

REQUEST FOR PROPOSALS

Maritime Safety and Security Consulting Services for Staten Island Ferry Vessels and Facilities, and Private Ferry Facilities

PROCUREMENT IDENTIFICATION NUMBER (PIN): 84108MBPT255

RELEASE DATE OF THE RFP: May 27, 2008

CONTRACT TERM: 1,095 consecutive calendar days from the date of the Notice to Proceed, with an option to renew under the same terms and conditions

AUTHORIZED AGENCY CONTACT PERSON

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

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Executive Director of Safety and Security
Division of the Staten Island Ferry
New York City Department of Transportation
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**THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DIVISION OF THE STATEN ISLAND FERRY
REQUEST FOR PROPOSALS**

**TITLE: Maritime Safety and Security Consulting Services for Staten Island Ferry
Vessels and Facilities, and Private Ferry Facilities**

PIN: 84108MBPT255

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SECTION I – TIMETABLE

A. Release Date of the Request for Proposals: TBD

B. Pre-Proposal Conference:

Date: June 6, 2008

Time: 10:00 AM

Location: 1 Bay Street, Ferry Maintenance Facility Conference Room, Staten Island, New York 10301

Attendance by proposers is optional but recommended by the Agency.

C. Proposal Due Date, Time, and Location:

Date: June 30, 2008

Time: NO LATER THAN 2:00 PM

Location: NYCDOT Contract Management Unit
40 Worth Street – Room 824A, New York, New York 10013

Oral Presentation (Applicable to proposers included on the list of Acceptably Qualified Proposers ONLY):
No earlier than two (2) weeks from the Proposal Due Date

Proposals should be hand delivered to the NYCDOT Contract Management Unit at the above address between the hours of 9AM and 2PM, on weekdays 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.

D. Anticipated Contract Start Date: December 1, 2008



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SECTION II – SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of the RFP

The Agency is seeking the services of an appropriately qualified firm or partnership (i.e. joint venture) of firms to provide consulting services for the Staten Island Ferry and Private Ferry operations. These services include duties that are related both to the safety and security of the ferry operations. Security services would include annual security audits to insure compliance with the Agency's security plan, vulnerability assessments to identify any areas in which improvement to those plans is needed, assistance in designing and implementing risk-based measures for the mitigation of these vulnerabilities, and assistance with respect to any new regulations that impose security requirements on the Agency. Safety services include compliance with annually required internal and external audits as identified by the Safety Management System (SMS), analysis of the SMS and identification of areas for improvement, assistance in the development of safety training for ferry employees, and additional special projects as identified by the Agency. In response to this RFP, the Proposer is required to submit a narrative plan for the performance of these duties.

The Agency, specifically at the Staten Island Ferry and DOT-operated private ferry facilities, is subject to a wide range of regulations and requirements, such as those stemming from the Maritime Transportation Security Act (MTSA) of 2002 and the International Safety Management (ISM) Code. In meeting these requirements, the Agency has developed a vessel and facility Combined Security Plan (CSP) as well as the comprehensive SMS. The CSP and the SMS require continual updates as well as regularly scheduled drills and audits. This contract will provide assistance in maintaining and meeting the requirements of these safety and security plans.

The plans required by the MTSA are classified as Sensitive Security Information (SSI). In order to comply with the terms of this specification, the Proposer will be required to demonstrate to the Agency that it is capable of complying with the federal regulations for securing and keeping safe SSI documents and information. Additionally, representatives and selected employees of the contractor, subcontractors, or partners may be required to sign an SSI waiver document, prior to the award of a contract resulting from this solicitation. This waiver document will constitute a confidentiality agreement between the contractor and the Agency.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded from this RFP will be **1,095** Consecutive Calendar Days from the date of written Notice to Proceed. The Agency maintains the option to renew the contract twice for two-year terms under the substantively similar contract terms and conditions.

C. Anticipated Payment Structure

It is anticipated that the payment structure for the contract 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. The maximum amount payable under this contract shall be seven hundred and fifty thousand dollars (\$750,000.00). Assignments will be made on a task order basis of task orders. Please see Section III, "Task Order Procedure After Agreement is Executed," of REQUIREMENTS OF CONTRACT FOR MARITIME SAFETY AND SECURITY CONSULTING SERVICES FOR STATEN ISLAND FERRY VESSELS AND FACILITIES, AND PRIVATE FERRY FACILITIES, Pages 16 and 17 of this RFP.



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SECTION III – SCOPE OF SERVICES

A. Agency Goals and Objectives for this RFP

The Agency's goals and objectives for this RFP are:

The provision of assistance in compliance with United States Coast Guard Maritime Security Regulations 33 CFR Subchapter H – Maritime Security and with the ISM Code, and the performance of security assessments and all work required for implementation of these requirements. The primary locations for work to be performed are the terminals and vessels associated with the Staten Island Ferry and ferry landings operated by the Agency. However, the Contractor shall provide services as described herein at any and all of the Agency's facilities and locations as directed by the Agency's Contracting Officer (the Contracting Officer and his/her designated representative(s) is the duly authorized representative of the Commissioner) with explicit prior, written approval from the Chief Operating Officer (COO) of the Staten Island Ferry or his/her designated representative.

Facility Sites

The Facilities to be included are as follows:

1. St. George Ferry Terminal, to include the Ferry Maintenance Facility
2. Whitehall Ferry Terminal
3. Pier 11, Wall Street
4. E. 34th Street Landing (landing for private ferries, owned by DOT)
5. E. 90th Street Landing (landing for private ferries, owned by DOT)
6. Pier 79/West 39th Street Ferry Terminal
7. Yankee Stadium (seasonal landing for private ferries, owned by DOT)
8. City Island – Hart Island DOT facility and operation

Proposers must offer plans covering all of the above listed facilities. The Agency, at its sole discretion, may require services under this contract at any of the listed locations or other such Agency locations as directed by the Commissioner or his or her designee and the approval of the Chief Operating Officer of the Staten Island Ferry or his or her designee.

Additionally, SIF ferryboats include:

1. Ferry boat (F/B) John F. Kennedy
2. F/B Andrew J. Barberi
3. F/B Samuel I. Newhouse
4. F/B Alice Austen
5. F/B John Noble
6. F/B Guy V. Molinari
7. F/B Sen. John J. Marchi
8. F/B Spirit of America
9. F/B Michael Cosgrove

The Contractor shall be responsible for providing operational and planning services to the Agency for supporting its ongoing efforts in compliance to local, federal, and international codes and regulations. Specifically, the contractor will assist the Agency in complying with the Maritime Transportation Security Act of 2002 (MTSA) and the International Safety Management (ISM) Code.

In order to ensure the safety and security of SI Ferry passengers and employees, and to meet the requirements imposed by regulation, the Agency has developed a vessel and facility security plan as well as a comprehensive Safety Management System (SMS). The security plan and the SMS both require continual updates as well as regularly scheduled drills, audits, and training for employees. Updates to these plans must be based on vulnerability assessments identifying any areas in which improvement is needed, and will consist of the risk-based measures that



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would mitigate those vulnerabilities. In order to meet these requirements, the Contractor will assist the agency in the performance of all of these functions, as described in further detail below.

1. **Security Plan Implementation Review and Assistance** – As required by MTSA regulations (33 CFR104.415 and 105.415) the contractor will assist the Agency in performing annual audits of the Combined Security Plan and submission and implementation of any required amendments to that plan.
2. **Security Assessments** – The Contractor shall provide technical assistance to the Agency in the performance of security assessments of the Agency's operations and facilities. Security assessments shall include, but not be limited to perimeter security, vulnerability to explosives, weapons, and biological threats. The Contractor shall also assist in designing and implementing risk-based measures to resolve any vulnerabilities uncovered in the course of these assessments.

In developing the security assessments and mitigation techniques, the Contractor shall take into account the specific needs of the Agency as it relates to the MTSA, its requirements at the designated MARSEC levels and activities required to increase or decrease security activities in response to changes in the MARSEC level as directed by the USCG.

3. **SMS Implementation Review and Assistance** – As required by the ISM Code (Section 12.1, 12.2) the Contractor shall assist the Agency in performing annual internal and external audits to ensure compliance with the Safety Management System. The Contractor shall also assist the agency in evaluating the efficiency of the SMS, and in making any necessary amendments to eliminate deficiencies.
4. **Drills and Exercises** – The Contractor shall provide assistance to the Agency in the performance of drills and exercises to test the proficiency of all personnel in performance of their security duties, including communications, notification procedures, and incident response. MTSA regulations (33 CFR104.230 and 105.220) require quarterly drills and annual exercises for vessels or facilities.
5. **Training** – In accordance with MTSA (33CFR 104.225 and 105.215) and with Section 6.5 of the ISM Code, the Contractor shall develop and/or assist in the development of training classes and materials to ensure familiarity and compliance with the Agency's Combined Security Plan and Safety Management System. The Contractor, if directed by the Contracting Officer or his designee, shall provide or assist in the provision of basic security training to employees of NYCDOT.
6. **Additional Requirements** – The Contractor shall provide assistance to the Agency with respect to any new regulations with safety or security requirements. The Contractor shall also assist with any additional special projects at the direction of the contracting officer.
7. **Environmental** – As required by the ISM Code (Section 2) the contractor shall review the Agency's compliance to its Safety and Environmental Protection Policy, including those requirements outlined in the Facility and Vessel Response Plans (FRP/VRP) and the Non-Tank Vessel Response Plan (NTVRP).

