

Michael R. Bloomberg
Mayor

The City of New York
Department of Transportation
Division of Planning & Sustainability
Alternative Fuel Programs

Janette Sadik-Khan
Commissioner

REQUEST FOR PROPOSALS

FOR

CONSULTANT/PROGRAM MANAGEMENT SERVICES

IN CONNECTION WITH

THE HUNTS POINT CLEAN TRUCKS PROGRAM

BOROUGH OF THE BRONX

PIN: 84108BXPS337

RELEASE DATE OF THE RFP: August 17, 2009

ANTICIPATED CONTRACT TERM: 5 YEARS (1825 CCD) from the Date of Written Notice to Proceed with an Option to Renew under the same contract terms and conditions.

AUTHORIZED AGENCY CONTACT PERSON

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

Susan McSherry
Program Manager, Alternative Fuel Programs
55 Water Street, 9th Floor
New York, NY 10041
Telephone: (212) 839-4544
Fax: (212) 839-9893

April 17, 2009

Re: Request for Proposals for Consultant/Program Management Services
In Connection with The Hunts Point Clean Trucks Program, Borough of The Bronx
PIN: 84108BXPS337

To Whom It May Concern:

I am pleased to invite your organization to submit a proposal for Consultant/Program Management Services to assist the Division of Planning & Sustainability – Alternative Fuel Programs.

Please be advised that a pre-proposal conference has been scheduled for September 1, 2009 at DOT Contract Section, 55 Water Street, Ground Floor Bid Room from 1pm to 3pm. Due to limited space, no more than 2 representatives from each interested firm will be permitted to attend. Attendance by proposers is optional but recommended by the Agency.

Enclosed for your use in developing your proposal is a set of forms with instructions for the above-referenced project. Be further advised that the selected proposer should not subcontract more than 49% of the contract work. In addition, please ensure compliance with all DBE requirements as incorporated in this contract. You should follow the submittal instructions carefully.

You should hand deliver your proposal, as indicated in Section IV of the RFP, to the **NYC Department of Transportation, Contract Section, Ground Floor, 55 Water Street, New York, New York 10041 on or before September 29, 2009 between the hours of 9:00am and 2:00pm only on business days.**

In order that we can expeditiously disseminate additional information regarding this RFP, please complete the attached “**ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS FORM**” and return to Susan McSherry within 48 Hours of receipt of this RFP by Fax: (212) 839-9892.

If you have any questions concerning this invitation, please call (212) 839-4544.

Very truly yours,

Susan McSherry
Program Manager, Alternative Fuel Programs

Enclosure

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS

**WE STRONGLY RECOMMEND THAT YOU FAX THIS SHEET TO US TO ENSURE THAT YOU RECEIVE ALL
FUTURE ADDENDA
ATTN.: Susan McSherry - FAX: (212) 839-9892**

WE WILL PARTICIPATE IN THE RFP - SEND ANY TECHNICAL ADDENDA TO THE CONTACT PERSON LISTED BELOW:

Consultant:		
Address:		
City State		ZIP
Contact Person:	Phone #:	Email:
RFP PIN: 84108BXPS337	Fax #	
RFP Contract Title (Fill in):	Consultant/Project Management Services In Connection with the Hunts Point Clean Trucks Program, PIN 84108BXPS337	

OR

WE DO NOT PLAN TO SUBMIT A PROPOSAL, BECAUSE (Please check as many as apply).

Please check **all** the reasons that apply and return this form to **Susan McSherry**
Fax: (212) 487- 8305 E-mail: smcsherry@dot.nyc.gov.

- 1) Size of this contract is not within the interest of consultant.
- 2) Consultant had an insufficient amount of time to prepare proposal. (Please give the date that the Consultant acquired RFP and any other pertinent information.)
- 3) Contract work not within the specialty of the Consultant. (Please cite Consultant's area of specialty.)
- 4) Other. (Please explain in comment section below.)
- 5) Please remove me from your solicitation list.

Comments: (Please use additional sheets if necessary)

Signature

Title

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SECTION I - TIMETABLE

A. Release Date of the Request for Proposals: **August 17, 2009**

All questions and requests for additional information concerning this RFP should be directed to Susan McSherry, the Authorized Agency Contact Person, at:

Telephone #: 212-839-4544
Fax #: 212-839-9892
E-Mail Address: smcsherry@dot.nyc.gov

Proposers should submit questions no later than 10 days prior to the proposal due date since the Agency may be unable to respond to questions received after that date.

B. Pre-Proposal Conference:

Date: September 1, 2009
Time: 1pm – 3pm
Location: 55 Water Street, Ground Floor Bid Room
New York, NY 10041

Attendance by proposers is optional but recommended by the agency. All questions and requests for additional information concerning the pre-proposal conference should be directed to the Authorized Agency Contact Person.

C. Proposal Due Date and Time and Location:

Date: September 29, 2009
Time: NO LATER THAN 2:00 PM
Location: NYCDOT Contract Section
55 Water Street, Ground Floor
New York, New York 10041

Proposals should be hand delivered to NYCDOT Contract Section located at 55 Water Street, Ground Floor, New York, New York 10041, between the hours of 9am-2pm only.

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

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.

SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of the RFP

The Department of Transportation seeks the assistance of a qualified Contractor to provide technical and administrative support for the development and management of a voluntary, incentive-based, clean vehicle revolving loan or rebate/grant program focused on the heavy duty truck fleet based in Hunts Point, Bronx, NY. The Contractor will also be required to handle finances and/or work with existing leasing companies to provide unique financial incentives that result in the use of cleaner vehicles by Hunts Point fleets (See Section VII, Attachment A); specifically, to promote fleet replacement/modernization for model year trucks 1993 and older, installation of retrofit technologies on trucks model year 1994 and newer, and to promote the use of alternative fuels/technologies such as Compressed Natural Gas and Hybrid-Electric drive.

The goal is to affect a minimum of 500 trucks affiliated with businesses in Hunts Point, whose fleet serves and operates approximately 80% of the time within City boundaries. The purpose of the program is to reduce diesel emissions thus improving air quality, and reduce the environmental impact of truck related activities on the neighborhood of Hunts Point/Port Morris and the City as a whole. The grant funding is provided through the FHWA Congestion Mitigation/Air Quality (CMAQ) Program.

B. Anticipated Contract Term

Anticipated Contract Term for the contract is Five (5) years (1825 CCD) starting from the date of the Notice to Proceed with an option to renew for up to five (5) years (1825 CCD) with the same terms and conditions, at the sole discretion of the City.

C. Anticipated Payment Structure

It is anticipated that the payment structure for the contract 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.

Additionally, cost proposals/payment structure will be based on costs for Project Management Services only, which is not to exceed 3% for revolving loan programs or 15% for straight rebate programs as explained in Section VII A – Proposed Contractual Agreement, Part II, Administrative Requirements and Invoicing, Section 2. Cost. These percentages will be used internally as a method to determine the maximum amount payable but not as the method of compensation. The setting of these amounts will be based on a number of cost benefit factors such as the amount of incentives paid based on cost/per ton emissions reduced as specified in the Scope of Work and will be subject to negotiation and approval by DOT. The total amount of funds allocated toward this effort (project management and vehicle upgrades) will be between \$7.5 and \$30 million dollars, subject to annual appropriation and achievement of program goals (i.e., number of trucks enrolled). Of this amount, 20% is required local match per Federal requirements, except in the case of diesel after-treatment/retrofits, which do not require cost share. Therefore, the net Federal funding for this project is \$24 million dollars. Required match must come from either from grant recipients, or any other eligible funding source.

