

Michael R. Bloomberg  
Mayor

Department of Transportation  
Staten Island Ferry Division

Janette Sadik-Khan  
Commissioner

## REQUEST FOR PROPOSALS

### PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

CONTRACT NUMBER: 841-C5591

PIN: 84108MBPT281

RELEASE DATE OF THE RFP: August 6, 2008

CONTRACT TERM: 365 Consecutive Calendar Days (CCD) starting from the date of the Notice to Proceed

#### AUTHORIZED AGENCY CONTACT PERSON

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

Gail Hatchett  
Office of the Agency Chief Contracting Officer (ACCO)  
New York City Department of Transportation  
40 Worth Street – Room 1228  
New York, New York 10013  
Telephone: (212) 839-2116  
Fax: (212) 442-7449  
E-mail: [ghatchett@dot.nyc.gov](mailto:ghatchett@dot.nyc.gov)



ACKNOWLEDGEMENT OF RECEIPT OF REQUEST OF PROPOSAL  
WE STRONGLY RECOMMEND THAT YOU FAX THIS SHEET TO US TO ENSURE THAT YOU RECEIVE ALL FUTURE  
ADDENDA TO THIS RFP

**ATTN: GAIL HATCHETT WITHIN 48 HOURS - FAX: (212) 442-7449**

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

|   |                 |      |
|---|-----------------|------|
| Consultant:   |                 |      |
| Address:  |                 |      |
| City:   | State:          | ZIP: |
| Contact Person:   | Telephone #:    |      |
| Fax #:  | E-mail Address: |      |
| RFP Contract No: <b>841-C5591</b>   |                 |      |
| RFP PIN: <b>84108MBPT281</b>  |                 |      |
| RFP Contract Title: <b>Preliminary Design Investigation for the Staten Island Ferry Fleet</b> |                 |      |

**OR**

**WE DO NOT PLAN TO SUBMIT A PROPOSAL.**

Please check **all** the reasons that apply and return this form to Gail Hatchett.  
Fax: (212) 442-7449 E-mail: ghatchett@dot.nyc.gov

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

|   |
|---|
| Comments: (Please use additional sheets if necessary) |
|   |
|   |

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title



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## **SECTION I: TIMETABLE**

### **A. Release Date of the Request for Proposals:      **August 6, 2008****

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

Telephone: (212) 839-2116  
Fax: (212) 442-7449  
E-Mail: ghatchett@dot.nyc.gov

### **B. Pre-Proposal Conference:**

Date: August 20, 2008  
Time: 10:00 AM  
Location: Ferry Maintenance Building, 1 Bay Street, Staten Island, New York 10301

Attendance by proposers is optional but recommended by the Agency. Proposers should submit in writing to the Authorized Agency Contact Person all questions arising out of the pre-proposal conference no later than September 3, 2008. All other questions should be submitted no later than 10 consecutive calendar days prior to the proposal due date since the Agency may be unable to respond to questions received after that date.

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

**Date: September 17, 2008**  
**Time: NO LATER THAN 2:00 PM**  
**Location: Proposals shall be submitted to the New York City Department of Transportation Contract Section located at 40 Worth Street, 8<sup>th</sup> Floor, Room 824A, New York, New York 10013**

Proposals should be hand-delivered. E-mailed or faxed proposals will not be accepted by the agency.

Note: All projected timetable dates are tentative and subject to change.

Proposals received at this location after the proposal due date and time are late and will not be accepted by the agency, except as provided under New York City's Procurement Policy Board Rules.

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

### **D. Anticipated Contract Start Date:      **January 15, 2009****



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

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

The New York City Department of Transportation (NYCDOT) is seeking a qualified consultant engineering firm to conduct a Preliminary Design Investigation (PDI) for the fleet of vessels in the Staten Island Ferry system. The purpose of the PDI is to investigate and evaluate the existing fleet and make recommendations for fleet and infrastructure requirements, including the possibility of introducing faster boats with smaller passenger capacity. Consideration will be given to increased frequency of nighttime service, quick and efficient deployment for emergencies, and temporary service on special routes. The PDI will also make recommendations for replacement and/or reconstruction of the Barberi- and Austen-class vessels based on current and projected future passenger ridership. It will establish fleet design parameters, including capacity requirements and ferry infrastructure needs. The Agency will make one award as a result of this RFP. It is anticipated that the services of the contract will be performed in accordance with the requirements and procedures set forth in Section VII, Attachment A – Proposed Contractual Agreement.

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

The anticipated Contract Term for this Contract is 365 Consecutive Calendar Days (CCD) starting from the date of the Notice to Proceed. Required delivery schedules are defined in Section VII, Attachment A – Proposed Contractual Agreement, of this RFP.

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

It is anticipated that the payment structure for the contract which will be awarded from this RFP will be based on a combination of direct technical salary costs times a multiplier, plus specified direct costs, subject to an overall "not-to-exceed" fee. The multiplier shall be applied only to technical salary costs and shall be considered as including provisions for indirect costs (overhead) and profit. However, the Agency 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.



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

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

The Agency's goals and objectives are to acquire the highest quality Naval Architecture, Marine Engineering, and related Engineering and Transportation Planning services in order to fully and accurately assess the current and future needs of the Staten Island Ferry fleet, and to provide clear recommendations for the make-up of the fleet. It is expected that the Consultant will apply all technical resources available in providing the agency with direction to achieve a fleet renewal and/or reconstruction program that will result in the safest, most reliable, and most economical transportation for Staten Island Ferry passengers.

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

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

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

Each successful proposer shall negotiate an agreement based on the proposed contractual agreement (See Section VII, Attachment A). Such agreement shall contain the appropriate United States Department of Transportation and New York State Department of Transportation requirements. In addition, the proposers must submit the "Disclosure of Lobbying Activity" and Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters, attached as Section VII G with its technical proposal.

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

The NYC Department of Transportation encourages firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of five (5) percent. The successful proposer must show good faith efforts that it attempted to meet the DBE goal. The list of certified DBE firms can be obtained from the following Web site: <http://biznet.nysucp.net/>. For more information, please refer to Section 25 of the "Federal Transit Administration (FTA) Third Party Requirements", located in Section VII of this RFP, as well as Appendices D through G of the "Standard Clauses for All New York State Contracts," also located in Section VII of this RFP.

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

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the City" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this proposal, and should do so in a separate envelope. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.



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

**Instructions:** Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). Pages should be paginated.

The RFP package should consist of Three (3) individually sealed components as listed below, each bound in an 8½" x 11" plastic spiral binding. The cover should be hard cardboard or laminated plastic, the cover should feature the name of the responding firm(s) and the contract name and numbers. Responses should be typed using 12 point font. Responses on pre-printed forms should be no smaller than 8 point font, and then only when necessary. The response may include a one page bound transmittal letter, which summarizes the respondent's understanding of the project and its ability to successfully accomplish the job. Each section should be tabbed and labeled to correspond with each section listed (i.e. IT, 2T, 3T, 4T, 5T, 6T, Standard Forms 330, Forms 4T1, 4T2 and 4T3.).

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

### **A. Proposal Format**

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

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

|                |                                   |
|----------------|-----------------------------------|
| <b>FORM 1P</b> | <b>PROPOSAL COVER LETTER</b>      |
| <b>FORM 2P</b> | <b>ACKNOWLEDGEMENT OF ADDENDA</b> |
| <b>FORM 3P</b> | <b>AFFIRMATION FORM</b>           |
| <b>FORM 4P</b> | <b>STATEMENT OF UNDERSTANDING</b> |

The Procedural Forms packet should include all completed Procedural Forms, required procedural documents, signed certifications and any supplementary information.

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

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

|                 |  |
|-----------------|--|
| <b>FORM 1T</b>  | <b>QUALITY &amp; RELEVANCE OF PRIOR EXPERIENCE<br/>(FIRM IN GENERAL)</b> |
| <b>FORM 2T</b>  | <b>PROPOSED STAFF RESUMES/EXPERIENCE</b>                                 |
| <b>FORM 3T</b>  | <b>OVERALL PROJECT UNDERSTANDING AND APPROACH</b>                        |
| <b>FORM 4T</b>  | <b>JOB TITLES AND HOURS PROPOSED</b>                                     |
| <b>FORM 5T</b>  | <b>NYCDOT CURRENT WORKLOAD DISCLOSURE</b>                                |
| <b>FORM 6T</b>  | <b>DBE PARTICIPATION FORM</b>  |
| <b>FORM 330</b> | <b>STANDARD FORM</b>   |



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

**3. Component 3:                      Cost Proposal**

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

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

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

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

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

|  |                                 |
|--|---------------------------------|
| <b><i>Proposer's Name</i></b>  | <b>NYCDOT Contracts Section</b> |
| <b><i>Proposer's Address</i></b>   | <b>40 Worth Street</b>          |
|  | <b>8th Floor, Room 824A</b>     |
|  | <b>New York, New York 10013</b> |
| <b>Contract No.: 841-C5591</b>   |                                 |
| <b>PIN: 84108MBPT281</b>   |                                 |
| <b>Title: PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET</b> |                                 |
| <b>PROPOSAL SUBMISSION DEADLINE IS:</b>                                      | <b>SEPTEMBER 17, 2008</b>       |
|  | <b>NO LATER THAN 2:00 PM</b>    |

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



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

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

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

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

- 1P Proposal Cover Letter
- 2P Acknowledgment of Addenda
- 3P Affirmation Form
- 4P Statement of Understanding
- Disclosure of Lobbying Activity
- Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters
- Confirmation of VENDEX Compliance
- Doing Business Data Form

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

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

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

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



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

### **A. Evaluation Procedures**

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

The ratings by the CSC members will be added and averaged for each firm in order to establish the initial technical evaluation ratings and rankings. Based on these rankings, at least the three (3) top rated proposers and any other proposer whose rating is within five percent (5%) of the third ranked proposer will be short listed. If the CSC determines that there are less than three (3) technically viable proposals, then a short list of only technically viable firms will be established.

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

The Agency shall rank proposers by technical merit, and pursuant to the federal method of procurement (Brooks Law), the price proposal from ONLY the highest technically ranked firm will be opened and reviewed by the CSC to determine whether it is responsive or non-responsive. Following analysis of the responsive price proposal by the CSC, the highest ranked firm will be recommended for award and invited for contract negotiations.

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

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

### **B. Evaluation Criteria**

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

|   |             |
|---|-------------|
| <b>1. Quality &amp; Relevance of Prior Experience with Similar Projects</b>   |             |
| - Proposed Staff (Resumes)  | 35%         |
| - Firm in General   | 20%         |
| <b>2. Quality of Proposal</b>   |             |
| - Project Understanding and Approach to Providing Naval Architecture, Marine Engineering, Inspection, Transportation Planning, and Related Services | 30%         |
| - Innovation  | 5%          |
| <b>3. Staffing</b>  |             |
| - Capacity of the Firm to Perform, Staff Availability, and Attrition Rate   | 5%          |
| - Commitment of Staff for Duration of Project as Reflected by Current Workload  | 5%          |
| <b>TOTAL:</b>   | <b>100%</b> |

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

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



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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 Contract for Consultants, Professional and Technical Services" or if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contract Person.

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

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

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

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

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

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

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

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

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

The Agency has determined that the contract to be awarded through this Request for Proposals (Contract No.: 841-C5591, PIN: 84108MBPT281) for Preliminary Design Investigation for the Staten Island Ferry Fleet will not directly result in the displacement of any New York City employee.

\_\_\_\_\_  
(Commissioner) (Agency Chief Contracting Officer)

\_\_\_\_\_  
Date

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



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PDI for Staten Island Ferry Fleet RFP  
PIN: 84108MBPT261

## **SECTION VII**

### **ATTACHMENTS**

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

**SECTION VII**

**A) PROPOSED CONTRACTUAL AGREEMENT**

**GENERAL REQUIREMENTS OF CONTRACT FOR  
CONSULTANT SERVICES**

**FOR**

**PRELIMINARY DESIGN INVESTIGATION  
FOR  
STATEN ISLAND FERRY FLEET**

**CONTRACT NO.: 841-C5591**

**PIN: 84108MBPT281**

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

**GENERAL REQUIREMENTS OF CONTRACT FOR CONSULTANT SERVICES  
FOR  
PRELIMINARY DESIGN INVESTIGATION  
FOR STATEN ISLAND FERRY FLEET**

**CONTRACT NO.: 841-C5591**

**PIN: 84108MBPT281**

**I. INTRODUCTION**

**A. Invitation**

The New York City Department of Transportation (“Department”) is seeking a qualified Consulting Engineering firm (Engineer) to conduct a Preliminary Design Investigation (PDI) and make recommendations for fleet and infrastructure requirements for the Staten Island Ferry (SIF) System. The basic intent of the investigation is to project future ferry transit requirements and, with this, to determine the best possible make-up of the Fleet. The only assumptions to be made are that the current SIF Molinari Class vessels will remain in the fleet and that there will be sufficient back-up vessels to allow one large vessel to be in shipyard while allowing one standby boat to remain in the operational rotation. All eventualities shall be considered, such as including the possibility of introducing smaller faster boats with smaller passenger capacity with the capability to increase frequency for nighttime service, for quick easy deployment for emergencies and for temporary ferry service on special routes. The PDI will also make recommendations for replacement and/or reconstruction of the Barberi and Austen class vessels based on current and future passenger ridership projections. The successful firm shall have capabilities in the fields of transportation planning, naval architecture, marine engineering, and marine vessel survey and inspection.

## **B. Work Location**

The ferry vessels are operated on the Staten Island Ferry route between the St. George Intermodal Ferry Terminal, Staten Island, New York and the Whitehall Intermodal Ferry Terminal, Manhattan, New York. While not in use, the vessels are generally docked at the Department's Ferry Maintenance Facility in St. George, Staten Island. Maintenance of the ferries is performed at this location as well as at various shipyards both inside and outside of the Port of New York and New Jersey. The vessels will be available for inspection at their terminals, while underway in service, and at the maintenance locations noted above.

## **C. Available Information**

Collecting, obtaining, generating and reducing all data or information required to generate the deliverables herein described shall be the successful consultant firm's responsibility. Liaison with governmental agencies and private firms to obtain necessary or required information or data shall also be the successful consultant firm's responsibility.

The Department has the vessels' original specifications and contract drawings, limited shipbuilder detail design drawings, and limited equipment technical information. The Department is also prepared to furnish available vessel maintenance history information and ridership (passenger count) information. Access to all available information within the Department may be obtained through the Agency Contact.

## **II. BACKGROUND INFORMATION**

### **A. General**

The Staten Island Ferry System is the largest ferry system in the nation and serves a major role in the New York City metropolitan area regional transportation network. The system serves over 65,000 passengers daily, both commuters and tourists, many of whom then transfer to adjacent subways or buses or other surface modes of transportation. It is the primary mass transit link between Manhattan and Staten Island. The Staten Island Ferry operates 24 hours per day, 365 days per year. The two terminals of the system are the St. George Intermodal Ferry Terminal in Staten Island and the Whitehall Intermodal Ferry Terminal in Manhattan. Two more ferry landings (Slip No. 7 in Staten Island and Slip No. 5 in Manhattan) have been built near or at these terminals to provide additional capacity for efficient small ferry operations. St. George Terminal is the terminus of the Metropolitan Transportation Authority's (MTA) Staten Island Railway and seventeen (17) New York City Transit (NYCT) local bus routes in Staten Island and also provides commuter parking facilities for

motorists. Whitehall Terminal directly connects to four (4) NYCT bus routes in Manhattan, and connects to or is adjacent to several MTA-NYCT subway lines. The Staten Island Ferry System thus serves a variety of regional and local mass transit users, as well as pedestrians, cyclists and motorists.

The purpose of this PDI is to investigate and evaluate the existing fleet of vessels and make recommendations for future fleet and infrastructure requirements, including the possibility of introducing smaller faster boats with smaller passenger capacity, with the capability to increase frequency for nighttime service, for quick easy deployment for emergencies, and for temporary ferry service on special routes. The PDI will also make recommendations for replacement and/or reconstruction of the Barberi and Austen class vessels based on current and future projected passenger ridership. It will establish fleet design parameters, including capacity requirements and ferry infrastructure needs. It is to be assumed that the Molinari Class vessels will remain in the fleet. It is also to be assumed that the final fleet make-up will allow sufficient redundancy so that one standby boat will remain for each size of vessel (large and small) while one is out of service for shipyard periods. Preliminary engineering will be conducted to develop options for appropriate changes in ferry infrastructure, to present alternatives of new design vessels or reconstruction of existing, to design parameters to optimize the size and capacity requirements of the vessels based on current data as well as anticipated future use, and to propose evaluation criteria for the selection process of the design to be chosen. The results of the PDI will enable the City to choose the type and capacity of vessels that should be procured or reconstructed to fulfill future fleet needs.

## **B. Tasks Included in Professional Services**

The intended scope of professional services to be performed as part of this contract includes the following tasks:

- Task 1 - Demand Forecast for Staten Island Ferry
- Task 2 - Survey of Existing Barberi and Austen Class Vessels
- Task 3 - Concept Design Studies
- Task 4 - Engineer's Analysis and Recommendations

Deliverables and presentations will be required as part of each of these tasks and are as described herein.