B. Agency Assumptions Regarding Consultant Approach

The agency's assumptions regarding which approach will best achieve the goals and objectives set out above are reflected in the tasks assigned. Please see Section III, "Task Order Procedure After Agreement is Executed," of REQUIREMENTS OF CONTRACT FOR MARITIME SAFETY AND SECURITY CONSULTING SERVICES FOR STATEN ISLAND FERRY VESSELS AND FACILITIES, AND PRIVATE FERRY FACILITIES, Pages 16 and 17 of this RFP.

C. Proposed Contractual Agreement

The successful proposer shall negotiate an agreement based on the proposed contractual agreement (See Section VII, Attachment A).



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D. Compliance with Local Law 34 of 2007

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



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SECTION IV – FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers should provide all the information requested in the format below.

The RFP package should consist of two (2) individually sealed components as listed below, each bound in an 8 ½" x 11" plastic spiral binding. The proposal should be typed on both sides of 8 ½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% postconsumer 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 cover should be hard cardboard or laminated plastic; the cover should feather 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).

The proposal will be evaluated on the basis of its content, not length. Failure to comply with any of these instructions will not make the proposal non-responsive.

A. PROPOSAL FORMAT

1. Proposal Cover Letter

The Proposal Cover Letter form (Attachment 1P) transmits the proposer's Proposal Package to the Agency. It should be completed, signed, and dated by an authorized representative of the proposer.

2. Technical Proposal

The Technical Proposal is a clear, concise narrative which addresses the following:

a. Quality and Relevance of Prior Experience:

Describe the successful relevant experience of the proposer, each proposed sub-contractor if any and the proposed key staff in providing the work described in Section III of this RFP. In addition:

- The Proposer must supply references from at least two (2) clients whose contracts are of similar scope to the work required herein. Attach a listing of the two relevant references, including the name of the reference entity, a brief statement describing the relationship between the proposer or proposed sub-contractor, as applicable, and the reference entity, and the name, title and telephone number of a contact person at the reference entity, for the proposer and each proposed sub-contractor, if any.
- Attach for each key staff position a resume and/or description of the qualifications that will be required. In addition, provide a statement certifying that the proposed key staff will be available for the duration of the project.
- **General Qualifications**

The minimum of experience also applies to sub-contractors. The responder to this RFP is advised that failure to meet the above described experience requirements may result in the rejection of the RFP response as non-responsive. The evaluation of a Proposer's experience and qualification for compliance with the requirements set forth herein shall be determined solely by the Agency.

NYCDOT shall also consider, for experience purposes, contracts of similar scope and type currently held by the proposer, provided that the start date of such contracts is no less than one and one half



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years prior to the RFP issue date as above. Proposer choosing to include this level of experience must provide the following information as part of the proposal submission:

- i. the name and address of the client;
- ii. the location(s) of service;
- iii. the nature of the service(s) provided;
- iv. the name and contact information for the client's contract and security manager;
- v. the total value of the contract;
- vi. and the date service began and the scheduled end date of the contract(s).

b. Proposed Approach/Technical Quality of Proposal:

Describe in detail how the proposer will provide the work described in Section III of this RFP and demonstrate that the proposer's proposed approach will fulfill the Agency's goals and objectives. The Agency's assumptions regarding contractor approach represent what the Agency believes to be the most likely to achieve its goals and objectives. However, proposers are encouraged to propose an approach that they believe will most likely achieve the Agency's goals and objectives. Proposers may also propose more than one approach. However, if an alternative approach should be submitted as a complete and separate proposal providing all the information specified in Section IV of the RFP.

c. Organizational Capability:

Demonstrate the proposer's organizational capabilities to provide the work described in Section III.

- Attach a chart showing where, or an explanation of how, the proposed services will fit into the proposer's organization.
- Attach a copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available.

3. Price Proposal

Proposers are encouraged to propose innovative payment structures. The Agency reserves the right to select any payment structure that is in the City's best interest. For the purposes of comparison, proposers should submit a Price Proposal that meets the standards of Sections IV(3)(a) and IV(3)(b), below.

a. Proposed Pricing

The Price Proposal should include each of the following for providing the work described in Section III of this RFP:

- The proposed rate per hour and multiplier for each job title proposed by each firm in their technical proposal (Form 2T1).
- The cost proposal summary (Form 2T2). Please note that the total dollar amount, along with the total amount of hours in Form 2T2 must equal the combination of Forms 2T1 proposed for each firm.
- The proposed rate for each component of the contract's performance-based payment structure proposed in Section IV(3)(b), below.

b. Performance Outcome Measures and Financial Incentives and/or Disincentives (Form 2T3)

Performance outcome measures and their related financial incentives and/or disincentives should be proposed in Form 2T3. 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.



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4. **Acknowledgment of Addenda**

The Acknowledgment of Addenda (Form 2P) serves as the proposer's acknowledgment of the receipt of addenda to this RFP, which may have been issued by the Department prior to the Proposal Due Date and Time. The proposer should complete this form as instructed on the form.

5. **Affirmation Form (Form 3P)**

B. PROPOSAL PACKAGE CHECKLIST

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. A sealed inner envelope labeled "Component 1," containing one original set and three (3) duplicate sets of the documents listed below in the following order:

- Proposal Cover Letter (1P)
- Acknowledgment of Addenda (2P)
- Affirmation Form (3P)
- Compliance with Requirements of RFP (1T)
- Job Titles and Hours Proposed (2T)
- Experience & Certification of Proposed Staff (3T)
- At least two (2) client references

2. A separate sealed inner envelope labeled "Component 2," containing one original set and three (3) duplicate sets of the documents listed below in the following order:

- Labor Cost Proposal (2T1)
- Cost Proposal Summary (2T2)
- Performance Outcome Measures and Financial Incentives and/or Disincentives (2T3)
- Proposed Time and Cost Estimates for Sample Project (2T4)

3. One original, fully completed document as follows:

- Doing Business Data Form (Attachment E)

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



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Proposer's Name
Proposer's Address

NYCDOT Contract Management Unit
40 Worth Street
8th Floor – Room 824A
New York, New York 10013

PIN: 84108MBPT255

MARITIME SAFETY AND SECURITY CONSULTING SERVICES FOR THE STATEN ISLAND FERRY
VESSELS AND FACILITIES AND PRIVATE FERRY FACILITIES

PROPOSAL SUBMISSION DEADLINE IS **JUNE 30, 2008**

NO LATER THAN 2:00 PM

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



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Maritime Safety and Security RFP

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SECTION V – PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures and Criteria

The Selection Committee (SC), comprised of at least three (3) qualified staff members, will evaluate the proposals on the basis of the selection criteria and their respective weights as stipulated in the RFP.

All Technical Proposals submitted by the due date and time determined by NYCDOT will be reviewed by the SC to determine whether they are responsive or non-responsive to the requisites of the RFP. Technical Proposals which are determined by the Agency to be non-responsive will not be further considered. The SC will rate all responsive Technical Proposals pursuant to the following criteria:

1. QUALITY AND RELEVANCE OF PRIOR EXPERIENCE	50%
2. PROPOSED APPROACH/TECHNICAL QUALITY OF PROPOSAL	40%
3. ORGANIZATIONAL CAPACITY	10%
<u>TOTAL:</u>	100%

Upon completion of the evaluation of Technical Proposals, each short-listed proposer will be required to make an oral/visual presentation to the SC in support of its proposal or to otherwise demonstrate or clarify the information contained in their proposals. As a result of a proposer’s oral presentation, the SC may request that a proposer submit written clarifications to its proposal.

Subsequent to any such presentations, the SC will prepare revised technical rating sheets. Proposers will then be ranked in descending order of their final score.

Cost Proposals will be requested in separate sealed envelopes as part of the overall proposal package. All proposers will submit by the due date and time a Cost Proposal that addresses the information requested in the RFP.