SECTION III : SCOPE OF SERVICES

A. Agency Goals and Objectives

The agency's goals and objectives are to acquire Project Management/Consultant services to assist the Department in developing an open enrollment revolving loan or rebate grant program for the businesses of Hunts Point to upgrade their fleet to cleaner technologies. The work will consist of collecting and analyzing vehicle data, designing and developing a program to help fund the upgrade costs, prepare an educational/outreach component to market the program, and performing technical analysis and other related services as necessary to determine costs and benefits of the program and update and improve the program as necessary. The scope of services included in this RFP can be found in the Proposed Contractual Agreement – Section VII, Attachment A.

B. Agency Assumptions Regarding Consultant Approach

The Agency's assumptions regarding which approach will best achieve the goals and objectives are set out, but not limited to, as listed below and are reflected in the Proposed Contractual Agreement (See Section VII, Attachment A):

- The contractor would have at least three (3) years of successful experience developing and implementing large program management projects and/or grant administration and would have the ability to start this program immediately.
- The contractor would have sufficient staff and experience in conducting outreach, including through seminars and market advertising, to expand the use of this program, and conduct personal site visits with any interested fleet.
- The contractor would possess sufficient staff and experience in providing technical analysis and other related services to conduct cost-benefit analysis of various pollution control devices to determine levels of effectiveness of emissions reductions for candidate vehicles.
- The contractor would possess the communication skills required to assist applicants in pulling together various funding entities for the purpose of maximizing potential cost-share combinations and capture any synergistic uses of multiple streams of funding in a cost-effective manner.
- The contractor would propose and implement an effective program for timely and appropriately handling customer inquiries and process applications in an efficient manner.
- The contractor would propose effective policies and procedures for minimizing difficulties in applying for funds and addressing issues related to eligibility.
- The contractor would propose and implement an effective plan to ensure the continued use of equipment purchased and installed through this program in order to sustain the environmental benefits associated with their use.
- The contractor would have working knowledge of FHWA/CMAQ and NYSDOT rules and regulations and would ensure program compliance with these rules.
- Contractor would have excellent computer skills and be expert in the use of MS Office programs such as Excel, Access, Word, PowerPoint, FrontPage, PhotoShop, Adobe Illustrator or any computer program needed to meet the requirements of this RFP.
- The contractor would possess sufficient financial resources, creditworthiness and capability, either alone or through a lender partner to advance payments to various entities to finalize transactions swiftly, in advance of re-payment by the City, as needed.

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 (See Section VII, Attachment H), and New York State Department of Transportation requirements, including but not limited to "NYSDOT procedures for Locally Administered Federal Aid Projects".

In addition, the proposers must submit all required FHWA forms attached as Appendix Section VII, Attachment I.

D. Opportunity for Disadvantaged Business Enterprise

The NYC Department of Transportation encourages firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of 18%. The successful proposers must show good faith efforts that it attempted to meet the DBE goal. DOT strongly encourages the Prime Vendor to use local DBE firms in order to meet this requirement. A list of certified DBE firms can be obtained from the following website: <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 are required to complete the attached Doing Business Data Form (see Attachment F) and return it with this proposal and should do so in a separate envelope. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form). If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

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 five (5) individually sealed components as listed below, each bound in an 8 1/2" x 11" plastic spiral binding. No pictures or drawings should be included, except for the cover. 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 number. 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, Form 330 and Form 4T1, Form 4T2, 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 included in the proposal package as follows:

FORM 1P	PROPOSAL COVER LETTER
FORM 2P	ACKNOWLEDGEMENT OF ADDENDA
FORM 3P	AFFIRMATION FORM

The Original Procedural Forms Packet should include all completed 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 included in the proposal package as follows:

FORM 1T	QUALITY & RELEVANCE OF PRIOR EXPERIENCE (FIRM IN GENERAL)
FORM 2T	PROPOSED STAFF (RESUMES)/EXPERIENCE
FORM 3T	OVERALL PROJECT UNDERSTANDING & APPROACH
FORM 4T	JOB TITLES & HOURS PROPOSED
FORM 5T	NYCDOT CURRENT WORKLOAD DISCLOSURE (2 PGS.)
FORM 6T	DBE PARTICIPATION FORM
FORM 330	STANDARD FORM

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 the proposal package in a separate sealed (clearly labeled) envelope as follows:

Cost Proposal

FORM 4T1 LABOR COST PROPOSAL*
FORM 4T2 COST PROPOSAL SUMMARY*
FORM 4T3 PERFORMANCE OUTCOME MEASURES & FINANCIAL INCENTIVES AND/OR DISINCENTIVES

Proposers shall review Section VII “Proposed Contractual Agreement” carefully and shall develop its cost proposal based on the scope therein. It is recognized that these efforts are not fully defined. Accordingly, proposers are asked to specify their assumptions underlying the cost estimate.

Performance Outcome Measures and 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.

4. Component 4: Local Law 34 – “Doing Business Data Form”

A Doing Business Data Form Packet has been supplied with this Request for Proposals (**Attachment F**) and should be fully completed and ONLY one (1) original set should be submitted in a separate sealed (clearly labeled) Technical Proposal package.

5. Component 5: FHWA Contract Boilerplate Forms

A FHWA Contract Boilerplate Form Packet has been supplied with this Request for Proposals (**Attachment I**) and should be fully completed and ONLY one (1) original set should be submitted in a separate sealed (clearly labeled) Technical Proposal package. The packet consists of:

FORM I-1: BUY AMERICA CERTIFICATION
FORM I-2: DISCLOSURE OF LOBBYING ACTIVITIES
FORM I-3: CERTIFICATION OF A CONTRACTOR REGARDING DISBARMENT, PENSION AND OTHER RESPONSIBILITY MATTERS
FORM I-4: CERTIFICATION OF A SUBCONTRACTOR/SUPPLIER REGARDING DISBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS
FORM I-5: DBE UTILIZATION GOALS
FORM I-6: DBE SCHEDULE OF UTILIZATION

All components should be individually sealed and labeled (i.e., Component 1, Component 2, Component 3, Component 4 & Component 5) to indicate the contents of each package and placed in

an outer envelope or wrapper. All component packages, outer envelope or wrappers shall be addressed as follows:

Proposer's Address	Name	NYCDOT 55 Ground New	Contract Section Water Street Floor York, New York 10041
PIN # 84108BXPS337 CONSULTANT/PROGRAM MANAGEMENT SERVICES IN CONNECTION WITH THE HUNTS POINT CLEAN TRUCKS PROGRAM, BOROUGH OF THE BRONX PROPOSAL SUBMISSION DEADLINE IS September 29, 2009 NO LATER THAN 2:00 PM			

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

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 one (1) original set

- 1P Proposal Cover Letter
- 2P Acknowledgment of Addenda
- 3P Affirmation Form

2. COMPONENT 2 – Submit one (1) original and four (4) copies

- 1T Quality and Relevance of Prior Experience (Firm in General)
- 2T Proposed Staff (Resumes)/Experience
- 3T Overall Project Understanding & Approach
- 4T Job Titles and Hours Proposed
- 5T NYCDOT Workload Disclosure (2 pgs.)
- 6T DBE Participation Form
- Form 330 Standard Form

