organizations having disputes with the City.
- G. Petition to Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the Contractor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.
1. Form and Content of Petition by Contractor. The Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written decision of the Comptroller, if any, and (v) copies of all correspondence with, and written material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four (4) complete sets of the Petition: one (1) to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three (3) to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
  2. Agency Response. Within thirty (30) days of its receipt of the Petition, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three (3) complete copies of the Agency response shall be submitted to the CDRB at OATH's Offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
  3. Further Proceedings. The CDRB shall permit the Contractor to present its case by the submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by the submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, at its discretion, may seek such technical or other expert advice from any party as it shall deem appropriate and any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
  4. Contract Dispute Resolution Board Determination. Within Forty-five (45) days of the conclusion of all written submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract.

Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of Contract Dispute Resolution Board Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and in the case of construction or construction-related services, the Engineer. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
  6. Finality of Contract Dispute Resolution Board Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four (4) months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York, pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with the PPB Rules.
- H. Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

**6.26 EXTENSION OF TIME FOR PERFORMANCE CONSTRUCTION AND CONSTRUCTION RELATED ONLY**

- A. If performance by the Contractor is delayed for a reason set forth in the Contract, the Contractor may be allowed a reasonable extension of time in conformance with this Section and with the Rules of the Procurement Policy Board.
- B. Any extension of time may be granted only by the Agency Chief Contracting Officer or by the Board for the Extension of Time (as set forth below) upon written application by the Contractor.
- C. Grounds for Extension – If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of the work caused solely: (i) by the acts or omissions of the City, its officers, agents or employees; or (ii) by the actions or omissions of other contractors on this project; or (iii) by supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, Acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act or omission of the Contractor). The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Commissioner or the Board may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all the requirements of Article 9, 10, and 11 of Chapter III, "Time Provisions", of the City of New York Standard Construction Contract, effective October 2000, as amended.
- D. Extension for Concurrent Causes of Delay – The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as

determined by the ACCO or the Board for Contract Time Extension irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of his/her Subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

1. The determination made by the ACCO or the Board on an application for an extension of time shall be binding and conclusive on the Contractor.
2. The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the ACCO or the Board. In the absence of special circumstances, applications for extensions of time not exceeding sixty (60) days in the aggregate will be acted upon by the Department within (30) days after request therefor.
3. Permitting the Contractor to continue with the work after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the Contractor after such time, shall in no way operated as a waiver on the part of the City or any of its rights under this contract.

E. Application for Extension of Time

1. Before the Contractor's time extension request may be approved, the Contractor must, within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the ACCO identifying:
  - (a) the Contractor; the Contract registration number; and project description;
  - (b) liquidated damage assessment rate, as specified in the Contract;
  - (c) original bid amount;
  - (d) the original Contract start date and completion date;
  - (e) any previous time extensions granted (number and duration); and
  - (f) the extension of time requested.
2. In addition, the application for extension of time shall set forth in detail:
  - (a) the nature of each alleged cause of delay in completing the work;
  - (b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
  - (c) a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for substantial and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and

- (d) a statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of Contract performance and payment for work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

F. Analysis and Approval of Time Extensions

1. For time extensions for partial payments, a written determination shall be made by the ACCO who may, for good and sufficient cause extend the time for the performance of the Contract as follows:
  - (a) If the work is to be completed within six (6) months, the time for performance may be extended for sixty (60) days;
  - (b) If the work is to be completed within less than one year but more than six (6) months, and extension of ninety (90) days may be granted;
  - (c) If the Contract period exceeds one year, besides the extension granted in subparagraph (b) above, an additional thirty (30) days may be granted for each multiple of six (6) months involved beyond the one year period; or
  - (d) If exceptional circumstances exist, the ACCO may extend the time for performance beyond the extensions in (a), (b), and (c) above. In that event, the ACCO shall file with the Director of the Office of Construction a written explanation of the exceptional circumstances.
2. For extensions of time for substantial completion payments and final completion payments, the Department's engineering staff, in consultation with the ACCO, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Contract). The report shall be subject to review by and approval of the Board of Time Extension, which shall have authority to question its analysis and determinations and request additional facts or documentation. The report as reviewed and made final by the Board of Time Extension shall be made a part of the departmental Contract file.
3. Approval Mechanism for Time Extensions for Final or Substantial Completion Payments – An extension of time for a final or substantial completion payment shall be granted only with the approval of a Board of Time Extension comprised of the ACCO, the Corporation Counsel and the Comptroller, or their authorized representatives.

- G. Assessment of Liquidated Damages – In the case of substantial completion and final completion payments, liquidated damages shall be assessed against the Contractor as determined by the report's analysis of the Contract's delays. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at substantial or final completion, shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

**6.27 EXTENSION OF TIME FOR PERFORMANCE (NON-CONSTRUCTION ONLY)**

If performance by the Contractor is delayed for a reason set forth in the Contract, reasonable extension in time for performance may be allowed.

- A. An extension of time may be granted only by the ACCO of the agency that awarded the Contract, upon written application by the Contractor.
- B. The ruling of the ACCO shall be final and binding as to the allowance of an extension, and the number of days allowed.
- C. The application for extension must detail each cause for delay, the date it occurred, and the resulting total delay in days attributed to such case.

**6.28 NO DAMAGE FOR DELAY**

The Contractor agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

**6.29 PROMPT PAYMENT**

- A. The Prompt Payment provisions set forth in the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under this Contract. The provisions require the payment to Contractors of interest on payments made after the required payment date except as set forth in the Prompt Payment section of the Rules.
- B. The Contractor must submit a proper invoice to receive payment, except where the Contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.
- C. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment section of the Procurement Policy Board Rules and General Municipal Law Section 3-a.
- D. If the Contractor is paid interest, the proportionate share of that interest shall be forwarded by the Contractor to its Subcontractor(s).
- E. The Contractor shall pay each Subcontractor (including a Materials Supplier) not later than seven (7) days after receipt of payment out of amounts paid to the Contractor by the City for work performed by the Subcontractor or Supplier under this Contract.
- F. The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its lower-tier Subcontractors or Suppliers for work performed under this Contract in the same manner and within the same time period set forth above.

**MACBRIDE PRINCIPLES PROVISIONS  
FOR NEW YORK CITY CONTACTORS  
ARTICLE I. MACBRIDE PRINCIPLES  
NOTICE TO ALL PROSPECTIVE CONTRACTORS**

Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 to the Administrative code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland and to promote freedom of workplace opportunity.

Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving and expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business in Northern Ireland operations conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b) (2) of the City Charter.

In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

**PART A**

In accordance with Section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

**PART B**

For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) establish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement, and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

The contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of the contract, either itself or by engaging another contractor or contractors. In the case of a requirements contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of the contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law

**(NO FURTHER TEXT ON THIS PAGE)**

**FEDERAL TRANSIT ADMINISTRATION (FTA)  
THIRD PARTY REQUIREMENTS**

This contract is subject to the Federal Transit Administration (FTA) requirements for implementing the U.S. Department of Transportation (USDOT) regulations for the following areas:

**1. FLY AMERICA (49 U.S.C. § 40118, 41 CFR Part 301-10)**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that the New York City Department of Transportation, (NYCDOT) of Federal funds and its Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**2. BUY AMERICA (49 U.S.C. 5323(j)(2)©, 49 CFR Part 661.11)**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to NYCDOT the appropriate Buy America certification (Appendix A) with all bids on FTA-funded contracts, except those subject to a general waiver.

**3. CARGO PREFERENCE (46 U.S.C. 1241, 46 CFR Part 381)**

The Contractor agrees: (a.) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b.) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to NYCDOT (through the Contractor in the case of a Subcontractor's bill-of-lading) (c.) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**4. SEISMIC SAFETY REQUIREMENTS (42 U.S.C. 7701 et seq., 49 CFR Part 41)**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Subcontractor is in

compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**5. ENERGY CONSERVATION (42 U.S.C. §§ 6321 et seq., 49 CFR 18)**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**6. CLEAN WATER (33 U.S.C. §§ 1251)**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to NYCDOT and understands and agrees that NYCDOT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**7. BUS TESTING (49 U.S.C. 5323(c), 49 CFR Part 665)**

The Contractor agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**8. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the bidder/offeror certifies compliance with Buy America, it shall submit documentation which lists a) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and b) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

#### **9. LOBBYING (31 U.S.C. 1352, 49 CFR Parts 19 & 20)**

The Contractor who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Parts 19 & Part 20, "New Restrictions on Lobbying" (Appendix B). Each tier of Contractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to NYCDOT.

#### **10. ACCESS TO RECORDS AND REPORTS (49 C.F.R. 5325, 18 CFR 18.36(i), 49 CFR 633.17)**

The Contractor shall comply with the following access to records requirements:

1. In accordance with 18 CFR 18.36(i), the Contractor agrees to provide NYCDOT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his/her authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where NYCDOT, in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to NYCDOT, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NYCDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (Reference 49 CFR 18.39 (i)(11)).
5. FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition or Rolling Stock	Professional Services
<b>I. <u>State Grantees</u></b>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<b>II. <u>Non State Grantees</u></b>						
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes <sup>3</sup>		Yes	Yes	Yes	Yes

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

SAT: Source Acquisition Threshold

**11. FEDERAL CHANGES (49 CFR Part 18)**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between NYCDOT and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**12. BONDING**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of NYCDOT, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- c. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

### **Bid Bond Requirements (Construction)**

#### **(a) Bid Security**

A Bid Bond must be issued by a fully qualified surety company acceptable to NYCDOT and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

#### **(b) Rights Reserved**

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by NYCDOT to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of NYCDOT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of NYCDOT, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of NYCDOT's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been

retained by NYCDOT as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense NYCDOT for the damages occasioned by default, then the undersigned bidder agrees to indemnify NYCDOT and pay over to NYCDOT the difference between the bid security and NYCDOT's total damages, so as to make NYCDOT whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

### **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

#### (a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the NYCDOT determines that a lesser amount would be adequate for the protection of NYCDOT.
2. The NYCDOT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NYCDOT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### (b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, (NYCDOT) may require additional protection as required by subparagraph 1 if the contract price is increased.