The Cost Proposals will contain titles and an estimated number of hours for the entire three years. Proposers shall not make any changes to the Cost Proposal Summary, and the sum of all Form 2T2s, in terms of total cost and total hours. The estimated hours listed in this RFP are for purposes of the RFP evaluation only, and will not be a basis for any claim against the City. The actual hours assigned to the successful proposer will be determined on a task order basis.

Each Cost Proposal for the top four (4) rated proposers will be opened and reviewed by the SC to determine whether it is responsive or non-responsive. Price Proposals determined to be non-responsive will be eliminated from further consideration. Following analysis and evaluation of the responsive Cost Proposals by the CSC, a price per technical point value, for each short-listed firm will be determined by dividing each proposed price by the corresponding technical evaluation rating. SC members will be given the price per technical point value, and the proposer that offers the lowest price per technical point will be recommended for award and invited to contract negotiations. All unopened Cost Proposals will be returned to the respective proposers upon registration of the contract.

Although discussions may be conducted with proposers submitting acceptable proposals, the agency reserves the right to award contracts on the basis of initial proposals received, without discussions. Therefore, the proposer’s initial proposal should contain its best technical and cost terms.

B. Basis for Contract Award

In accordance with the New York City Charter, the Department of Transportation will award the contract to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration price and such factors or criteria as are set forth in the Request for Proposals.



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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; New York City MacBride Principles Law; 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 (PIN 84108MBPT255) for Maritime Safety and Security Consulting Services for the Staten Island Ferry Vessels and Facilities and Private Ferry Facilities will not directly result in the displacement of any New York City employee.

Agency Chief Contracting Officer

Date



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SECTION VII

APPENDICES

A) PROPOSED CONTRACTUAL AGREEMENT WITH GENERAL PROVISIONS

B) FORMS:

Procedural Forms (P-Forms) (APPENDIX B)

Technical Proposal Forms (T-Forms) (APPENDIX C)

Price Proposal Forms (2T-Forms) (APPENDIX D)



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

**REQUIREMENTS OF CONTRACT FOR MARITIME SAFETY AND SECURITY
CONSULTING SERVICES FOR STATEN ISLAND FERRY VESSELS AND FACILITIES,
AND PRIVATE FERRY FACILITIES**

PIN: 84108MBPT255

I. GENERAL REQUIREMENTS

The services under this agreement include duties that are related both to the safety and security of the ferry operations. During the term of this agreement, work assignments may be identified, associated individual scope of services prepared, and requirements regarding staffing, cost, and schedule promulgated. Work will commence immediately upon registration of individual task orders, or assignments.

II. SERVICES FOR THIS CONTRACT

Security services will include annual security audits to insure compliance with the Agency's security plan, vulnerability assessments to identify any areas in which improvement to those plans is needed, assistance in designing and implementing risk-based measures for the mitigation of these vulnerabilities, and assistance with respect to any new regulations that impose security requirements on the Agency. Safety services include compliance with annually required internal and external audits as identified by the Safety Management System (SMS), analysis of the SMS and identification of areas for improvement, assistance in the development of safety training for ferry employees, and additional special projects as identified by the Agency.

The Agency, specifically at the Staten Island Ferry and DOT-operated private ferry facilities, is subject to a wide range of regulations and requirements, such as those stemming from the Maritime Transportation Security Act (MTSA) of 2002 and the International Safety Management (ISM) Code. In meeting these requirements, the Agency has developed a vessel and facility Combined Security Plan (CSP) and a comprehensive Safety Management System (SMS). The CSP and the SMS require continual updates as well as regularly scheduled drills and audits. This contract will provide assistance in maintaining and meeting the requirements of these safety and security plans.

The provision of assistance in compliance with United States Coast Guard Maritime Security Regulations 33 CFR Subchapter H – Maritime Security and with the ISM Code, and the performance of security assessments and all work required for implementation of these requirements. The primary locations for work to be performed are the terminals and vessels associated with the Staten Island Ferry and ferry landings operated by the Agency. However, the Contractor shall provide services as described herein at any and all of the Agency's facilities and locations as directed by the Agency's Contracting Officer (the Contracting Officer and his/her designated representative(s) is the duly authorized representative of the Commissioner) with explicit prior, written approval from the Chief Operating Officer (COO) of the Staten Island Ferry or his/her designated representative.

Facility Sites

The Facilities to be included are as follows:

1. St. George Ferry Terminal, to include the Ferry Maintenance Facility
2. Whitehall Ferry Terminal
3. Pier 11, Wall Street
4. E. 34th Street Landing (landing for private ferries, owned by DOT)
5. E. 90th Street Landing (landing for private ferries, owned by DOT)
6. Pier 79/West 39th Street Ferry Terminal



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7. Yankee Stadium (seasonal landing for private ferries, owned by DOT)
8. City Island – Hart Island DOT facility and operation

Proposers must offer plans covering all of the above listed facilities. The Agency, at its sole discretion, may require services under this contract at any of the listed locations or other such Agency locations as directed by the Commissioner or his or her designee and the approval of the Chief Operating Officer of the Staten Island Ferry or his or her designee.

Additionally, SIF ferryboats include:

1. Ferry boat (F/B) John F. Kennedy
2. F/B Andrew J. Barberi
3. F/B Samuel I. Newhouse
4. F/B Alice Austen
5. F/B John Noble
6. F/B Guy V. Molinari
7. F/B Sen. John J. Marchi
8. F/B Spirit of America
9. F/B Michael Cosgrove

The Contractor shall be responsible for providing operational and planning services to the Agency for supporting its ongoing efforts in compliance to local, federal, and international codes and regulations. Specifically, the contractor will assist the Agency in complying with the Maritime Transportation Security Act of 2002 (MTSA) and the International Safety Management (ISM) Code.

In order to ensure the safety and security of SI Ferry passengers and employees, and to meet the requirements imposed by regulation, the Agency has developed a vessel and facility security plan as well as a comprehensive Safety Management System (SMS). The security plan and the SMS both require continual updates as well as regularly scheduled drills, audits, and training for employees. Updates to these plans must be based on vulnerability assessments identifying any areas in which improvement is needed, and will consist of the risk-based measures that would mitigate those vulnerabilities. In order to meet these requirements, the Contractor will assist the agency in the performance of all of these functions, as described in further detail below.

1. **Security Plan Implementation Review and Assistance** – As required by MTSA regulations (33 CFR104.415 and 105.415) the contractor will assist the Agency in performing annual audits of the Combined Security Plan and submission and implementation of any required amendments to that plan.
2. **Security Assessments** – The Contractor shall provide technical assistance to the Agency in the performance of security assessments of the Agency's operations and facilities. Security assessments shall include, but not be limited to perimeter security, vulnerability to explosives, weapons, and biological threats. The Contractor shall also assist in designing and implementing risk-based measures to resolve any vulnerabilities uncovered in the course of these assessments.

In developing the security assessments and mitigation techniques, the Contractor shall take into account the specific needs of the Agency as it relates to the MTSA, its requirements at the designated MARSEC levels and activities required to increase or decrease security activities in response to changes in the MARSEC level as directed by the USCG.

3. **SMS Implementation Review and Assistance** – As required by the ISM Code (Section 12.1, 12.2) the Contractor shall assist the Agency in performing annual internal and external audits to ensure compliance with the Safety Management System. The Contractor shall also assist the agency in evaluating the efficiency of the SMS, and in making any necessary amendments to eliminate deficiencies.
4. **Drills and Exercises** – The Contractor shall provide assistance to the Agency in the performance of drills and exercises to test the proficiency of all personnel in performance of their security duties, including communications, notification procedures, and incident response. MTSA regulations (33 CFR104.230 and 105.220) require quarterly drills and annual exercises for vessels or facilities.



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5. **Training** – In accordance with MTSA (33CFR 104.225 and 105.215) and with Section 6.5 of the ISM Code, the Contractor shall develop and/or assist in the development of training classes and materials to ensure familiarity and compliance with the Agency’s Combined Security Plan and Safety Management System. The Contractor, if directed by the Contracting Officer or his designee, shall provide or assist in the provision of basic security training to employees of NYCDOT.
6. **Additional Requirements** – The Contractor shall provide assistance to the Agency with respect to any new regulations with safety or security requirements. The Contractor shall also assist with any additional special projects at the direction of the contracting officer.
7. **Environmental** – As required by the ISM Code (Section 2) the contractor shall review the Agency’s compliance to its Safety and Environmental Protection Policy, including those requirements outlined in the Facility and Vessel Response Plans (FRP/VRP) and the Non-Tank Vessel Response Plan (NTVRP).

III. TASK ORDER PROCEDURE AFTER AGREEMENT IS EXECUTED

Task assignments under this contract will be made based upon the process defined below. The maximum of this contract will not exceed \$750,000.00; however, there is no guarantee that the New York City Department of Transportation will expend the entire value of these contracts. Specifically, the Department does not guarantee that the Consultant will receive a specific volume of work, a specific total contract amount, or a specific task order value. All work will be conducted through task orders for specific pieces of work.