**3. COMPONENT 3: COST PROPOSAL – Submit ONLY one (1) original Set
(To be submitted in a separate sealed (clearly labeled) envelope along with the Technical Proposal)**

- 4T-1 Labor Cost Proposal
- 4T-2 Cost Proposal Summary
- 4T-3 Performance Outcome Measures and Financial Incentives and/or Disincentives

**4. COMPONENT 4 - LOCAL LAW 34 –“Doing Business Data Form”-
Submit ONLY one (1) original set**

- Doing Business Data Form
(To be submitted in a separate sealed (clearly labeled) envelope along with the Technical Proposal)

5. COMPONENT 5: “FEDERAL BOILERPLATE FORMS”- Submit ONLY one (1) original Set

- I-1 Buy America Certification
- I-2 Disclosure of Lobbying Activities
- I-3 Certification of A Contractor Regarding Disbarment, Suspension and Other
Responsibility Matters
- I-4 Certification of A Subcontractor/Supplier Regarding Disbarment, Suspension and Other
Responsibility Matters
- I-5 DBE Utilization Goals
- I-6 DBE Schedule of Utilization

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 Consultant Selection Committee (CSC) will evaluate and rate all responsive proposals based on the Evaluation Criteria prescribed below.

In order to establish the technical evaluation ranking, the ratings by the evaluation committee members will be added and averaged for each proposing firm. Upon completion of the evaluation of the Technical Proposals, proposers will be ranked in descending order of score.

Based on these rankings, a "short-list" will be established of only those proposers who submit highly relevant and technically viable proposals with relevant and adequate experience, overall project understanding, approach and innovativeness in all project areas. The Agency reserves the right to limit the number of firms shortlisted.

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 Federal/State Method of procurement, (Brooks Law), the price proposal of ONLY the highest technically ranked firm 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 proposal by the CSC, the Agency then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer. In the event that the agency has chosen to negotiate a fair and reasonable price with the highest ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next highest ranked vendor(s), as necessary.

All unopened price proposals will be returned back 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 programmatic and cost terms.

B. Technical Evaluation Criteria:

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

1. Quality & Relevance of Prior Experience		
- Firm in General		20%
- Proposed Staff (resumes)	10%	
2. Quality of Proposal		
- Overall Project Understanding	20%	
- Approach and Innovation	20%	
3. Financial Capability & Staffing Availability		
- Financial capacity & Approach	20%	
- Workload – Staff Availability	10%	
TOTAL:		100%

C. Basis for Contract Award

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 this contract shall be subject to timely completion of contract negotiation between the Agency and the selected proposer.

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 Contracts 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. If a copy of the applicable document is not attached, it is available through the Authorized Agency Contact Person.

D. Contract Award. Contract award is subject to each of the following applicable conditions: New York City Fair Share Criteria; submission by the proposer of the 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/Certificate 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 the 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 the 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 secrets 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.

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

L. Charter Section 312(a) Certification.

The New York City Department of Transportation has determined that the contract to be awarded through this Request for Proposals (84108BXPS337) for Consultant/Program Management Services in connection with the Hunts Point Clean Trucks Program 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) **Local Law 34 - Doing Business Data Form**
(To be submitted in a separate sealed envelope along with Technical Proposal)
- G) **Confirmation of Vendex Compliance**
- H) **FHWA Contract Boilerplate**
- I) **FHWA Contract Forms**

SECTION VII – Attachment ‘A’
PROPOSED CONTRACTUAL AGREEMENT

**CONSULTANT/PROJECT MANAGEMENT SERVICES
IN CONNECTION WITH
THE HUNTS POINT CLEAN TRUCK PROGRAM**

BOROUGH OF THE BRONX

PIN: 84108BXPS337

Sec VII A

Part I

Proposed Contract/Scope of Work

THIS AGREEMENT, made and entered this _____ day of _____, 2009, by and between the City of New York acting by and through the Commissioner of the Department of Transportation (herein referred to as the "DOT") located at 55 Water Street, New York, NY 10041 and _____

WHEREAS, DOT submitted an application to the Congestion Mitigation and Air Quality (CMAQ) grant program, to fund a grant entitled "Hunts Point/Port Morris Diesel Emissions Reduction Project" under CMAQ PIN # X770.05 (hereinafter referred to as the "Project"); and

WHEREAS, the United States has provided for the apportionment of Federal Aid Highway funds to the State of New York (hereinafter called "State") for the purpose of carrying out Federal Aid highway projects, pursuant to section 149 of the Federal Highway Act (Title 23 of the United States Code); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of the New York State Department of Transportation to use federal funds available under the Federal-Aid Highway Act and provides for the consent to and approval by a municipality of any project for the use of such federal funds; and

WHEREAS, the Congestion Mitigation and Air Quality Improvement Program ("CMAQ") pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") as administered by the Federal Highway Administration ("FHWA") provides for the apportionment of monies to the State under said program; and

WHEREAS, NYCDOT desires to enter into an Agreement with _____ to provide consultant and program management services , which is more fully described in the Statement of Work, attached hereto,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

Task 1. PRELIMINARY PROGRAM DESIGN

- Contractor will obtain and review all available fleet data information on heavy duty vehicles domiciled in Hunts Point including vital statistics (make/model/engine types) and operational/duty cycle information.
- Contractor will identify and describe all various clean vehicle strategies, including diesel retrofit and alternative fuel, taking into account compatibility with the Hunts Point fleet vehicle population and vocation, and make recommendations for targeting specific vehicle types/fleets.
- Contractor will conduct investigations and review similar programs undertaken by various other State and local jurisdictions and provide a summary overview of how each plan is implemented. Contractor will make recommendations as to what various candidate measures/approaches may be replicated as part of the Hunts Point Program initiative.
- Contractor will prepare an emissions data estimate of the current truck fleet mix, based on available research and information, to determine an emissions benefit matrix, showing estimated pollution reductions for various scrappage/trade-up arrangements (old vs. new vehicles), retrofits, or alternative fuel options. Such recommendations shall also include a cost-benefit analysis based on dollar-per-lb/ton reduced for all various clean vehicle strategies for heavy duty vehicles; and a price-point analysis to determine the level of grant support (i.e., financial incentive) necessary and reasonable to trigger interest in the program.
- Contractor will investigate any various other sources of funding available that will maximize the use of the Hunts Point grant funds through increased cost share availability. This includes tax benefits, innovative financing programs, as well as other sources of funds from State and Federal Programs and develop various business plans showing potential financial benefits to applicants who participate in the program.
- Contractor will facilitate program task force meetings, and attend public meetings as necessary, to provide an opportunity for public comment and input by stakeholders. The contractor will produce presentations that are both articulate and well organized, and able to meet a high level of review as well as be easily understandable to the general public.
- The Contractor will prepare preliminary reports based on the findings, input and progress at Task Force and public meetings, as well as a draft final report outlining program details.
- Contractor may be required to conduct additional meetings and site visits, collect any additional data, conduct additional surveys, make additional recommendations, write additional reports and prepare additional documents as required.
- Contractor will adhere to a detailed management plan and work schedule. The work program shall provide for a program launch date no later than six months from the start of this contract.

- The contractor will have to submit monthly progress reports to DOT, and will advise DOT, in advance, of any possible problems or delays.