Refer to Section III, Paragraph A for a specific description of the tasks and services required under the contract.

## C. Ferry Fleet Description

### 1. Overview of Ferry Operations:

The New York Department of Transportation – Staten Island Ferry (SIF) is the registered owner and operator of a fleet of U.S. Coast Guard (USCG) inspected and American Bureau of Shipping (ABS) classed ferries. The Staten Island ferry service transports approximately 20 million passengers annually providing service in all weather conditions 24 hours per day, 365 days per year. The service schedules nearly 33,000 trips annually. There are 108 scheduled trips daily Monday through Friday and 64 scheduled trips daily on Saturdays, Sunday, and holidays.

An eight (8) vessel ferry fleet, two (2) passenger terminals, a maintenance facility as well as a fuel storage facility make up the infrastructure to provide the service between St. George Terminal in Staten Island and Whitehall Terminal in Manhattan. The ferry route is 5.2 miles long traveling from the south end of Upper Bay to the west end of the East River in New York Harbor. Trip time between Staten Island and Manhattan is 30 minutes, 22 minutes of travel time and 8 minutes of dock time at either terminal for the ferry to discharge and load passengers. A round trip takes 1 hour.

The below figure provides an overview of the fleet of ferries currently operated by the Staten Island Ferry.

### Fleet Overview

| Name                | Class    | GRT/HP    | Year Delivered | Crew | Passengers |
|---------------------|----------|-----------|----------------|------|------------|
| Alice Austen        | Austen   | 500/3100  | 1986           | 11   | 1271       |
| John A. Noble       | Austen   | 500/3100  | 1986           | 11   | 1271       |
| Andrew J. Barberi   | Barberi  | 3335/7000 | 1981           | 17   | 5992       |
| Samuel I. Newhouse  | Barberi  | 3335/7000 | 1982           | 17   | 5992       |
| John F. Kennedy     | Kennedy  | 2109/4110 | 1965           | 14   | 3515       |
| Guy V. Molinari     | Molinari | 5901/9000 | 2004           | 18   | 4400       |
| Sen. John J. Marchi | Molinari | 5901/9000 | 2005           | 18   | 4400       |
| Spirit of America   | Molinari | 5901/9000 | 2005           | 18   | 4400       |

Five of the eight ferries are in service at any given time while the remaining three (2 large and 1 small ferry) are receiving major and minor scheduled maintenance, repairs, and inspections. In addition to the ferries and terminals used for passenger transport, the Staten Island Ferry maintains assets and vessels necessary for the support of this primary function, including deck scows and derricks for pier maintenance, oil barges for petroleum distribution to the boats, a small utility/emergency vessel, and a small vehicle ferry used by the Department of Corrections.

The main ferries for daytime service include the Guy V. Molinari, John J. Marchi, Spirit of America, Andrew J. Barberi, and Samuel I. Newhouse. The John F. Kennedy is used for training and stand-by or fill-in service when one of the other vessels is out of service for maintenance or repair, such as at shipyard. The Austen and Noble serve as the night ferries and are rotated in this service to equalize operating time between the two.

There are 14 individual crews assigned to the ferries on a weekly basis. There are three different crews assigned to the large boats and two crews assigned to the small boats on a daily basis. The large boats carry a crew of 14 – 18 persons depending upon class while the small boats carry 11 crew. Each member of these crews is required to perform fire, safety, and rescue drills weekly. Drills require approximately 1 to 2 hours of time which must be uninterrupted by fueling, maintenance, or cleaning evolutions.

The ferries are rotated in and out of service to meet the passenger capacity demand as well as providing connecting service with other mass transit nodes. The 4 large ferries are utilized 6 AM to 12 Midnight Monday through Friday and 7 AM to 11 PM on Saturday and Sunday. One small ferry is in service from 11 PM to 6 AM, 7 days a week.

The weekday morning schedule begins with 4 large ferries running between the hours of 5:30 AM and 8 AM (20 minute service), 4 large ferries running from 8 AM to 9:30 AM (15 minute service), then 2 large ferries from 9:30 AM to 3:30 PM. Four large ferries have crews aboard while the service only requires 2 in operation. This time is utilized to fuel, perform scheduled maintenance, inspections, crew drills, and accomplish repairs as well as providing down time for operating equipment. The small ferry service receives fuel and conducts drills prior to the crew departing or at the completion of runs. Maintenance is performed on the small ferry from 9 AM to 4 PM.

The evening large ferry service is 20 minutes from 3:30 PM to 5 PM, 15 minute service from 5 PM to 7 PM, 20 minute service from 7 PM to 8 PM, and half hour service from 8 PM to midnight.

On weekends, the small ferry runs overnight 11 PM to 6 AM. Two large ferries provide hourly service from 6 AM to midnight, half hour service from 11 AM to 8 PM, and then back to hourly service from 8 PM to 11 PM.

Ferries are tied up overnight and on weekends have a sounding security watch and are monitored on a continuous basis.

The ferries are certified and inspected by USCG and are classed by the ABS.

Each ferry undergoes at least four USCG inspections as well as several ABS inspections annually to ensure the boats and the crews are maintained to a sound and safe operating condition. The inspections last from several hours to several days.

Each ferry is mandated by the USCG and the ABS to be drydocked with their hulls inspected twice every five years. This is the time when they are out of service for extended periods of time receiving major overhauls and preventive maintenance.

## **2. Vessel Descriptions:**

The following is a description by class of the characteristics of the ferryboats in the Staten Island Ferry Fleet:

### BARBERI CLASS:

#### General Characteristics:

Year of build: 1981

Shipbuilder: Equitable Shipyards, Inc.  
New Orleans, Louisiana

| <u>Name of Vessel</u> | <u>Hull No.</u> | <u>Official No.</u> | <u>ABSID</u> |
|-----------------------|-----------------|---------------------|--------------|
| Andrew J. Barberi     | 1713            | 629314              | 8123416      |
| Samuel I. Newhouse    | 1714            | 629315              | 8204852      |

Certificate – U.S. Coast Guard  
Class – American Bureau of Shipping

Design Capacity: 6000 Passengers  
Type: Welded Steel Double Ended Ferry  
Propulsion: Diesel, four medium speed Diesel engines driving a single cycloidal propeller at each end  
Fuel: Ultra Low Sulfur Diesel (ULSD)  
Installed Power: 7000 Brake Horsepower total  
Service Speed: 18.5 Miles per Hour  
Length Overall: 310'-0  
Breadth Over Guards: 70'-0"  
Depth at Side: 20'-8"  
Design Draft: 12'-6"  
Design Displacement: 2721 Long Tons  
Design Freeboard: 8'-2"

## Hull and Superstructure Description:

The hull is steel, all welded construction, transversely framed on 30-inch centers, and subdivided by watertight bulkheads to provide end ballast tanks, voids, propulsion gear rooms, and machinery spaces. The hull is symmetrical about the midships transverse section. Frame numbers are designated such that Frame 0 is located at midships.

There are ten watertight compartments. The Engine Room, containing the bulk of all main and auxiliary machinery, is located amidships between Frame 12, New York End (NYE), and Frame 12, Staten Island End (SIE). The four main engines, turbo couplings, and their auxiliaries are installed at the bottom of the space which is fitted with a flat on either side to accommodate the control room, auxiliary boilers, and auxiliary generators.

The vessel is designed to meet the two-compartment subdivision standard of the USCG for passenger vessels and has watertight bulkheads at Frames 12, 39/40, and 52, forward and aft. At Frames 20 and 31, forward and aft there are partial watertight bulkheads that are interrupted by the shaft tunnels. While the hull is generally single bottomed, there is an inner bottom at the shaft tunnels that is 4'-0" high. Cross flooding ducts in way of the shaft tunnels are provided at Frames 22, 31, and 47.

The superstructure is entirely of welded steel. There are three decks for passenger use and one open deck restricted to use by the crew. Embarkation is at two levels, main deck and upper embarkation level, suited to the terminal facilities. Ramps are provided between bridge deck and upper embarkation level, and stairs are provided between upper embarkation level and saloon deck and between saloon deck and main deck.

The enclosed portion of the main deck seats 1,630 passengers and has an open boarding area at each end protected by the upper embarkation level above. Seating is arranged with longitudinal seats on centerline and on the outboard sides, with the remaining space occupied by groupings of transverse seats. Four large hinged doors open up the cabin to the boarding space at each end. A toilet for disabled passengers is provided on this deck. Enclosed stairwells forward and aft lead up to the saloon deck.

The saloon deck is completely enclosed and has seating accommodations for 1,258 passengers. Seating is arranged similar to the main deck. Men's and Women's toilet facilities are provided at midships on this deck. Enclosed stairs lead from the saloon deck to the upper embarkation levels, and ramps lead from the upper embarkation levels to the bridge deck.

The bridge deck is divided by two longitudinal bulkheads to provide a convertible promenade area port and starboard of the enclosed center section. During good

weather, the conversion is accomplished by securing the outboard windows in the open position. This deck has longitudinal seating on centerline and on the outboard side of the interior longitudinal bulkheads. The remaining area has groups of transverse seats. The bridge deck seats 784 persons. A snack bar and rest rooms are located in the center of this deck.

The wheelhouses and stack are located on the hurricane deck. The stack provides space for the engine casing and passenger space ventilation fans.

Passenger seating is comprised of individual fiberglass reinforced plastic units supported on aluminum cabinets that serve as life preserver stowage. Cabin decks are faced with sheet rubber. Overheads and bulkheads in passenger cabins are sheathed with Marinite panels. Bulkhead sheathing panels in passenger lavatory spaces are faced with ribbed stainless steel from deck to overhead. In the convertible promenade compartments, there is no lining of any type. The structural steel, wiring, and piping are exposed and simply painted. Decks in these areas and all passenger weather decks are topped with a poured and troweled composition finish material. Cabin heating is accomplished by a low pressure steam system.

#### Machinery Description:

Each vessel is equipped with two cycloidal propellers, one at each end. The cycloidal propellers can provide virtually equal thrust through a horizontal arc of 360 degrees. Thus the cycloidal propellers are used to accomplish both propulsion and steering of the vessel. The vessel's control system is such that the magnitude and direction of thrust of each propeller is separately and manually controlled. Each of the two wheelhouses can control both propellers. An automatic control system maintains the speed of the main engines at a constant 800 rpm when the vessel is underway and prevents any of the manual commands to the cycloidal propellers from overloading the engines. Manual signals to each propeller are transmitted and amplified by an electro hydraulic system in order to develop the required force to move the internal pitch control mechanism of the propeller.

Each main engine is coupled to a cycloidal propeller through a torsionally flexible coupling, a disk coupling, a hydraulic coupling, a length of line shafting, and a length of line shafting supported by angularly flexible couplings. Two main engines drive the NYE propeller, while the other two main engines drive the SIE propeller. Draining the hydraulic coupling permits de-clutching its associated engine, thereby driving its associated cycloidal propeller using a single engine when required. The propellers each have an internal combining and reducing gear/ right angle gear, as the axis of the propeller rotor is vertical.

Auxiliary Electrical Description:

There are two Ship Service Diesel Generator (SSDG) sets to provide all ship service electrical energy located on the 10'-0" above baseline (ABL) flat in a generator room that is within the engine room. These generator sets supply power to the main switchboard, located in the Control Room, from which the power is transmitted to various panelboards. The ship service diesel generators on the Barberi Class are installed so that they may be operated in parallel when necessary. The ship service electrical system is 230 volts, 3 phase, 60 Hz, alternating current. Transformers are provided to provide 115 volts for lighting and fractional horsepower motors.

There is an Emergency Diesel Generator set and emergency switchboard located in the emergency generator room on the NYE of the Saloon Deck, port side. This equipment is designed to supply energy to all emergency loads upon loss of voltage from the normal source. Emergency power is supplied at 230 volts, 3 phase, 60 Hz. with dedicated transformation to pick up all 115 volt emergency loads.

There is a 24-volt direct current interior communications power supply system supplied by two storage batteries that are normally kept charged by energy from the emergency switchboard.

For security, there is a multiple camera closed circuit television system with recording capability and positive means of securing access to restricted areas of the vessel.

AUSTEN CLASS:

General Characteristics:

Year of build: 1986

Shipbuilder: Robert E. Derektor Shipyards of Rhode Island, Inc.  
Warren, RI

| <u>Name of Vessel</u> | <u>Hull No.</u> | <u>Official No.</u> | <u>ABSID</u> |
|-----------------------|-----------------|---------------------|--------------|
| Alice Austen          | N207 A          | 696013              | 8601313      |
| John A. Noble         | N207 B          | 696014              | 8601868      |

Certificate – U.S. Coast Guard  
Class – American Bureau of Shipping

Design Capacity: 1,280 Passengers  
Type: Welded Steel Double Ended Ferry  
Propulsion: Diesel, two medium speed Diesel engines driving a single cycloidal propeller at each end

Fuel: Ultra Low Sulfur Diesel (ULSD)  
Installed Power: 2550 Brake Horsepower  
Trial Speed: 17.8 Miles Per Hour  
Length Overall: 207'-0"  
Breadth Over Guards 41'-10"  
Depth at Side: 16'-0"  
Design Draft: 8'-3"  
Design Displacement: 650 Long Tons  
Design Freeboard: 7'-9"

#### Hull and Superstructure Description:

The Austen Class vessels, with a maximum passenger capacity of 1,280, and significantly lower power requirements and a smaller crew complement, were designed for economical off-peak hour operation. Their small passenger capacity makes them unsuitable for rush hour operation.

The hull is steel, all welded construction, longitudinally framed, and subdivided by watertight bulkheads to provide peak tanks, voids, two propulsion gear rooms, and an engine room located amidships. The hull is symmetrical about the midship section. Frame numbers are designated such that Frame 0 is located at the after perpendicular. Actual transverse frames are on 8-foot centers in the engine room, and generally on 4-foot centers elsewhere. Partial double bottom tanks in the engine room are provided for fuel storage, and some other small tankage.

There are seven watertight compartments. The engine room, containing the bulk of all main and auxiliary machinery, is located between Frames 76 and 124. The machinery is all mounted at the hold (i.e, tank top) level in the engine room, including the two main engines and their turbo-couplings, the two ship service diesel generator sets, ship service switchboard, engineer's watch room, and auxiliaries.

The superstructure is entirely of welded steel. All passenger decks are nearly fully enclosed with small open embarkation areas at the end of each passenger deck.

There are two decks for passenger use and one open deck restricted to use by the crew. Embarkation is at two levels, main deck and upper embarkation level, suited to the terminal facilities. Ramps are provided between the upper deck and upper embarkation level. A stairway at each end provides communication between the two passenger decks. The main deck cabin is fitted with sideports amidships on each side.

Passenger seating is provided on the two passenger decks by transverse rows of plastic seats mounted on open steel frames. Life preserver stowage is located

amidships in steel lockers. There is a rescue boat supported by davits located at each end of the vessel on the open area of the main deck. Crew locker rooms are provided on the upper deck below each wheelhouse. The two wheelhouses and the stack are located on the bridge deck. The stack contains an air inlet plenum and the emergency generator.

All space heating is provided by electrical space heaters using ships service power.

#### Machinery Description:

Each vessel is equipped with two cycloidal propellers; one at each end. The cycloidal propellers can provide virtually equal thrust through a horizontal arc of 360 degrees. Thus, the cycloidal propellers are used to accomplish both propulsion and steering of the vessel. The vessel's control system is such that the magnitude and direction of thrust of each propeller is separately and manually controlled. Each of the two wheelhouses can control both propellers. An automatic control system maintains the speed of the main engines at a constant 1500 rpm when the vessel is underway. Manual signals to the propellers are transmitted by a combined power assisted hydraulic/ mechanical system and amplified by a hydraulic system in order to develop the required force to move the internal pitch control mechanism of the propeller. Each main engine is coupled to a cycloidal propeller through a Holset coupling, a hydraulic coupling, a fixed length of line shafting, and a length of line shafting supported by angularly flexible couplings. One main engine drives the NYE propeller, while the other main engine drives the SIE propeller. The propellers each have an integrally mounted parallel shaft reducing gear, and an internal right angle gear, as the axis of the propeller rotor is vertical.

#### Auxiliary Electrical Description:

There are two Ship Service Diesel Generator (SSDG) sets providing all ship service electrical energy, located on the tank top level of the engine room, port side. The main switchboard, transformers, and lighting load center are located immediately adjacent to the generators. All features of the auxiliary electrical system are generally similar to the Barberi Class vessels. An Emergency Diesel Generator set, switch board, and associated equipment are located in the dummy stack and provide emergency power when required.

For security, there is a multiple camera closed circuit television system with recording capability and positive means of securing access to restricted areas of the vessel.