Specific work under this contract will be performed on a task order basis. Each task order will provide a specific scope, budget and schedule of the services required. The CONSULTANT should be capable of adding, deleting, or substituting titles/ expertise as necessary to meet the needs of specific task orders. There is no guarantee that all titles or services will be utilized.

The CONSULTANT will be expected to respond to short notice requests for services to resolve urgent task orders. The CONSULTANT should be capable of performing urgent task order assignments while working on several other task orders simultaneously.

A. TASK ORDERS

1. Issuance of Task Orders by the Project Manager: Throughout the term of the Contract, as the need arises for services under this agreement, the Department shall issue a Task Order to the Consultant. The Department may issue separate and/or supplementary task orders to the Consultants for the performance of services for different phases or portions of the individual project. Each Task Order issued hereunder shall specify the items set forth below:
 - (i) A description of the required services
 - (ii) The services to be performed by the Consultant
 - (iii) The method of payment for the performance of services
 - (iv) Any requirements for scheduling and/or phasing of the services
 - (v) Time frame for completion of services
 - (vi) An overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount shall be further broken down into various amounts and/or allowances, depending on the required services and the method of payment specified in the Task Order.
2. Supplementary Task Orders: In the event of any changes to the Task Order, the Project Manager shall issue a Supplementary Task Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Task Order issued by the Department.
3. Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Task Order shall take precedence.



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4. No Right to Reject a Task Order: The Consultants shall have no right to reject or decline to perform any Task Order issued under the Contract. Accordingly, any rejection of a Task Order by any Consultant, expressly made or implied by conduct, shall constitute a material breach of this Contract.

B. TASK ORDER PROCESS

1. (i) The Department will notify the Consultant of the Department's intention to develop a Task Order for a specific assignment and will forward the draft scope of services. These will be considered Tasks for this Agreement.

(ii) For each individual task order, the Project Manager will issue a written or verbal "Task Order Request" to the Consultant. The task request will describe the nature and extent of the project, its scope, preliminary schedule and rough order of magnitude.

(iii) Within 5 days or the timeframe specified in the "Task Order Request", the Consultant will prepare a scope of work, schedule, and fees as well as identify the key staff assignments and potential subconsultants.

(iv) If needed, arrangements will be made for a scope meeting to be held in the most appropriate location. The Consultant shall take minutes and submit them to all attendees within one week of such meeting.. At the close of the meeting, the definitive due date of the second proposal will be established.

(v) The Consultant will submit the two copies of its first proposal to the Department.

(vi) The Department shall review the proposal and conduct appropriate negotiations with the Consultant that result in a final proposal, submitted by the Consultant as in B(1)(v) above.

(vii) After review, the authorized representative of the Department will then recommend that the Project Task Agreement be finalized. The agreement will be sent to the Consultant for signature.

(viii) A copy of the executed task order will be sent to the New York City Office of Management and Budget for final approval. Upon such approval, the fully executed task order will be forwarded to all parties.

(ix) Upon encumbrance of the funds for the project, the Department will notify the Consultant when to proceed with work on the assignment.

(x) The Consultant shall send billings and progress reports to New York City Department of Transportation, Staten Island Ferry Division. All extra work elements must be negotiated in writing. If warranted, a supplemental task order for additional work will be processed in the same manner as the original assignment.

(xi) All documents shall be submitted electronically or in the most efficient and environmentally friendly manner, wherever possible and whenever requested by the Department.

IV. FEES AND PAYMENTS

A. FEE

In full payment for all services to be rendered hereunder, the Department may pay to the Consultant and the Consultant agrees to accept a fee not to exceed \$750,000.00.

B. BASIS

1. Hourly Rate Schedule:



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

C. DEFINITIONS

1. Direct Technical Salary Cost

Direct technical salary cost shall include only salaries of the individuals working on behalf of the Consultant, exclusive of Principals' Time, and shall be derived from direct individual salaries, not including overtime premium pay, vacation pay, holiday pay, social security, unemployment insurance, worker's compensation, sick pay or other fringe benefits. Any salary increases prior to or during the contract period should be within parameters as established in the Private Industry Workers-All Workers, Index of the U.S. Bureau of Labor Statistics-Employment Cost Index for Private Industry Workers.

2. Multiplier

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

3. Principals' Time

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

- a) The rate of compensation for Principals' Time as stated herein before, will not exceed One Hundred Dollars (\$100.00) per hour, to be based on actual draw.
- b) The Principals participating in the project should provide the Department with a demonstration certifying his/her actual draw from the firm on an average weekly basis. Where said rate exceeds Fifty Dollars (\$50.00) per hour, the principal participating in the project shall provide the Department with a notarized statement by a certified public accountant that such rate does not exceed the principals' annual direct compensation, excluding profit, computed on an hourly rate. The amount payable for Principals' Time shall not be included in the technical salary cost base and is not subject to any multiplier.
- c) The Principals participating in the project shall maintain a daily log of their participation, which shall be available for inspection by the Department and the New York City Comptroller.
- d) For Principals' time the Department deems directly compensable, the Department will certify that direct participation by the Principals is essential to the effective and economic completion of the task order. Principals will only receive direct compensation for work performed, and then only at the flat rate of One Hundred Dollars (\$100.00) per hour.
- e) The total compensation for the Principals' time shall not exceed thirty-five Percent (35%) of the total not to exceed fee as stated herein before.
- f) In the event that a Principal assumes the specific assignment of responsibilities normally allocated to a technical member of the team for a task order, said Principal shall be compensated at a rate corresponding to the technical salary commensurate with that assignment times an adjusted (where appropriate) multiplier, said multiplier to be established by the Department's Engineering Audit Bureau to avoid duplication of indirect expenses. The adjusted multiplier is calculated by decreasing the Consultant's Multiplier by 10%.



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

4. Out-of-Pocket Expense.

- a) The cost of acquiring, on a per diem basis, the services of other experts as may be required for the performance of the Consultant's services are subject to the same audit rules as the prime consultant.
- b) The costs of the use of motor vehicles, owned by the Consultant or employees of the Consultant or leased and maintained by the Consultant and used specifically for and only for the performance of this contract, shall be compensated on a direct mileage basis in accordance with the standards as established for reimbursement allowances for City personnel by the current edition of Directive #6, NYC Comptroller. The cost of MTA tokens and tolls within the city borders are reimbursable as out-of-pocket costs. However, cost of parking is not reimbursable.
- c) The cost of printing and duplicating for this project by an outside vendor is reimbursable as out-of-pocket costs based on the submitted invoice. However, cost of printing by in-house services is not reimbursable.
- d) The cost of renting any other materials or equipment or acquiring services specifically for, and applicable only to, this project may be submitted for direct payment as out-of-pocket costs. This should not include the purchase of general tools or office supplies whether expendable or reusable.
- e) The costs of the specified registered mailing and/or FEDEX-type services directed by the Department are reimbursable as out-of-pocket costs. However, routine postage, messenger service, etc. are not reimbursable.
- f) The cost of task order-related long distance telephone calls are reimbursable as out-of-pocket costs.
- g) The cost of project specified cellular communications, approved by the Contract Manager, are reimbursable as out-of-pocket costs.

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

5. Not used.

6. Indirect Costs and Overhead

- a) Indirect Costs shall include costs of a general nature which could be applied to the Consultant's entire operation and which are not readily attributable to any one project. These shall include: fringe benefits, taxes, insurance premiums, postage, office supplies, motor vehicles, equipment, office machine and computer rentals, depreciation on purchased equipment, maintenance and operation costs, recruitment, temporary facilities, consultant fees, overhead (see below) and any such costs as are necessary to conduct the Consultant's operations with the exception of those cost items which are submitted to direct payment as out-of-pocket expenses.
- b) Overhead includes that portion of the Consultant's administrative, clerical and financial costs which are applicable to operations, including, but not limited to: rent, utilities, salary costs of administrative and clerical work (including administrative services of the Principal and Technical Typing), fringe benefits,



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payroll expenses, taxes, insurance, legal and professional fees, bank service charges, depreciation, office supplies and equipment, maintenance.

7. Performance Evaluation

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

D. PAYMENTS

1. During the course of the Contract, all payments, including the final payment, should be paid to the Consultant on a monthly basis as they occur, as follows:
 - a) Payment shall be made based on direct technical salaries* of the Consultant and any Subconsultants as established in the Hourly Rate Schedule of the Contract in, times a multiplier of:
 - b) For approved out-of-pocket costs and allowable time for Principals' services, payments shall be made on the basis of direct reimbursement at cost to the Consultant, with no markup for the Consultant's overhead and profit.