### **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect NYCDOT's interest. The FTA requirements apply to first tier subcontractors as well as the Contractor.

#### (a) The following situations may warrant a performance bond:

1. NYCDOT's property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. The Contractor sells assets to or merges with another concern and NYCDOT after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100% of the original contract price, unless NYCDOT determines that a lesser amount would be adequate for the protection of NYCDOT.
2. NYCDOT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% of the increase in contract price. NYCDOT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in NYCDOT's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. NYCDOT shall determine the amount of the advance payment bond necessary to protect NYCDOT.

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. NYCDOT shall determine the amount of the patent indemnity to protect NYCDOT.

#### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to NYCDOT, the Architect and/or Engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by NYCDOT, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NYCDOT and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NYCDOT. As additional security for these guarantees, the Contractor shall, prior to the

release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to NYCDOT written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**13. CLEAN AIR( 42 U.S.C. §§ 7401 et seq, 40 CFR 15.61, 49 CFR Part 18)**

(1) The Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall agree to report each violation to NYCDOT and understands and agrees that NYCDOT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor shall also agree to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**14. RECYCLED PRODUCTS (42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873)**

The Contractor shall agree to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**15. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - NYCDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the NYCDOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all

payrolls to the NYCDOT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all Subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a

project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**(5) Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

**(6) Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.

**(7) Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract

shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## **16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - NYCDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## **17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **No Obligation by the Federal Government**

(1) NYCDOT and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any

obligations or liabilities to NYCDOT, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (31 U.S.C. 3801 et seq, 49 CFR Part 31, 18 U.S.C. 1001, 49 U.S.C. 5307)**

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**19. TERMINATION (49 U.S.C. Part 18, FTA Circular 4220.1E)**

The Contractor agrees to include these provisions in all subcontracts in excess of \$10,000.

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

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

If it is later determined by NYCDOT that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, NYCDOT, after setting up

a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

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

**e. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, NYCDOT may terminate this contract for default. NYCDOT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

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

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

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

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

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

If the termination is for the convenience of NYCDOT, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

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

**20. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) (49 CFR 29.220(b), 49 CFR 29.940 and 49 CFR 29.945, Executive Orders 12549/12689)**

Executive Orders 12549/12689, as implemented by 49 CFR Part 29, prohibits NYCDOT and sub-grantees from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, NYCDOT is required to submit a certification (Appendix C) to the effect that NYCDOT will not enter into contracts over \$25,000 with suspended or debarred contractors and that they will require the Contractors (and subcontractors) to make the same certification to them. The Contractor agrees to include these provisions in its subcontracts over \$25,000.

The certification in this requirement is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NYCDOT may pursue available remedies, including suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**21. PRIVACY ACT (5 U.S.C. 552)**

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

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

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

**22. CIVIL RIGHTS REQUIREMENTS (29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Part 60 et seq.)**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**23. BREACHES AND DISPUTE RESOLUTION (49 CFR Part 18, FTA Circular 4220.1E)**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. FTA will not substitute its judgment for that of NYCDOT unless the matter is primarily a federal authority having proper jurisdiction.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NYCDOT [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by NYCDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by NYCDOT or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

#### **24. STATE AND LOCAL LAW DISCLAIMER**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the NYCDOT's procurement documents, NYCDOT should consult with its legal division.

#### **25. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26)**

The newest version on the FTA's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The NYCDOT's overall goal for DBE participation is 11%.

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

Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the NYCDOT. In addition, the Contractor may not hold retainage from its Subcontractors. The Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The Contractor is required to return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the NYCDOT and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.

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

## **26. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of NYCDOT's requests which would cause NYCDOT to be in violation of the FTA terms and conditions.

## **27. DRUG AND ALCOHOL TESTING (49 U.S.C. § 5331, 49 CFR Parts 653 and 654)**

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require that NYCDOT ensures that any entity performing a safety-sensitive function on NYCDOT's behalf (usually Contractor and/or Contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on NYCDOT's compliance with the rules; thus, NYCDOT is not in compliance with the rules unless every entity that performs a safety-sensitive

function on NYCDOT's behalf is in compliance with the rules. Third, the rules do not specify how NYCDOT ensures that its Contractors comply with them.

NYCDOT does so depends on several factors, including whether the Contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that NYCDOT has with the Contractor, and the financial resources available to NYCDOT to oversee the Contractor's drug and alcohol testing program. In short, there are a variety of ways that NYCDOT can ensure that it's Contractor and/or contractors comply with the rules.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York, or NYCDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 30<sup>th</sup> and to submit the Management Information System (MIS) reports before March 15<sup>th</sup> to the Commissioner of NYCDOT or designee. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor agrees further to [Select a, b, or c] (a) submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt NYCDOT's policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before January 30<sup>th</sup>, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: (to be determined by NYCDOT, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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 \$15,000 (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.

**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.

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

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

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

**(b) PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

Appendix A

Buy America Certification

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Appendix B**

**DISCLOSURE OF LOBBYING ACTIVITIES**

I \_\_\_\_\_ hereby certifies on behalf of \_\_\_\_\_  
name and title of company representative name of company

will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The Contractor certifies, 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 an 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 the 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 making lobbying contacts to an officer or employee of any 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

**Appendix C**

CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Contractor \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The Contractor agrees to provide NYCDOT with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCDOT.

NOTE: If for any reason the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE CONTRACTOR, \_\_\_\_\_ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date

CERTIFICATION OF A SUBCONTRACTOR/SUPPLIER REGARDING DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS

The Subcontractor/Supplier \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
5. The Subcontractor agrees to provide the Contractor with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCDOT.

NOTE: If for any reason the Subcontractor/Supplier is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE SUBCONTRACTOR/SUPPLIER, \_\_\_\_\_ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date

**Contractor Note:**

**Contractor must require all Subcontractors/Suppliers to complete this certification and Contractor shall submit the certifications to NYCDOT as they are received.**

**DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS**

**For**

**Federal Transit Administration Projects**

**New York City Department of Transportation**

The New York City Department of Transportation has established the following Disadvantaged Business Enterprise (DBE) utilization goal for this contract. The goal is expressed as a percentage of the total federal share of the contract. It is the Contractor's responsibility to secure DBE participation in the contract work to satisfy this goal, and to document acceptable good-faith efforts taken to fulfill the goal. Utilization is measured as the amount actually paid to DBE's, not the contract bid price for the work.

**Disadvantaged Business Enterprise Utilization Goal: 11.0%**

A list of currently certified Disadvantaged Business Enterprises - Construction Related Firms can be obtained by contacting any of the following:

**MTA - New York City Transit**  
Office of Business Programs  
2 Broadway - 16th Floor  
New York, NY 10004  
Telephone: (646) 252-1372

**Niagara Frontier Transportation Authority**  
181 Ellicott Street  
Buffalo, New York 14203  
Telephone: (716) 855-7300

**New York State Department  
Of Transportation  
Contract Audit Bureau DBE Unit**  
50 Wolf Road, 1<sup>st</sup> Floor South  
Albany, New York 12232  
Fax: 518-457-1675  
Telephone: (518) 457-9679

**Port Authority of NY & NJ  
Office of Civil Rights**  
2 Broadway, 16<sup>th</sup> Floor  
New York, New York 10004  
Telephone: 646-252-1378

Or go to the Unified Certification Program for NYS on the Web: <http://biznet.nysucp.net/>.

**Disadvantaged Business Enterprise Officer**

The Bidder shall designate and enter below the name of the Disadvantaged Business Enterprise Officer who will have the responsibility for effectively administering and promoting an active Disadvantaged Business Enterprise Program at its firm and who must be assigned adequate authority and responsibility to do so.

Bidder Designated DBE Officer: \_\_\_\_\_  
Name, Title  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_

**RETURN THIS PAGE WITH BID**

## Federal Transit Administration Third Party Contract Requirements

This contract is subject to the Federal Transit Administration (FTA) requirements for implementing the U.S. Department of Transportation (USDOT) regulations for the following areas:

A. Disadvantaged Business Enterprise (DBE) Requirements

The successful Proposer will be required to meet a NYCDOT 11.0% Disadvantaged Business Enterprise (DBE) goal; 11.0% of the total value of the FTA funds in the contract should be subcontracted to a DBE firm or firms. To be qualified as a DBE, a firm should agree to abide by the statements from a governmental or quasi-governmental agency that adheres to Federal Regulation 49 CFR Part 26 such as:

**MTA - New York City Transit, Office of Business Programs**, 2 Broadway - 16<sup>th</sup> Floor, New York, NY 10004, Telephone: (646) 252-1372.

**New York State DOT, Office of Equal Opportunity Development & Compliance**, 50 Wolf Road, 1<sup>st</sup> Floor, Albany, New York 12232, Telephone: (518) 457-1129.

**Niagara Frontier Transportation Authority**, 181 Ellicott Street, Buffalo, New York 14203, Telephone: (716) 855-7300

**Port Authority of NY & NJ, Office of Civil Rights**, 2 Broadway, 16<sup>th</sup> Floor, New York, New York 10004, Telephone: 646-252-1378

Or go to the Unified Certification Program for NYS on the web: <http://biznet.nysucp.net/>

All applicants and recipients shall agree to abide by the statements in paragraphs (1) and (2) listed below:

- 1 "Policy. It is the policy of USDOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."
- 2 "DBE Obligation. The recipient or its contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT-assisted contracts."