MOLINARI CLASS:

General Characteristics:

Year of build: 2004/2005  
Shipbuilder: Marinette Marine Corporation  
Marinette, Wisconsin

| <u>Name of Vessel</u> | <u>Hull No.</u> | <u>Official No.</u> | <u>ABSID</u> |
|-----------------------|-----------------|---------------------|--------------|
| Guy V. Molinari       | 0511            | 1154854             | 04112711     |
| John J. Marchi        | 0512            | 1163079             | 05113721     |
| Spirit of America     | 0513            | 1170221             | 05113722     |

Certificate – U.S. Coast Guard  
Class – American Bureau of Shipping

Design Capacity: 4,400 Passengers  
30 Automobiles

Type: Welded Steel Double Ended Ferry

Propulsion: Diesel Electric (60 Hz AC), two medium speed Diesel engines driving a single fixed pitch propeller at each end a third medium speed Diesel engine installed as a standby unit

Fuel: Ultra Low Sulfur Diesel (ULSD)

Installed Power: 10,800 Brake Horsepower (Operating Power: 7,200 Brake Horsepower) Maximum Design Speed: 18.2 Miles Per Hour

Service Speed; 17.5 Miles Per Hour

Length Overall: 310'-0"

Breadth Over Guards: 70'-0"

Depth at Side: 20' -8"

Design Draft: 13'-6"

Design Displacement: 3,200 Long Tons

Design Freeboard: 7'-2" (midships @ side)

Hull and Superstructure Description:

The vessels are double ended ferries with diesel electric propulsion, suitable for carrying 4,400 passengers and 30 automobiles. There are five passenger cabins on four decks; each deck has outdoor passenger areas.

The hull and superstructure are constructed entirely of steel. The hull is transversely framed with cant frames at each end. Frames below the main deck are on 30-inch centers, and those above the main deck are on 20-inch centers. Frame numbers are designated such that Frame 0 is at the midships transverse section.

The ferry is subdivided into 13 watertight compartments to meet a two compartment standard of flooding and is single bottomed throughout. The hull is symmetrical about the midship transverse section. The Engine Room extends from Frame 16 NYE to Frame 16 SIE. There is a flat on either side at 10'-0" ABL to accommodate auxiliary machinery. The flat extends completely across the engine room at the NYE to accommodate the control room, which is transversely mounted to enhance visibility.

Passenger toilet spaces are provided on the Saloon and Bridge Decks. A snack area is located on the Saloon Deck. Main Deck and Saloon Deck embarkations are similar to the other Staten Island Ferry Class vessels.

A vehicle alleyway with a width of 22 feet is arranged on the main deck between the two main deck passenger cabins. The vehicle alleyway is unobstructed to provide for the transport of overwidth vehicles as required. There is an intermediate deck housing ventilation fans and equipment over each main deck passenger cabin. The Saloon Deck is the principal passenger deck. The Bridge Deck has open promenades having seats arranged along each side of the passenger cabins. Crew day rooms are also located on the Bridge Deck. The Hurricane Deck has an enclosed passenger cabin and an open area around the cabin accessible to passengers. Elevator access is provided between all passenger decks. The two wheelhouses, the stack, and the emergency generator room are also located on the Hurricane Deck. The stack contains the uptakes from the machinery and ventilation fan rooms.

Cabin heating is accomplished by a low pressure steam system.

#### Machinery Description:

The propulsion system consists of three propulsion diesel generators supplying electric power to four propulsion electric motors, two mounted mechanically in series at each end, directly connected to a line of shafting and a fixed pitch propeller.

Two of the three propulsion diesel generators normally run at a time, generating 3-phase, 60Hz power at 4,160 volts, which is conveyed to the main propulsion switchboard. From there, power is distributed to four phase shifting transformers, two at each end. The transformers reduce the potential from 4,160 to 690 volts as required for the static frequency converter units. From there, it is transferred to the four controllers (one for each motor). The four static frequency converters, two on each end, take power from the transformers and supply variable frequency power at 690 volts to the four variable speed, reversible, electric propulsion motors. Control of speed and direction of propeller rotation is affected by variation of the frequency and phase relationship of the power supply to the alternating current propulsion motors in response to commands from the wheelhouses. Control is set up such that each propeller can be operated

independently of the other regarding speed and direction from either wheelhouse. This is combined with the ability to independently control each rudder from each wheelhouse to facilitate directional control of the vessel during maneuvering. During free running in open water, the control system is programmed to direct 80% of required power to the “pushing” propeller and the remainder to the bow propeller

#### Auxiliary Electrical Description:

The propulsion power system and ship service power system are entirely independent of each other, the ship service power system being 230 volts, AC, 3 wire. Ship service electrical power is furnished by two 370 kW Ships Service Diesel Generator (SSDG) sets at 230 volts, 3 phase, 60Hz located in the Engine Room on the 10'-0" ABL flat. This power is distributed through the ship service switchboard located in the Control Room to distribution panels on each deck, as well as to the emergency switchboard located in the Emergency Generator Room. Only one generator is required to carry the ship service load. The other is on standby mode, such that it will automatically start and connect to the ship service switchboard in the event of a drop in voltage on the board. The SSDG's are started by compressed air driving cranking motors.

There is a diesel driven Emergency Diesel Generator located in a dedicated room on the Hurricane Deck, rated at 324 kW, 230 Volts AC, 3 phase. 60 Hz. The unit is started via an electric cranking motor and storage batteries and is arranged for automatic starting upon failure of the normal voltage supply to the emergency switchboard. Stopping of the emergency generator is accomplished by manual control.

There is a 24-volt, DC alarm and monitoring electrical system powered by two storage battery banks.

For security, there is a multiple camera closed circuit television system with recording capability and positive means of securing access to restricted areas of the vessel.

#### KENNEDY CLASS:

The John F. Kennedy is the last remaining vessel of the Kennedy Class. In the event fleet renewal is the chosen path, it is expected that the Kennedy will be decommissioned. Should reconstruction be selected, the Kennedy will remain in the fleet. To allow for this, a separate life extension and reconstruction survey and plan is planned for this vessel under separate contract. The purpose of this survey is to ascertain moderate life extension measures to be taken as warranted.

### **3. Vessel Staffing:**

Levels of operational staffing for each vessel class are in accordance with union agreements and U.S. Coast Guard requirements. Current levels of staffing for each vessel class are as follows:

#### Barberi Class:

- a) Deck Department
  - 1 - Captain
  - 1 - Assistant Captain
  - 3 - Mates
  - 7 - Deckhands
  - 1 - Matron
  
- b) Engine Department
  - 1 - Chief Marine Engineer
  - 1 - Marine Engineer
  - 2 - Oilers

Total Complement - 17

#### Austen Class:

- a) Deck Department
  - 1 - Captain
  - 1 - Assistant Captain
  - 2 - Mate
  - 4 - Deckhands
  - 1 - Matron
  
- b) Engine Department
  - 1 - Chief Marine Engineer
  - 1 - Oiler

Total Complement - 11

#### Molinari Class:

- a) Deck Department
  - 1 - Captain
  - 1 - Assistant Captain
  - 3 - Mate
  - 8 - Deckhands
  - 1 - Matron

- b) Engine Department
  - 1 - Chief Marine Engineer
  - 1 – Marine Engineer
  - 2 – Oilers

Total Complement - 18

#### **4. Maintenance and Repair:**

Maintenance, inspection and repair of the ferryboats and other Staten Island Ferry assets can be classified in several ways but mainly by when it is performed and who performs it. Classified in this way, there are the following categories:

- Running Maintenance and Inspections
- Minor In-service Maintenance
- Major Waterborne Inspections, Maintenance, and Repair
- Drydock Inspection, Maintenance, Overhaul, Repair, and Modifications

These actions include both preventive and reactive maintenance and have to be accomplished in accordance with the regulatory environment and the demands of the Staten Island Ferry operational schedule. A brief description of each follows:

Running Maintenance and Inspections – These are minor preventive maintenance inspections and corrective maintenance actions that are accomplished on the ferryboats during operation of the ferryboats by their normal operational crews, particularly the engine department crews.

Minor In-service Maintenance - Minor in-service maintenance includes those tasks of brief duration that can be performed on an active ferryboat between rush hours. These tasks include preventive maintenance as well as reactive maintenance and include such items as engine oil changes, main engine cylinder head gasket renewals, radar repair, etc. Most of these tasks are accomplished by the in-house ferry maintenance organization and/or ship's crew while the vessels are moored between trips at the St. George Ferry terminal. The bulk of this work is accomplished in the few hours between the morning and evening rush hour periods.

Major Waterborne Inspection, Maintenance, Repair and Overhaul and Modifications - During major maintenance availabilities, ferryboats are removed from service and usually physically moved to one of the berths at the Ferry Maintenance Facility. Work of any type not requiring access to the underwater hull can be accomplished limited only by available time and funds. Typical work accomplished during these periods includes major overhauls and maintenance, both scheduled and otherwise, of propulsion machinery or auxiliary equipment; superstructure or cabin painting; modifications; etc. Included in these periods are also USCG mandated annual inspections and ABS annual inspections

Drydock Inspection, Maintenance, Overhaul, Repair, and Modifications - By USCG and ABS regulations, each of the ferryboats is drydocked twice during each five year period, with intervals between drydockings not to exceed three years. Drydockings are performed by contractors who own or control and operate appropriate drydock and equipment as approved by the Department. Typical items performed during drydock availabilities include inspection, repair, and renewal of hull steel, painting of hull and superstructure exterior, cleaning of bilges, inspection of internal structure, inspection and repair of sea chests, renewal of sea valves, tailshaft rudder, and propeller inspection and bearing renewals, cycloidal propeller maintenance, etc.

### **III. SCOPE OF WORK**

#### **A. Description of Tasks and Services**

##### **1. Task 1 - Demand Forecast for the Staten Island Ferry**

The future demand for Staten Island Ferry service will dictate the productive fleet capacity required, which in turn will dictate the carrying capacity required for reconstructed or new ferry vessels.

The Engineer shall forecast levels of demand and required passenger transport capacity for the Staten Island Ferry system annually for each of the twenty years following completion of the study. The forecast shall include a “margin of error” for the values predicted. The forecasting method shall be submitted to the Department for review and approval prior to commencement of work [Deliverable – Information]. The forecast shall take into account historical trends of Staten Island Ferry and New York Metropolitan area transit ridership, population growth, development or improvements of major publicly or privately owned/operated feeder or competing transit services or highways, and other relevant trends. The effects of projected major commercial or housing development for the service area shall be accounted for. The Engineer shall define the significant Staten Island Ferry service area as part of the forecast methodology to be submitted to the Department for review prior to commencement of work [Deliverable – Information]. In performance of the forecast, the Engineer shall interface with and interview appropriate officials of major public transportation, planning, and highway agencies whose operations or projects impact Staten Island Ferry ridership levels, as well as with relevant government and community planning agencies. The Engineer shall develop a list of such contacts for submission to the Department for review and approval prior to commencement of work [Deliverable – Information].

The demand forecast will look at both passenger-only and vehicular traffic.

The Engineer's forecast shall identify and discuss potential special accommodation needs on public transportation vehicles which must be addressed in the design of new vessels or in reconstruction of the existing vessels. Such accommodations must meet all Americans with Disabilities Act (ADA) requirements and shall include transport of bicycles, accommodation of tourists, and other needs requiring special design or outfitting to meet community requirements.

In the forecast report, the Engineer shall include a discussion of the possible effects on forecast demand resulting from level of service improvements related to vessel design or number of vessels operated, such as improved vessel appearance or comfort, improved schedule frequency, improved vessel maneuverability, or greater vessel speed. The primary forecast shall be made assuming existing vessel speed is retained, but secondary forecasts will use alternate speeds for analysis.

The Engineer shall deliver a Demand and Capacity Requirement Forecast Report to the Department fully detailing the forecast requirements for future vessel and fleet capacity, including all relevant assumptions made and forecasting methodology [Deliverable – Report]. The Engineer shall consider all possibilities within this analysis, ranging from replacing existing boats with identical replacements to reconstructing and extending the life of existing ferries to constructing a fleet of smaller, more operationally flexible vessels and all variations in between.

## **2. Task 2 - Survey of Existing Staten Island Ferry Fleet**

The condition and possible future serviceability of the Barberi and Austen Class vessels, including suitability for reconstruction/modernization, approximate economic service life after reconstruction, estimated cost (including annualized total costs) and approximate scope of work required shall be determined by performance of the vessel survey outlined in this section. The survey goals include compiling "lessons learned" from the existing vessel designs of all Staten Island Ferry vessels (Austen, Barberi, and Molinari Classes and John F. Kennedy) which can be applied to a preliminary reconstruction design, or a new vessel preliminary design.

The gathering of raw data for the survey shall focus primarily on the vessels' existing physical condition as well as compatibility of the original design and construction with the mission that the vessels presently serve. Data gathered shall be used to determine:

- a. Extent of modification required to meet future projected demand and to improve or restore vessel transit characteristics as listed herein.

- b. Suitability of public spaces and accommodations related to present demand and mission requirements.
- c. Condition of hull, machinery, and electrical systems.
- d. Extent and cost of work necessary to restore hull, machinery, and electrical systems to conditions approaching original reliability, serviceability, or function, in cases where deficiencies are found or can be expected, using sound engineering judgement.
- e. Extent of system or equipment modernization advisable and possible to achieve significant performance gains over original design and equipment with respect to hull, machinery and electrical systems.
- f. Extent of work advisable to prolong vessel useful life.
- g. Existing regulatory violations, safety hazards, or incipient system/equipment failures.
- h. Extent of obsolete system design or equipment presently installed in the vessel.
- i. Extent of modification required to meet U.S. Coast Guard and all other regulatory present and pending regulations.
- j. Extent of work required to outfit vessels with equipment and systems to meet current and future environmental regulations and initiatives, such as emissions control.
- k. Extent of time that vessels will be unavailable for service.
- l. Extent of modifications required to improve operational economy, such as reductions in fuel consumption or manning.
- m. Extent of modifications required to lower maintenance costs, such as in maintenance of machinery or structure and maintenance of vessel aesthetics and cleanliness.
- n. Extent of modifications required to ensure compliance with existing and projected regulatory emissions standards for vessels.

The Engineer shall gather and provide information based primarily on a survey of each vessel, supplemented, where appropriate, by review of original plans and Department records and interviews of Department operations and maintenance management. The Engineer shall be prepared to conduct the survey of each vessel while the vessel is underway in service, while docked at the Department's

facilities, or while in shipyard, including drydock, depending on vessel availability and the type of survey information to be obtained. All information reported by the Engineer shall be fully referenced as to source.

The Engineer shall submit a checklist of all hull and machinery items to be surveyed to the Department prior to commencement [Deliverable – Information].

The survey shall be conducted by persons well qualified and experienced in the survey of marine vessels, particularly large, deep draft vessels and large passenger ferries.

The two phases of the survey are described below:

### **2.1 Phase I of Survey - Transit Characteristics**

The Engineer shall survey vessel public spaces, observe passenger flow during loading/transit/unloading conditions, observe space utilization, and utilization of vessel public facilities. The Engineer shall interview operations and maintenance management, review Department accident, cost accounting, and other records, and report on the following. All vessels in the fleet shall be part of this study.

#### **a. Capacity**

- 1) Adequacy of both carrying and productive capacity of the entire Staten Island Ferry system, accounting for maintenance outages and other operating profile characteristics.
- 2) Utilization of capacity for peak periods based on present and projected ridership and vessel/fleet carrying capacity. Note if, and project in what year, peak utilization will reach 100%. Include effects of different fleet vessels undergoing maintenance outages on fleet capacity utilization levels presently existing and forecasted.
- 3) Summarize and note implications of Staten Island Ferry system capacity features and present/projected utilization levels.

#### **b. Productivity**

Discuss following productivity levels based on existing ferry designs and design features. Compare all Staten Island Ferry fleet vessels where appropriate. State in terms of appropriate input and output parameters (e.g. transit spaces provided, persons carried, passenger miles, man-hours, dollars, etc.)

- 1) Operating Labor Productivity
- 2) Fuel Productivity
- 3) Operating Cost Productivity (non fuel, non labor)

- 4) Maintenance Cost Productivity (include discussion of projected trends)
- c. Discuss other vessel transit performance information relevant to a vessel reconstruction or replacement decision.
- d. Level-of-Service
  - 1) Discuss schedule reliability - the ability of vessels to navigate safely at full service speed in all weather conditions to enhance schedule reliability and the ability of vessels to maintain operation with the failure of individual equipment or components (i.e., inherent back-up). Propose possible additional equipment that can be added on new or reconstructed vessels which would enhance schedule reliability. (Actual physical reliability of systems will be dealt with in Phase 2.)

2) Safety

- a) Discuss impact of vessel maneuverability impact on passenger safety during docking maneuvers, vis-a-vis other vessels in Staten Island Ferry fleet. Cite Department accident and near-miss reports, injury statistics, passenger complaints, etc.
- b) The Engineer shall search for and identify any patterns of accidents or injuries to passengers or operational personnel due to design or construction features of the various ferries in the fleet. Interview operating management staff and review accident and injury records, lost time injury reports and rates and observe passenger spaces and passenger flow as required.

e. Service Quality Concerns

1) Convenience

Note features of the vessels which are inconvenient, difficult, or fatiguing for passengers to use and which can be improved, based on plan review, inspection of spaces, and observation of passenger flow. Particularly note if improvements can be made in new or reconstructed design in:

- a) Loading Speed
- b) Access to people with disabilities, including the requirement to meet ADA requirements.
- c) Facilities such as seating, toilets, snack bars, signage, etc.