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

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

2. The Consultant shall submit to the Department, not more than once per calendar month, a certified requisition for each task order for which the Consultant requests compensation, and six copies, setting forth in detail the items of work and services performed by the Consultant and the amount of partial payment requested. Requisitions, shall be accompanied by statements prepared and certified by the Consultant setting forth the name and title of each of his/her employees and his/her Subconsultants' employees who was engaged in the work during such respective month, the number of hours worked each day, the direct salary and the compensation attributable to the time for which the requisition is submitted. All requisitions shall be accompanied by a report on the progress of the work, properly coded and tabulated to indicate the percentage of completion of each phase of the work. All said requisitions and progress reports shall be subject to review and approval of the Department's authorized contact person.
3. The Department will review the said requisition and if, in its judgment, the work and services therein set forth have been performed, the Department will endorse its approval of payment of said requisition and certify that the work and services have been satisfactorily performed by the Consultant.
4. Out-of-Pocket expenses and compensation for Principals' time approved by the Department will be paid at cost to the Consultant, with no markup for the Consultant's overhead and profit.
5. The last and final payment to the Consultant shall become due and payable upon the actual completion of the work under this contract and the filing by the Consultant with the Department of all records and documents in connection with the contract. Prior to final payment, at the request of the Department, the Consultant shall submit all original documents in electronic and hard copy format; this is to include a cross reference document stating the project task order, date, deliverable, and media being submitted.
6. The final voucher shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Consultant attributable to the contract.



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7. The fee and all payments hereunder shall be subject to review and audit by the Department and subject to audit by the New York City Comptroller.
8. The fee shall not be increased for any reason except as provided herein or where such increase is due to a material change in scope only.
9. Included hereunder are the major provisions/requirements applicable to all services.

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

10. Partial Payments:

- a) The Consultant shall be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with the applicable clauses of this contract. The consultant shall submit a breakdown of costs for each specific task provided with request for payment. Payment requests are subject to the approval of the Commissioner, or his/her duly authorized representative.
- b) The Consultant shall inform the Department and all Subcontractors and Subconsultants of the Consultant's schedule for submitting monthly requisitions to the Department, said schedule should be strictly adhered to by the Consultant.
- c) All Subcontractor and Subconsultant requisitions received by the Consultant at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the Consultant does not have other costs to be billed for that period. The Consultant shall inform the Subcontractor or Subconsultant of the date the requisition was submitted to the Department and the amount included for the Subcontractor or Subconsultant.
- d) The Consultant is required to make partial payments to all Subcontractors and Subconsultants within (10) calendar days of receipt of payment from the Department.
- e) Accounts of the Consultant shall clearly identify the costs of the work performed under this Agreement and shall be subject to periodic and final audit by the Department or their consultants engaged for performing such audits. Such audit should not be a condition of partial payment.

V. TERM

- A. The total length of this contract shall be **1,095 consecutive calendar days** from the Notice to Proceed. The Department reserves the right to renew the contract twice for two-year terms.



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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.



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2.3 FAIR PRACTICES

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

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

ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY

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

ARTICLE 4. COVENANTS OF THE CONTRACTOR

4.1 EMPLOYEES

- A. All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Contract are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Contract. Nothing in the Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, disability benefits and social security, or, except as specifically stated in this Contract, to any person, firm or corporation.

B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this Contract resulting from any negligent or wrongful act of omission or commission or error in judgement of any of its officers, trustees, employees, agents, servants, of independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.

C. Minimum Wage

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

4.2 INDEPENDENT CONTRACTOR STATUS

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

4.3 INSURANCE

A. Required Insurance Coverage: Before performing any work on the Contract, the Contractor shall procure and maintain for the duration of the Contract, insurance against any claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work in this Contract by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall procure the required insurance from companies licensed and authorized by the New York State Department of Insurance to do business in New York State and with a Best's rating of A-7 or better.

1. Commercial General Liability. Before performing any work on the Contract, the Contractor shall procure Comprehensive General Liability Insurance in the Contractor's name and naming the City of New York and the Department of Transportation as additional insured thereunder and endorsed to cover the liability assumed by the Contractor under the indemnity provisions of this Contract. This insurance policy shall be maintained during the term of this Contract and shall protect the City of New York, the Contractor and/or its subcontractors performing work under this Contract from claims for property damage and/or bodily injury, including death, which may arise from operations under this Contract, whether such operations are performed by the Contractor or anyone directly or indirectly employed by the Contractor. The coverage provided shall not be less than \$1,000,000 per occurrence. The coverage provided must be "occurrence" based; "claims-made" coverage will not be accepted.

2. Workers' Compensation Insurance. Before performing any work on this Contract, the Contractor and each Subcontractor shall provide Workers' Compensation Insurance in accordance with the Laws of the State of New York, and the United States Longshoremen's and Harbor Workers' Act where applicable, on behalf of all employees providing services under this Contract.

3. Employers' Liability Insurance. Before performing any work on this Contract, the Contractor shall procure Employers' Liability Insurance, in the amount of at least \$1,000,000 per accident, providing compensation for bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his/her employment by the Contractor.

4. Automobile Liability. Before performing any work on this Contract, the Contractor shall procure commercial auto liability insurance covering all owned, non-owned, hired and borrowed vehicles to be used in connection with this Contract. The City of New York and the Department shall be named as additional insureds. Coverage shall be in an amount of at least \$1,000,000.00.
5. Unemployment Insurance. Before performing any work on this Contract, Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.
6. Professional Liability. Before performing any work on this Contract, the Contractor shall procure Professional Liability Insurance covering as insured the Contractor, with a limit of liability of not less than \$1,000,000. All sub-consultants to the Contractor providing professional services under this Contract shall also provide evidence of Professional Liability Insurance to the Commissioner at limits appropriate to the exposures of the sub-consultant's work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to the City.
7. The Contractor agrees to indemnify and hold harmless the City of New York and each officer, agent and employee of the City of New York against any and all claims for personal injury or wrongful death or damage to personal property arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. General Requirements for Insurance Policies:

1. All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New York by the New York State Department of Insurance. The Contractor must first obtain the written approval of the City's Risk Manager of the Mayor's Office of Operations, or its delegate, in the event it wishes to maintain any type of required insurance with a company not licensed to do business in the State of New York.
2. The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City is an insured under the policy.
3. All insurance policies shall include, without limitations, the following endorsements/requirements.
 - (a) Notice under the Policy to the City as Additional Insured shall be addressed to each of the following: (1) the Commissioner; (2) Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and
 - (b) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the City as Additional Insured of any occurrence, offense, or claim, if such notice is required, will be deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Comptroller; however, in no event shall notice be deemed untimely so long as it is given within 180 days of the filing of the Notice of Claim; and
 - (c) Any notice, demand other writing by or on behalf of the Contractor to the Insurance Company relating to any occurrence, offense, claim or suit shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured, and any response thereto on behalf of the Insurance Company shall be sent to the Contractor, to the City at New York City Law Department, Insurance Law Unit, Affirmative Litigation Division, 100 Church Street, New York, NY 10007, and to the Comptroller at Insurance Unit, NYC Comptroller's Office, 1 Centre Street, Room 1222, New York, NY; and
 - (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 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 an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
 4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (F) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in (D) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. In addition to and notwithstanding any other provision of this Contract the Commissioner or Agency Head may in his or her sole discretion terminate this Contract upon not less than three (3) days' written notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

4.10 ASSIGNMENT

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Contract, unless the prior written consent of the Agency shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Agency; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the Contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor's employees.
- C. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.
- D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

4.11 SUBCONTRACTING

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:
1. That the work performed by the subcontractor must be in accordance with the terms of the Contract between the Department and the Contractor.
 2. That nothing contained in such Contract shall impair the rights of the Department.
 3. That nothing contained herein, or under the Contract between the Department and the Contractor, shall create any contractual relation between the Subcontractor and the Department, and
 4. That the Subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Contract between the Department and the Contractor.
- 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 agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Contract.

4.16 ANTI-TRUST

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

ARTICLE 5. TERMINATION

- A. The Department and/or City shall have the right to terminate this Contract, in whole or in part:
 - 1. Under any right to terminate as specified in any section of this Contract.
 - 2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Contract.
 - 3. Upon the Contractor's becoming insolvent.
 - 4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.
 - 5. Upon the Commissioner's determination that termination is in the best interest of the City.
- B. The Department or City shall give the Contractor written notice of any termination of this Contract specifying therein the applicable provisions of subsection A of this section and the effective date thereof, which shall not be less than ten (10) days from the date the notice is received.
- C. The Contractor shall be entitled to apply to the Department to have this Contract terminated by said Department by reason of any failure in the performance of this Contract (including any failure by the Contractor to make progress in the execution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or any other case beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Contract terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.

- D. Upon termination of this Contract the Contractor shall comply with the Department or City close-out procedure, including but not limited to:
1. Accounting for and refunding to the Department or City within thirty (30) days, any unexpended funds which have been paid to the Contractor pursuant to this Contract.
 2. Furnishing within thirty (30) days an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Contract carrying out any Department or City directive concerning the disposition thereof.
 3. Not incurring or paying any further obligation pursuant to this Contract beyond the termination date. Any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after such date shall be paid by the Department or City in accordance with the terms of this Contract. In no event shall the "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.
 4. Turn over to the Department or City or its designees all books, records, documents and material specifically relating to the Contract.
 5. Submit, within ninety (90) days, a final statement and report relating to the Contract. The report shall be made by a certified public accountant or a licensed public accountant.
- E. In the event the Department or City shall terminate this Contract, in whole or in part, as provided in paragraphs 1, 2, 3, or 4 of subsection A of this section, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Contract to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this Contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's breach of the Contract, and the City may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- G. The provisions of the Contract regarding confidentiality of information shall remain in full force and effect following any termination.
- H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Contract.

ARTICLE 6. MISCELLANEOUS

6.1 CONFLICT OF LAWS

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

6.2 GENERAL RELEASE

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

6.3 CLAIMS AND ACTIONS THEREON

- A. Any claim, which is not subject to the Dispute Resolution provisions of the PBB Rules, against the City for damages for breach of contract shall not be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as hereinbefore provided.

- B. No action or proceeding shall be instituted or maintained on any such claims unless such action or proceeding be commenced within six (6) months after the date the Commissioner issues a Certificate of Substantial Completion except that:
1. Any claims arising out of events occurring after the date the Commissioner issues a Certificate of Substantial Completion and before Final Acceptance of the work shall be asserted within six (6) months of Final Acceptance of the work;
 2. Any claims for monies deducted, retained or withheld under the provisions of this Contract shall be asserted within six (6) months after the date when such monies become due and payable hereunder; and
 3. If the Commissioner exercises his/her right to terminate the Contract Pursuant to Article 5, any such action shall be commenced within six (6) months of the date of filing in the Office of the Comptroller of the City of the Certificate for Final Payment hereunder.
- C. In the event any claim is made or any action brought in any way relating to the Contract herein, the Contractor shall diligently render to the Department and/or the City of New York, without additional compensation, any and all assistance which the Department and/or the City of New York may require of the Contractor.
- D. The contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Contract.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

6.5 WAIVER

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

6.6 NOTICE

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

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

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

6.8 SEVERABILITY

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

6.9 POLITICAL ACTIVITY

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

6.10 MODIFICATION

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

6.11 PARAGRAPH HEADINGS

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

6.12 NO REMOVAL OF RECORDS FROM PREMISES

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

6.13 INSPECTION AT SITE

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

6.14 MERGER

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

6.15 CONDITIONS PRECEDENT

This contract shall neither be binding nor effective unless:

- A. Approved by the Mayor pursuant to the provisions of Executive Order No. 42 dated October 9, 1975, in the event the Executive Order requires such approval; and
- B. Certified by the Mayor (Mayor's Fiscal Committee created pursuant Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and
- C. Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.
- D. It has been authorized by the Mayor and the Comptroller shall have endorsed his or her certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this Contract.

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

6.16 PPB RULES

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

6.17 STATE LABOR LAW AND CITY ADMINISTRATIVE CODE

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

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

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

1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
2. It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
3. Disobedience of the foregoing provisions shall be deemed a violation of a material provision of the Contract.
4. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

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

- A. This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New

York City ("Federal Court") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Contract and intent, the Contractor agrees:

1. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing;
2. With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.
3. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
4. If the Contractor commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

6.19 E.O. 50 APPENDIX A RIDER

- A. This Contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O. 50") and the Rules and Regulations promulgated have been complied with in their entirety. By signing this Contract, the Contractor, agrees that it:
 1. Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
 2. Will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
 3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
 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 noncompliance with nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the Contract and noncompliance with the E.O. 50 and the rules and regulations promulgated

thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

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

- C. The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.
- D. The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.
- E. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

6.20 NOISE CONTROL CODE PROVISIONS

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

6.21 LIQUIDATED DAMAGES

- A. In case the Contractor shall substantially fail to complete the work within the times fixed in the General Provisions of this Contract or within the times to which such completion may have been extended by agreement, the Contractor must pay to the City the sum of one hundred (\$100) dollars for each and every calendar day that the time consumed in completing the work exceeds the time allowed, provided, however, that the delay in completing the work is within the control of the Contractor and is caused solely by the Contractor's acts or failures to act. Delays beyond the control of the Contractor shall include, but not be limited to, those caused by the following:
 1. On the part of the City, its agencies, employees and representative acts or failures to act, to provide necessary information, prompt reviews, expeditious decisions and other matters essential to the progress of the project.
 2. On the part of private utilities and agencies, acts or failure to act to provide necessary information, prompt reviews, expeditious decisions and other matters essential to the progress of the project.
 3. Unavoidable casualties, including Acts of God.

4. The enforcement of laws and regulation by the City, the State of New York and/or Federal Government enacted subsequent to the date of this Contract.
- B. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the completion of the work hereunder, the sum of one hundred (\$100) dollars is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.
- C. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification or the Contractor's obligation to indemnify the City, or any other remedy provided for by contract or by law.
- D. The Comptroller will deduct and retain out of the monies which may be due hereunder, the amount of any such liquidated damages; and in case the amount which may be due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the Comptroller.

6.22 COPIES OF REPORTS

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

6.23 CONTRACTOR'S PERFORMANCE EVALUATION

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

6.24 CONTRACT CHANGES

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

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

6.25 RESOLUTION OF DISPUTES

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

The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding

party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Contract, and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the Contractor initiating the dispute.
 3. **Agency Head Determination.** Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the Engineer, together with a statement concerning how the decision may be appealed.
 4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek and the CDRB may render a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
- E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
1. **Time, Form, and Content of Notice.** Within thirty (30) days of its receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the written decision of the Agency Head, and; (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
 2. **Agency Response.** Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.
 3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in E (1) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.
- F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
1. The chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
 2. The City Chief Procurement Officer ("CCPO") or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and
 3. A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons companies, or organizations having disputes with the City.
- G. Petition to Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the Contractor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.
1. Form and Content of Petition by Contractor. The Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written decision of the Comptroller, if any, and (v) copies of all correspondence with, and written material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four (4) complete sets of the Petition: one (1) to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three (3) to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
 2. Agency Response. Within thirty (30) days of its receipt of the Petition, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three (3) complete copies of the Agency response shall be submitted to the CDRB at OATH's Offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.
 3. Further Proceedings. The CDRB shall permit the Contractor to present its case by the submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by the submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, at its discretion, may seek such

technical or other expert advice from any party as it shall deem appropriate and any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. **Contract Dispute Resolution Board Determination.** Within Forty-five (45) days of the conclusion of all written submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the Contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
 5. **Notification of Contract Dispute Resolution Board Decision.** The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and in the case of construction or construction-related services, the Engineer. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
 6. **Finality of Contract Dispute Resolution Board Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four (4) months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York, pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with the PPB Rules.
- H. Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

6.26 EXTENSION OF TIME FOR PERFORMANCE CONSTRUCTION AND CONSTRUCTION RELATED ONLY

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

delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

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

E. Application for Extension of Time

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

F. Analysis and Approval of Time Extensions

1. For time extensions for partial payments, a written determination shall be made by the ACCO who may, for good and sufficient cause extend the time for the performance of the Contract as follows:
 - (a) If the work is to be completed within six (6) months, the time for performance may be extended for sixty (60) days;

- (b) If the work is to be completed within less than one year but more than six (6) months, and extension of ninety (90) days may be granted;
 - (c) If the Contract period exceeds one year, besides the extension granted in subparagraph (b) above, an additional thirty (30) days may be granted for each multiple of six (6) months involved beyond the one year period; or
 - (d) If exceptional circumstances exist, the ACCO may extend the time for performance beyond the extensions in (a), (b), and (c) above. In that event, the ACCO shall file with the Director of the Office of Construction a written explanation of the exceptional circumstances.
- 2. For extensions of time for substantial completion payments and final completion payments, the Department's engineering staff, in consultation with the ACCO, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Contract). The report shall be subject to review by and approval of the Board of Time Extension, which shall have authority to question its analysis and determinations and request additional facts or documentation. The report as reviewed and made final by the Board of Time Extension shall be made a part of the departmental Contract file.
- 3. Approval Mechanism for Time Extensions for Final or Substantial Completion Payments – An extension of time for a final or substantial completion payment shall be granted only with the approval of a Board of Time Extension comprised of the ACCO, the Corporation Counsel and the Comptroller, or their authorized representatives.
- G. Assessment of Liquidated Damages – In the case of substantial completion and final completion payments, liquidated damages shall be assessed against the Contractor as determined by the report's analysis of the Contract's delays. However, neither the failure to assess liquidated damages at this time, nor the report itself, nor the granting of a time extension at substantial or final completion, shall operate as a waiver or release of any claim the City may have against the Contractor for either actual or liquidated damages.

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

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

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

6.28 NO DAMAGE FOR DELAY

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

6.29 PROMPT PAYMENT

- A. The Prompt Payment provisions set forth in the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under this Contract. The provisions require the payment to Contractors of interest on payments made after the required payment date except as set forth in the Prompt Payment section of the Rules.

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

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

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

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

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

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

PART A

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

PART B

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

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
 - (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 - (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
 - (3) ban provocative religious or political emblems from the workplace;
 - (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 - (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

- (6) establish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement, and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

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

(NO FURTHER TEXT ON THIS PAGE)

SECTION VII B

APPENDIX B

Procedural Forms Packet

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

- Notes:**
- 1. Please copy and use separate sheets for each subconsultant (if any).**
 - 2. Make copies of format sheets as needed**

FORM 1P

PROPOSAL COVER LETTER

Request for Proposals for Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-owned Private Ferry Facilities

**Boroughs of Staten Island, Manhattan, the Bronx, Brooklyn, and Queens
PIN: 84108MBPT255**

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

Telephone #: _____ **Fax #:** _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

FORM 2P

ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: Request for Proposals for Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-owned Private Ferry Facilities

PIN: 84108MBPT255

COMPLETE PART I OR PART II, WHICHEVER IS APPLICABLE.

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:

_____ No addendum was received in connection with this RFP.

Proposer (Print) _____

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 B

APPENDIX C

Technical Proposal Forms Packet

- Form 1T - Compliance with Requirements of RFP**
- Form 2T - Proposed Staffing**
- Form 3T - Experience/Certification of Proposed Staff**

Notes:

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

FORM 1T – COMPLIANCE WITH REQUIREMENTS OF RFP

PIN: 84108MBPT255

PROJECT NAME: Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-owned Private Ferry Facilities

CONTRACT NO.: _____ **CONSULTANT:** _____

List and explain how the firm will integrate the requirements as set forth in the RFP into its approach. In the order in which they appear in the RFP, address the requirements section by section and how your approach will fulfill those requirements. Specifically, please refer to Section III and Section VII A when preparing your proposal.

FORM 2T – PROPOSED STAFFING

PROJECT NAME: Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-Owned Private Ferry Facilities

PIN: 84108MBPT255

PRIME CONSULTANT: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL SECURITY SERVICES OTHER/_____

(COLUMN 1) JOB TITLE	(COLUMN 2) TOTAL HOURS
1. Principal	
2. Project Manager	
3. Team Leader	
4. Senior Associate	
5. Associate	
6. Assistant Team Leader	
7. Engineer	
8. Administrative Support Staff	
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 (Form 2T1).
2. No salary information should be included on this form.

FORM 3T

EXPERIENCE & CERTIFICATION OF PROPOSED STAFF

PIN: 84108MBPT255

PROJECT NAME: Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-owned Private Ferry Facilities

CONTRACT NO.: _____

CONSULTANT: _____

PROPOSED STAFF:

Show organization chart for staffing this project below and attach resumes of key personnel emphasizing the titles proposed for this project. Note relevant experience for personnel that will be providing assessment, planning, and audit services. Explain the firm's understanding of Sensitive Security Information and its procedures for handling such information.

SECTION VII B

APPENDIX D

Cost Proposal Forms Packet

- Form 2T1 - Labor Cost Proposal**
- Form 2T2 - Cost Proposal Summary**
- Form 2T3 - Performance Outcome Measures and
Related Financial Incentives and/or
Disincentives**
- Form 2T4 - Proposed Time and Cost Estimates**

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

FORM 2T1 – LABOR COST PROPOSAL

PROJECT NAME: Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-owned Private Ferry Facilities

PIN: 84108MBPT255

PRIME CONSULTANT: _____

CONTRACT NO.: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL SECURITY SERVICES

OTHER/ _____

	<u>(COLUMN 1)</u> <u>JOB TITLE</u>	<u>(COLUMN 2)</u> <u>TOTAL HOURS</u>	<u>(COLUMN 3)</u> <u>HOURS BY THIS FIRM</u>	<u>(COLUMN 4)</u> <u>AVERAGE HOURLY RATE</u>	<u>(COLUMN 5)</u> <u>LABOR COST COL. 3 x COL. 4</u>
1.	Principal	_____	_____	_____	_____
2.	Project Manager	_____	_____	_____	_____
3.	Team Leader	_____	_____	_____	_____
4.	Senior Associate	_____	_____	_____	_____
5.	Associate	_____	_____	_____	_____
6.	Assistant Team Leader	_____	_____	_____	_____
7.	Engineer	_____	_____	_____	_____
8.	Administrative Support Staff	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____
	TOTALS	_____	_____	_____	(T)
	MULTIPLIER FOR OVERHEAD		(A)		(A)
	MULTIPLIER FOR PROFIT		(B)		(B)
	TOTAL MULTIPLIER		(1+A)X(1+B)		(M)
	TOTAL LABOR COST		(LINE T X LINE M)		(C)
	TOTAL LABOR ESCALATED TO PROJECT MIDPOINT (C X PROPOSED ESCALATION FACTOR)		PROPOSED ESCALATION FACTOR		(D)
			MAXIMUM ESCALATION FACTOR = 1.03		

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 NYCDOT (if available) or NYSDOT for regional offices. 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 proposed escalation factor used to calculate "D" should not exceed the maximum escalation factor indicated in the shaded area. Greater consideration will be given to proposers that propose more competitive prices.

FORM 2T2 – COST PROPOSAL SUMMARY

PROJECT NAME: Safety and Security Consulting Services for its Staten Island Ferry Vessels and Facilities and City-owned Private Ferry Facilities

PIN: 84108MBPT255

PRIME CONSULTANT: _____

CONTRACT NO.: _____

<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			\$750,000.00	(T)

INSTRUCTIONS:

1. The costs entered in Column 3 are the totals shown on line (D) of Form 2T-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 2T3

**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.			

FORM 2T4

PROPOSED TIME AND COST ESTIMATES FOR A SAMPLE PROJECT

Listed below are the components of a sample project: an annual audit of the Combined Security Plan, as described in Section III(A)(1) of this RFP. For each component of this project, the proposer is to indicate appropriate job titles and hourly rates, as provided in Form 2T1. The proposer is also to estimate the number of hours for each title that is to be dedicated to each component of the project.

**ON A SEPARATE SHEET, COMPLETE THIS RATE SCHEDULE FOR EACH PROJECT COMPONENT/
SUBCOMPONENT LISTED BELOW AND FILL IN THE TOTALS WHERE INDICATED TO CALCULATE A GRAND
TOTAL PROJECT COST.**

Hourly Rate for Title 1 - Principal:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 2 - Project Manager:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 3 - Team Leader:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 4 - Senior Associate:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 5 - Associate:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 6 - Assistant Team Leader:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 7 - Engineer:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ +
Hourly Rate for Title 8 - Administrative Support Staff:	\$ _____ x Number of Hours: _____ = Subtotal: \$ _____ =

TOTAL: \$ _____

Component 1, Preparation for Audit: \$ _____

Component 2, On-Site Audit Actions for Each of Two (2) Ferry Terminals:

- a. Whitehall: \$ _____
- b. St. George: \$ _____

Component 3, On-Site Audit Actions for Each of Eight (8) Ferry Vessels

- a. John F. Kennedy: \$ _____
- b. Andrew J. Barberi: \$ _____
- c. Samuel I. Newhouse: \$ _____
- d. Alice Austen: \$ _____
- e. John Noble: \$ _____
- f. Guy V. Molinari: \$ _____
- g. Sen. John J. Marchi: \$ _____
- h. Spirit of America: \$ _____

Component 4, Draft Presentation of Report: \$ _____

Component 5, Final Report: \$ _____

GRAND TOTAL = 1 + 2 (a+b) + 3 (a+b+c+d+e+f+g+h) + 4 + 5 = \$ _____

ATTACHMENT E – DOING BUSINESS DATA FORM



Doing Business Data Form – Contract Proposers

A Doing Business Data Form is to be completed by any vendor that submits a proposal for this contract (see Q&A sheet for more information). Please type or print in black ink, sign the last page, and return the complete Data Form, in a separate envelope, to the contracting agency along with your proposal. **The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.**

This Data Form requires information to be provided on your principal officers, owners and senior managers. The name, employer, and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. This Data Form is separate from the City's VENDEX requirements.