Because this is a federally funded project with its own DBE requirement (noted above) no separate NYC M/WBE program condition will apply to this contract. Further information or questions can be directed to:

New York City Department of Transportation  
ACCO, Office of Contract Compliance  
40 Worth Street, Room 1228  
New York, NY 10013  
Telephone: (212) 442-7597  
Facsimile: (212) 442-7587  
Attention: Charles Bartolotta, DBE Representative

REQUIRED CONTRACT PROVISIONS\*

DBE Program

USDOT-assisted contracts that NYCDOT lets will include, as appropriate, the model contract provisions that are included as Exhibit B and incorporated herein. NYCDOT shall have discretion to modify the provisions for particular contracts as needed. These required contract provisions consist of:

- A. Notice of DBE requirements in the Invitation for Bids
- B. General Conditions
  - 1. DBE Program
  - 2. Prompt Payment to Subcontractors
- C. Special Provisions
  - 1. DBE Participation Goal (where applicable)

- A. Assurances – Section 26.13

**Each financial assistance agreement signed with a NYCDOT operation administration (of a primary recipient) must include the following assurance:**

*The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26*

*and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.).*

**Each** contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) **must include the following assurance:**

*The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

- B. Prompt Payment to Subcontractors  
**In accordance with NYCDOT's DBE Program, the Contractor shall pay any Subcontractors approved by NYCDOT for work that has been satisfactorily performed no later than seven (7) days from the date of the Contractor's receipt of progress payments by NYCDOT. Within thirty (30) days of satisfactory completion of all work required of the Subcontractor. Contractor shall release any retainage payments withheld to the Subcontractor.**

<b>Determining Good Faith Efforts</b>
---------------------------------------

In determining whether or not a bidder/proposer not in compliance with NYCDOT's DBE contract goal may be awarded a NYCDOT contract, NYCDOT must decide if the efforts the bidder/proposer made to obtain DBE participation and attainment of specific contract goals were made in good faith. Efforts to meet the established goals that are unsubstantiated or insubstantial are not good faith efforts.

In order to award a contract to a bidder/proposer that has failed to meet the stated contract goal, NYCDOT must determine that a competitor actively and aggressively sought to meet the goal. Kinds of efforts that are considered demonstrative of a "good faith effort" include, but not limited to the following documented actions pursuant to 49 CFR Part 26:

1. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBEs of contracting and subcontracting opportunities;
2. Whether the contractor advertised in general circulation, trade associations, and minority-focus media concerning the subcontracting opportunities;
3. Whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
4. Whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract;
7. Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBES as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and
9. Whether the contractor effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

The DBE Representative will review the data submitted under this section to determine whether the DBE requirements have been satisfied through good faith efforts.

Exhibit F

SAMPLE PRIME CONTRACTOR AWARD LETTER

[date]

Prime Contractor, Inc.  
Attn: Mr. John Doe, President  
1111 Main Street  
City, New York 10000

Re: Contract Name and/or Description

Dear Mr. Doe:

Your Company was awarded and recently executed the above listed contract with NYCDOT. Part of the consideration in awarding the contract was the Disadvantaged Business Enterprise (DBE) participation that you listed in the bid/proposal document.

You have listed the following DBE firm(s) and the dollar amounts of their subcontracts:

<b>ABC Electrical Co.</b>	<b>Electrical Contracting</b>	<b>\$xx,xxx</b>
<b>DEF Plumbing</b>	<b>Plumbing Contracting</b>	<b>\$xx,xxx</b>
<b>GHI Roofing</b>	<b>Roofing Contracting</b>	<b>\$xx,xxx</b>
<b>JKL Printing Co.</b>	<b>Printing</b>	<b>\$xx,xxx</b>

The DBE firm(s) listed above represent(s) your commitment to NYCDOT's DBE program and each respective DBE firm.

To ensure the integrity of the DBE program, NYCDOT has developed DBE compliance procedures that should be followed during this contract. NYCDOT's DBE Department and Contract Administrator should be notified in writing prior to any material changes from the above commitments. Also, any changes should be for real and substantial reasons. Frivolous and/or unsubstantiated changes are unacceptable.

Please provide to the DBE Department, within three (3) calendar days of execution a copy of your executed subcontract with each DBE firm. A letter of commitment signed by both an authorized representative of your firm and the DBE firm may be submitted instead of signed subcontracts. The letter should verify the subcontract dollar amount, the general work scope, **and affirm the absence of subcontract restrictions or requirements that are unfair, burdensome, outside of normal business practices, unjustly punitive, etc...** There should be a letter for each DBE firm.

Also, you **must** attach NYCDOT's **DBE Expenditure Report** (see contract compliance manual) with **each** invoice/payment request that you submit to NYCDOT's Contract Administrator. This report is designed to provide an accounting of monthly and year-to-date payments made to the DBE firm(s) that you have subcontracted with above.

The DBE Expenditure Report reflects the dollars that **will be paid** to each DBE firm from your **submitted invoice/payment request**. Evidence of payments (i.e. copy of canceled checks, copy of check register, etc.) may be periodically requested. NYCDOT **may not** authorize payment unless the DBE Expenditure Report accompanies your invoice/payment request.

Finally, please submit a DBE projected work schedule (i.e. a breakdown by month of expected DBE activity). Updates of the projected work schedule should be submitted as needed over the life of the contract.

Failure to comply may result in breach of contract and it may jeopardize future contracts with NYCDOT.

If you have any questions, please contact the DBE Department at (212) 442-7597.

Thank you for your continued commitment and cooperation.

Cordially,

DBE Representative

cc: Every DBE Firm Listed Above  
Appropriate Project Manager, NYCDOT  
Contracts Administrator, NYCDOT  
Purchasing Administrator, NYCDOT  
DBE File, NYCDOT  
Others as needed



**FORM 1P  
PROPOSAL COVER LETTER**

**FOR NAVAL ARCHITECTURE AND RELATED ENGINEERING SERVICES IN CONNECTION  
WITH ENGINEERING SERVICE AGREEMENT  
FERRY VESSELS AND FLOATING EQUIPMENT 07 A & B  
CONTRACT No.: FC-5584A & FC-5584B  
PIN No. : 84107SIPT175 & 84107SIPT182**

**Proposer:**

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

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

**Tax Identification #:** \_\_\_\_\_

**Proposer's Contact Person:**

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

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

**Telephone #:** \_\_\_\_\_ **Fax #:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Proposer's Authorized Representative:**

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

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

**Telephone #:** \_\_\_\_\_ **Fax #:** \_\_\_\_\_ **Email:** \_\_\_\_\_

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

Is the response printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the instructions to this solicitation?

**Yes**       **No**

# FORM 2P

## ACKNOWLEDGEMENT OF ADDENDA

**RFP TITLE: NAVAL ARCHITECTURE AND RELATED ENGINEERING SERVICES IN CONNECTION WITH ENGINEERING SERVICE AGREEMENT FERRY VESSELS AND FLOATING EQUIPMENT 07 A & B**  
**CONTRACT No.: FC-5584A & FC-5584B**  
**PIN No. : 84107SIPT175 & 84107SIPT182**

**Directions:** Complete Part I or Part II, whichever is applicable, and sign your name in Part III.

### **Part I**

Listed below are the dates of issue for each Addendum received in connection with this RFP:

- Addendum # 1, Dated: \_\_\_\_\_
- Addendum # 2, Dated \_\_\_\_\_
- Addendum # 3, Dated \_\_\_\_\_
- Addendum # 4, Dated \_\_\_\_\_
- Addendum # 5, Dated \_\_\_\_\_
- Addendum # 6, Dated \_\_\_\_\_
- Addendum # 7, Dated \_\_\_\_\_
- Addendum # 8, Dated \_\_\_\_\_
- Addendum # 9, Dated \_\_\_\_\_
- Addendum #10, Dated \_\_\_\_\_

### **Part II Acknowledgement of No Receipt**

\_\_\_\_\_ No Addendum was received in connection with this RFP

### **Part III**

Proposer's Name: \_\_\_\_\_

Proposer's Authorized Representative:

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

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

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

# FORM 3P

## AFFIRMATION FORM

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts

Except \_\_\_\_\_

\_\_\_\_\_  
Full Name of Proposer or Bidder

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip Code

Check below and include appropriate number:

\_\_\_\_ Individual or Sole Proprietorship \*  
Social Security Number      \_ \_ - \_ \_ - \_ \_ \_ \_

\_\_\_\_ Partnership, Joint Venture or unincorporated company  
Employer Identification Number      \_ \_ - \_ \_ - \_ \_ \_ \_

\_\_\_\_ Corporation  
Employer Identification Number      \_ \_ - \_ \_ - \_ \_ \_ \_

If a corporation, place seal here:

by    Signature      \_\_\_\_\_  
         Print Name      \_\_\_\_\_  
         Title              \_\_\_\_\_

Must be signed by an officer or duly authorized representative.

\* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers, or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.

## **SECTION VII**

### **D) PROPOSAL FORMS PACKET**

#### **CONTENTS**

- 1. FORM 1T - QUALITY & RELEVANCE OF PRIOR EXPERIENCE  
(FIRM IN GENERAL)**
- 2. FORM 2T - PROPOSED STAFF RESUMES/EXPERIENCE**
- 3. FORM 3T - OVERALL PROJECT UNDERSTANDING AND APPROACH**
- 4. FORM 5T - NYCDOT CURRENT WORKLOAD DISCLOSURE (2 PGS)**
- 5. FORM 6T - DBE PARTICIPATION**
- 6. FORM 7T - STATEMENT OF UNDERSTANDING**
- 7. FORM 330 - STANDARD FORM**
- 9. FORM 330S - SPECIAL SUPPLEMENT**

**Note: Please copy and use separate sheets for each subconsultant (if any)  
Principal's Time (if any) is charged direct without multiplier.  
Make copies of format sheets as needed**

# FORM 1T

## QUALITY & RELEVANCE OF PRIOR EXPERIENCE (FIRM IN GENERAL)

PROJECT NAME: Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement, Ferry Vessels and Floating Equipment

PIN No.: 84107SIPT175 & 84107SIPT182

CONTRACT NO.: FC-5584A & FC-5584B CONSULTANT: \_\_\_\_\_

### DESCRIBE

#### QUALITY & RELEVANCE OF PRIOR EXPERIENCE – (FIRM IN GENERAL)

- 1) Proposer will include relevant experience in engineering, design, inspection and construction supervision services in the last fifteen (15) years. Proposer should mention only projects on U.S. Flag self propelled vessels (commercial or naval) for which the associated physical work commenced thereon.
- 2) List all current and prior projects performed within the last fifteen (15) years including ship design and construction/ repair supervision. For each project, provide the following information:
  - Description/Name of Project (Include vessel name and/ or Official Number or designator, type (including commercial or naval and type of propulsion) and size of each vessel (i.e., gross tonnage or dimensions), vessel's trade, and brief general description of the project scope (i.e. new construction, conversion, repowering, supervision of shipyard availability, repair, etc.))
  - Nature of consultant's work (i.e. planning, design, construction supervision, etc.)
  - Disciplines furnished by the Consultant (i.e. Naval Architects, Electrical Engineers, Structural Engineers, Marine Engineers, Construction Superintendents, Shipyard Inspectors, etc.)
  - Dollar Value of Consultant's Work Project
  - Contract Term
  - Contract Status
  - Project Status (Physical work completed and in service, or still in progress)
  - Regulatory Environment (State if consultant's work on project subject to U.S. Coast Guard or American Bureau of Shipping Approval)
  - Owner/Client's Name
  - Owner Project Manager's Name
  - Telephone No.
  - Email

NYCDOT reserves the right to request data to verify information provided above.