## 2) Comfort

The Engineer shall comment on conditions based upon the original design, and conditions due to deterioration, which influence passenger comfort, with emphasis on areas that can be improved. Aspects to review include:

- a) Heating
- b) Ventilation
- c) Lighting
- d) Seating
- e) Airborne Noise Levels
- f) Vibration
- g) Other Factors Affecting Passengers
- h) Condition of Crew Service or Control Spaces, Including Equipment and Furnishings

## 3) Aesthetics

The Engineer shall comment on the aesthetics of the various passenger cabins as influenced by:

- a) Design and furnishing (layout, shape, proportions, windows, etc.)
- b) Color and texture of existing surface coverings on all surfaces.
- c) Present condition, including a detailed inventory of dirty, broken, worn, stained, or deteriorated decks, overheads, bulkheads, doors, windows, seats, cabinets, visible fixtures, moldings, floor coverings, joiner work, and any other visible ship's parts in public spaces. Include restrooms and snack bar as well as publicly accessible weather decks.

## 4) Cleanliness

The Engineer shall comment on features due to design, furnishings or wear which make spaces unnecessarily difficult or expensive to maintain in a neat, sanitary or attractive condition on a daily basis, and which different materials or design can improve. Include all passenger spaces and all outside windows.

## 5) Security

Note features that promote increased risk of crime against passengers or ship security, including unauthorized operation/access to ship's equipment or controls, theft, vandalism, or the threat of terrorism.

The Engineer shall submit a report summarizing all findings and recommendations derived from the Ferry Fleet Transit Characteristic Study [Deliverable – Report].

## **2.2 Phase 2 of Survey - Physical Condition of Current Vessels and Vessel Systems**

The Engineer shall gather data on an individual vessel basis on the condition of hull, machinery, and electrical systems; fitness for further use; and feasibility and adaptability for reconstruction, modernization and service life extension. The Engineer shall provide a complete survey report for each Barberi and Austen Class vessel.

Information shall be gathered primarily from an actual survey of each vessel, and shall be supplemented by information gained from Department maintenance records, regulatory agency/classification agency data, data from original equipment manufacturers where available, ship's plans, interview of operations and maintenance management, and testing where warranted.

At a minimum, the Engineer shall survey all normally accessible crew, passenger, void, and machinery spaces on each Barberi and Austen Class vessel, as well as exterior surfaces above the waterline.

The Engineer shall note any deteriorated or unreliable conditions found, as well as equipment or systems that are inherently inefficient or obsolete due to their original design or construction. Any unsafe conditions found shall be brought to the Department's immediate attention, as well as noted in the appropriate project deliverable.

Project work shall be as follows:

- a. The Engineer shall inspect the structure of the vessel, including hull and superstructure, and note corroded, wasted, deteriorated or damaged areas. Particular attention shall be paid to areas subject to rapid or serious corrosion, or damage, including but not limited to:
  - 1) Protection of Openings and Hull Fittings
    - a) doors, hatchways, manholes, and scuttles in the main deck and superstructure decks, bulkheads, bulwarks, ladders and floor plating
    - b) machinery casings, companionways, ventilator trunks, filter trunks, uptakes, pipe trunks, deck houses, and door or window sills
    - c) ventilators and air pipes together with flame screens, scupper discharges, closing and watertight appliances

- d) watertight bulkheads, bulkhead penetrations, and bulkheads of superstructures
- 2) Guard railings and passenger/vehicle gates and vehicle safety equipment.
  - 3) Fire protection arrangements and fire doors.
  - 4) Structural areas particularly susceptible to corrosion, including salt water ballast tanks, underside of main deck overhangs (or fantails) and support beams, and joints between superstructure. Gauging shall be performed where significant corrosion is suspected or observed.
  - 5) Conduct a thorough examination of all accessible areas of the hull, including decks, shell, superstructure and main scantlings of each vessel, by inspecting the interior of normally accessible compartments and the exterior above the waterline. Thickness measurements shall be made in suspect areas. Hull spaces to be inspected include engine room, propulsion and steering gear rooms, tanks, storage compartments, and void compartments. The Engineer shall expose and examine structure and clean to base metal as necessary to permit a sample examination of shell plating, framing, floors, brackets, reverse bars, keelsons, girders, engine, machinery and shaft bearing foundations, beams, stringers, decks, and bilges. An examination of the superstructure, including steel decks under finished decking in passenger areas, is to be made with attention to areas subject to corrosion and water leakage. The Engineer shall make arrangements with designated Department staff for the removal of selected joiner work sections in locations where corrosion is suspected, or for the exposure of selected areas to determine the general condition of the superstructure interior.
  - 6) Conduct a thorough examination of the vessel's passenger areas, including condition of finished decking, finished bulkheads, overheads, seats, lighting, and all paintwork. Examine public restrooms for condition and modernity.
  - 7) The Engineer shall note data in the USCG and ABS reports to infer condition of underwater or otherwise inaccessible hull areas that have been surveyed recently by the USCG or ABS. The Engineer shall propose, and if approved, examine such other portions of the hull structure of the vessels as he deems advisable to give a thorough indication of the vessel's condition and fitness for further use and reconstruction.
- b. The Engineer shall perform a general condition survey of the machinery and electrical installations of each Barberi and Austen Class vessel. The Engineer shall note equipment that is, or will soon become, obsolete, inefficient, worn, deteriorated, damaged, malfunctioning, dangerous, or unreliable.

The Engineer shall gather information through inspection and observation of equipment while the vessels are idle and underway, inspection of items opened for maintenance, review of maintenance records, review of ABS and USCG inspection data, review of original manufacturer data, and interview of Department operations and maintenance management.

The Engineer shall develop a proposed checklist of equipment items and submit it to the Department for review [Deliverable – Information]. This checklist shall be the basis for the survey, rating the condition of each piece of equipment or system and the source of the information used to rate each item. The Engineer shall include qualitative notes on conditions found. Information gained through external observation shall be supplemented by attending scheduled maintenance periods to inspect the interior of critical equipment items scheduled for maintenance disassembly.

Equipment and systems to be rated shall include main propulsion machinery, major auxiliaries, fire protection, emergency and rescue equipment, fire and explosion hazards, heating and ventilating equipment, control systems, communication systems, steering equipment, anchor and anchor deployment equipment, and pumps and piping systems. The Engineer shall note the condition of machinery installations and systems including associated gages, instruments, electrical controllers, cutout and control valves, adjacent piping, machinery chocks, bolts and foundations.

A general list of equipment and systems to be inspected and rated shall include the following, as well as any other deemed appropriate by the Engineer: (Listed systems are to include associated pumps, motors, controllers, machinery, valves, instrumentation, piping, and other major components.)

- 1) Machinery
  - a) Main propulsion diesel generator engines including the following associated systems and system equipment:
    - i) starting
    - ii) control/governing/alarm/indication
    - iii) lubrication (service, storage, transfer and purification)
    - iv) cooling
    - v) air intake
    - vi) exhaust
    - vii) fuel service
    - viii) shaft couplings and mounting arrangements
    - ix) air and noise pollution
  - b) Ship's Service diesel and emergency diesel generator engines. Rate similar associated systems as main engines and as applicable.

- c) Heating Boilers, including
  - i) fuel service and pumps
  - ii) burner
  - iii) feed water (include tanks, pumps & regulators)
  - iv) forced draft
  - v) control, power and safety equipment
  - vi) fittings and mountings
  - vii) air pollution
- d) Cycloidal Propulsion Units
- e) Air Compressors and Motors
- f) Compressed Air Systems and Air Flasks
- g) Potable Water Tanks and Systems (include fill system)
- h) Machinery Space Heating and Ventilation Systems
- i) Sea Water Circulation System (include piping internal sample inspection for fouling, erosion, and corrosion)
- j) Auxiliary Condensate System, Tanks, and Pumps
- k) Firemain System (include internal sample inspection for fouling, erosion and corrosion)
- l) Sanitary System
- m) Sewage Collecting, Holding and Transfer System
- n) Lube and Fuel Transfer and Filling Systems, including purifiers and heaters
- o) General condition of all exposed piping systems including valves, gages, hangers, fittings, heat exchangers, presence or suspected presence of erosion, corrosion, fouling and leaks
- p) Heating and Ventilating Systems for Superstructure
- q) Bilge and Ballast System, including bilge water oil-water separator
- r) Steering, including power, hydraulics, electrical, control and communication systems
- s) Propulsion Shafts, Glands, Couplings and Bearings

- t) Control Room, including equipment, instrumentation and furnishings
- u) Whistle
- v) Fire Extinguishing Systems and Equipment
- w) Life Saving Equipment, including rescue boats and life preservers
- x) Anchors and anchor handling equipment
- y) Domestic Hot Water Heater
- z) Oily Water Separator

2) Electrical

- a) Ship Service Generators and Main Switchboard
- b) Emergency Generator and Switchboard
- c) Power and Lighting Distribution Panels
- d) Interior and Exterior Lighting
- e) Interior Communication Equipment
- f) Auxiliary Motors and Controllers
- g) Wiring, Fittings and Brackets
- h) Navigation and Search Lights
- i) Radar
- j) Rudder Angle Indicators
- k) Shaft Revolution Indicators
- l) General Alarm System
- m) Tank Level Indicators and Engineers Signal Alarm Panel
- n) Engine Order Telegraphs
- o) Fire Door Controls

- p) Steering Gear Alarms and Controls
- q) Radios
- r) Snack Bar Equipment
- s) CCTV Systems and Security Equipment

For each equipment item or system inspected, the Engineer shall note age (original to the ship or fitted later); type and condition as far as can be seen, as well as from installed instrumentation; sound, temperature and vibration levels when the machinery is in operation. The Engineer shall note in particular equipment subject to frequent breakdown and/or for which parts are not available. For each item or system inspected, the Engineer shall recommend disposition should the City undertake reconstruction/modernization. Such dispositions include removal and replacement with similar type equipment, removal or replacement with more modern equipment type (specify), rebuild existing equipment item, continue operation of the equipment item as is, etc.

The Engineer shall supplement inspection information, where required, with review of ship's log and Department records and interview of maintenance and operations management.

The Engineer shall submit a detailed report of all findings and recommendations derived from the Physical Condition Survey [Deliverable – Report].

### **3. Task 3 - Concept Design Studies**

The Engineer shall develop and submit concept design studies, including cost estimates and other features outlined herein for options identified by the Department as means to meet future Staten Island Ferry needs. The intent of each option is that it must provide the required fleet productive capacity (vessel capacity X speed X number of vessels in fleet) to meet the forecasted peak needs for the next twenty years following completion of the study, with reasonable additional capacity allowances to be determined by the Engineer.

The options discussed and considered by the Engineer, for both the New Design vessels as well as Class reconstruction/modernization, shall be grounded in conservative engineering principles and practice, with low initial and maintenance costs, simplicity, high reliability, high maneuverability, ruggedness, safety of operation, and long life being important design considerations. The vessel and its machinery must operate reliably in all weather conditions experienced in New York Harbor. The vessels should be compatible with existing Department maintenance, operating and service personnel technical skills and physical plant,

and should allow for commonality of equipment where appropriate. The vessels must be compatible with existing terminal facilities.

The Engineer shall perform outreach and solicit technical information from the worldwide marine community, targeting ferry operators, in order to assess concepts and ideas such as equipment and vessel designs that would or would not work well within the Staten Island Ferry fleet. Specifically, the Engineer shall benchmark ferry operators with similar operational profiles, specifically double-ended ferry operations in North America and Europe.

The Engineer shall also specifically investigate current and future technologies and applications that are designed to allow a “green” operation with consideration for the environment. Examples include emissions reduction technologies and measures, paints to improve fuel economy, and use of high efficiency motors, engines, and machinery. The Engineer shall pursue all avenues to move the ferries to be more compatible with the environment, examples being minimal required discharges, cold ironing, and low water consumption. The Engineer shall factor in current and projected regulatory environmental regulations in this regard.

The Engineer shall specifically target measures to reduce total cost of operation and maintenance. Included would be designs, materials, and equipment to extend maintenance intervals. Examples include the use of advanced materials requiring minimal upkeep and maintenance, advanced coatings, engine and machinery technologies affording extended maintenance intervals, and designs allowing for ease of cleaning, such as on decks and in restroom facilities. The Engineer shall frame his study with the understanding that the prime concerns of the Department include safety, maximum operational reliability, reduced maintenance, improved passenger comfort, and low total cost of operation, including operating efficiencies and manning requirement considerations. In addition, the Department is concerned with ease of passenger transport, including safety and rapidity of embarking and discharging passengers. Options the Department has identified to be studied by the Engineer as likely courses of action are:

- a. Reconstruction/Modernization of the two Barberi Class and two Austen Class Vessels.
- b. Procurement of New Design vessels similar to current vessel classes in passenger and/or vehicle carrying capability.
- c. Procurement of New Design vessels smaller and faster than the current Class of vessels.
- d. Any combination of the above that meets the Demand Forecast predicted fleet requirements and that will provide the best result of long-term service reliability and economy over the duration of the projected vessel life.

Details of each option are more fully described below.

For each option the Engineer is to prepare a concept design study, incorporating relevant information from the Demand Forecast and Existing Fleet Survey as appropriate. Each study shall include cost estimates covering all relevant costs, on an annualized and total cost basis, projected over the useful life of each option. Estimated cost for each shall include breakdowns for maintenance, operations, and estimated procurement cost, with separate design, construction inspection, and construction costs, including test, trials, plan review/regulatory oversight, classification, delivery and other incidentals.

### **3.1 Barberi and Austen Class Reconstruction**

The Engineer, based on conditions found in the vessel survey, expected costs and future maintenance trends, as well as sound engineering judgment, shall determine and justify a reasonable life extension goal for the Barberi and Austen Class vessels.

Reconstructed/modernized vessels shall have all minor auxiliary machinery items replaced, particularly those subject to rapid deterioration, such as seawater pumps and piping, and shall have rebuilt or new main propulsion and large auxiliary equipment items, such as main engines, ship service generators, or heating boilers. Main propulsion engines shall be upgraded to accommodate current and projected engine emissions restrictions and regulations and to enhance fuel economy where possible. Propulsion units shall be overhauled and upgraded where possible to extend their remaining reliable service life. Other equipment, where found obsolete but otherwise in good condition, shall be upgraded with manufacturer supplied modifications or replaced where either action results in significant performance or maintainability gains to the Department.

The reconstruction/modernization shall include complete redecoration of public spaces and restoration of the ship's exteriors.

The study shall feature improvements possible in superstructure internal arrangement and related passenger access/traffic patterns; improvement in joiner materials/deck coverings; possible performance enhancements of machinery plant particularly in fuel consumption and emissions control; feasible maneuvering/steering improvements; food vending arrangement improvements; sanitary space improvements; seating type improvements; improvements to navigation, control and other operational features; and upgrading of engine room control room and crew locker rooms. The study shall explore upgrade options that may afford the opportunity to safely reduce manning and maintenance requirements. The study shall examine feasibility and cost of maintaining adequate transit capacity (i.e., a four boat schedule with back-up) during

reconstruction. Maintenance of service during reconstruction shall be appropriately factored into the Engineer's cost analysis of this capital improvement option.

The material developed from this preliminary design study shall be suitable for input specifications to a contract design, should this option be chosen by the Department. Where required, the Engineer shall include adequate amplification of technical features of the study report, which will be presented to and used by non-technical personnel in consideration of various options. Where fundamental technical concepts have major impact on the characteristics of the design, or where Department requirements or constraints have major implications due to technical factors, the Engineer shall provide a full explanation of these implications, suitable to explain the issues to non-technical persons. The preliminary design study shall be backed up by adequate drawings, sketches, and graphic materials. The Engineer shall site cases of comparable reconstructions/modernizations in the report. The Engineer shall also include the results of benchmarking studies performed.

The Engineer shall make a recommendation on what vessels shall remain in the fleet to serve as stand-by when one vessel is out of service in the shipyard for the life extension work.

The reconstruction/life extension recommendations shall be submitted in a fully detailed report [Deliverable – Report].

### **3.2 and 3.3 Procurement of New Design Vessels**

New Design vessels shall have capacities as dictated by the Demand Forecast, for passengers and for motor vehicles. As a baseline, the Department assumes that double-ended, double operating, displacement hulled vessels shall be employed. However, the Engineer shall consider alternate designs to meet speed and capacity requirements. New vessels would have to be fully compatible in operational, manning, fueling and maintenance features to all existing facilities of the Department with which they will interact. The vessels would be restricted to the approximate beam and draft of the existing vessels as a maximum. However, should increases in capacity be required, they might be accommodated by increased height and/or length. New vessels must operate with the present loading arrangements and terminal configurations. Improved transit characteristics (as defined under the Vessel Survey section, including passenger space aesthetics, and passenger comfort levels) would be required. The Engineer shall submit two separate, alternate design concept studies for each of the proposed or hypothetical New Design ferries. For example, if two separate classes of ferries are recommended, a total of four designs (two for each) shall be presented. As a minimum, the passenger capacity and corresponding speed (productive capacity) of each concept shall be definitely specified.