Deliverables: Report(s) detailing a analysis of all available information on the Hunt's Point fleet; cost-benefit analysis detailing various incentive levels based on dollar-per-lb/ton reduced for all various clean vehicle strategies for heavy duty vehicles; and a price-point analysis to determine the level of programmatic support required; overview of similar programs nationwide and type of innovative financing options available; preparation and participation in monthly or quarterly meetings; preparation of Power Point presentations and hand out materials as required; and monthly reports detailing progress made

Task 2. FINAL PROGRAM DESIGN & GUIDELINES

- Based upon all the information and input, the Contractor will finalize program design guidelines, providing an outline of the process, requirements and information required to evaluate an application for incentive funding. This includes but is not limited to the following:
 - Contractor will outline the minimum qualifications to participate, paperwork required to process applications, paperwork required to complete the reimbursement process, enforcement issues, responsibilities for final disposition of trucks by salvage yards and contractual obligations of the applicant and others if necessary
 - Contractor will detail the role of vehicle dealerships, vehicle leasing companies, requirements of both replaced and replacement candidate vehicles, vehicle inspection requirements, engine dealership roles and responsibilities, any warranty issues and responsibilities with respect to equipment purchased for inclusion in the program, the application approval process, reimbursement and/or loan financing requirements, funding availability and cost-effectiveness guidelines, vehicle salvage yard responsibilities and applicants roles and responsibilities.
 - Contractor will detail the financial transaction process including account funding requirements for internal purposes as well as a detailed description of oversight and audit functions, performance of necessary reviews, coordination, investigations, information on third party financing organizations or programs, and perform the necessary reviews, coordination, investigations, studies, in order to clearly delineate the payment approval process.

Deliverable: Final Guidelines Booklet submitted and approved by Task Force

Task 3. DEVELOPMENT AND ONGOING IMPLEMENTATION OF OUTREACH – MARKETING CAMPAIGN

- Contractor will develop a detailed plan for community outreach and targeted marketing events
- Contractor shall develop and create various marketing materials with information regarding the program and develop a mailing list of all relevant stakeholders in the business and residential community. Materials must be bi-lingual and must be available in English and Spanish at a minimum.
- Contractor will develop, create and support with its own staff or qualified subcontractor, an online website (also bi-lingual) to promote and provide program and materials, forms, etc., via downloads (Adobe .pdf files or equivalent)

- Contractor will mobilize support for the program by holding and hosting a number of event or seminars which will be open to fleet managers and other interested stakeholders as part of the ongoing progress report criteria and to and formulate and inform future goals and strategies moving forward.
- Contractor will update marketing plan, programs website information, and information handouts, etc. periodically as necessary to account for changes in technologies or policies, as needed, for the entire term of the contract.
- Contractor will retain point-of-contact status and must provide bi-lingual staff for any follow-up questions potential applicants may have for the entire term of the contract.

Deliverable: Detailed action plan identifying targeted community entities and target market; well-designed website up and running with linkages to specific program application and informational materials; attendance at events; preparation of PowerPoint presentations; 'x' number of events hosted to market program; preparation, development and printing of marketing materials for mailings/handouts; contact information and staff in place to answer any questions and assist with decision-making process; assistance to help ensure submittal of quality applications and successful long-term participation.

Task 4. PROGRAM IMPLEMENTATION

Subtask 4a. Process, Evaluate, and Troubleshoot Program Applications (Participant Intake)

- Based on outreach efforts, Contractor shall receive applications from participants, evaluate applications for completeness, follow up over the phone and in-person with truck dealer and participant to request additional back-up documentation required to complete the approval process
- Contractor shall review vehicles title history to determine of number of years previously owned and registered, interview owner and inspect dispatch logs etc. to determine number of trips to and from Hunts Point, and any documentation needed to support application
- Contractor will estimate benefit and cost-effectiveness of updated vehicle versus trade-in, both for operational (driver) impacts, and emissions reduced to determine appropriate funding support level
- Contractor shall coordinate with NYS-DMV, lending entities, insurance providers, trucking/leasing firms that utilize or lease to the trucker/applicant, and truck dealers in providing coordination to secure any additional paperwork or background check information as necessary, including vehicle liens to protect federal cost-share
- Finalize transaction and provide funds up-front to owner or dealership as appropriate
- Document and Inspect replacement vehicle
- Document and certify destruction of old vehicle (engine)
- Review and revise program guidelines as needed in bi-lingual format (English/Spanish)

Deliverable: complete processing of all applications submitted under the program, including documentation and final disposition of scrapped vehicle; per vehicle summary documenting emissions reduction benefit and cost-effectiveness of replacement vehicle; terms and conditions of any loans granted or guaranteed to applicants; and revise grant program guidelines as needed

Subtask 4b: Plan, Oversee and Troubleshoot After-treatment Retrofit Program

(Note: All retrofits to be EPA or CARB certified to be eligible)

- Contractor shall receive applications from participants, evaluate applications for completeness, follow up with truck dealer and/or retrofit vendor, and participant to request additional back-up documentation required to complete the approval process
- Contractor will analyze the best retrofit technology based on a given applicants truck duty cycle and other relevant circumstances
- Contractor will estimate emissions benefit and cost-effectiveness of each retrofit to determine appropriate funding support level
- Contractor will finalize transaction and provide funds up-front to owner or installer as appropriate
- Contractor will facilitate/coordinate with retrofit vendors to ensure each installation is performed accurately and with minimum downtime of vehicle
- Contractor will follow-up on any problems or issues that may occur in the field after installation such as filter plugging or warranty disputes.
- Contractor will work with vendors performing filter element cleaning and will attempt to ensure filter cleanings are being performed when necessary and will do follow-up with any users regarding maintenance issues.
- Contractor shall coordinate with NYS-DMV, lending agencies, insurance providers, trucking firms that utilize the trucker/applicants, and truck dealers in providing coordination to secure any additional paperwork or background check information as necessary, including vehicle liens to protect the federal cost-share

Deliverable: Candidate vehicles visually inspected and temperature profiled to determine most effective retrofit technology match; per vehicle summary of estimated emission benefit using retrofit and cost-effectiveness of installation; coordinate installations with all parties involved; monitor and follow-up with users on appropriate maintenance and service issues;

Subtask 4c: Participant Issues – Resolution, Enforcement, Coordination with Legal Team:

- The Contractor will be in charge of ensuring compliance with program guidelines for all participants.
- The Contractor will be responsible for addressing participant issues such as dealing with police reports and insurance companies whenever a vehicle has been in an accident
- The Contractor will assist in resolving participant issues such as injury or inability to continue operating the truck; and compliance with program requirements such as percentage of miles driven outside the program area
- The Contractor will assist participants in re-sale of vehicles if the participant needs to exit the program for various permissible reasons to be determined
- The Contractor will coordinate with NYCDOT Legal in cases where the applicant is in gross violation of contractual arrangements requiring that liens or other promissory instruments to be litigated, and will provide the Legal Dept with all necessary information to help bring about appropriate corrective action.

Deliverable: Reports filed on an interval basis to be determined, showing number of participants out of compliance; follow-up with participant to determine problem issue and make recommendations for action based on a case-by-case basis; coordinate with NYCDOT where cases are referred for legal action; coordinate with insurance company to enforce title lien or other promissory instrument if necessary

Subtask 4d: Emissions Calculations, Emissions Factors, Cost-Effectiveness:

- The Contractor will be required to update the factors that are used to calculate emissions reductions from each grant award on a regular interval basis, and establish the corresponding amount of grant funds for which each participant is eligible based on dollar per lb/ton basis, and price-point analyses conducted in the preliminary stages.