- 3) Provide a discussion on the firm's ability to retain its employees. Complete the attrition chart below:

Average attrition rate for past 3 calendar years:

Total number of technical employees as of August 1 <sup>st</sup> of last year	_____ . (a)
Number of technical employees who left firm during last calendar year	_____ . (b)
Total number of technical employees as of August 1 <sup>st</sup> of previous cal. year	_____ . (c)
Number of technical employees who left firm during previous calendar year	_____ . (d)
Total number of technical employees as of August 1 <sup>st</sup> of 2 <sup>nd</sup> previous cal. Year	_____ . (e)
Number of technical employees who left firm during 2 <sup>nd</sup> previous calendar year	_____ . (f)

b/a = \_\_\_\_\_ (g)      d/c = \_\_\_\_\_ (h)      f/e = \_\_\_\_\_ (i)  
Average attrition rate = (g+h+i) / 3 = \_\_\_\_\_.

NYCDOT reserves the right to request data to verify information provided in the attrition table.

## FORM 2T

### **PROPOSED STAFF (RESUMES)/EXPERIENCE**

PROJECT NAME: Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement, Ferry Vessels and Floating Equipment

PIN No.: 84107SIPT175 & 84107SIPT182

CONTRACT NO.: FC-5584A & FC-5584B CONSULTANT: \_\_\_\_\_

#### PROPOSED STAFF:

1. Provide an organization chart for staffing this project and attach resumes of all key personnel including any sub-consultants. The chart must provide the key personnel proposed titles/roles for this project.
2. Provide a description of all relevant education and experience for key personnel (including any sub consultants). Include, for each, prior relevant experience, professional society affiliations, and relevant federal (e.g. U.S. Coast Guard) and state licenses (i.e. state Professional Engineer Licenses) as applicable.

Specifically identify any current or prior key personnel experience with City, state and /or federal project

In each of the project descriptions, identify the project manager, project engineer/resident engineers, the construction dollar value and the start date.

Explain how past assignments of key personnel relate to their proposed assignments on this project.

*Greater consideration will be given to those proposals which demonstrate successful and relevant experience on engineering, design and inspection services.*

3. State the key personnel's commitment to and availability for the duration of this project.

## FORM 3T

### **OVERALL PROJECT UNDERSTANDING AND APPROACH**

PROJECT NAME: Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement, Ferry Vessels and Floating Equipment

PIN No.: 84107SIPT175 & 84107SIPT182

CONTRACT NO.: FC-5584A & FC-5584B CONSULTANT: \_\_\_\_\_

#### **OVERALL APPROACH TO PROJECT:** (Staffing Sheet)

1. Describe your overall approach and understanding to providing naval architecture and related engineering, design and inspection services for this project. This discussion should clearly demonstrate your understanding of how it impacts the provision of the technical services. Provide enough detail to permit NYCDOT to assess the extent of the proposer's understanding of engineering, design and inspection services, potential problems and proposed solutions. Proposers are expected to explain the different tasks anticipated to be performed, their relationship, the extent to which they can be performed concurrently and the unique aspects of each task as they relate to this project. Explain the duration of each task and demonstrate the proposer's ability to complete these tasks on time with the proposed staffing. Please elaborate on how the positions assigned for this project as shown in your organization chart will assist you in the execution of each identified task.
2. Provide a list of all subconsultants, with contact information, participating in the project team and the specialized work or expertise they are intended to provide to the project effort.
3. Discuss any alternate tasks, or innovative approaches that would assist in the successful provision of services and/or best achieve the project goals and objectives.

FORM 5 (Page 1 of 2)

NYCDOT CURRENT WORKLOAD DISCLOSURE

The purpose of this form is to provide information concerning the current workload of the firms interested in the project for which the proposal is being submitted. The information provided should be for the office(s) which would perform the work of this contract. The values shown should not include fees to be paid to subconsultants and subcontractors or for rentals or purchases of equipment.

PIN: 84107SIPT175 & 84107SIPT182 FIRM NAME: \_\_\_\_\_

CONTRACT NO.: FC-5584A & FC-5584B CONTACT PERSON: \_\_\_\_\_

PROJECT NAME: Naval Architecture and Related Engineering Services in Connection With Ferry Vessels and Floating Equipment 07 A & B PHONE NUMBER \_\_\_\_\_

ADDRESS OF OFFICE(S) TO PERFORM WORK \_\_\_\_\_

DATE OF RFP: \_\_\_\_\_

IS YOUR FIRM A: DBE? (YES/NO) \_\_\_\_\_

Number of Personnel (Proposed Office(s)): Administration \_\_\_\_\_ Total Personnel \_\_\_\_\_

I. Remaining NYC-DOT work of proposed office(s) (from back of sheet) with: All NYC-DOT \$ \_\_\_\_\_

II. Expected billings for next 18 months:

A. NYC-DOT WORK: total expected billings in next 18 months. \$ \_\_\_\_\_

B. WORK WITH OTHER PUBLIC AGENCIES: total expected in the next 18 months \$ \_\_\_\_\_

C. PRIVATE WORK: total expected billings on projects in next 18 months. \$ \_\_\_\_\_

TOTAL (A + B + C) \$ \_\_\_\_\_

III. Certified Disadvantaged Business Enterprise (DBE) firm(s) for Federal Aid Projects or for Non-Federal air Projects proposed for use on this project:

Table with 4 columns: SUBCONSULTANT FIRM NAME, PROPOSED % OF PROJECT, # OF TECHNICAL PERSONNEL, WORKLOAD. Includes three rows of blank entries.

IV. Other firm(s) proposed for use on this project

\_\_\_\_\_ % \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ % \_\_\_\_\_ \$ \_\_\_\_\_

CERTIFICATION

I hereby certify that the above figures are actual contract amounts (when available) or my best estimate of expected billings.

DATE \_\_\_\_\_

SIGNATURE (OFFICER OR PARTNER) \_\_\_\_\_

**FORM 5T  
(Page 2 of 2)**

**Remaining Work with NYCDOT (within Department)**

List all projects on which you are currently working for the Department and those which you have been designated to perform. These shall be categorized as indicated below (Design, Construction Inspection or Miscellaneous).

Type of work – Highway, Bridge, Planning	Contract Number	Remaining \$ Value (include anticipated Supplemental Agreement for this Project (a)	Percentage of Project performed at Office(s) proposed for this Project  (b)	Pro-rated Workload of proposed office(s)  (a x b)
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Design Division (includes Highway Design, Bridge Design and Construction Support Services)				

Total Firmwide Design Workload \$ \_\_\_\_\_

Assigned Office(s) Miscellaneous Workload \$ \_\_\_\_\_

Construction Division (includes only Resident Engineering Inspection)				

Total Firmwide REI Workload \$ \_\_\_\_\_

Assigned Office(s) REI Workload \$ \_\_\_\_\_

Miscellaneous (includes Planning and any other agreements not covered above)				

Total Firmwide Miscellaneous Workload \$ \_\_\_\_\_

Assigned Office(s) Miscellaneous Workload \$ \_\_\_\_\_

Total Firmwide Overall  
Workload with NYC-DOT \$ \_\_\_\_\_

Assigned Office(s) Overall  
Workload with NYC-DOT \$ \_\_\_\_\_

YOU MAY ATTACH ADDITIONAL SHEETS OF REMAINING WORK FOLLOWING THE SAME FORMAT AS USED ABOVE.

Use the following as a ratings guide:

Calculate the Ratio of expected billable dollars per person per year vs. average billable dollars per person per year.

- If: EB\$PY - expected billable dollars per person per year.
- AB\$PY - average billable dollars per person per year.
- EB - expected billing dollars for next 18 months.
- S - Total personnel minus administrative personnel.
- Y - Yearly adjustment (converts 18 months into 1 year).

Assume: AB\$PY = \$60,000 and Y = 1.5 (18 / 12 = 1.5)

Then: EB\$PY = EB / S / Y and R = EB\$PY / AB\$PY X 100%

If R is greater than or equal to 100%, a rating of 0 may be appropriate.

If R is equal to 75 %, a rating of 5 may be appropriate.

If R is less than or equal to 25%, a rating of 10 may be appropriate.

# FORM 6T

## DBE PARTICIPATION

**PROJECT NAME:** Naval Architecture and Related Engineering Services In Connection With Ferry Vessels and Floating Equipment

**PIN No.:** 84107SIPT175 & 84107SIPT182

**CONTRACT NO.:** FC-5584A & FC-5584B

**CONSULTANT:** \_\_\_\_\_

Participation by DBE Consultants:  is being proposed

Participation by DBE Consultants:  is ***not*** being proposed

If being proposed, attach the following:

1. Name(s) and Address(es) of proposed DBE firms.
2. Percentage(s) of assigned participation.
3. NYS DBE Certification(s)\*.

\* An approved letter from the New York State Department of Transportation Office of Equal Opportunity Development and Compliance is required as proof of DBE certification for any DBE prime or subconsultant. The certification must be in effect on the RFP response date.