The concept studies shall include suggested overall dimensions, particularly hull dimensions; number of decks; deck access and traffic arrangements; hull and superstructure proposed internal arrangement and structural configurations; crew requirements; structural materials; deck coverings and joiner materials; propulsion system general type with approximate horsepower, estimated maximum fuel consumption, and estimated total emissions; maneuvering and steering enhancement aspects; lighting and power generation system; seating and window type; food vending arrangement; and a literature search for comparable vessels. Data developed shall be suitable for use as a specification for developing a preliminary design, or for use as a baseline for further design studies. At this point it is expected that material submitted would be primarily qualitative in nature supported by necessary sketches, including inboard and outboard profiles and deck plans, and other graphics, as well as preliminary quantitative data. The Engineer shall be cognizant of the fact that the design study reports submitted at this stage of the project will be presented to non-technical personnel. The Engineer shall, where required, explain fundamental technical concepts in his reports, particularly where these have major impacts on the characteristics of the vessels ultimately chosen, or where requirements of the Department have important technically dictated implications. The Engineer shall also include the results of benchmarking studies performed.

It is the preference of the Department that the concept studies for the New Design ferries incorporate, if possible, the following features:

- a. Propulsion system with performance and maneuverability capabilities and characteristics similar to the Department's existing Barberi Class and Austen Class ferries.
- b. Incorporation of new propulsion and other technologies, focussing on designs with the least environmental impact and the highest attainable efficiency.
- c. Simple, rugged, and reliable designs with inherent back-ups to allow continuous operations.
- d. Maximum passenger safety.
- e. Maximum effective security.
- f. Ease of operation.
- g. Ease of maintenance.
- h. Passenger comfort, including outdoor seating for passengers, similar to existing Molinari Class ferries.
- i. Ease, safety, and rapidity of embarking and disembarking passengers.

- j. Pilothouse visibility and safety.
- k. Ease of entering into and removing from service (lay-up and cold ironing).
- l. Ability to meet projected regulatory requirements.

The recommendation for the procurement of new vessels shall be submitted in a fully detailed report [Deliverable – Report].

### **3.4 Any Combination of the Above**

The Engineer shall submit any combination of the above (new vessels and/or reconstructed vessels) that will most reliably and economically meet the needs of the Demand Forecast.

## **4. Task 4 - Engineer's Analysis and Recommendations**

The Engineer shall present a concise analysis of the options suggested by the Department, based on cost and qualitative features, and recommend, with full justification, the option which best appears to meet the Department's future needs. The Engineer shall also take the opportunity to suggest technical options, in addition to the four proposed by the Department, which may warrant further consideration. If Class reconstruction is included in the recommended option, the recommendation must address how services during reconstruction will be maintained. The Engineer will demonstrate full costing data with this presentation. This shall include estimated cost of new construction vessels, estimated cost for life extension and reconstruction of existing vessels, and projected life cycle costs for all options. The Engineer will demonstrate a full comparison of all costs (acquisition, reconstruction, and life cycle) associated with each option on a net present value basis to allow comparison. The Engineer will provide an analysis of the best option available by providing an argument for cost, quality of service, and other factors and shall summarize this as best available approach to pursue [Deliverable – Report].

## **5. Task 5 - Miscellaneous Assignments**

The Engineer shall also perform miscellaneous technical support assignments as requested by the Department. These may include, but not be limited to, assignments related to the work covered in Tasks 1 through 4. An amount of \$50,000.00 in direct technical labor shall be included in the Cost Proposal for these assignments.

## **B. Deliverables**

The Engineer shall produce and submit the following deliverables within the time specified herein.

Upon initial Notice to Proceed, the Engineer shall submit the following information (task number in parentheses) within forty-five (45) calendar days.

1. Forecast Methodology (Task 1)
2. Significant Staten Island Ferry Service Area (Task 1)
3. List of Proposed Planning Coordination Contacts (Task 1)
4. Proposed Hull and Machinery Survey Checklist (Task 2)

The Engineer shall not begin work on project deliverables for the related sections until the items listed above are approved by the Department. The Engineer shall assume that the approvals will be provided within thirty (30) calendar days following submission.

The Engineer shall produce and submit the following project reports (task number in parentheses).

1. Demand and Capacity Requirement Forecast Report (Task 1)
2. Ferry Fleet Transit Characteristics Survey Report (Task 2)
3. Barberi and Austen Class Physical Condition Survey Report (Task 2)
4. Barberi and Austen Class Reconstruction Concept Design Report (Task 3)
5. New Vessel Design Concept Report 1 (Task 3)
6. New Vessel Design Concept Report 2 (Task 3)
7. Combined New Vessel Design/Vessel Reconstruction Concept Design Report (Task 3)
8. Engineer's Analysis and Recommendations (Task 4)
9. Miscellaneous Assignments (Task 5)

Each of the project deliverables shall be submitted, within the time specified in Section D below, in a preliminary edition that shall be reviewed by the Department. Upon approval of preliminary reports, the Engineer shall produce and submit a final edition, incorporating any recommended changes required by the Department. Each report shall at a minimum include the appropriate information required in Tasks 1 through 4.

All deliverables shall become the property of the Department and may be used at the discretion of the Department for development or implementation of all future phases of the project.

All deliverables shall be submitted both in hard-copy and in electronic format.

**C. Presentations**

The Engineer shall make up to three separate public presentations of the subject matter of each project deliverable. These presentations shall be made at New York City locations when and where directed by the Department. The Engineer shall prepare all necessary text, handouts, slides, charts, and graphics to support his presentations. One reduced size copy of all presentation slides, charts and graphics and a copy of all proposed text and handouts shall be submitted to the Department for review at least two weeks prior to each presentation date, and the Engineer shall incorporate changes, requested thereto by the Department, in the material prior to its public presentation. Upon completion of the presentation, all presentation material developed by the Engineer shall become the property of the Department, which shall take possession of the same for use in possible future presentations.

**D. Time of Completion**

The project reports identified by number in Section B shall be submitted within the time specified below:

1. Within 150 calendar days after the Notice to Proceed.
2. Within 180 calendar days after the Notice to Proceed.
3. Within 240 calendar days after the Notice to Proceed.
4. Within 270 calendar days after the Notice to Proceed.
5. Within 300 calendar days after the Notice to Proceed.
6. Within 300 calendar days after the Notice to Proceed.
7. Within 330 calendar days after the Notice to Proceed.
8. Within 365 calendar days after the Notice to Proceed.
9. As required.

**E. Project Status Reporting and Review**

1. The Engineer will hold monthly progress review meetings in the Department's offices with the Department's designated Project Manager with exact dates to be determined by the Department. These meetings will provide the formal mechanism through which the progress of the effort is reviewed, problems are presented and discussed, alternate solutions are presented, and the Engineer and Department activities are coordinated.
2. The Engineer shall submit a Monthly Project Status Reports to the Project Manager. These progress reports shall be submitted not more than ten (10) calendar days after the close of each month and shall be signed by an authorized officer of the Engineer. Each report shall describe the Engineer's activities by reference to the tasks as shown in Section D.

3. Monthly Project Status Reports will be subject to the review and signed approval of the Department's designated Project Manager.
4. The Project Manager shall be the focal point for communication with the Engineer and for required Department support including approvals, acceptance, information, and availability of personnel to be interviewed and coordinated. The Department shall designate as Project Manager the following person:

Raymond M. Takla, P.E.  
New York City Department of Transportation  
59 Maiden Lane, 35<sup>th</sup> Floor  
New York, NY 10038  
Tel: (212) 487-5694  
Fax: (212) 487-5924

**F. Fees and Payments**

1. Fee

In full payment for services and certain out-of-pocket expenses, the City shall pay to the Engineer, and the Engineer agrees to accept, a fee not to exceed **(TBD)**.

2. Basis

Payment for the services rendered herein shall be made on the following basis:

- a. For Engineering Services, payment shall be made on the basis of total direct technical salaries time a technical multiplier, plus direct reimbursement for Principals' time and certain out-of-pocket expenses.
- b. For Specialized Engineering Services provided by a sub-consultant, payment shall be made on the basis of direct reimbursement for out-of-pocket expenses.

3. Definitions

- a. Direct Technical Salary Cost - Direct technical salary cost shall include only engineering, surveying, technical and drafting salaries, including applicable weekend/night work differential but exclusive of Principals' Time, and shall be derived from direct individual salaries for actual time worked, including applicable weekend/night work differential but not including overtime premium pay, vacation pay, holiday pay, social security, unemployment insurance, worker's compensation, sick pay or other fringe benefits.

- b. Multiplier – The multiplier shall be applied to the direct salary costs of the Engineer and shall be considered as including provisions for indirect costs and profit.
- c. Principals' Time - The words "Principals" or "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 percent (10%) 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:
  - 1) The rate of compensation for Principals' Time as stated herein before, shall not exceed One Hundred Dollars (\$100.00) per hour, to be based on actual draw.
  - 2) The Principals participating in the project shall provide the Department with a certification of 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 Principal's 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.
  - 3) The Principals participating in the project shall maintain a daily log of their participation, which shall be available for inspection by the Department and the NYC Comptroller.
  - 4) For Principals' time the Department deems directly compensable, the Department shall certify that direct participation by the Principals is essential to the effective and economic completion of the project.
  - 5) The total compensation for the Principals' Time shall not exceed Thirty Five Percent (35%) of the total "not to exceed" fee as stated above.
  - 6) In the event that a Principal assumes the specific assignment of responsibilities normally allocated to a technical member of the project team, said Principal shall be compensated at a rate corresponding to the technical salary commensurate with that assignment times an adjusted (where appropriate) multiplier, said multiplier to be established by the Department's Engineering Audit Bureau to avoid duplication of indirect expenses. The adjusted multiplier is calculated by decreasing the Engineer's multiplier by Ten Percent (10%).

- 7) For the purpose of this Agreement, the individuals hereinafter named, or their designated replacements, will be considered “Principals” and will be paid for services performed under this Agreement in accordance with the provisions stated above for the Principals’ Time.

LIST OF PRINCIPALS

| <u>Name</u> | <u>Title</u> |
|-------------|--------------|
| _____       | _____        |
| _____       | _____        |
| _____       | _____        |
| _____       | _____        |
| _____       | _____        |

In addition, any other individual employed by the Engineer under this agreement whose total annual remuneration is equal to or more than the above-mentioned Principals for the corresponding firm, shall be paid for services performed under this Agreement in accordance with the provisions stated for the Principals’ Time.

d. Out-of-Pocket Expenses

- 1) The cost of acquiring, on a per diem basis, the services of other experts or engineers as may be required for the performance of the Engineer’s services.
- 2) The cost of printing and duplicating for this project by an outside vendor. However, cost of printing by in-house services is not reimbursable.
- 3) 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 shall not include the purchase of general tools or office supplies whether expendable or reusable.
- 4) Certain living, travel and other miscellaneous expenses, as approved by the Department , and in accordance with the guidelines in New York City Comptroller’s Directive No. 6 (available on NYC Comptroller’s website).

5) Out-of-Pocket expenses shall be subject to audit by the Department. Consequently, the Engineer shall maintain, and submit to the Department upon request, time and material records for all out-of-pocket expenses incurred and submitted for reimbursement in connection with the services herein contained.

e. Indirect Cost and Overhead

- 1) Indirect Cost shall include costs of a general nature which could be applied to the Engineer's 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's fees, overhead (see below) and any such costs as are necessary to conduct the Engineer's operations, with the exception of those cost items which are submitted to direct payment as out-of-pocket expenses.
- 2) Overhead includes that portion of the Engineer's administrative, clerical and financial costs which are applicable to the operations, including, but not limit to: rent, utilities, salary costs of administrative and clerical work (including administrative services of the Principal and incidental typing), fringe benefits, payroll expenses, taxes, insurance, legal and professional fees, bank service charges, depreciation, office supplies and equipment, maintenance, etc.

f. Overtime Premium

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

g. Weekend/Night Work Differential

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

as established for reimbursement allowances for Department personnel. In no event, however, shall the rate of weekend/night work differential exceed the Engineer's normal company policy relating to such compensation.

#### 4. Payments

- a. During the course of the contract, all payments, including the final payment, shall be paid to the Engineer on a monthly basis as they occur, as follows:
  - 1) For Engineering Services, payments shall be made based on direct technical salaries of the Engineer times a technical multiplier of **(TBD)\***.
  - 2) For approved out-of-pocket costs, including Specialized Engineering and Materials Testing Services, overtime premium pay and allowable time for Principals' services, payments shall be made on the basis of direct reimbursement at cost to the Engineer, with no markup for the Engineer's overhead and profit.
- b. The Engineer shall submit to the Department, but not more than once per calendar month, a certified voucher, and four (4) copies, setting forth in detail the items of work and services performed by the Engineer, and the amount of partial payment requested. Vouchers shall be accompanied by statements prepared and certified by the Engineer setting forth the name and title of each of his/her and his/her sub-consultants' employees who was engaged in the project during such respective month, the direct salary and the number of hours worked each day, the direct salary and the compensation attributable to the time for which the voucher is submitted. All vouchers 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 vouchers and progress reports shall be subject to review and approval of the Department's designated Project Manager.
- c. The Department's designated Project Manager shall review the said voucher and if, in his/her judgment, the work and services therein set forth have been performed, he/she shall endorse his/her approval of payment of said voucher and certify that the work and services have been satisfactorily performed by the Engineer.
- d. Out-of-pocket expenses, overtime premium pay, and compensation for Principals' Time approved by the Department shall be paid at cost to the Engineer, with no markup for the Engineer's overhead and profit.
- e. The last and final payment to the Engineer shall become due and payable upon the actual completion of the work under this contract and the filing by

the Engineer with the Department of all records and documents in connection with the project.

- f. The final voucher shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Engineer attributable to the contract.
- g. The fee and all payments hereunder shall be subject to review and audit by the Department, and subject to a post audit by the Comptroller.
- h. The fee shall not be increased for any reason except as provided herein or where such increase is due to a change in scope of work.
- i. No overhead and profit shall be paid on the premium portion of overtime authorized, in connection with field operations, by the Department. However, the Engineer will be paid the total direct cost of overtime, times the technical multiplier.

\*Said multiplier was established by the Engineer in his/her Request for Proposal submission and has been accepted by the Department, subject to the review and audit provisions as contained herein.

- j. The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown in the Cost Proposal. However, the Engineer may periodically, but not more than once per contract year, request in writing to the Department, to have these rates adjusted. This adjustment shall be subject to the approval of the Department's Director of Ferry Engineering, or duly authorized representative, and the Department's Engineering Audit Officer, and shall be within the parameters as established in the Engineer Pay Index of the U.S. Bureau of Labor Statistics Employment Cost Index for Professional Specialty and Technical Workers – Wages and Salaries.

## 5. Cost Limitations

The total "not to exceed" fee of **(TBD)** shall be apportioned as follows:

- a. For Engineering Services, the total direct technical salary costs times the technical multiplier shall not exceed **(TBD)**.
- b. The total cost of Out-of-Pocket expenses for the project shall not exceed **(TBD)**.
- c. Changes to apportionment of the "not to exceed" fee described above, if required during the course of operation, must be justified by a written report detailing such need. Such changes shall be at the sole discretion of

the Department, provided the “not to exceed” fee remains unchanged. In the event that the total “not to exceed” fee is exceeded, the Engineer shall make written request for an increase in funds in accordance with standard change order procedures. No payment shall be made for work performed beyond the established cost limitation without an approved change order.

## 6. Overtime

The need for overtime on a project must receive prior approval of the Commissioner, or duly authorized representative, the Department’s Director of Ferry Engineering. The Engineer shall obtain this authorization before assigning personnel on an overtime basis. In the event that such prior approval cannot be obtained due to the nature of the operations, the Engineer shall submit a written report detailing the need for such overtime. This report shall be subject to the review and approval of the Commissioner, or duly authorized representative, the Department’s Director of Ferry Engineering. Overtime compensation will be paid in accordance with the following:

### a. Personnel other than Surveyors

Compensation shall be limited to those payments required by applicable State and Federal Laws and Regulations. Overtime payments by the Engineer in excess of those required by such Laws and Regulations may be included as indirect labor salaries, subject to an audit by the Department and to a post audit by the Comptroller.

### b. Surveyors

Compensation for approved overtime for those personnel covered under the Field Survey Union Contract will be paid in accordance with the schedule set up under the Field Survey Union Contract.

**SECTION VII**

**B) GENERAL PROVISIONS (APPENDIX A)**

## **APPENDIX A**

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

#### **ARTICLE 1. DEFINITIONS**

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

#### **ARTICLE 2. REPRESENTATIONS AND WARRANTIES**

##### **2.1 PROCUREMENT OF CONTRACT**

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

##### **2.2. CONFLICT OF INTEREST**

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

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

### **2.3 FAIR PRACTICES**

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

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

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

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

## ARTICLE 4. COVENANTS OF THE CONTRACTOR

### 4.1 EMPLOYEES

- A. All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Contract are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Contract. Nothing in the Contract shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workmen's compensation, disability benefits and social security, or, except as specifically stated in this Contract, to any person, firm or corporation.
- B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this Contract resulting from any negligent or wrongful act of omission or commission or error in judgement of any of its officers, trustees, employees, agents, servants, of independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.
- C. Minimum Wage
- Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Contractor in the performance of this Contract shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

### 4.2 INDEPENDENT CONTRACTOR STATUS

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

### 4.3 INSURANCE

- A. Required Insurance Coverage: Before performing any work on the Contract, the Contractor shall procure and maintain for the duration of the Contract, insurance against any claims for injuries to persons or damage to property which may arise from or in

connection with the performance of the work in this Contract by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall procure the required insurance from companies licensed and authorized by the New York State Department of Insurance to do business in New York State and with a Best's rating of A-7 or better.