General Instructions for Sections 2, 3, and 4:

Title: The actual office title held by the officer, owner, or manager.

Employer (if not vendor): If the individual is not employed by the vendor, list his/her employer's name.

Certification:

Fill out the certification box on the last page completely, and return the completed Data Form, in a separate envelope, to the contracting agency along with your proposal. If you have questions, please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov. Thank you for your cooperation.

NOTE: Under the Federal Privacy Act the furnishing of Social Security Numbers is voluntary. Failure to provide an SSN will not result in any vendor's disqualification. SSNs will not be disclosed to the public. SSNs will be used to: identify a vendor's officers, owners and managers; assist the City in enforcement of Local Law 34 by ensuring that it is applied only to those individuals intended to be covered; and provide the City a means of identifying individuals whose names are not required to be listed in the *Doing Business Database*.

Section 1: Vendor Information

Vendor Name: _____

Vendor EIN: _____

Vendor Filing Status (select one):

- New Vendor/Full Data Form. *Fill out the entire form.*
- Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the person(s) who no longer hold positions with the vendor.*
- No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Vendor Type: Corporation (any type) Partnership (any type) Sole Proprietor
 Other (specify): _____

Vendor Address: _____

Vendor Main Phone #: _____ Vendor is a Non-Profit: Yes No

Vendor Main E-mail: _____

Section 2: Principal Officers

Please fill in the required identification information for each officer listed below. If the vendor has no such officer or its equivalent, please check the "Position does not exist" box. If the vendor is filing a Change Data Form and the person listed is replacing someone who was previously disclosed, please check the "This person replaced" box and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) This position does not exist

The highest ranking officer or manager, such as the CEO, President or Executive Director; or, if those positions do not exist, the Chairperson of the Board.

Name: _____

Office Title: _____ SSN: _____

Employer (if not vendor): _____

Birth date: _____ Home phone #: _____

Home address: _____

This person replaced CEO: _____ On date: _____

Chief Financial Officer (CFO) This position does not exist

The highest ranking financial officer, such as the CFO, Treasurer, Comptroller, Financial Director, or VP for Finance.

Name: _____

Office Title: _____ SSN: _____

Employer (if not vendor): _____

Birth date: _____ Home phone #: _____

Home address: _____

This person replaced CFO: _____ On date: _____

Chief Operating Officer (COO) This position does not exist

The highest ranking operational officer, such as the COO, Chief Planning Officer, Director of Operations, or VP for Operations

Name: _____

Office Title: _____ SSN: _____

Employer (if not vendor): _____

Birth date: _____ Home phone #: _____

Home address: _____

This person replaced COO: _____ On date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means **own or control 10% or more of the vendor**. If no individual owners exist, please check the appropriate box below to indicate why, and skip to the next page. If the vendor is owned by other companies, those companies do not need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the vendor is filing a Change Data Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- There are no individual owners
- No owner holds 10% or more shares in the entity
- Other (explain): _____

Principal Owners (who own or control 10% or more of the vendor):

Name: _____ SSN: _____
 Employer (if not vendor): _____
 Office Title: _____ Birth date: _____
 Home address: _____
 Home phone #: _____

Name: _____ SSN: _____
 Employer (if not vendor): _____
 Office Title: _____ Birth date: _____
 Home address: _____
 Home phone #: _____

Name: _____ SSN: _____
 Employer (if not vendor): _____
 Office Title: _____ Birth date: _____
 Home address: _____
 Home phone #: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal date: _____
 Name: _____ Removal date: _____
 Name: _____ Removal date: _____

To list more Principal Owners, please attach additional pages.

Section 4: Senior Contract Managers

Please fill in the required identification information for all senior managers who oversee any of the vendor's contracts with the City. Senior managers include anyone who, either by title or duties, has substantial discretion over the solicitation, letting, or administration of any contract with the City. You must list at least one Senior Manager or your Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the vendor is filing a Change Data Form, list any individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Contract Managers:

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Name: _____ SSN: _____

Employer (if not vendor): _____

Office Title: _____ Birth date: _____

Home address: _____

Home phone #: _____

Remove the following previously-reported Senior Contract Managers:

Name: _____ Removal date: _____

Name: _____ Removal date: _____

Name: _____ Removal date: _____

To list more Senior Contract Managers, please attach additional pages.

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the vendor being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Vendor name: _____

Title: _____ Work phone #: _____

Return the completed Data Form, in a separate envelope, to the contracting agency along with your proposal. For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

**DOING BUSINESS ACCOUNTABILITY PROJECT
CONTRACT, FRANCHISE AND CONCESSION PROPOSERS
FALL 07 – SPRING 08**

Q & A: The *Doing Business Data Form* and the *Doing Business Database*

What is the purpose of this Data Form?

To collect accurate, up-to-date identification information about vendors that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), the recently passed campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of City vendors and mandates the creation of a *Doing Business Database* to allow the City to enforce the law. The information requested in this Data Form must be provided, regardless of whether the vendor or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

Why have I received this Data Form?

The contract, franchise or concession for which you are proposing is considered a business dealing with the City under LL 34. Most types of contracts, franchises and concessions valued at more than \$5,000 are considered business dealings. Exceptions include transactions awarded on an emergency basis or by non-qualified competitive sealed bid. Later in 2008, the types of transactions considered business dealings will be expanded to include grants, economic development agreements, pension fund investments and real property and land use transactions with the City.

What vendors will be included in the *Doing Business Database*?

Vendors that hold contracts for goods or services, or franchises or concessions, valued at more than \$100,000, or contracts for construction valued at more than \$500,000, are considered to be doing business with the City for the purposes of this law and will be included in the *Doing Business Database*. As noted above, later in 2008 other types of transactions will also result in vendor inclusion in the database.

What individuals will be included in the *Doing Business Database*?

The principal officers, owners and certain senior managers of vendors listed in the *Doing Business Database* are themselves considered to be doing business with the City and will also be included in the database.

- **Principal officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the Data Form instructions for examples of titles that apply.
- **Owners** are individuals who own or control 10% or more of the vendor. This includes stockholders, partners and anyone else with an ownership or controlling interest in the vendor.
- **Senior managers** include anyone who, either by job title or actual duties, has substantial discretion over the solicitation, letting or administration of any contract, franchise or concession with the City. If the vendor holds any City contracts, franchises or concessions, you must list at least one Senior Manager, or your Data Form will be considered incomplete. Later in 2008, senior managers responsible for the additional types of transactions indicated above will also be included in the *Doing Business Database*.

I provided some of this information on the VENDEX Questionnaire. Why do I have to do it again?

Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the Data Form requests information concerning senior managers, which is not part of the VENDEX Questionnaire.

What happens if I don't submit a complete and accurate Data Form?

Vendors are required to supply information of this type upon request of the City. The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.

Will the information on this Data Form be available to the public?

Campaign contributions will continue to be public information, as they have been in the past. Similarly, the names of vendors' top officers and owners, which have previously been made public through the VENDEX database, will continue to be public, as will the additional names (senior managers) now required by this Data Form. Each person's employer and title will be made public. However, no sensitive personal identifying information will be made available to the public, and home address and phone number information will not be used for communication purposes.

No one in my organization plans to contribute to a candidate; do I have to fill out this Data Form?

Yes. All vendors are required to return this Data Form with complete and accurate information, regardless of the history or intention of the vendor or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

I have already completed a Doing Business Data Form. Do I have to submit another one?

Yes. A vendor is required to submit a Doing Business Data Form each time it proposes for, or enters, a transaction considered business dealings with the City. However, the Form has both a No Change option, which only requires a vendor to report its EIN and sign the last page, and a Change option, which allows a vendor to only fill in applicable information that has changed since the previous completion of the Doing Business Data Form.

How does a person remove him/herself from the *Doing Business Database*?

Any person who believes that s/he should not be listed may apply for removal from the database by contacting the Doing Business Accountability Project of the Mayor's Office of Contract Services. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the vendor. Vendors may also contact the DBA Project to add or remove such individuals. Removal and update forms will be available on-line at nyc.gov/mocs, or by contacting the Doing Business Accountability Project at 212-788-8104.

How long will a vendor and its officers, owners and senior managers remain listed on the *Doing Business Database*?

- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.
- **Contract and Concession holders:** generally for the term of the contract or concession, plus one year.
- **Franchise holders:** from the commencement or renewal of the franchise, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.

For information on other types of transactions, contact the Doing Business Accountability Project at 212-788-8104.

What are the new campaign contribution limits for people doing business with the City?

Please contact the NYC Campaign Finance Board for information on contribution limits, at www.nyccfb.info, or 212-306-7100.

The Data Form is to be returned, in a separate envelope, to the contracting agency along with your proposal.

If you have any questions about the Data Form please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.