FORM 7T

**STATEMENT OF UNDERSTANDING**

*(To Be Filled Out and Submitted By and For Each Prime Consultant and Subconsultant)*

PINs 84107SIPT175 & 84107SIPT182

CONTRACT NOs. FC-5584A & FC-5584B

PROJECT NAME Naval Architecture and Related Engineering Services In  
Connection With Engineering Services Agreement  
Ferry Vessels and Floating Equipment 07 A & B

PRIME CONSULTANT \_\_\_\_\_

CONSULTANT ON THIS FORM \_\_\_\_\_

WITH RESPECT TO THIS RFP, CONSULTANT ON THIS FORM INTENDS TO BE A:

- PRIME CONSULTANT
- SUBCONSULTANT and will offer the following services/specialities: \_\_\_\_\_

The undersigned, having read and understood the intent and scope, would intend, by submitting a Proposal for this project, to enter into a formal contract with the New York city Department of Transportation for the performance of the work as the Prime Consultant, or to enter into a contract with the Prime Consultant to perform as a subconsultant on this project.

The undersigned further stipulates that the information in this proposal is, to the best of knowledge, true and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Consultant Firm

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Telephone Number

# ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0157  
Expires: 06/30/2007

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 1101 - 1104) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

## GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

## INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

## DEFINITIONS

**Architect-Engineer Services:** Defined in FAR 2.101.

**Branch Office:** A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

**Discipline:** Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

**Firm:** Defined in FAR 36.102.

**Key Personnel:** Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

## **SPECIFIC INSTRUCTIONS**

### **Part I - Contract-Specific Qualifications**

#### Section A. Contract Information.

1. **Title and Location.** Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. **Public Notice Date.** Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. **Solicitation or Project Number.** Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

#### Section B. Architect-Engineer Point of Contact

4-8. **Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address.** Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

#### Section C. Proposed Team.

9-11. **Firm Name, Address, and Role in This Contract.** Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

#### Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

#### Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. **Name.** Self-explanatory.

13. **Role in This Contract.** Self-explanatory.

14. **Years Experience.** Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. **Firm Name and Location.** Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

#### Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contract Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

#### Section G. Key Personnel Participation in Example Projects.

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information.

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

Section I. Authorized Representative

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

**SAMPLE ENTRIES FOR SECTION G (MATRIX)**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)      27. ROLE IN THIS CONTRACT (From Section E, Block 13)      28. EXAMPLE PROJECTS LISTED IN SECTION F Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.

		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mech. Engineer	X	X	X	X						
Tara C. Donovan	Chief Elec. Engineer	X	X		X						

**29. EXAMPLE PROJECTS KEY**

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport, RI

## Part II - General Qualifications

See the "**General Instructions**" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.
- 2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.
3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.
4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.
5. Ownership.
  - a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).
  - b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.
- 6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.
7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.
- 8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.
9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).
10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.
11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.
12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

List of Disciplines (Function Codes)

Code	Description	Code	Description
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	D01	Dams ( <i>Concrete; Arch</i> )
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	D02	Dams ( <i>Earth; Rock</i> ); Dikes; Levees
A03	Agricultural Development; Grain Storage; Farm Mechanization	D03	Desalinization ( <i>Process and Facilities</i> )
A04	Air Pollution Control	D04	Design-Build - Preparation of Requests for Proposals
A05	Airports; Nav aids; Airport Lighting; Aircraft Fueling	D05	Digital Elevation and Terrain Model Develop- ment
A06	Airports; Terminals and Hangars; Freight Handling	D06	Digital Orthophotography
A07	Arctic Facilities	D07	Dining Halls; Clubs; Restaurants
A08	Animal Facilities	D08	Dredging Studies and Design
A09	Anti-Terrorism/Force Protection	E01	Ecological and Archeological Investigations
A10	Asbestos Abatement	E02	Educational Facilities; Classrooms
A11	Auditoriums and Theaters	E03	Electrical Studies and Design
A12	Automation; Controls; Instrumentation	E04	Electronics
B01	Barracks; Dormitories	E05	Elevators; Escalators; People-Movers
B02	Bridges	E06	Embassies and Chanceries
C01	Cartography	E07	Energy Conservation; New Energy Sources
C02	Cemeteries ( <i>Planning and Relocation</i> )	E08	Engineering Economics
C03	Charting; Nautical and Aeronautical	E09	Environmental Impact Studies, Assessments or Statements
C04	Chemical Processing and Storage	E10	Environmental and natural Resource Mapping
C05	Child Care/Development Facilities	E11	Environmental Planning
C06	Churches; Chapels	E12	Environmental Remediation
C07	Coastal Engineering	E13	Environmental Testing and Analysis
C08	Codes; Standards; Ordinances	F01	Fallout Shelters; Blast-Resistant Design
C09	Cold Storage; Refrigeration and Fast Freeze	F02	Field Houses; Gyms; Stadiums
C10	Commercial Building ( <i>Low Rise</i> ); Shopping Centers	F03	Fire Protection
C11	Community Facilities	F04	Fisheries; Fish Ladders
C12	Communications Systems; TV; Microwave	F05	Forensic Engineering
C13	Computer Facilities; Computer Service	F06	Forestry and Forest Products
C14	Conservation and Resource Management	G01	Garages; Vehicles Maintenance Facilities; Parking Decks
C15	Construction Management	G02	Gas Systems ( <i>Propane; Natural, Etc.</i> )
C16	Construction Surveying	G03	Geodetic Surveying: Ground and Air- borne
C17	Corrosion Control; Cathodic Protection Electrolysis	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting		
C19	Cryogenic Facilities		

Code	Description	Code	Description
G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting	M08	Modular systems Design; Pre-Fabricated Structures or Components
G06	Graphic Design	N01	Naval Architecture; Off-Shore Platforms
H01	Harbors; Jetties; Piers, Ship Terminal Facilities	N02	Navigation Structures; Locks
H02	Hazardous Materials Handling and Storage	N03	Nuclear Facilities; Nuclear Shielding
H03	Hazardous, Toxic, Radioactive Waste Remediation	O01	Office Buildings; Industrial Parks
H04	Heating; Ventilating; Air Conditioning	O02	Oceanographic Engineering
H05	Health Systems Planning	O03	Ordnance; Munitions; Special Weapons
H06	High-rise; Air-Rights-Type Buildings	P01	Petroleum Exploration; Refining
H07	Highways; Streets; Airfield Paving; Parking Lots	P02	Petroleum and Fuel ( <i>Storage and Distribution</i> )
H08	Historical Preservation	P03	Photogrammetry
H09	Hospital and Medical Facilities	P04	Pipelines ( <i>Cross-Country - Liquid and Gas</i> )
H10	Hotels; Motels	P05	Planning ( <i>Community, Regional, Areawide and State</i> )
H11	Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )	P06	Planning ( <i>Site, Installation and Project</i> )
H12	Hydraulics and Pneumatics	P07	Plumbing and Piping Design
H13	Hydrographic Surveying	P08	Prisons and Correctional Facilities
I01	Industrial Buildings; Manufacturing Plants	P09	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P10	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P11	Postal Facilities
I04	Intelligent Transportation Systems	P12	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P13	Public Safety Facilities
I06	Irrigation; Drainage	R01	Radar; Sonar; Radio and Radar Telescopes
J01	Judicial and Courtroom Facilities	R02	Radio Frequency Systems and Shieldings
L01	Laboratories; Medical Research Facilities	R03	Railroad; Rapid Transit
L02	Land Surveying	R04	Recreation Facilities ( <i>Parks, Marinas, Etc.</i> )
L03	Landscape Architecture	R05	Refrigeration Plants/Systems
L04	Libraries; Museums; Galleries	R06	Rehabilitation ( <i>Buildings; Structures; Facilities</i> )
L05	Lighting ( <i>Interior; Display; Theater, Etc.</i> )	R07	Remote Sensing
L06	Lighting ( <i>Exteriors; Streets; Memorials; Athletic Fields, Etc.</i> )	R08	Research Facilities
M01	Mapping Location/Addressing Systems	R09	Resources Recovery; Recycling
M02	Materials Handling Systems; Conveyors; Sorters	R10	Risk Analysis
M03	Metallurgy	R11	Rivers; Canals; Waterways; Flood Control
M04	Microclimatology; Tropical Engineering	R12	Roofing
M05	Military Design Standards	S01	Safety Engineering; Accident Studies; OSHA Studies
M06	Mining and Mineralogy	S02	Security Systems; Intruder and Smoke Detection
M07	Missile Facilities ( <i>Silos; Fuels; Transport</i> )	S03	Seismic Designs and Studies

<b>Code</b>	<b>Description</b>
S04	Sewage Collection, Treatment and Disposal
S05	Soils and Geologic Studies; Foundations
S06	Solar Energy Utilization
S07	Solid Wastes; Incineration; Landfill
S08	Special Environments; Clean Rooms, Etc.
S09	Structural Design; Special Structures
S10	Surveying; Platting; Mapping; Flood Plain Studies
S11	Sustainable Design
S12	Swimming Pools
S13	Storm Water Handling and Facilities
T01	Telephone Systems ( <i>Rural; Mobile; Intercom, Etc.</i> )
T02	Testing and Inspection Services
T03	Traffic and Transportation Engineering
T04	Topographic Surveying and Mapping
T05	Towers ( <i>Self-Supporting and Guyed Systems</i> )
T06	Tunnels and Subways
U01	Unexploded Ordnance Remediation
U02	Urban renewals; Community Development
U03	Utilities ( <i>Gas and Steam</i> )
V01	Value Analysis; Life-Cycle Costing
W01	Warehouse and Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

# ARCHITECT - ENGINEER QUALIFICATIONS

---

## PART I - CONTRACT-SPECIFIC QUALIFICATIONS

### A. CONTRACT INFORMATION

1. TITLE AND LOCATION (*City and State*):
2. PUBLIC NOTICE DATE:
3. SOLICITATION OR PROJECT NUMBER:

---

### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE:
5. NAME OF FIRM:
6. TELEPHONE NUMBER:
7. FAX NUMBER:
8. E-MAIL ADDRESS:

---

### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

- 
- 9a. PRIME (CHECK HERE):
  - 9a. JOINT-VENTURE PARTNER (CHECK HERE):
  - 9a. SUBCONTRACTOR (CHECK HERE):
  - 9a. FIRM NAME:
  - 9a. IF BRANCH OFFICE CHECK HERE:
  - 10a. ADDRESS
  - 11a. ROLE IN THIS CONTRACT
- 
- 9b. PRIME (CHECK HERE):
  - 9b. JOINT-VENTURE PARTNER (CHECK HERE):
  - 9b. SUBCONTRACTOR (CHECK HERE):
  - 9b. FIRM NAME:
  - 9b. IF BRANCH OFFICE CHECK HERE:
  - 10b. ADDRESS
  - 11b. ROLE IN THIS CONTRACT
-

- 9c. PRIME (CHECK HERE):
  - 9c. JOINT-VENTURE PARTNER (CHECK HERE):
  - 9c. SUBCONTRACTOR (CHECK HERE):
  - 9c. FIRM NAME:
  - 9c. IF BRANCH OFFICE CHECK HERE:
  - 10c. ADDRESS
  - 11c. ROLE IN THIS CONTRACT
- 

- 9d. PRIME (CHECK HERE):
  - 9d. JOINT-VENTURE PARTNER (CHECK HERE):
  - 9d. SUBCONTRACTOR (CHECK HERE):
  - 9d. FIRM NAME:
  - 9d. IF BRANCH OFFICE CHECK HERE:
  - 10d. ADDRESS
  - 11d. ROLE IN THIS CONTRACT
- 

- 9e. PRIME (CHECK HERE):
  - 9e. JOINT-VENTURE PARTNER (CHECK HERE):
  - 9e. SUBCONTRACTOR (CHECK HERE):
  - 9e. FIRM NAME:
  - 9e. IF BRANCH OFFICE CHECK HERE:
  - 10e. ADDRESS
  - 11e. ROLE IN THIS CONTRACT
- 

- 9f. PRIME (CHECK HERE):
  - 9f. JOINT-VENTURE PARTNER (CHECK HERE):
  - 9f. SUBCONTRACTOR (CHECK HERE):
  - 9f. FIRM NAME:
  - 9f. IF BRANCH OFFICE CHECK HERE:
  - 10f. ADDRESS
  - 11f. ROLE IN THIS CONTRACT
- 

**D. ORGANIZATIONAL CHART OF PROPOSED TEAM** *(Attached; check here)*

---

**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT**  
(Complete one Section E for each key person.)

- 12. NAME:
- 13. ROLE IN THIS CONTRACT:
- 14a. YEARS EXPERIENCE - TOTAL:
- 14b. YEARS EXPERIENCE - WITH CURRENT FIRM:
- 15. FIRM NAME AND LOCATION (*City and State*):
- 16. EDUCATION (*DEGREE AND SPECIALIZATION*):
- 17. CURRENT PROFESSIONAL REGISTRATION (*STATE AND DISCIPLINE*):
- 18. OTHER PROFESSIONAL QUALIFICATIONS (*Publications, Organizations, Training, Awards, etc.*):

- 
- 19a(1) RELEVANT PROJECT - TITLE AND LOCATION (*City and State*):
  - 19a(2) RELEVANT PROJECT - YEAR COMPLETED - PROFESSIONAL SERVICES:
  - 19a(2) RELEVANT PROJECT - YEAR COMPLETED - CONSTRUCTION (*If applicable*):
  - 19a(3) RELEVANT PROJECT - BRIEF DESCRIPTION (*Brief scope, size, cost etc.*) AND SPECIFIC ROLE:
  - 19a(3) RELEVANT PROJECT - BRIEF DESCRIPTION - Check here if project performed with current firm:

- 
- 19b(1) RELEVANT PROJECT - TITLE AND LOCATION (*City and State*):
  - 19b(2) RELEVANT PROJECT - YEAR COMPLETED - PROFESSIONAL SERVICES:
  - 19b(2) RELEVANT PROJECT - YEAR COMPLETED - CONSTRUCTION (*If applicable*):
  - 19b(3) RELEVANT PROJECT - BRIEF DESCRIPTION (*Brief scope, size, cost etc.*) AND SPECIFIC ROLE:
  - 19b(3) RELEVANT PROJECT - BRIEF DESCRIPTION - Check here if project performed with current firm:

- 
- 19c(1) RELEVANT PROJECT - TITLE AND LOCATION (*City and State*):
  - 19c(2) RELEVANT PROJECT - YEAR COMPLETED - PROFESSIONAL SERVICES:
  - 19c(2) RELEVANT PROJECT - YEAR COMPLETED - CONSTRUCTION (*If applicable*):
  - 19c(3) RELEVANT PROJECT - BRIEF DESCRIPTION (*Brief scope, size, cost etc.*) AND SPECIFIC ROLE:
  - 19c(3) RELEVANT PROJECT - BRIEF DESCRIPTION - Check here if project performed with current firm:

- 
- 19d(1) RELEVANT PROJECT - TITLE AND LOCATION (*City and State*):
  - 19d(2) RELEVANT PROJECT - YEAR COMPLETED - PROFESSIONAL SERVICES:
  - 19d(2) RELEVANT PROJECT - YEAR COMPLETED - CONSTRUCTION (*If applicable*):
  - 19d(3) RELEVANT PROJECT - BRIEF DESCRIPTION (*Brief scope, size, cost etc.*) AND SPECIFIC ROLE:
  - 19d(3) RELEVANT PROJECT - BRIEF DESCRIPTION - Check here if project performed with current firm:

- 
- 19e(1) RELEVANT PROJECT - TITLE AND LOCATION (*City and State*):
  - 19e(2) RELEVANT PROJECT - YEAR COMPLETED - PROFESSIONAL SERVICES:
  - 19e(2) RELEVANT PROJECT - YEAR COMPLETED - CONSTRUCTION (*If applicable*):
  - 19e(3) RELEVANT PROJECT - BRIEF DESCRIPTION (*Brief scope, size, cost etc.*) AND SPECIFIC ROLE:
  - 19e(3) RELEVANT PROJECT - BRIEF DESCRIPTION - Check here if project performed with current firm:
-

**F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT**

*(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)*

- 
- 20. EXAMPLE PROJECT KEY NUMBER:
  - 21. TITLE AND LOCATION *(City and State)*:
  - 22a. YEAR COMPLETED - PROFESSIONAL SERVICES:
  - 22b. YEAR COMPLETED - CONSTRUCTION *(If applicable)*:
  - 23a. PROJECT OWNER'S INFORMATION - PROJECT OWNER:
  - 23b. PROJECT OWNER'S INFORMATION - POINT OF CONTACT NAME:
  - 23c. PROJECT OWNER'S INFORMATION - POINT OF CONTACT TELEPHONE NUMBER:
  - 24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*:

25. FIRMS FROM SECTION INVOLVED WITH THIS PROJECT

(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE



**H. ADDITIONAL INFORMATION**

---

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED:

---

**I. AUTHORIZED REPRESENTATIVE**  
**The foregoing is a statement of facts.**

31. SIGNATURE OF AUTHORIZED REPRESENTATIVE:

32. DATE SIGNED:

33. NAME AND TITLE OF SIGNER:

# ARCHITECT-ENGINEER QUALIFICATIONS

## PART II - GENERAL QUALIFICATIONS

*(If a firm has branch offices, complete for each specific branch office seeking work.)*

1. SOLICITATION NUMBER *(If any)*:
- 2a. FIRM (OR BRANCH OFFICE) NAME:
- 2b. FIRM (OR BRANCH OFFICE) STREET:
- 2c. FIRM (OR BRANCH OFFICE) CITY:
- 2d. FIRM (OR BRANCH OFFICE) STATE:
- 2e. FIRM (OR BRANCH OFFICE) ZIP CODE:
3. YEAR ESTABLISHED:
4. DUNS NUMBER:
- 5a. OWNERSHIP - TYPE:
- 5b. OWNERSHIP - SMALL BUSINESS STATUS:
- 6a. POINT OF CONTACT NAME AND TITLE:
- 6b. POINT OF CONTACT TELEPHONE NUMBER:
- 6c. POINT OF CONTACT E-MAIL ADDRESS:
7. NAME OF FIRM *(If block 2a is a branch office)*:

8a. FORMER FIRM NAME(S) <i>(If any)</i>	8b. YR. ESTABLISHED	8c. DUNS NUMBER





## **SECTION VII**

### **E) COST PROPOSAL FORMS PACKET**

#### **CONTENTS**

1. FORM 4T1 - LABOR COST PROPOSAL
2. FORM 4T2 - COST PROPOSAL SUMMARY
3. FORM 4T3 - PERFORMANCE OUTCOME MEASURES  
AND RELATED FINANCIAL INCENTIVE  
AND/OR DISINCENTIVE

**Note:** Please copy and use separate sheets for each sub consultant (if any).  
Make copies of format sheets as needed

PROJECT NAME: Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement Ferry Vessels and Floating Equipment 07 A & B

CONTRACT No: FC-5584A  
PIN No: 84107SIPT175

CONTRACT No: FC-5584B  
PIN No: 84107SIPT182

PRIME CONSULTANT: \_\_\_\_\_

CONSULTANT ON THIS FORM: \_\_\_\_\_

SERVICES TO BE RENDERED BY CONSULTANT ON THIS FORM: \_\_\_\_\_

(COLUMN 1) JOB TITLE	(COLUMN 2) MAXIMUM HOURLY RATE*
<u>"OFFICE" TITLES***:</u>	
1. Principal** (ASCE VII or higher).....	<u>\$100.00</u>
2. Senior Technical Expert/ Project Manager (ASCE VI or higher).....	_____
3. Senior Professional (ASCE V or higher).....	_____
4. Professional (ASCE IV or higher).....	_____
5. Senior Technical (ASCE III or NICET 'SET').....	_____
6. Technical (ASCE I/II or NICET 'ET').....	_____

notes:

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the "Proposed Contractual Agreement" (Appendix 'A' to this RFP).

\*\* The Maximum Hourly Rate for Principals for contract year # 1 shall be \$100.00 per hour, will not be subject to any multiplier, and will only be paid for Principals performing technical work as described in the "Proposed Contractual Agreement" (Appendix 'A' to this RFP).