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

error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(B) General Requirements for Insurance Policies:

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

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

C. Materiality/Non-Waiver: The Contractor's failure to secure policy(ies) in complete conformity with this article, or to give the Insurance Company timely notice of an occurrence, offense, claim or suit on behalf of the City, shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

#### **4.4 PROTECTION OF CITY PROPERTY**

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Contract and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as an expert, consultant, specialist or subcontractor hereunder.
- B. In the event that any such City property is lost or damaged, except for normal wear and tear, the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover such loss of damage.
- C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection 4.4A above.
- D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Contract.

#### **4.5 CONFIDENTIALITY**

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

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

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

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

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

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

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

#### **4.9 INVESTIGATION CLAUSE**

The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation, to compel

the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

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

established in paragraph (3) and (4) below in addition to any other information which may be relevant and appropriate:

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

#### **4.10 ASSIGNMENT**

- A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Contract, unless the prior

written consent of the Agency shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

- B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Agency; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the Contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor's employees.
- C. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.
- D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

#### **4.11 SUBCONTRACTING**

- A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:
  - 1. That the work performed by the subcontractor must be in accordance with the terms of the Contract between the Department and the Contractor.
  - 2. That nothing contained in such Contract shall impair the rights of the Department.
  - 3. That nothing contained herein, or under the Contract between the Department and the Contractor, shall create any contractual relation between the Subcontractor and the Department, and
  - 4. That the Subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Contract between the Department and the Contractor.
- 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.

#### **6.24 CONTRACT CHANGES**

- A. Changes may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or the Agency Chief Contracting Officer's designee. Contractors deviating from the requirements of an original purchase order or Contract without a duly approved change order, do so at their own risk. All such changes, modifications and amendments will become part of the original Contract.
- B. Contract changes will be made only for work necessary to complete the work included in the original scope of the Contract, and for non-material changes to the scope of the Contract. Changes are not permitted for any material alteration in the scope of the work.
- C. Changes may include any one or more of the following:

1. Specification changes to account for design errors or omissions;
  2. Changes in Contract amount due to authorized additional or omitted work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten percent of the original Contract amount or \$100,000 shall be approved by the City Chief Procurement Officer (CCPO) (for non-construction contracts) or the Director of the Office of Construction (for construction and construction-related contracts);
  3. Extensions of a Contract term for good and sufficient cause for a cumulative period not to exceed one (1) year from the date of expiration of the current Contract. Requirements contracts shall be subject to this limitation;
  4. Changes in delivery location;
  5. Changes in shipment method; and
  6. Any other changes not inconsistent with the PPB Rules.
- D. Any Contractor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the Contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension to time of performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

#### **6.25 RESOLUTION OF DISPUTES**

- A. All disputes between the City and the Contractor of the kind delineated in this section that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this section and the Rules of the Procurement Policy Board ("PPB Rules"). The procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.
1. This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
  2. For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract documents, the amount to be paid for extra work or disputed work performed in connection with the Contract, the conformity of the Contractor's work to the Contract, and the acceptability and quality of the Contractor's work; such disputes arise when the Engineer makes a determination with which the Contractor disagrees.
- B. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.

- C. During such time as any dispute is being presented, heard, and considered pursuant to this section, the Contract terms shall remain in full force and effect and the Contractor shall continue to perform work in accordance with the Contract and as directed by the Agency Chief Contracting Officer ("ACCO") or Engineer. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this section and a material breach of contract.
- D. Presentation of Disputes to Agency Head.
1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein or, if no time is specified, within thirty (30) days of receiving notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Contract.  
The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.
  2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Contract, and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the Contractor initiating the dispute.
  3. Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the Engineer, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
- E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
1. Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the written decision of the Agency Head, and; (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
  2. Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.
  3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.
  4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in E (1) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.
- F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
1. The chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such

orders consistent with this section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

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

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

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

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

- A. If performance by the Contractor is delayed for a reason set forth in the Contract, the Contractor may be allowed a reasonable extension of time in conformance with this Section and with the Rules of the Procurement Policy Board.
- B. Any extension of time may be granted only by the Agency Chief Contracting Officer or by the Board for the Extension of Time (as set forth below) upon written application by the Contractor.
- C. Grounds for Extension – If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of the work caused solely: (i) by the acts or omissions of the City, its officers, agents or employees; or (ii) by the actions or omissions of other contractors on this project; or (iii) by supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, Acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act

or omission of the Contractor). The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Commissioner or the Board may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all the requirements of Article 9, 10, and 11 of Chapter III, "Time Provisions", of the City of New York Standard Construction Contract, effective October 2000, as amended.

D. Extension for Concurrent Causes of Delay – The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the ACCO or the Board for Contract Time Extension irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of his/her Subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

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

E. Application for Extension of Time

1. Before the Contractor's time extension request may be approved, the Contractor must, within five (5) days after commencement of the condition which allegedly has caused or is causing the delay, submit a written application to the ACCO identifying:
  - (a) the Contractor; the Contract registration number; and project description;
  - (b) liquidated damage assessment rate, as specified in the Contract;
  - (c) original bid amount;
  - (d) the original Contract start date and completion date;
  - (e) any previous time extensions granted (number and duration); and
  - (f) the extension of time requested.
2. In addition, the application for extension of time shall set forth in detail:
  - (a) the nature of each alleged cause of delay in completing the work;

- (b) the date upon which each such cause of delay began and ended and the number of days attributable to each such cause;
- (c) a statement that the Contractor waives all claims except for those delineated in the application, and the particulars of any claims which the Contractor does not agree to waive. For time extensions for substantial and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and
- (d) a statement indicating the Contractor's understanding that the time extension is granted only for the purpose of permitting continuation of Contract performance and payment for work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

F. Analysis and Approval of Time Extensions

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

of the ACCO, the Corporation Counsel and the Comptroller, or their authorized representatives.

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

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

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

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

#### **6.28 NO DAMAGE FOR DELAY**

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

#### **6.29 PROMPT PAYMENT**

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

- F. The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to make payment to each of its lower-tier Subcontractors or Suppliers for work performed under this Contract in the same manner and within the same time period set forth above.

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

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

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

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

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

**PART A**

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

**PART B**

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

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

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) establish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement, and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

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

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

**ATTACHMENT C**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

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

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

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

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

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

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

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

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

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

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

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

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

|   |                  |  |      |     |     |     |
|---|------------------|--|------|-----|-----|-----|
|   |                  |  | 5311 |     |     |     |
| <b>II . <u>Non State Grantees</u></b>         | Yes <sup>3</sup> | Those imposed on non-state Grantee pass thru to Contractor | Yes  | Yes | Yes | Yes |
| a. Contracts below SAT (\$100,000)            |                  |  |      |     |     |     |
| b. Contracts above \$100,000/Capital Projects | Yes <sup>3</sup> |  | Yes  | Yes | Yes | Yes |
|   |                  |  |      |     |     |     |

Sources of Authority:

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

<sup>2</sup> 49 CFR 633.17

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

SAT: Source Acquisition Threshold

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

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

**12. BONDING**

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- c. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;

- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

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

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

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

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

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

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by NYCDOT as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense NYCDOT for the damages occasioned by default, then the undersigned bidder agrees to indemnify NYCDOT and pay over to NYCDOT the difference between the bid security and NYCDOT's total damages, so as to make NYCDOT whole.

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

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

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

#### **(a) Performance bonds**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the NYCDOT determines that a lesser amount would be adequate for the protection of NYCDOT.

2. The NYCDOT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NYCDOT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### **(b) Payment bonds**

1. The penal amount of the payment bonds shall equal:

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

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

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

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

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

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

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

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

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

1. The penal amount of payment bonds shall equal:

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

**Advance Payment Bonding Requirements**

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

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

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

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

1. The Contractor warrants to NYCDOT, the Architect and/or Engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by NYCDOT, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NYCDOT and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NYCDOT. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to NYCDOT written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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

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

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

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

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

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

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to

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

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

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

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

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

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

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

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

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

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

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

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

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

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and

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

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

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

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

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

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

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

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

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

for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If it is later determined by NYCDOT that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, NYCDOT, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

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

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

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another

Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and

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

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

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

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

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

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

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

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

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

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of

the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively,

document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following:

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

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

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

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

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

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

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

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

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

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

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

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage

rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Appendix A**

**Buy America Certification**

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

**Appendix B**

**DISCLOSURE OF LOBBYING ACTIVITIES**

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

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

The Contractor certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

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

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

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

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

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

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

\_\_\_\_\_ Date

**Appendix C**

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

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

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

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

\_\_\_\_\_  
Date

**Contractor Note:**

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

**Appendix D**

**DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS**

**For**

**Federal Transit Administration Projects**

**New York City Department of Transportation**

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

**Disadvantaged Business Enterprise Utilization Goal: 5.0%**

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

**MTA - New York City Transit**

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

**Niagara Frontier Transportation Authority**

181 Ellicott Street  
Buffalo, New York 14203  
Telephone: (716) 855-7300

**New York State Department  
Of Transportation  
Contract Audit Bureau DBE Unit**

50 Wolf Road, 1<sup>st</sup> Floor South  
Albany, New York 12232  
Fax: 518-457-1675  
Telephone: (518) 457-9679

**Port Authority of NY & NJ  
Office of Civil Rights**

2 Broadway, 16<sup>th</sup> Floor  
New York, New York 10004  
Telephone: 646-252-1378

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

**Disadvantaged Business Enterprise Officer**

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

Bidder Designated DBE Officer: \_\_\_\_\_

Name, Title

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

Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**RETURN THIS PAGE WITH BID**

## Appendix E

### **Federal Transit Administration Third Party Contract Requirements**

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

#### A. **Disadvantaged Business Enterprise (DBE) Requirements**

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

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

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

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

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

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

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

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

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

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

REQUIRED CONTRACT PROVISIONS\*

DBE Program

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

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

- A. Assurances – Section 26.13

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

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

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

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

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

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

## Appendix F

### Determining Good Faith Efforts

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

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

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

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

Appendix G

**SAMPLE PRIME CONTRACTOR AWARD LETTER**

[date]

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

Re: Contract Name and/or Description

Dear Mr. Doe:

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

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

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

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

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

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

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

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

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

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

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

Thank you for your continued commitment and cooperation.

Cordially,

DBE Representative

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

## **SECTION VII**

### **D) PROCEDURAL FORMS PACKET**

#### **CONTENTS**

- 1. FORM 1P - PROPOSAL COVER LETTER**
- 2. FORM 2P - ACKNOWLEDGEMENT OF ADDENDA**
- 3. FORM 3P - AFFIRMATION FORM**
- 4. FORM 4P - STATEMENT OF UNDERSTANDING**

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

# FORM 1P

## PROPOSAL COVER LETTER

REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

CONTRACT NO.: 841-C5591  
PIN: 84108MBPT281

**Proposer:**

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

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

\_\_\_\_\_

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

**Proposer's Contact Person:**

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

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

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

**Proposer's Authorized Representative:**

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

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

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

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

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

Yes

No

# FORM 2P

## ACKNOWLEDGEMENT OF ADDENDA

REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

CONTRACT NO.: 841-C5591  
PIN: 84108MBPT281

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

### **Part I**

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

Addendum # 1, Dated: \_\_\_\_\_

Addendum # 2, Dated \_\_\_\_\_

Addendum # 3, Dated \_\_\_\_\_

Addendum # 4, Dated \_\_\_\_\_

Addendum # 5, Dated \_\_\_\_\_

Addendum # 6, Dated \_\_\_\_\_

Addendum # 7, Dated \_\_\_\_\_

Addendum # 8, Dated \_\_\_\_\_

Addendum # 9, Dated \_\_\_\_\_

Addendum #10, Dated \_\_\_\_\_

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

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

### **Part III**

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

Proposer's Authorized Representative:

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

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

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

# FORM 3P AFFIRMATION FORM

## REQUEST FOR PROPOSAL PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

CONTRACT NO.: 841-C5591  
PIN: 84108MBPT281

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.

# FORM 4P

## STATEMENT OF UNDERSTANDING

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

### REQUEST FOR PROPOSAL PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

**CONTRACT NO.: 841-C5591  
PIN: 84108MBPT281**

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Address  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

## **SECTION VII**

### **E) PROPOSAL FORMS PACKET**

#### **CONTENTS**

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

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

# FORM 1T

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

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

**PROJECT NAME: PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**PIN: 84108MBPT281**

**CONTRACT NO.: 841-C5591**

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

### DESCRIBE

#### QUALITY & RELEVANCE OF PRIOR EXPERIENCE –

- 1) Consultant should include experience in naval architecture, marine engineering, inspection, transportation planning, and other services relevant to this project within the last fifteen (15) years, including work with City, State and Federal agencies. Consultant should demonstrate ability to complete these jobs in a timely fashion.
- 2) List all current and prior projects performed within the last fifteen (15) years, relevant to this project. For each project, provide the following information:

- Description/Name of Project
- Nature of Consultant's work (i.e., engineering, design, inspection, etc.)
- Dollar Value of Consultant's Work Project
- Contract Term
- Contract Status
- Owner/Client's Name
- Owner/Client's Project Manager's Name, Telephone No., E-mail address

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

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

Average attrition rate for past 3 calendar years:

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

b/a = \_\_\_\_ (g)      d/c = \_\_\_\_ (h)      f/e = \_\_\_\_ (i)

Average attrition rate = (g+h+i) / 3 = \_\_\_\_\_.

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

## FORM 2T

### **PROPOSED STAFF RESUMES/EXPERIENCE**

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

**PROJECT NAME:** PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

**PIN:** 84108MBPT281

**CONTRACT NO.:** 841-C5591

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

#### **PROPOSED STAFF:**

1. Provide an organization chart for staffing this project and attach resumes of all key personnel, including any subconsultants. The chart must provide the key personnel proposed titles/roles for this project.
2. Provide a description of all relevant education and experience for key personnel (including any subconsultants) assigned to performing the tasks of this project. Specifically identify any current or prior key personnel experience with City, State and/or Federal projects. Explain how past assignments of key personnel relate to their proposed assignments on this project. Particular attention will be given to the track record of the Project Manager in successfully completing projects of comparable scope and complexity to this project.
3. State the key personnel's availability for the duration of this project. The selected firm will be prohibited from changing the composition of the team prior to or during the contract period without the written approval of the Department.

## FORM 3T

### OVERALL PROJECT UNDERSTANDING AND APPROACH

**PROJECT NAME:** PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

**PIN:** 84108MBPT281

**CONTRACT NO.:** 841-C5591

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

#### OVERALL APPROACH TO PROJECT:

1. Describe your overall approach and understanding to providing naval architecture, marine engineering, inspection, transportation planning, and other services relevant to this project. This discussion should clearly demonstrate your understanding of how it impacts the provision of the technical services. Provide enough detail to permit the Department to assess the extent of the proposer's understanding of the various services, potential problems and proposed solutions. Proposers are expected to explain the different tasks anticipated to be performed, their relationship, the extent to which they can be performed concurrently, and the unique aspects of each task as they relate to this project. Explain the duration of each task and demonstrate the proposer's ability to complete these tasks on time with the proposed staffing. Please elaborate on how the positions assigned for this project as shown in the organization chart(s) will assist you in the execution of each identified task.
2. Describe your knowledge and understanding of NYC Regulations related to the contracting, design, construction and operation of the ferry vessels and facilities, as well as other Regulatory Requirements (American Bureau of Shipping, U. S. Coast Guard, etc.).
3. Discuss any alternate tasks, or innovative approaches that would assist in the successful provision of services and/or best achieve the project goals and objectives.

# FORM 4T – JOB TITLES AND HOURS PROPOSED

**PROJECT NAME:** PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

**PIN:** 84108MBPT281      **CONTRACT NO.:** 841-C5591

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

**CONSULTANT ON THIS FORM:** \_\_\_\_\_

PROFESSIONAL ENGINEERING/  
ARCHITECTURAL SERVICES

OTHER/\_\_\_\_\_

| (COLUMN 1)<br>JOB TITLES | (COLUMN 2)<br>TOTAL HOURS |
|--------------------------|---------------------------|
| 1.                       |                           |
| 2.                       |                           |
| 3.                       |                           |
| 4.                       |                           |
| 5.                       |                           |
| 6.                       |                           |
| 7.                       |                           |
| 8.                       |                           |
| 9.                       |                           |
| 10.                      |                           |

**DO NOT INCLUDE SALARIES ON THIS FORM**

1. Job titles and hours proposed should be the same as those proposed on the Labor Cost Proposal Form (4T1).
2. No salary information should be included on this form.