- The Contractor will be required to keep abreast of any revisions to calculation methodologies for emissions and cost-effectiveness
- The Contractor will update emission factors periodically, based on CARB, EPA or other jurisdictional regulatory body releasing new information pertaining to the emissions characteristics of various types of vehicles and retrofits.
- The Contractor will be required to review and update grant award limits based on cost-effectiveness and other factors, to ensure that the best approach to secure cost-effective emissions reductions is being taken (e.g., eligible vehicle types, model years, types of retrofit devices).

Example of Deliverables: a variety of ongoing analyses involving program emissions reductions, cost-effectiveness calculations, and the effects of changing emissions factors on Fleet Modernization award amounts as well as the exhaust after treatment retrofit program.

Task 5: Data Collection and Reporting / Database Management:

- Contractor will develop an extensive database of program vehicles based on application information and specialized reporting requirements, including detailed annual, semi-annual and final reports.
- Contractor will update and expand the database as needed to include vehicle usage information such as mileage and travel patterns to determine compliance with geographic in-use requirements
- Contractor will collect emissions data, including original baseline estimates at the point of application approval and perform ongoing validation and assessment in order to meet CMAQ reporting requirements and any other specialized reporting as needed.
- Contractor will be required to perform emissions testing on a sample of representative vehicles to make some determinations on emissions reduction estimates, as well as utilize available modeling techniques to extrapolate sample data and provide a more detailed overall analysis.
- All data collection will be condensed into a presentation format that can be reported in a meaningful way to the NYCDOT and other various intended audiences
- The Contractor shall retain records on all data collection aspects for a minimum period to be determined, but in no event less than five years based on applicant approved date(s).
- Contractor will make ongoing improvements and updates to the existing program database as required to meet the terms of this contract.
- Contractor will answer specific questions about program progress, emissions reductions achieved, etc., in a timely manner, on an as-needed basis.

Deliverables: Monthly downloads of data (if GIS-AVL locators are used), monthly updates based on data collection efforts and information received from grant program users, compiled into a standardized format and incorporated into an appropriate reporting method, with highlights for key metrics such as vehicle usage, geographic in-use requirements, and reporting of emissions data updates, based on actual testing or modeling technique (intervals to be determined)

Task 6: Develop Presentations/Speak at Events:

- Contractor will be required to have personnel available to make presentations at various events throughout the course of the contract period, or help develop presentations to be delivered by NYCDOT staff
- Presentations will describe how the program works, lessons learned, progress reporting, and strategic next steps.
- Contractor may be required to appear before local governing bodies, and elected officials whose area of responsibility includes Hunts Point, to offer information or legal testimony as requested.

Deliverables: preparation of PowerPoint presentations to be delivered by NYCDOT and/or consultant personnel about the Hunts Point Clean Truck Program. Provide testimony at hearings and updates at meetings as needed, etc. Possible technical presentations prepared and presented for a wide array of technical/policy symposia.

Task 7: Preparation for / Participation in Program Management Meetings:

- Contractor will meet with NYCDOT staff on an ongoing basis (interval to be determined or to be adjusted periodically) to discuss program progress, issues that need to be resolved, and various policy issues related to the program.
- Contractor will identify any problems impeding progress and provide alternative solutions based on technical analysis for review and approval by NYCDOT
- Contractor will provide support and analysis to NYCDOT on any policy issues/situations that may arise, which, upon approval, will be used by the Contractor on Program Guideline updates and any changes to program funding policies.
- Contractor must obtain prior approval from NYCDOT on any changes to Program Guidelines in advance of any implementation procedure
- Contractor will provide analyses that are used to update and educate other stakeholders or advisory committees, and occasionally will be asked to attend such meetings.
- Contractor will be required to provide agendas and meeting minutes to NYCDOT within a reasonable time from conclusion of such meetings

Deliverables: Preparation, for and participation in approximately 60 monthly meetings (at a minimum); meeting agendas and meeting minutes.

Task 8: Long Term Program Management Requirements

Subtask 8a: Strategic Planning and Coordination with Regulatory Agencies

- Contractor will be required to assist with strategic planning for the program. This includes but is not limited to the following:
 - Assistance and coordination with any Task Force, ad-hoc committees and agencies (federal, state and local) working on statewide and regional diesel emission reduction issues
 - Coordinate with such entities so that the Hunts Point Program can be complementary to, rather than in competition with, other efforts.
 - Convene working groups to develop viable and effective programs that take into account lessons learned from the Hunts Point program and its effect on any other larger scale programs going forward.
 - Working with agencies to ensure that the latest “best practices” are being employed by the program and are able to be standardized and expanded on a larger scale.

Example of Deliverables: Preparation for and participation in scheduled and unscheduled meetings; convene meetings with various other stakeholders, agencies and entities having key interest in developing a larger scale initiative; follow-up memos and emails regarding key actions taken or needed.

Subtask 8b: Continued Oversight & Inspection of Dealerships and Salvage Yards – Train New, Retrain Existing, Ensure Compliance:

- Contractor will be required to continuously interact with dealerships and salvage yards participating in the program to assist with ongoing issues, including but not limited to:
 - Periodic on site inspections to dealerships and salvage yards to ensure program compliance
 - Mediate disputes between buyer and seller (i.e., unreasonable markups for replacement trucks, etc.) and monitor for abuses
 - Train new dealerships and salvage yards entering the program
 - Notify, train, and re-train dealerships and salvage yards whenever program guidelines change

Example of Deliverables: Formal or informal training exercises to communicate program changes to dealers and salvage yards. Periodic email or letter communications to all Hunts Point dealers about problems and issues, and how they can be resolved. Occasional visits to dealerships or salvage yards to discuss problems face to face. When necessary, conduct unannounced visits to dealerships or salvage yards to check the guidelines for the program are being followed.

Part II Administrative Requirements and Invoicing

Sec 1. Record Maintenance

1. The Contractor shall keep all files, including but not limited to, field notes, interview/survey information, diagnostic vehicle data, application forms, loan agreements, bank account information, insurance/titles liens, etc. and office computations in a neat and orderly manner, and clearly indexed. These files shall be open for inspection and checking during the course of the work and shall be available for review thereafter. The Contractor shall, at all times, cooperate with the Commissioner for such checking of files as may be necessary.
2. The Contractor is required to keep copies of **all** submitted documentation for a minimum of six years after contract is fulfilled for the Department to access upon request. During the contract period, upon request, the Contractor shall provide the Commissioner/representative with legible copies of all field notes on standard loose leaf field book that contain standard survey formats.

Sec 2. Cost

It is anticipated that the available funding for the contract awarded from this RFP will be between \$7.5 and \$30 million dollars, subject to annual appropriation, in annual increments of between \$5,000,000 and \$7,500,000 per year for a period of five years, pending State and Federal obligating authority. Of this amount, 20% is required local match per Federal requirements, except in the case of diesel after-treatment/retrofits, which do not require cost share. Therefore, the net Federal funding for this project is \$24 million dollars. Required match must come from either from grant recipients, or any other eligible funding source. Contract payments will be based on costs for Project Management Services only, which is not to exceed 3% for revolving loan programs for a not-to-exceed amount of \$720,000 or 15% for straight rebate programs based on program activity for a not-to-exceed amount of \$3,600,000. These percentages will be used internally as a method to determine the maximum amount payable but not as the method of compensation. The setting of these amounts will be based on a number of cost benefit factors, such as the amount of incentives paid based on cost/per ton emissions reduced. This fee is a maximum amount only and does not represent a commitment or guarantee on the part of the City to pay such amount. Greater consideration will be given to proposers that propose more competitive prices (in combination with a high quality program).

The Contractor must establish a privately held escrow to deposit any fees obtained as a portion of the local match requirement financing.

. BASIS

1. **Office Work:**

The payment for the services rendered herein shall be made on the basis of total direct technical office salary costs of the Contractor 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 shall 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.

Sec 3. Definitions

1. **Direct Technical Salary Cost**

Direct technical salary cost shall include only project management costs, 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 shall be within parameters as established in the relevant pay index of the U. S. Bureau of Labor Statistics-Employment Cost Index for Professional Specialty and Technical Workers-Wages and Salaries. ¹ Any request for salary increases should be accompanied by an analysis showing the relationship to the relevant pay index.

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 staff person in connection with the project, and shall be considered as including provisions for indirect costs and profit.

The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, Interim Overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision on an annual basis when the actual overhead information for the respective year becomes available. Suitable adjustments to the previous payments will be made accordingly upon completion of phase and when multiplier information is available. As needed, the additional fund for the overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

3. **Principals' Time**

Principals of the firm, such as partners or owners, shall be compensated for their time, to the extent that they perform services other than administrative or supervisory services, as follows:

¹ 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 shall not exceed the pool money per contract year.

- a) The rate of compensation for Principals' Time as stated herein before, shall not exceed One Hundred Dollars (\$100.00) per hour, to be based on actual draw.
- b) The Principals participating in the project shall provide the Commissioner 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 Commissioner with a notarized statement by a certified public accountant that such rate does not exceed the principal's annual direct compensation, excluding profit, computed on an hourly rate. The amount payable for Principal's 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 submitted with payment requisitions and be available for inspection by the Commissioner.
- d) The Commissioner shall certify that direct participation by the Principals is essential to the effective and economic completion of the Project.
- e) The total compensation for the Principals' Time shall not exceed Thirty-Five Percent (35%) of the total not to exceed fee as stated hereinbefore.
- f) In the event that 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 multiplier, said multiplier to be established by Department's Engineering Audits Office.

4. **Out-Of-Pocket Expense**

In the event that the Commissioner directs the Contractor to provide services for which out-of-pocket expenses are incurred, the provisions set forth below shall apply. Out-of-pocket expenses shall not exceed 10% of the contract amount.

- a) The cost of acquiring, on a per diem bases, the services of other experts or engineers as may be required for the performance of the Contractor services.
- b) The costs of the use of motor vehicles, owned by the Contractor or employees of the Contractor or leased and maintained by the Contractor 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. The costs 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 procurement of copies of documents, data sheets, drawings and reports for reference and information.
- d) The cost of printing and duplication by an outside vendor is reimbursable as out-of-pocket costs based on submitted invoice. However, cost of printing by in-house services is not reimbursable.
- e) The cost of project specified microfilming services is reimbursable as out-of-pocket costs.
- f) The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs.

- g) The cost of renting 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 shall not include the purchase of general tools or office supplies whether expendable or reusable.
- h) The costs of 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.
- i) The costs of project related long distance telephone calls are reimbursable as out-of-pocket costs.

Out-of-pocket expenses are subject to Comptroller limits for city employees. Out-of-pocket expenses shall be subject to audit by the Department of Transportation. Consequently, the Contractor shall maintain, and submit to the Department as part of his/her monthly payment requisition, time and material records for all out-of-pocket expenses incurred during that month and submitted for reimbursement in connection with the services herein contained. Subcontractors and subconsultants are subject to the same rules governing the documentation and reimbursement of Out-of Pocket expenses as the prime consultant.

5. Indirect Cost and Overhead

- a) Indirect Costs shall include costs of a general nature which could be applied to the Contractor'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, engineer fees, overhead (see below) and any such costs as are necessary to conduct the firm'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 Contractor'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.

6. Overtime Premium

Overtime Premium Compensation should be those payments over and above straight salary for hours actually worked, which are required by applicable State and Federal Laws. In no event however, should the rate of overtime premium compensation exceed the Contractor's normal Company policy relating to such compensation.

7. Weekend/Night Work Differential

Weekend/night work differential should be compensation over and above the daily wage rate as indicated in the agreed upon rates (as would be indicated in the "Salary Schedule" table) 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 should be limited to a maximum of ten percent (10%) of actual base pay for applicable time worked during the different periods, exclusive of overtime premium pay, and should be paid in accordance with the standards as established for reimbursement allowances for City personnel. In no event however, should rate of weekend/night work differential exceed the Contractor's normal Company Policy relating to such compensation.

8. Performance Evaluation

Contractor 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 Contractor for future work.

9. Subconsultants and Subcontractors

Subconsultant and/or Subcontractor services must be performed on a time and material basis with a not to exceed maximum cost. Reimbursement will be based on time and material in voices verified by the same rules governing the prime consultant. Subconsultant or subcontractor services not included in the original proposal must be disclosed to the Project Manager, and is required to receive the prior written approval of the Commissioner or his/her designee, prior to any work performed on the contract.

Sec 4. Payments

1. During the course of the contract, all payments, including the final payment, shall be paid to the Contractor on a monthly basis as they occur, as follows:
 - a) Payment shall be made based on direct technical office or field salaries of the staff assigned and all professional subcontractors in connection with the project, 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 Contractor, with no markup for the Contractor's overhead and profit.
2. The Contractor shall submit to the Commissioner, or his duly authorized representative, but not more than once per calendar month, a certified requisition, and six copies, setting forth in detail the items of work and services performed by the Contractor and the amount of partial payment requested. Requisitions shall be accompanied by statements prepared and certified by the Contractor setting forth the name and title of each of his/her and his/her sub-consultant's employees who was engaged in the project 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 designated Project Engineer.
3. The Commissioner, or his duly authorized representative, shall review the said requisition and if, in his/her judgment, the work and services therein set forth have been performed, the Commissioner shall endorse his/her 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 Commissioner shall be paid at cost to the Contractor, with no markup for the Contractor's overhead and profit.

* Said multiplier was established by the Contractor in his/her "Request for Proposal" submission and has been accepted by the Department subject to the review and audit provisions as contained herein. In no event shall said multiplier be increased.

5. The last and final payment to the Contractor shall become due and payable upon the actual completion of the work under this contract and the filing by the Contractor with the Commissioner of all records and documents in connection with the project.
6. The final requisition shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Contractor attributable to the contract.
7. The fee and all payments hereunder shall be subject to review and audit by the Department of Transportation and subject to audit by the Comptroller of the City of New York.
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.

The annual daily rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown on Labor Cost Proposals Forms 4T-1 & 4T-2. However, the Contractor may periodically, but not more than once per contract year, request, in writing to the Department, to have these rates adjusted. This adjustment shall be within the parameters as established in the U. S. Bureau of Labor Statistics Employment Cost Index for Professional Specialty and Technical Workers-Wages and Salaries

9. Partial Payments:

- a) The Contractor shall be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with Section IV of this Agreement. The Contractor 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 duly authorized representative.
- b) The Contractor shall inform the City and all sub-contractors/sub-consultants of the Contractor's schedule for submitting monthly requisitions to the City, said schedule shall be strictly adhered to by the Contractor.
- c) All sub-contractor requisitions received by the Contractor at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the Contractor does not have other costs to be billed for that period. The Contractor shall inform the sub-contractor of the date the requisition was submitted to the City and the amount included for the sub-contractor.
- d) In cases where the contractor has not pre-paid for services, the Contractor is required to make partial payments to all sub-contractors within (10) calendar days of receipt of payment from the City.
- e) Accounts of the Contractor shall clearly identify the costs of the work performed under this Agreement and shall be subject to periodic and final audit by the City and, on Federally aided Projects, by the Federal Highway Administration. Such audit shall not be a condition of partial payment.
- f) The total maximum length of this Contract shall be 1825 consecutive calendar days from notice to proceed.
- g) This Department in its sole discretion has the option to renew this contract at the same terms and conditions, and not to exceed price, for an additional 5 years. The multiplier is subject to adjustment at the renewal time.

Sec 5. Electronic Funds Transfer

In accordance with Section 6-107.1 of the New York City Administrative Code, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, Contractor shall designate one financial institution or other authorized payment agent and shall complete the attached "EFT Vendor Payment Enrollment Form" in order to provide the Commissioner of Finance with information necessary for Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

SECTION VII

B) GENERAL PROVISIONS (APPENDIX A)

SECTION VII

B)

GENERAL PROVISIONS (Appendix A)

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 an 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 judgment 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 Design Build 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 an 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 insureds under a policy 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 a 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 or 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

- (d) 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
- (e) 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
- (f) 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
- (g) 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
- (h) 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
- (i) 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
- (j) The policies shall contain no exclusions or endorsements which are not acceptable to the City; and
- (k) 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 to 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
- (l) 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

- A. 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.

- B. 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;
- C. 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;
- D. 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.
- E. 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.
- F. 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.
- G. 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 a 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 the reupon 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.
- B. 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.
 - C. The aforesaid approval is required in all cases other than individual employer-employee contracts.
 - D. 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 agree 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 a written 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 March 2004 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 thereunder. The Contractor has 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;
 - (4) 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 non compliance 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. There is no limit to the Liquidated Damages. Delays beyond the control of the Contractor shall include, but not be limited to, those caused by the following..."
- B.
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.
- C. 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.
- D. 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.
- E. 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 annually and 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 no-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 times 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.
- D. 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.

F. 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.
- G. 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 material men, 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 Contract or 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.

SECTION VII

C) PROCEDURAL FORMS PACKET

CONTENTS

- 1. FORM 1P - PROPOSAL COVER LETTER**
- 2. FORM 2P - ACKNOWLEDGEMENT OF ADDENDA**
- 3. FORM 3P - AFFIRMATION FORM**

Note: Please copy and use separate sheets for each subconsultant (if any).
Make copies of format sheets as needed

FORM 1P

PROPOSAL COVER LETTER

Request for Proposals for Consultant/Project Management Services
In Connection with
The Hunts Point Clean Trucks Program
Borough of The Bronx
PIN#: 84108BXPS337

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: Consultant/Project Management Services in Connection with
The Hunts Point Clean Truck Program

PIN: 84108BXPS337

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 4T - JOB TITLES AND HOURS PROPOSED
5. FORM 5T - NYCDOT CURRENT WORKLOAD DISCLOSURE (2 PGS)
6. FORM 6T - DBE PARTICIPATION
7. - STANDARD FORM 330

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

FORM IT

QUALITY & RELEVANCE OF PRIOR EXPERIENCE
(FIRM IN GENERAL)

PIN: 84108BXPS337 PROJECT NAME: HUNTS POINT CLEAN TRUCK PROGRAM

CONSULTANT: _____

PROFESSIONAL ENGINEERING/
ARCHITECTURAL SERVICES

OTHER/ _____

DESCRIBE

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

- 1) Proposer will include relevant experience in analyzing technologies and trends in the clean diesel and alternative fuel vehicle field from both a fuel and equipment perspective, developing and executing communication campaigns to market large incentive based clean transportation programs, working with the local trucking industry to provide fleet management assistance and technical expertise, implementing fleet monitoring systems, processing financial instruments and facilitation of financial transactions, processing financial awards and providing ongoing oversight in the last three (3) years.
- 2) List all current and prior projects completed within the last three (3) years for analyzing technologies and trends in the clean diesel and alternative fuel vehicle field from both a fuel and equipment perspective, developing and executing communication campaigns to market large incentive based programs, working with trucking firms and individual owner/operators to provide fleet management assistance and technical expertise, implementing fleet monitoring systems, processing financial instruments and facilitation of financial transactions, processing financial awards For each project, provide the following information:
 - Description/Name of Project
 - Dollar Value of Project
 - Contract Term
 - Contract Status
 - Owner/Client
 - Owner Project Manager
 - Telephone No.
 - Email

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

- 3) Proposer will include relevant experience in community outreach in the last five (3) years.
- 4) Proposer will demonstrate its financial capacity and management ability and the quality of its past performance including the ability to manage large scale, complex projects and complete them on time, as documented by references. Proposer will demonstrate its business approach to the project, outlining the main financial product to be offered, such as straight rebate or loan structures, including if applicable, interest and repayment rates; a multi-year timeline for managing the financial side of the program; and complimentary products, services or incentives offered. The proposer must have an available line of credit in excess of \$1,000,000 or equivalent that must be verified by an office of the lending institution in writing. Proposer must have the legal ability to hold funds, make loans, enter into loan agreements, and collect repayments, using prudent lending practices.

FORM 2T

PROPOSED STAFF (RESUMES)/EXPERIENCE

PIN: 84108BXPS337 PROJECT NAME: HUNTS POINT CLEAN TRUCKS PROGRAM

CONTRACTOR NAME: _____

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 experience for key personnel (including any sub consultants).
 - Include relevant experience in analyzing technologies and trends in the clean diesel and alternative fuel vehicle field from both a fuel and equipment perspective
 - developing and executing communication campaigns to market large incentive based programs,
 - working with trucking firms and individual owner/operators to provide fleet management assistance and technical expertise
 - implementing fleet monitoring systems, processing financial instruments and facilitation of financial transactions, processing financial awards
 - Include relevant experience in community outreach in the last three (3) years.
 - Explain how past assignments of key personnel relate to their proposed assignments on this project.
3. State the key personnel's commitment to and availability for the duration of this project.

FORM 3T

OVERALL PROJECT UNDERSTANDING AND APPROACH

PIN: 84108BXPS337 PROJECT NAME: HUNTS POINT CLEAN TRUCKS PROGRAM

CONTRACTOR NAME: _____

OVERALL APPROACH TO PROJECT: (Staffing Sheet)

1. Describe your overall approach and understanding of this contract in providing program design, outreach activities and program marketing/branding, program implementation, data collection and analysis as more fully described in various forms herein, and the financial aspects involved in the development of loan packages, provisions of loan services, or rebate program. Describe your business plan, any financial products you would offer to borrowers (fleets), complimentary products/services, program incentives, and how you will promote the long term sustainability of the project. Describe how you would develop criteria for applicant selection, the evaluation of quantifiable and unquantifiable benefits of the emissions reductions, cost-effectiveness and verification of emission reductions (\$/ton or lb), provisions for monitoring and enforcing loan terms, and communicating with project partners and client recipients. 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 and those of any sub-contractors/consultants will assist you in the execution of each identified task and demonstrate ability to manage and complete these tasks in a timely fashion.
2. Discuss any alternate tasks, or innovative, value-added approaches that would assist in the successful provision of services and/or best achieve the project goals and objectives.

FORM 4T

JOB TITLES AND HOURS PROPOSED

PIN: 84108BXPS337 PROJECT NAME: HUNTS POINT CLEAN TRUCKS PROGRAM

PRIME: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ARCHITECTURAL ENGINEERING/ SERVICES OTHER R/ _____

(COLUMN 1) JOB TITLES	(COLUMN 2) TOTAL HOURS
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

DO NOT INCLUDE SALARIES ON THIS FORM

1. Job titles and hours proposed should be the same as those proposed on the Labor Cost Proposal forms 4T1.
2. No salary information should be included on this form.
3. This form must be completed for the prime and each of the proposed subconsultants (use additional pages, if necessary)

FORM 5T 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: 84108BXPS337 FIRM NAME: _____

CONTRACT NO.: _____ CONTACT PERSON: _____

PROJECT NAME: Hunts Point Clean Trucks Program PHONE NUMBER _____

BIN: _____ ADDRESS OF OFFICE(S) TO PERFORM WORK _____

DATE OF RFP: _____

IS YOUR FIRM A: M/WBE DBE ? (Circle one)

Name 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 M/WBE or DBE firm(s) for Federal Aid Projects or for Non-Federal aid Projects proposed for use on this project:

SUBCONSULTANT FIRM NAME	PROPOSED % OF PROJECT	# OF TECHNICAL PERSONNEL	WORKLOAD Hours Proposed
_____	_____ %	_____	_____
_____	_____ %	_____	_____
_____	_____ %	_____	_____

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 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)
---	-----------------	---	---	--

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: CONSULTANT/PROGRAM MANAGEMENT SERVICES IN CONNECTION WITH THE HUNTS POINT CLEAN TRUCKS PROGRAM, BOROUGH OF THE BRONX

PIN NO.: 84108BXPS337

CONTRACT NO.:

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)*.

- ◆ List of certified DBE firms can be obtained from the following website:
<http://biznet.nysucp.net/>

* 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.

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**

FORM 4T1 – LABOR COST PROPOSAL

PROJECT NAME: HUNTS POINT CLEAN TRUCKS PROGRAM – THE BRONX PIN NO.: 84108BXPS337

PRIME CONTRACTOR: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES

OTHER/_____

	<u>(COLUMN 1)</u> <u>JOB TITLE</u>	<u>(COLUMN 2)</u> <u>TOTAL</u> <u>HOURS</u>	<u>(COLUMN 3)</u> <u>HOURLY THIS FIRM</u>	<u>(COLUMN 4)</u> <u>AVERAGE HOURLY</u> <u>RATE - FY 2010</u>	<u>(COLUMN 5)</u> <u>LABOR COST</u> <u>COL 3 X COL 4</u>
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____
	<u>TOTALS</u>	_____	_____	_____	<u>(T)</u>

INTERIM OVERHEAD FACTOR _____ **(A)** _____ **(A)**

PROFIT FACTOR _____ **(B)** _____ **(B)**

INTERIM MULTIPLIER (*) _____ **(1+A)X(1+B)** _____ **(M)**

TOTAL LABOR COST (T x M) _____ \$ _____ **(C)**

TOTAL LABOR ESCALATED TO PROJECT MIDPOINT _____ **MAXIMUM ESCALATION FACTOR =** _____ **1.04(D)**

GRAND TOTAL COST (C X D) _____ \$ _____

INSTRUCTIONS:

- Each consultant of the project team is to submit a separate "Labor Cost Proposal Form". For each job title, the hours proposed by each firm of the project team in Column (3) MUST SUM to the total hours provided in Column (2).
- For Column (4), use actual average salary rates for firm for each job title at regional offices. Attach a listing of current average rates for all titles/grades/levels as approved by NYSDOT for regional offices (if available). A regional office is defined as one located within a 75 mile radius of Columbus Circle (NYC).
- The labor costs to be included in Column (5) are obtained by multiplying the hours in Column (3) by the average hourly rate in Column (4).
- The maximum escalation factor "D" indicated in the shaded area shall not be changed.
- Interim Multiplier (M) shall be rounded off to three (3) decimal figures. Total Labor Cost (C) and Column 4 and Column 5 entries shall be rounded off to two (2) decimal places.
- The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, Interim Overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision on an annual basis when the actual overhead information for the respective year becomes available. Suitable adjustments to the previous payments will be made accordingly upon completion of phase and when multiplier information is available. As needed, the additional fund for the overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

FORM 4T2 – COST PROPOSAL SUMMARY

PROJECT NAME: HUNTS POINT CLEAN TRUCKS PROGRAM – THE BRONX

PIN NO.: 84108BXPS337

PRIME CONSULTANT: _____

	<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>	<u>(COLUMN 3)</u>	<u>(COLUMN 4)</u>	<u>(COLUMN 5)</u>
	<u>CONSULTANT</u>	<u>HOURS ALL FIRMS</u>	<u>ESCALATED LABOR COST TO PROJECT MIDPOINT</u>	<u>DIRECT NON-SALARY COST</u>	<u>TOTAL COST</u>
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____
	TOTALS			\$225,000.00	(T)

INSTRUCTIONS:

1. The costs entered in Column 3 are the totals shown on line (D) of Form 4T-1 "Labor Cost Proposal" for each consultant on the project team.
2. The Total Direct Non-Salary Cost shown in the shaded area below Column 4 is an out of pocket expense budgeted amount allowed to all proposers and must not be changed.
3. 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 4.

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) LOCAL LAW 34:
DOING BUSINESS DATA FORM AND INSTRUCTIONS
(*To be submitted as a separate sealed envelope along with the
Technical Proposal*)**

Hyper Link:

[Doing Business Data Form](#)

SECTION VII

G) VENDEX REQUIREMENTS AND COMPLIANCE

CONTENTS

- 1. VENDEX REQUIREMENTS**
- 2. CONFIRMATION OF VENDEX COMPLIANCE**

Note: Please copy and use separate sheets for each sub consultant (if any).
Make copies of format sheets as needed

SECTION VII

G) VENDEX REQUIREMENTS & CONFIRMATION OF VENDEX COMPLIANCE

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 sub consultants) will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of Vindex 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 Vindex Questionnaires and procedures have changed. See www.nyc.gov/vindex 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:** Vindex Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vindex, 253 Broadway, 9th Floor, New York, New York 10007.

(b) **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, Vindex 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 G

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, 9th 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: _____

SECTION VII

H) FHWA CONTRACT BOILERPLATE

SECTION VII

I) FHWA CONTRACT FORMS

CONTENTS

- 1. BUY AMERICA CERTIFICATION**
- 2. DISCLOSURE OF LOBBYING ACTIVITIES**
- 3. CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**
- 4. CERTIFICATION OF A SUBCONTRACTOR/SUPPLIER REGARDING DISBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**
- 5. DBE UTILIZATION GOALS**
- 6. DBE SCHEDULE OF UTILIZATION**