\*\*\* Tasks performed by "Office" titles include, but are not limited to, such activities as: Preliminary or Final Design of a Conversion; Comprehensive Design; Planning; Hull, Machinery, Interior or Electrical/ Electronic Design; Estimating; Scheduling; Regulatory Liaison; Engineering Studies; Project Management.

Consultant's Proposed Technical Office Multiplier \_\_\_\_\_

INSTRUCTIONS:

- Each consultant of the project team is to submit a separate "Labor Cost Proposal Form".
- The Total Multiplier shall be rounded off to Two (2) Decimal Places.
- For each engineer title listed herein, and American Society of Civil Engineers (ASCE) Grade Number is given. The proposer should consult the "ASCE Professional Grade Descriptions" (Available free on ASCE's website) for guidance on General Characteristics, Direction Received, Typical Duties and Responsibilities, Supervisory Responsibility, Typical Equivalent Position Titles, Education and Registration Requirements, and Equivalent Federal General Schedule Grade corresponding to each position.
- For each technician title listed herein, a National Institute for Certification in Engineering Technologies (NICET) grade abbreviation is given. The proposer should consult NICET's Requirements for Certification in Civil Engineering Technology, Mechanical Engineering Technology and Bridge Safety Inspection (available free on NICET's web site) for guidance on the capabilities and experience corresponding to each position.
- Certification of employees by ASCE or NICET is not required: the ASCE and NICET grades given herein are intended as standard specifications for job title requirements only.

PROJECT NAME: Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement Ferry Vessels and Floating Equipment 07 A & B

CONTRACT No: FC-5584A  
PIN No: 84107SIPT175

CONTRACT No: FC-5584B  
PIN No: 84107SIPT182

PRIME CONSULTANT: \_\_\_\_\_

CONSULTANT ON THIS FORM: \_\_\_\_\_

SERVICES TO BE RENDERED BY CONSULTANT ON THIS FORM: \_\_\_\_\_

(COLUMN 1) JOB TITLE	(COLUMN 2) MAXIMUM HOURLY RATE*
-------------------------	---------------------------------------

"FIELD" TITLES\*\*\*:

- 1a. Resident Engineer (ASCE IV or higher)..... \_\_\_\_\_
- 2b. Chief Inspector\*\*..... \_\_\_\_\_
- 3. Senior Hull Inspector (ASCE III or NICET IV)..... \_\_\_\_\_
- 4. Senior Electrical Inspector (ASCE III or NICET IV)..... \_\_\_\_\_
- 5. Senior Machinery Inspector (ASCE III or NICET IV)..... \_\_\_\_\_

notes:

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the "Proposed Contractual Agreement" (Appendix 'A' to this RFP).

\*\* See the "Proposed Contractual Agreement" (Appendix 'A' to this RFP) for details of job specification for Chief Inspector.

\*\*\* Typical "Field" tasks include, but are not limited to, supervision of a major overhaul, conversion, or reconstruction of a ferryboat, supervision of construction of auxiliary vessels, supervision of ship or barge repair projects, related construction management and contractor quality assurance tasks, and functioning as owner's representative during shipyard availabilities.

**Consultant's Proposed Technical Field Multiplier** \_\_\_\_\_

INSTRUCTIONS:

1. Each consultant of the project team is to submit a separate "Labor Cost Proposal Form".
2. The Total Multiplier shall be rounded off to Two (2) Decimal Places.
3. For each engineer title listed herein, and American Society of Civil Engineers (ASCE) Grade Number is given. The proposer should consult the "ASCE Professional Grade Descriptions" (Available free on ASCE's website) for guidance on General Characteristics, Direction Received, Typical Duties and Responsibilities, Supervisory Responsibility, Typical Equivalent Position Titles, Education and Registration Requirements, and Equivalent Federal General Schedule Grade corresponding to each position.
4. For each technician title listed herein, a National Institute for Certification in Engineering Technologies (NICET) grade abbreviation is given. The proposer should consult NICET's Requirements for Certification in Civil Engineering Technology, Mechanical Engineering Technology and Bridge Safety Inspection (available free on NICET's web site) for guidance on the capabilities and experience corresponding to each position.
5. Certification of employees by ASCE or NICET is not required: the ASCE and NICET grades given herein are intended as standard specifications for job title requirements only.

**PROJECT NAME:** Naval Architecture and Related Engineering Services In Connection With Engineering Service Agreement Ferry Vessels and Floating Equipment 07 A & B

**CONTRACT No:** FC-5584A  
**PIN No:** 84107SIPT175

**CONTRACT No:** FC-5584B  
**PIN No:** 84107SIPT182

**PRIME CONSULTANT:** \_\_\_\_\_

**CONSULTANT ON THIS FORM:** \_\_\_\_\_

**TITLE CONVERSIONS**

<b>Title Used In RFP Form 4T-1 pp 1 &amp; 2</b>	<b>Consultant's Job Title Names*</b>
---	--------------------------------------

**"OFFICE" TITLES:**

1. Principal\*\* (ASCE VII or higher)..... \_\_\_\_\_  
\_\_\_\_\_
2. Senior Technical Expert/ Project Manager (ASCE VI or higher) \_\_\_\_\_  
\_\_\_\_\_
3. Senior Professional (ASCE V or higher)..... \_\_\_\_\_  
\_\_\_\_\_
4. Professional (ASCE IV or higher)..... \_\_\_\_\_  
\_\_\_\_\_
5. Senior Technical (ASCE III or NICET 'SET')..... \_\_\_\_\_  
\_\_\_\_\_
6. Technical (ASCE I/II or NICET 'ET')..... \_\_\_\_\_  
\_\_\_\_\_

**"FIELD" TITLES:**

- 1a. Resident Engineer (ASCE IV or higher)..... \_\_\_\_\_  
\_\_\_\_\_
- 2b. Chief Inspector..... \_\_\_\_\_  
\_\_\_\_\_
3. Senior Hull Inspector (ASCE III or NICET IV)..... \_\_\_\_\_  
\_\_\_\_\_
4. Senior Electrical Inspector (ASCE III or NICET IV)..... \_\_\_\_\_  
\_\_\_\_\_
5. Senior Machinery Inspector (ASCE III or NICET IV)..... \_\_\_\_\_  
\_\_\_\_\_

**Note:** \* Each consultant of the project team shall submit a separate "Title Conversion Form." Each consultant shall insert the equivalent names it uses for the titles included in its proposal which will be included in the consultant's bills. For example, if the proposer's equivalent names for a "Professional" grade (i.e. ASCE IV) employee are "Naval Architect," "Electrical Engineer," "Senior Piping Designer," etc., the proposer must insert that information.

**FORM 4T2 – COST PROPOSAL SUMMARY**

**PROJECT NAME:** Naval Architecture and Related Engineering Services In Connection With Ferry Vessels and Floating Equipment 07 A & B

**CONTRACT No:** FC-5584A

**CONTRACT No:** FC-5584B

**PIN No:** 84107SIPT175

**PIN No:** 84107SIPT182

**PRIME CONSULTANT:** \_\_\_\_\_

**(COLUMN 1)**  
**CONSULTANT**

**(COLUMN 2)**  
**DIRECT**  
**NON-SALARY**  
**COST**

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

**TOTALS**

**\$200,000.00**  
**(For Each Contract)**

**INSTRUCTIONS:**

1. The Total Direct Non-Salary Cost shown in the shaded area below Column 2 is an out of pocket expense budgeted amount allowed to all proposers and must not be changed.
2. The Total Direct Non-Salary Cost provided by each consultant of the project team MUST SUM to the total shown in the shaded area at the bottom of the Column 2.

# FORM 4T3

## PERFORMANCE OUTCOME MEASURES AND RELATED FINANCIAL INCENTIVES AND/OR DISINCENTIVES

Instructions: Provide the information requested below for proposed performance outcome measures

	Performance Outcome (Target Goal)	Measure of Performance	Associated Financial Incentive/Disincentive
1.			
2.			
3.			
4.			
5.			

## **SECTION VII**

### **F) VENDEX REQUIREMENTS & CONFIRMATION OF VENDEX COMPLIANCE**

## **Attachment F**

### **VENDEX Requirements**

Pursuant to Section 6-112.2(b) of the New York City Administrative Code, all vendors that are under consideration for the award of a sole source contract or a contract valued at \$100,000 or more, or whose aggregate business with the City in the last 12 months, including the proposed contract, is \$100,000 or more, must complete and submit a VENDEX Business Entity or Not-For-Profit Organization Questionnaire when notified by the Agency. The principals and individuals thereof must also submit a Principal of Individual Questionnaire.

Upon selection, the successful proposer (including their subconsultants) will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of Vendex Compliance to the NYCDOT Vendor Responsibility Unit within five days of official notification.(Section VII, Attachment G). A form for this confirmation is set forth in the RFP.

**The proposer is advised that Vendex Questionnaires and procedures have changed. See [www.nyc.gov/vendex](http://www.nyc.gov/vendex) to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact NYCDOT's Vendor Responsibility Unit at 212-442-7757.**

(a) **Submission:** Vendex Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

**Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.**

# ATTACHMENT F

## CONFIRMATION OF VENDEX COMPLIANCE

The Proposer (including its subconsultant) shall submit this Confirmation of Vendex Compliance

Name of Proposer: \_\_\_\_\_

Proposer's Address: \_\_\_\_\_

Proposer's Telephone Number: \_\_\_\_\_

Proposer's Fax Number: \_\_\_\_\_

Date of Proposal Submission: \_\_\_\_\_

Project ID: \_\_\_\_\_

**Vendex Compliance:** To demonstrate compliance with Vendex requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.

- (1) **Submission of Questionnaires to MOC:** By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted Vendex Questionnaires to the Mayor's Office of Contract Services, Attn: VENDEX, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

Date of Submission: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Partner or corporate officer)

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

- (2) **Submission of Certification of No Change to NYCDOT:** By signing in the space provided below, the Proposer certifies that it has read the instructions in a "Vendor's Guide to Vendex" and that such instructions do not require the Proposer to submit Vendex Questionnaires. The Proposer has completed **TWO ORIGINALS** of the Certification of No Change.