FORM 5T

NYCDOT CURRENT WORKLOAD DISCLOSURE

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

PIN: 84108MBPT281

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

CONTRACT NO.: 841-C5591

CONTACT PERSON: \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

PROJECT NAME: PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

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

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

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

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

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

II. Expected billings for next 18 months:

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

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

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

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

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

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

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

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

CERTIFICATION

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

DATE \_\_\_\_\_

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

# FORM 6T

## DBE PARTICIPATION

PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

PIN: 84108MBPT281

CONTRACT NO.: 841-C5591

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

Participation by DBE Consultants:  is being proposed.

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

If being proposed, attach the following:

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

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

## ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0157  
Expires: 6/30/2007

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

### PURPOSE

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

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

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

### GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

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

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

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

### INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of

pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

### DEFINITIONS

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

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

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

**Firm:** Defined in FAR 36.102.

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

### SPECIFIC INSTRUCTIONS

#### Part I - Contract-Specific Qualifications

##### Section A. Contract Information.

1. **Title and Location.** Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.
2. **Public Notice Date.** Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.
3. **Solicitation or Project Number.** Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

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

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

---

**Section C. Proposed Team.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23c. **Point of Contact Telephone Number**  
Self-explanatory.

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

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

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

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

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

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

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

**Section H. Additional Information.**

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

**Section I. Authorized Representative.**

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

33. Name and Title. Self-explanatory.

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

| 26. NAMES OF KEY PERSONNEL<br>(From Section E, Block 12) | 27. ROLE IN THIS CONTRACT<br>(From Section E, Block 13) | 28. EXAMPLE PROJECTS LISTED IN SECTION F<br>(Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.) |   |   |   |   |   |   |   |   |    |
|--|---|--|---|---|---|---|---|---|---|---|----|
|  |   | 1  | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Jane A. Smith  | Chief Architect   | X  |   | X |   |   |   |   |   |   |    |
| Joseph B. Williams                                       | Chief Mech. Engineer                                    | X  | X | X | X |   |   |   |   |   |    |
| Tara C. Donovan  | Chief Elec. Engineer                                    | X  | X |   | X |   |   |   |   |   |    |

**29. EXAMPLE PROJECTS KEY**

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

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**Part II - General Qualifications**

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

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was

effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

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List of Disciplines (Function Codes)

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

**List of Experience Categories (Profile Codes)**

| <b>Code</b> | <b>Description</b>  | <b>Code</b> | <b>Description</b>   |
|-------------|---|-------------|--|
| A01         | Acoustics, Noise Abatement  | E01         | Ecological & Archeological Investigations  |
| A02         | Aerial Photography; Airborne Data and Imagery Collection and Analysis           | E02         | Educational Facilities; Classrooms   |
| A03         | Agricultural Development; Grain Storage; Farm Mechanization                     | E03         | Electrical Studies and Design  |
| A04         | Air Pollution Control   | E04         | Electronics  |
| A05         | Airports; Nav aids; Airport Lighting; Aircraft Fueling                          | E05         | Elevators; Escalators; People-Movers   |
| A06         | Airports; Terminals and Hangars; Freight Handling                               | E06         | Embassies and Chanceries   |
| A07         | Arctic Facilities   | E07         | Energy Conservation; New Energy Sources  |
| A08         | Animal Facilities   | E08         | Engineering Economics  |
| A09         | Anti-Terrorism/Force Protection   | E09         | Environmental Impact Studies, Assessments or Statements  |
| A10         | Asbestos Abatement  | E10         | Environmental and Natural Resource Mapping   |
| A11         | Auditoriums & Theaters  | E11         | Environmental Planning   |
| A12         | Automation; Controls; Instrumentation   | E12         | Environmental Remediation  |
|             |   | E13         | Environmental Testing and Analysis   |
| B01         | Barracks; Dormitories   | F01         | Fallout Shelters; Blast-Resistant Design   |
| B02         | Bridges   | F02         | Field Houses; Gyms; Stadiums   |
| C01         | Cartography   | F03         | Fire Protection  |
| C02         | Cemeteries ( <i>Planning &amp; Relocation</i> )                                 | F04         | Fisheries; Fish ladders  |
| C03         | Charting: Nautical and Aeronautical   | F05         | Forensic Engineering   |
| C04         | Chemical Processing & Storage   | F06         | Forestry & Forest products   |
| C05         | Child Care/Development Facilities   | G01         | Garages; Vehicle Maintenance Facilities; Parking Decks   |
| C06         | Churches; Chapels   | G02         | Gas Systems (Propane; Natural, Etc.)   |
| C07         | Coastal Engineering   | G03         | Geodetic Surveying: Ground and Airborne  |
| C08         | Codes; Standards; Ordinances  | G04         | Geographic Information System Services: Development, Analysis, and Data Collection             |
| C09         | Cold Storage; Refrigeration and Fast Freeze                                     | G05         | Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting |
| C10         | Commercial Building ( <i>low rise</i> ); Shopping Centers                       | G06         | Graphic Design   |
| C11         | Community Facilities  | H01         | Harbors; Jetties; Piers, Ship Terminal Facilities  |
| C12         | Communications Systems; TV; Microwave   | H02         | Hazardous Materials Handling and Storage   |
| C13         | Computer Facilities; Computer Service   | H03         | Hazardous, Toxic, Radioactive Waste Remediation  |
| C14         | Conservation and Resource Management  | H04         | Heating; Ventilating; Air Conditioning   |
| C15         | Construction Management   | H05         | Health Systems Planning  |
| C16         | Construction Surveying  | H06         | Highrise; Air-Rights-Type Buildings  |
| C17         | Corrosion Control; Cathodic Protection; Electrolysis                            | H07         | Highways; Streets; Airfield Paving; Parking Lots   |
| C18         | Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting | H08         | Historical Preservation  |
| C19         | Cryogenic Facilities  | H09         | Hospital & Medical Facilities  |
| D01         | Dams ( <i>Concrete; Arch</i> )  | H10         | Hotels; Motels   |
| D02         | Dams ( <i>Earth; Rock</i> ); Dikes; Levees                                      | H11         | Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )                         |
| D03         | Desalination ( <i>Process &amp; Facilities</i> )                                | H12         | Hydraulics & Pneumatics  |
| D04         | Design-Build - Preparation of Requests for Proposals                            | H13         | Hydrographic Surveying   |
| D05         | Digital Elevation and Terrain Model Development                                 |             |  |
| D06         | Digital Orthophotography  |             |  |
| D07         | Dining Halls; Clubs; Restaurants  |             |  |
| D08         | Dredging Studies and Design   |             |  |

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List of Experience Categories (Profile Codes)

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| Code | Description   | Code | Description  |
|------|---|------|--|
| I01  | Industrial Buildings; Manufacturing Plants                      | P09  | Product, Machine Equipment Design                          |
| I02  | Industrial Processes; Quality Control                           | P10  | Pneumatic Structures, Air-Support Buildings                |
| I03  | Industrial Waste Treatment                                      | P11  | Postal Facilities  |
| I04  | Intelligent Transportation Systems                              | P12  | Power Generation, Transmission, Distribution               |
| I05  | Interior Design; Space Planning                                 | P13  | Public Safety Facilities                                   |
| I06  | Irrigation; Drainage  |      |  |
| J01  | Judicial and Courtroom Facilities                               | R01  | Radar; Sonar; Radio & Radar Telescopes                     |
| L01  | Laboratories; Medical Research Facilities                       | R02  | Radio Frequency Systems & Shieldings                       |
| L02  | Land Surveying  | R03  | Railroad; Rapid Transit                                    |
| L03  | Landscape Architecture  | R04  | Recreation Facilities (Parks, Marinas, Etc.)               |
| L04  | Libraries; Museums; Galleries                                   | R05  | Refrigeration Plants/Systems                               |
| L05  | Lighting (Interior; Display; Theater, Etc.)                     | R06  | Rehabilitation (Buildings; Structures; Facilities)         |
| L06  | Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.) | R07  | Remote Sensing   |
| M01  | Mapping Location/Addressing Systems                             | R08  | Research Facilities  |
| M02  | Materials Handling Systems; Conveyors; Sorters                  | R09  | Resources Recovery; Recycling                              |
| M03  | Metallurgy  | R10  | Risk Analysis  |
| M04  | Microclimatology; Tropical Engineering                          | R11  | Rivers; Canals; Waterways; Flood Control                   |
| M05  | Military Design Standards                                       | R12  | Roofing  |
| M06  | Mining & Mineralogy   | S01  | Safety Engineering; Accident Studies; OSHA Studies         |
| M07  | Missile Facilities (Silos; Fuels; Transport)                    | S02  | Security Systems; Intruder & Smoke Detection               |
| M08  | Modular Systems Design; Pre-Fabricated Structures or Components | S03  | Seismic Designs & Studies                                  |
| N01  | Naval Architecture; Off-Shore Platforms                         | S04  | Sewage Collection, Treatment and Disposal                  |
| N02  | Navigation Structures; Locks                                    | S05  | Soils & Geologic Studies; Foundations                      |
| N03  | Nuclear Facilities; Nuclear Shielding                           | S06  | Solar Energy Utilization                                   |
| O01  | Office Buildings; Industrial Parks                              | S07  | Solid Wastes; Incineration; Landfill                       |
| O02  | Oceanographic Engineering                                       | S08  | Special Environments; Clean Rooms, Etc.                    |
| O03  | Ordnance; Munitions; Special Weapons                            | S09  | Structural Design; Special Structures                      |
| P01  | Petroleum Exploration; Refining                                 | S10  | Surveying; Platting; Mapping; Flood Plain Studies          |
| P02  | Petroleum and Fuel (Storage and Distribution)                   | S11  | Sustainable Design   |
| P03  | Photogrammetry  | S12  | Swimming Pools   |
| P04  | Pipelines (Cross-Country - Liquid & Gas)                        | S13  | Storm Water Handling & Facilities                          |
| P05  | Planning (Community, Regional, Area-wide and State)             | T01  | Telephone Systems ( <i>Rural; Mobile; Intercom, Etc.</i> ) |
| P06  | Planning (Site, Installation, and Project)                      | T02  | Testing & Inspection Services                              |
| P07  | Plumbing & Piping Design  | T03  | Traffic & Transportation Engineering                       |
| P08  | Prisons & Correctional Facilities                               | T04  | Topographic Surveying and Mapping                          |
|      |   | T05  | Towers ( <i>Self-Supporting &amp; Guyed Systems</i> )      |
|      |   | T06  | Tunnels & Subways  |

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List of Experience Categories (Profile Codes)

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| <b>Code</b> | <b>Description</b>                                  |
|-------------|---|
| U01         | Unexploded Ordnance Remediation                     |
| U02         | Urban Renewals; Community<br>Development            |
| U03         | Utilities (Gas and Steam)                           |
| V01         | Value Analysis; Life-Cycle Costing                  |
| W01         | Warehouses & Depots                                 |
| W02         | Water Resources; Hydrology;<br>Ground Water         |
| W03         | Water Supply; Treatment and<br>Distribution         |
| W04         | Wind Tunnels; Research/Testing<br>Facilities Design |
| Z01         | Zoning; Land Use Studies                            |

# ARCHITECT - ENGINEER QUALIFICATIONS

## PART I - CONTRACT-SPECIFIC QUALIFICATIONS

### A. CONTRACT INFORMATION

|   |                                   |
|---|-----------------------------------|
| 1. TITLE AND LOCATION <i>(City and State)</i> |                                   |
| 2. PUBLIC NOTICE DATE                         | 3. SOLICITATION OR PROJECT NUMBER |

### B. ARCHITECT-ENGINEER POINT OF CONTACT

|                     |               |                   |
|---------------------|---------------|-------------------|
| 4. NAME AND TITLE   |               |                   |
| 5. NAME OF FIRM     |               |                   |
| 6. TELEPHONE NUMBER | 7. FAX NUMBER | 8. E-MAIL ADDRESS |

### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

|    | (Check) |      |         |   | 9. FIRM NAME | 10. ADDRESS | 11. ROLE IN THIS CONTRACT |
|----|---------|------|---------|---|--------------|-------------|---------------------------|
|    | PRIME   | J.V. | PARTNER | SUBCONTRACTOR                                   |              |             |                           |
| a. |         |      |         |   |              |             |                           |
|    |         |      |         | <input type="checkbox"/> CHECK IF BRANCH OFFICE |              |             |                           |
| b. |         |      |         |   |              |             |                           |
|    |         |      |         | <input type="checkbox"/> CHECK IF BRANCH OFFICE |              |             |                           |
| c. |         |      |         |   |              |             |                           |
|    |         |      |         | <input type="checkbox"/> CHECK IF BRANCH OFFICE |              |             |                           |
| d. |         |      |         |   |              |             |                           |
|    |         |      |         | <input type="checkbox"/> CHECK IF BRANCH OFFICE |              |             |                           |
| e. |         |      |         |   |              |             |                           |
|    |         |      |         | <input type="checkbox"/> CHECK IF BRANCH OFFICE |              |             |                           |
| f. |         |      |         |   |              |             |                           |
|    |         |      |         | <input type="checkbox"/> CHECK IF BRANCH OFFICE |              |             |                           |

### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*

**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT**  
*(Complete one Section E for each key person.)*

|  |                           |   |                      |
|--|---------------------------|---|----------------------|
| 12. NAME   | 13. ROLE IN THIS CONTRACT | 14. YEARS EXPERIENCE  |                      |
|  |                           | a. TOTAL  | b. WITH CURRENT FIRM |
| 15. FIRM NAME AND LOCATION <i>(City and State)</i>   |                           |   |                      |
| 16. EDUCATION <i>(DEGREE AND SPECIALIZATION)</i>   |                           | 17. CURRENT PROFESSIONAL REGISTRATION <i>(STATE AND DISCIPLINE)</i> |                      |
| 18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i> |                           |   |                      |

**19. RELEVANT PROJECTS**

|    |  |   |                                     |
|----|--|---|-------------------------------------|
| a. | (1) TITLE AND LOCATION <i>(City and State)</i>                                 | (2) YEAR COMPLETED  |                                     |
|    | (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE | PROFESSIONAL SERVICES   | CONSTRUCTION <i>(If applicable)</i> |
|    |  | <input type="checkbox"/> Check if project performed with current firm |                                     |
| b. | (1) TITLE AND LOCATION <i>(City and State)</i>                                 | (2) YEAR COMPLETED  |                                     |
|    | (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE | PROFESSIONAL SERVICES   | CONSTRUCTION <i>(If applicable)</i> |
|    |  | <input type="checkbox"/> Check if project performed with current firm |                                     |
| c. | (1) TITLE AND LOCATION <i>(City and State)</i>                                 | (2) YEAR COMPLETED  |                                     |
|    | (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE | PROFESSIONAL SERVICES   | CONSTRUCTION <i>(If applicable)</i> |
|    |  | <input type="checkbox"/> Check if project performed with current firm |                                     |
| d. | (1) TITLE AND LOCATION <i>(City and State)</i>                                 | (2) YEAR COMPLETED  |                                     |
|    | (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE | PROFESSIONAL SERVICES   | CONSTRUCTION <i>(If applicable)</i> |
|    |  | <input type="checkbox"/> Check if project performed with current firm |                                     |
| e. | (1) TITLE AND LOCATION <i>(City and State)</i>                                 | (2) YEAR COMPLETED  |                                     |
|    | (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE | PROFESSIONAL SERVICES   | CONSTRUCTION <i>(If applicable)</i> |
|    |  | <input type="checkbox"/> Check if project performed with current firm |                                     |

|   |                                       |
|---|---------------------------------------|
| <b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b><br><i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i> | <b>20. EXAMPLE PROJECT KEY NUMBER</b> |
|---|---------------------------------------|

|  |                           |                                     |
|--|---------------------------|-------------------------------------|
| <b>21. TITLE AND LOCATION (City and State)</b> | <b>22. YEAR COMPLETED</b> |                                     |
|  | PROFESSIONAL SERVICES     | CONSTRUCTION <i>(if applicable)</i> |

**23. PROJECT OWNER'S INFORMATION**

|                         |                                 |   |
|-------------------------|---------------------------------|---|
| <b>a. PROJECT OWNER</b> | <b>b. POINT OF CONTACT NAME</b> | <b>c. POINT OF CONTACT TELEPHONE NUMBER</b> |
|-------------------------|---------------------------------|---|

**24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT (Include scope, size, and cost)**

**25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT**

|           | (1) FIRM NAME | (2) FIRM LOCATION (City and State) | (3) ROLE |
|-----------|---------------|------------------------------------|----------|
| <b>a.</b> |               |                                    |          |
| <b>b.</b> |               |                                    |          |
| <b>c.</b> |               |                                    |          |
| <b>d.</b> |               |                                    |          |
| <b>e.</b> |               |                                    |          |
| <b>f.</b> |               |                                    |          |



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**H. ADDITIONAL INFORMATION**

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30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

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**I. AUTHORIZED REPRESENTATIVE**  
The foregoing is a statement of facts.

31. SIGNATURE

32. DATE

33. NAME AND TITLE



# FORM 330S SPECIAL SUPPLEMENT

FOR USE IN PREPARING PROPOSAL FOR

PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET

CONTRACT NO: 841-C5591

PIN: 84108MBPT281

Where appropriate in the completion of Standard Form 330, proposers shall use the following supplementary disciplines (Function Codes), which supplement the List of Disciplines (Function Codes) provided on Page 5 of the Instructions for Standard Form 330.

| <b>Code</b> | <b>Discipline</b>   |
|-------------|---|
| 63          | Naval Architect   |
| 64          | Marine Engineer   |
| 65          | Marine Surveyor (includes Hull, Machinery, Electrical)  |
| 66          | Marine Designer (includes Hull, Machinery, Piping, Electrical, Heating Ventilation and Air Conditioning, and other specializations) |
| 67          | Transportation Planner  |

## **SECTION VII**

### **F) COST PROPOSAL FORMS PACKET**

#### **CONTENTS**

1.       **FORM 4T1       -    COST PROPOSAL**
2.       **FORM 4T2       -    COST PROPOSAL SUMMARY**
3.       **FORM 4T3       -    PERFORMANCE OUTCOME MEASURES  
                          AND RELATED FINANCIAL INCENTIVE  
                          AND/OR DISINCENTIVE**

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

**PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

**LABOR COST FOR TASK 1 – DEMAND FORECAST FOR STATEN ISLAND FERRY**

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

**CONSULTANT ON THIS FORM: \_\_\_\_\_**

|    | <b><u>JOB TITLE</u></b> | <b><u>NO. OF HOURS</u></b> | <b><u>MAXIMUM HOURLY RATE*</u></b> | <b><u>DIRECT TECHNICAL LABOR (HRS. X RATE)</u></b> |
|----|-------------------------|----------------------------|------------------------------------|--|
| 1. | _____                   | _____                      | _____                              | _____  |
| 2. | _____                   | _____                      | _____                              | _____  |
| 3. | _____                   | _____                      | _____                              | _____  |
| 4. | _____                   | _____                      | _____                              | _____  |
| 5. | _____                   | _____                      | _____                              | _____  |
| 6. | _____                   | _____                      | _____                              | _____  |
| 7. | _____                   | _____                      | _____                              | _____  |
| 8. | _____                   | _____                      | _____                              | _____  |

**TOTAL DIRECT TECHNICAL LABOR (DTL) = \_\_\_\_\_  
(NOT INCLUDING PRINCIPALS)**

**TECHNICAL MULTIPLIER = \_\_\_\_\_ TOTAL DTL X MULT. = \_\_\_\_\_**

**PRINCIPALS\*\* = \_\_\_\_\_**

**TOTAL LABOR COST FOR TASK 1 = \_\_\_\_\_**

**Notes:**

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

\*\* The Maximum Hourly Rate for Principals shall be \$100.00 per hour, will not be subject to any multiplier, and will only be paid for Principals performing technical work as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

**INSTRUCTIONS:**

1. Each consultant of the project team working on the above Task is to submit this page of the Cost Proposal Form.
2. The Technical Multiplier shall be rounded off to two (2) decimal places.

**PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

**LABOR COST FOR TASK 2 – SURVEY OF EXISTING STATEN ISLAND FERRY FLEET**

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

**CONSULTANT ON THIS FORM: \_\_\_\_\_**

|    | <b><u>JOB TITLE</u></b> | <b><u>NO. OF HOURS</u></b> | <b><u>MAXIMUM HOURLY RATE*</u></b> | <b><u>DIRECT TECHNICAL LABOR (HRS. X RATE)</u></b> |
|----|-------------------------|----------------------------|------------------------------------|--|
| 1. | _____                   | _____                      | _____                              | _____  |
| 2. | _____                   | _____                      | _____                              | _____  |
| 3. | _____                   | _____                      | _____                              | _____  |
| 4. | _____                   | _____                      | _____                              | _____  |
| 5. | _____                   | _____                      | _____                              | _____  |
| 6. | _____                   | _____                      | _____                              | _____  |
| 7. | _____                   | _____                      | _____                              | _____  |
| 8. | _____                   | _____                      | _____                              | _____  |

**TOTAL DIRECT TECHNICAL LABOR (DTL) = \_\_\_\_\_  
(NOT INCLUDING PRINCIPALS)**

**TECHNICAL MULTIPLIER = TOTAL DTL X MULT. = \_\_\_\_\_**

**PRINCIPALS\*\* = \_\_\_\_\_**

**TOTAL LABOR COST FOR TASK 2 = \_\_\_\_\_**

**Notes:**

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

\*\* The Maximum Hourly Rate for Principals shall be \$100.00 per hour, will not be subject to any multiplier, and will only be paid for Principals performing technical work as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

**INSTRUCTIONS:**

1. Each consultant of the project team working on the above Task is to submit this page of the Cost Proposal Form.
2. The Technical Multiplier shall be rounded off to two (2) decimal places.

**PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

**LABOR COST FOR TASK 3 – CONCEPT DESIGN STUDIES**

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

**CONSULTANT ON THIS FORM: \_\_\_\_\_**

|    | <u>JOB TITLE</u> | <u>NO. OF HOURS</u> | <u>MAXIMUM HOURLY RATE*</u> | <u>DIRECT TECHNICAL LABOR (HRS. X RATE)</u> |
|----|------------------|---------------------|-----------------------------|---|
| 1. | _____            | _____               | _____                       | _____                                       |
| 2. | _____            | _____               | _____                       | _____                                       |
| 3. | _____            | _____               | _____                       | _____                                       |
| 4. | _____            | _____               | _____                       | _____                                       |
| 5. | _____            | _____               | _____                       | _____                                       |
| 6. | _____            | _____               | _____                       | _____                                       |
| 7. | _____            | _____               | _____                       | _____                                       |
| 8. | _____            | _____               | _____                       | _____                                       |

**TOTAL DIRECT TECHNICAL LABOR (DTL) = \_\_\_\_\_  
(NOT INCLUDING PRINCIPALS)**

**TECHNICAL MULTIPLIER = TOTAL DTL X MULT. = \_\_\_\_\_**

**PRINCIPALS\*\* = \_\_\_\_\_**

**TOTAL LABOR COST FOR TASK 3 = \_\_\_\_\_**

**Notes:**

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

\*\* The Maximum Hourly Rate for Principals shall be \$100.00 per hour, will not be subject to any multiplier, and will only be paid for Principals performing technical work as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

**INSTRUCTIONS:**

1. Each consultant of the project team working on the above Task is to submit this page of the Cost Proposal Form.
2. The Technical Multiplier shall be rounded off to two (2) decimal places.

**FORM 4T1 – COST PROPOSAL**

**PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

**LABOR COST FOR TASK 4 – ENGINEER’S ANALYSIS AND RECOMMENDATIONS**

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

**CONSULTANT ON THIS FORM: \_\_\_\_\_**

|    | <b><u>JOB TITLE</u></b> | <b><u>NO. OF HOURS</u></b> | <b><u>MAXIMUM HOURLY RATE*</u></b> | <b><u>DIRECT TECHNICAL LABOR (HRS. X RATE)</u></b> |
|----|-------------------------|----------------------------|------------------------------------|--|
| 1. | _____                   | _____                      | _____                              | _____  |
| 2. | _____                   | _____                      | _____                              | _____  |
| 3. | _____                   | _____                      | _____                              | _____  |
| 4. | _____                   | _____                      | _____                              | _____  |
| 5. | _____                   | _____                      | _____                              | _____  |
| 6. | _____                   | _____                      | _____                              | _____  |
| 7. | _____                   | _____                      | _____                              | _____  |
| 8. | _____                   | _____                      | _____                              | _____  |

**TOTAL DIRECT TECHNICAL LABOR (DTL) = \_\_\_\_\_  
(NOT INCLUDING PRINCIPALS)**

**TECHNICAL MULTIPLIER = \_\_\_\_\_ TOTAL DTL X MULT. = \_\_\_\_\_**

**PRINCIPALS\*\* = \_\_\_\_\_**

**TOTAL LABOR COST FOR TASK 4 = \_\_\_\_\_**

**Notes:**

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

\*\* The Maximum Hourly Rate for Principals shall be \$100.00 per hour, will not be subject to any multiplier, and will only be paid for Principals performing technical work as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

**INSTRUCTIONS:**

1. Each consultant of the project team working on the above Task is to submit this page of the Cost Proposal Form.
2. The Technical Multiplier shall be rounded off to Two (2) Decimal Places.

**PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

**LABOR COST FOR TASK 5 – MISCELLANEOUS ASSIGNMENTS**

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

**CONSULTANT ON THIS FORM: \_\_\_\_\_**

|    | <u>JOB TITLE</u> | <u>MAXIMUM HOURLY RATE*</u> |
|----|------------------|-----------------------------|
| 1. | _____            | _____                       |
| 2. | _____            | _____                       |
| 3. | _____            | _____                       |
| 4. | _____            | _____                       |
| 5. | _____            | _____                       |
| 6. | _____            | _____                       |
| 7. | _____            | _____                       |
| 8. | _____            | _____                       |

**TOTAL DIRECT TECHNICAL LABOR (DTL) = \$50,000.00  
(NOT INCLUDING PRINCIPALS)**

**TECHNICAL MULTIPLIER = TOTAL DTL X MULT. = \_\_\_\_\_**

**PRINCIPALS\*\* = \_\_\_\_\_**

**TOTAL LABOR COST FOR TASK 5 = \_\_\_\_\_**

**Notes:**

\* The Maximum Hourly Rates to be proposed shall be the maximum hourly rate for each title for contract year # 1. Escalation of the contract Maximum Hourly Rates will be accomplished as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

\*\* The Maximum Hourly Rate for Principals shall be \$100.00 per hour, will not be subject to any multiplier, and will only be paid for Principals performing technical work as described in the Proposed Contractual Agreement (See Section VII, Attachment A).

**INSTRUCTIONS:**

1. Each consultant of the project team working on the above Task is to submit this page of the Cost Proposal Form.
2. The Technical Multiplier shall be rounded off to Two (2) Decimal Places.

**PROJECT NAME: REQUEST FOR PROPOSAL  
PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

**OUT-OF-POCKET EXPENSES**

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

**CONSULTANT ON THIS FORM: \_\_\_\_\_**

|     | <b><u>ITEM</u></b> | <b><u>OUT-OF-POCKET<br/>EXPENSES (OPE)</u></b> |
|-----|--------------------|--|
| 1.  | _____              | _____  |
| 2.  | _____              | _____  |
| 3.  | _____              | _____  |
| 4.  | _____              | _____  |
| 5.  | _____              | _____  |
| 6.  | _____              | _____  |
| 7.  | _____              | _____  |
| 8.  | _____              | _____  |
| 9.  | _____              | _____  |
| 10. | _____              | _____  |

**TOTAL OPE = \_\_\_\_\_**

**INSTRUCTIONS:**

1. Each consultant of the project team with Out-of-Pocket Expenses is to submit this page of the Cost Proposal Form.
2. When determining Out-of-Pocket Expenses for the prime consultant and each subconsultant, please note that total Out-of-Pocket Expenses for the contract may not exceed \$200,000.

**FORM 4T2 – COST PROPOSAL SUMMARY**

**PROJECT NAME:   REQUEST FOR PROPOSAL  
                          PRELIMINARY DESIGN INVESTIGATION FOR STATEN ISLAND FERRY FLEET**

**CONTRACT No: 841-C5591  
PIN: 84108MBPT281**

|    | <b><u>CONSULTANT</u></b>       | <b><u>LABOR</u></b> | <b><u>OPE*</u></b> | <b><u>TOTAL</u></b> |
|----|--------------------------------|---------------------|--------------------|---------------------|
|    | <b><u>Prime Consultant</u></b> |                     |                    |                     |
| 1. | _____                          | _____               | _____              | _____               |
|    | <b><u>Subconsultants</u></b>   |                     |                    |                     |
| 1. | _____                          | _____               | _____              | _____               |
| 2. | _____                          | _____               | _____              | _____               |
| 3. | _____                          | _____               | _____              | _____               |
| 4. | _____                          | _____               | _____              | _____               |
| 5. | _____                          | _____               | _____              | _____               |
| 6. | _____                          | _____               | _____              | _____               |
| 7. | _____                          | _____               | _____              | _____               |
| 8. | _____                          | _____               | _____              | _____               |
|    | <b>GRAND TOTAL</b>             | _____               | _____*             | _____               |

**\*Note:   Under no circumstances may the Grand Total of Out-of-Pocket Expenses (OPE) exceed an amount of \$200,000.**

# FORM 4T3

## PERFORMANCE OUTCOME MEASURES AND RELATED FINANCIAL INCENTIVES AND/OR DISINCENTIVES

Instructions: Provide the information requested below for proposed performance outcome measures.

|    | Performance Outcome<br>( <u>Target Goal</u> ) | <u>Measure of Performance</u> | <u>Associated Financial<br/>Incentive/Disincentive</u> |
|----|---|-------------------------------|--|
| 1. |   |                               |  |
| 2. |   |                               |  |
| 3. |   |                               |  |
| 4. |   |                               |  |
| 5. |   |                               |  |

## **SECTION VII**

### **G) VENDEX REQUIREMENTS & CONFIRMATION OF VENDEX COMPLIANCE**

## **Attachment G**

### **VENDEX Requirements**

Pursuant to Section 6-112.2(b) of the New York City Administrative Code, all vendors that are under consideration for the award of a sole source contract or a contract valued at \$100,000 or more, or whose aggregate business with the City in the last 12 months, including the proposed contract, is \$100,000 or more, must complete and submit a VENDEX Business Entity or Not-For-Profit Organization Questionnaire when notified by the Agency. The principals and individuals thereof must also submit a Principal of Individual Questionnaire.

Upon selection, the successful proposer (including their subconsultants) will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of Vendex Compliance to the NYCDOT Vendor Responsibility Unit within five days of official notification. A form for this confirmation is included herein.

**The proposer is advised that Vendex Questionnaires and procedures have changed. See [www.nyc.gov/vendex](http://www.nyc.gov/vendex) to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact NYCDOT's Vendor Responsibility Unit at 212-442-7757.**

**Submission:** VENDEX Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

**Requirement:** Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. If required, VENDEX Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.

# ATTACHMENT G

## CONFIRMATION OF VENDEX COMPLIANCE

The Proposer (including its subconsultant) shall submit this Confirmation of VENDEX Compliance

Name of Proposer: \_\_\_\_\_

Proposer's Address: \_\_\_\_\_

Proposer's Telephone Number: \_\_\_\_\_

Proposer's Fax Number: \_\_\_\_\_

Date of Proposal Submission: \_\_\_\_\_

Project ID: \_\_\_\_\_

**VENDEX Compliance:** To demonstrate compliance with VENDEX0 requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.

- (1) **Submission of Questionnaires to MOC:** By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted Vendex Questionnaires to the Mayor's Office of Contract Services, Attn: VENDEX, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

Date of Submission: \_\_\_\_\_

By: \_\_\_\_\_  
**(Signature of Partner or corporate officer)**

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

- (2) **Submission of Certification of No Change to NYCDOT:** By signing in the space provided below, the Proposer certifies that it has read the instructions in a "Vendor's Guide to Vendex" and that such instructions do not require the Proposer to submit Vendex Questionnaires. The Proposer has completed **TWO ORIGINALS** of the Certification of No Change.

By: \_\_\_\_\_  
**(Signature of Partner or corporate officer)**

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

## **ATTACHMENT H**

- 1) DISCLOSURE OF LOBBYING ACTIVITIES &**
- 2) CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

## DISCLOSURE OF LOBBYING ACTIVITIES

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

The Contractor certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

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

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

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

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

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

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

\_\_\_\_\_ Date

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

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

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

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

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

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

\_\_\_\_\_

**ATTACHMENT I – DOING BUSINESS DATA FORM**



## Doing Business Data Form – Contract Proposers

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

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

### **General Instructions for Sections 2, 3, and 4:**

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

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

### **Certification:**

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

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

### **Section 1: Vendor Information**

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

Vendor EIN: \_\_\_\_\_

Vendor Filing Status (select one):

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

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

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

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

Vendor Main E-mail: \_\_\_\_\_

**Section 2: Principal Officers**

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

**Chief Executive Officer (CEO)**

This position does not exist

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

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

This person replaced CEO: \_\_\_\_\_ On date: \_\_\_\_\_

**Chief Financial Officer (CFO)**

This position does not exist

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

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

This person replaced CFO: \_\_\_\_\_ On date: \_\_\_\_\_

**Chief Operating Officer (COO)**

This position does not exist

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

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

This person replaced COO: \_\_\_\_\_ On date: \_\_\_\_\_

**Section 3: Principal Owners**

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

**There are no owners listed because (select one):**

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

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

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

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

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

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_  
 Name: \_\_\_\_\_ Removal date: \_\_\_\_\_  
 Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

**To list more Principal Owners, please attach additional pages.**

**Section 4: Senior Contract Managers**

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

**Senior Contract Managers:**

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

**Remove the following previously-reported Senior Contract Managers:**

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

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

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

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

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

Vendor name: \_\_\_\_\_

Title: \_\_\_\_\_ Work phone #: \_\_\_\_\_

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

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

**What is the purpose of this Data Form?**

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

**Why have I received this Data Form?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Please contact the NYC Campaign Finance Board for information on contribution limits, at [www.nyccfb.info](http://www.nyccfb.info), or 212-306-7100.

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

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