By: \_\_\_\_\_  
(Signature of Partner or corporate officer)

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

## **ATTACHMENT G**

- 1) **DISCLOSURE OF LOBBYING ACTIVITIES &**
- 2) **CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

## DISCLOSURE OF LOBBYING ACTIVITIES

I \_\_\_\_\_ hereby certifies on behalf of \_\_\_\_\_ will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The Contractor certifies, 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 an 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 the 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 making lobbying contacts to an officer or employee of any 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

**CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS**

The Contractor \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

6. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
7. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
8. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
9. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
10. The Contractor agrees to provide NYCDOT with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCDOT.

NOTE: If for any reason the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE CONTRACTOR, \_\_\_\_\_ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date

# **ATTACHMENT H – DOING BUSINESS DATA FORM**



## Doing Business Data Form – Contract Proposers

A Doing Business Data Form is to be completed by any vendor that submits a proposal for this contract (see Q&A sheet for more information). Please type or print in black ink, sign the last page, and return the complete Data Form, in a separate envelope, to the contracting agency along with your proposal. **The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.**

This Data Form requires information to be provided on your principal officers, owners and senior managers. The name, employer, and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. This Data Form is separate from the City's VENDEX requirements.

### **General Instructions for Sections 2, 3, and 4:**

**Title:** The actual office title held by the officer, owner, or manager.

**Employer (if not vendor):** If the individual is not employed by the vendor, list his/her employer's name.

### **Certification:**

Fill out the certification box on the last page completely, and return the completed Data Form, in a separate envelope, to the contracting agency along with your proposal. If you have questions, please contact the Doing Business Accountability Project at 212-788-8104 or [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov). Thank you for your cooperation.

**NOTE:** Under the Federal Privacy Act the furnishing of Social Security Numbers is voluntary. Failure to provide an SSN will not result in any vendor's disqualification. SSNs will not be disclosed to the public. SSNs will be used to: identify a vendor's officers, owners and managers; assist the City in enforcement of Local Law 34 by ensuring that it is applied only to those individuals intended to be covered; and provide the City a means of identifying individuals whose names are not required to be listed in the *Doing Business Database*.

### **Section 1: Vendor Information**

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

Vendor EIN: \_\_\_\_\_

Vendor Filing Status (select one):

- New Vendor/Full Data Form. *Fill out the entire form.*
- Change from previous Data Form dated \_\_\_\_\_. *Fill out only those sections that have changed, and indicate the name of the person(s) who no longer hold positions with the vendor.*
- No Change from previous Data Form dated \_\_\_\_\_. *Skip to the bottom of the last page.*

Vendor Type:  Corporation (any type)     Partnership (any type)     Sole Proprietor  
 Other (specify): \_\_\_\_\_

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

Vendor Main Phone #: \_\_\_\_\_ Vendor is a Non-Profit:  Yes     No

Vendor Main E-mail: \_\_\_\_\_

**Section 2: Principal Officers**

Please fill in the required identification information for each officer listed below. If the vendor has no such officer or its equivalent, please check the "Position does not exist" box. If the vendor is filing a Change Data Form and the person listed is replacing someone who was previously disclosed, please check the "This person replaced" box and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO)**

This position does not exist

The highest ranking officer or manager, such as the CEO, President or Executive Director; or, if those positions do not exist, the Chairperson of the Board.

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

This person replaced CEO: \_\_\_\_\_ On date: \_\_\_\_\_

**Chief Financial Officer (CFO)**

This position does not exist

The highest ranking financial officer, such as the CFO, Treasurer, Comptroller, Financial Director, or VP for Finance.

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

This person replaced CFO: \_\_\_\_\_ On date: \_\_\_\_\_

**Chief Operating Officer (COO)**

This position does not exist

The highest ranking operational officer, such as the COO, Chief Planning Officer, Director of Operations, or VP for Operations

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

This person replaced COO: \_\_\_\_\_ On date: \_\_\_\_\_

**Section 3: Principal Owners**

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means **own or control 10% or more of the vendor**. If no individual owners exist, please check the appropriate box below to indicate why, and skip to the next page. If the vendor is owned by other companies, those companies do not need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the vendor is filing a Change Data Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- The entity is not-for-profit
- There are no individual owners
- No owner holds 10% or more shares in the entity
- Other (explain): \_\_\_\_\_

**Principal Owners (who own or control 10% or more of the vendor):**

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Employer (if not vendor): \_\_\_\_\_  
 Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_  
 Home address: \_\_\_\_\_  
 Home phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Employer (if not vendor): \_\_\_\_\_  
 Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_  
 Home address: \_\_\_\_\_  
 Home phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Employer (if not vendor): \_\_\_\_\_  
 Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_  
 Home address: \_\_\_\_\_  
 Home phone #: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_  
 Name: \_\_\_\_\_ Removal date: \_\_\_\_\_  
 Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

**To list more Principal Owners, please attach additional pages.**

**Section 4: Senior Contract Managers**

Please fill in the required identification information for all senior managers who oversee any of the vendor's contracts with the City. Senior managers include anyone who, either by title or duties, has substantial discretion over the solicitation, letting, or administration of any contract with the City. You must list at least one Senior Manager or your Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the vendor is filing a Change Data Form, list any individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Contract Managers:**

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

**Remove the following previously-reported Senior Contract Managers:**

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

**To list more Senior Contract Managers, please attach additional pages.**

**I certify that the information submitted on these four pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the vendor being found non-responsible and therefore denied future City awards.**

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

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

Vendor name: \_\_\_\_\_

Title: \_\_\_\_\_ Work phone #: \_\_\_\_\_

**DOING BUSINESS ACCOUNTABILITY PROJECT  
CONTRACT, FRANCHISE AND CONCESSION PROPOSERS  
FALL 07 – SPRING 08**

**Q & A: The *Doing Business Data Form* and the *Doing Business Database***

**What is the purpose of this Data Form?**

To collect accurate, up-to-date identification information about vendors that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), the recently passed campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of City vendors and mandates the creation of a *Doing Business Database* to allow the City to enforce the law. The information requested in this Data Form must be provided, regardless of whether the vendor or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

**Why have I received this Data Form?**

The contract, franchise or concession for which you are proposing is considered a business dealing with the City under LL 34. Most types of contracts, franchises and concessions valued at more than \$5,000 are considered business dealings. Exceptions include transactions awarded on an emergency basis or by non-qualified competitive sealed bid. Later in 2008, the types of transactions considered business dealings will be expanded to include grants, economic development agreements, pension fund investments and real property and land use transactions with the City.

**What vendors will be included in the *Doing Business Database*?**

Vendors that hold contracts for goods or services, or franchises or concessions, valued at more than \$100,000, or contracts for construction valued at more than \$500,000, are considered to be doing business with the City for the purposes of this law and will be included in the *Doing Business Database*. As noted above, later in 2008 other types of transactions will also result in vendor inclusion in the database.

**What individuals will be included in the *Doing Business Database*?**

The principal officers, owners and certain senior managers of vendors listed in the *Doing Business Database* are themselves considered to be doing business with the City and will also be included in the database.

- **Principal officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the Data Form instructions for examples of titles that apply.
- **Owners** are individuals who own or control 10% of more of the vendor. This includes stockholders, partners and anyone else with an ownership or controlling interest in the vendor.
- **Senior managers** include anyone who, either by job title or actual duties, has substantial discretion over the solicitation, letting or administration of any contract, franchise or concession with the City. If the vendor holds any City contracts, franchises or concessions, you must list at least one Senior Manager, or your Data Form will be considered incomplete. Later in 2008, senior managers responsible for the additional types of transactions indicated above will also be included in the *Doing Business Database*.

**I provided some of this information on the VENDEX Questionnaire. Why do I have to do it again?**

Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the Data Form requests information concerning senior managers, which is not part of the VENDEX Questionnaire

**What happens if I don't submit a complete and accurate Data Form?**

Vendors are required to supply information of this type upon request of the City. The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.

**Will the information on this Data Form be available to the public?**

Campaign contributions will continue to be public information, as they have been in the past. Similarly, the names of vendors' top officers and owners, which have previously been made public through the VENDEX database, will continue to be public, as will the additional names (senior managers) now required by this Data Form. Each person's employer and title will be made public. However, no sensitive personal identifying information will be made available to the public, and home address and phone number information will not be used for communication purposes.

**No one in my organization plans to contribute to a candidate; do I have to fill out this Data Form?**

Yes. All vendors are required to return this Data Form with complete and accurate information, regardless of the history or intention of the vendor or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

**I have already completed a Doing Business Data Form. Do I have to submit another one?**

Yes. A vendor is required to submit a Doing Business Data Form each time it proposes for, or enters, a transaction considered business dealings with the City. However, the Form has both a No Change option, which only requires a vendor to report its EIN and sign the last page, and a Change option, which allows a vendor to only fill in applicable information that has changed since the previous completion of the Doing Business Data Form.

**How does a person remove him/herself from the *Doing Business Database*?**

Any person who believes that s/he should not be listed may apply for removal from the database by contacting the Doing Business Accountability Project of the Mayor's Office of Contract Services. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the vendor. Vendors may also contact the DBA Project to add or remove such individuals. Removal and update forms will be available on-line at [nyc.gov/mocs](http://nyc.gov/mocs), or by contacting the Doing Business Accountability Project at 212-788-8104.

**How long will a vendor and its officers, owners and senior managers remain listed on the *Doing Business Database*?**

- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.
- **Contract and Concession holders:** generally for the term of the contract or concession, plus one year.
- **Franchise holders:** from the commencement or renewal of the franchise, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.

For information on other types of transactions, contact the Doing Business Accountability Project at 212-788-8104.

**What are the new campaign contribution limits for people doing business with the City?**

Please contact the NYC Campaign Finance Board for information on contribution limits, at [www.nyccfb.info](http://www.nyccfb.info), or 212-306-7100.

**The Data Form is to be returned, in a separate envelope, to the contracting agency along with your proposal.**

If you have any questions about the Data Form please contact the Doing Business Accountability Project at 212-788-8104 or [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov).