

Michael R. Bloomberg
Mayor

The City of New York
Department of Transportation
Ferry Division

Janette Sadik-Khan
Commissioner

REQUEST FOR PROPOSALS

FOR

**TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS
STATEN ISLAND FERRY
BOROUGHS OF MANHATTAN AND STATEN ISLAND**

CONTRACT NUMBER: 841 - FERRYRACK

PIN: 84108MBPT317

RELEASE DATE OF THE RFP: July 13, 2009

**ANTICIPATED CONTRACT TERM: 1460 Consecutive Calendar Days from the Date of
Written Notice to Proceed**

AUTHORIZED AGENCY CONTACT PERSON

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

Gail Hatchett
Office of the Agency Chief Contracting Officer (ACCO)
New York City Department of Transportation
55 Water Street – 8th Floor
New York, New York 10041
Telephone: (212) 839-9308
Fax: (212) 839-4241
E-mail: ghatchett@dot.nyc.gov



July 13, 2009

Re: Request for Proposals for
Total Design and Engineering of Fendering Systems
Staten Island Ferry
Contract No. FC-5591
PIN 84108MBPT317

To Whom It May Concern:

I am pleased to invite your organization to submit a proposal for Total Design and Engineering of Fendering Systems to assist the Ferry Division with its Capital Infrastructure Improvement Program. Specifically, the proposal will be for Engineering Services in connection with the above noted contract.

Please be advised that a Pre-Proposal Conference has been scheduled for July 28, 2009 at 10:00 AM, at Whitehall Ferry Terminal, Manhattan 3rd Floor Conference Room. Due to limited space, no more than (2) representatives from each interested firm will be permitted to attend.

Enclosed for your use in developing your proposal is a set of forms with instructions for the above-referenced project. Be further advised that the selected proposer should not subcontract more than 49% of the contract work. You should follow the submittal instructions carefully.

You should hand deliver your proposal, as indicated in Section IV of the RFP, to the **NYC Department of Transportation, ACCO Contract Management Unit, Ground Floor, 55 Water Street, New York, New York 10041 on or before September 15, 2009 between the hours of 9:00am and 2:00pm only on business days.**

In order that we can expeditiously disseminate additional information regarding this RFP, please complete the attached "**ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS FORM**" and return to Gail Hatchett within 48 Hours of receipt of this RFP by Fax: (212) 839-4241.

All questions concerning this invitation must be faxed to Gail Hatchett at (212) 839-4241. If you need to contact her by telephone please call (212) 839-9308.

Very truly yours,

Gail Hatchett

Enclosure

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS

**WE STRONGLY RECOMMEND THAT YOU FAX THIS SHEET TO US TO ENSURE THAT YOU RECEIVE ALL
FUTURE ADDENDA
ATTN.: GAIL HATCHETT WITHIN 48 HOURS – FAX: (212) 839-4241**

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

Consultant:		
Address:		
City	State	ZIP
Contact Person:	Phone #:	Email:
RFP Contract Number (Fill in): Contract No. 841-FERRYRACK , PIN 84108MBPT317 Fax #		
RFP Contract Title (Fill in): Total Design and Engineering of Fendering Systems, Staten Island Ferry, Boroughs of Manhattan and Staten Island		

OR

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

Please check **all** the reasons that apply and return this form to Gail Hatchett.
Fax: (212) 839-4241. E-Mail Address: 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: **July 13, 2009**

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

Telephone #: (212) 839-9308
Fax #: (212) 839-4241
E-Mail Address: ghatchett@dot.nyc.gov

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

B. Pre-Proposal Conference:

Date: **July 28, 2009**
Time: **10:00 AM**
Location: **Whitehall Ferry Terminal, Manhattan 3rd Floor Conference Room,
New York, NY 10006**

Attendance by proposers is optional but recommended by NYC Department of Transportation ("the Agency"). All questions and requests for additional information concerning the pre-proposal conference should be directed to the Authorized Agency Contact Person.

C. Proposal Due Date and Time and Location:

Date: **September 15, 2009**
Time: **NO LATER THAN 2:00 PM**
Location: **NYCDOT Contract Management Unit**
 55 Water Street, Ground Floor
 New York, New York 10041

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

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

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

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

SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of the RFP

The Agency is seeking an appropriately qualified vendor to provide Total Design and Engineering Services that includes Project Development, the preparation of concept designs and studies, preliminary project design, final design, the preparation of construction documents; and bid analysis services in support of reconstruction of the Staten Island Ferry's fendering systems. Proposers will provide only Job Titles and Hours proposed on Form 4T and Job Titles, Hours and Cost on Form 4T1 for the Project Development (Phase I) and Preliminary Project Design (Phase II) in their proposals (see Section VII attached).

B. Anticipated Contract Term

It is anticipated that the term of the contract(s) awarded from this RFP will be **1460** consecutive calendar days from the date of written notice to proceed. The agency reserves the right, prior to contract award, to determine the length of the contract term

Anticipated Time Required for completion of Phase I, Project Development: **365** consecutive calendar days.

Anticipated Time Required for completion of Phase II, Preliminary Project Design: **365** consecutive calendar days.

Anticipated Time Required for completion of Phase III, Project Design including Services of the Designer During Construction: **730** consecutive calendar days.

The consultant contract will have an initial encumbrance to perform work on Phase I and Phase II.

C. Anticipated Payment Structure

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

D. Exclusion from Participation in Subsequent Solicitation(s)

This RFP is for the Total Design & Engineering of Fendering Systems, Staten Island Ferry. The selected proposer from this RFP shall not be allowed to participate, whether as a construction contractor or sub-contractor or a resident engineer consultant or sub-consultant, in response to a subsequent solicitation(s) utilizing the specifications they drafted, except as provided under New York City's Procurement Policy Board Rules.

SECTION III - SCOPE OF SERVICES

A. Agency Goals and Objectives

The agency's goals and objectives are to acquire quality Total Design and Engineering Services to reconstruct the Staten Island Ferry's Fendering Systems as stipulated in Section VII of the RFP.

B. Agency Assumptions Regarding Consultant Approach

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

Minimum Qualification Requirements

The following are the Minimum Qualification Requirements of this RFP. DOT reserves the right to reject proposals as non-responsive that fail to meet all of the requirements below:

- **(1) The prime contractor for the Total Design and Engineering of Fendering Systems, Staten Island Ferry must have, as a business entity, legal authority to render engineering services in New York State as granted by the New York State Education Department.**
- (2) The Proposer (i.e., prime consultant), must have a minimum of five years of broad facilities engineering experience relating to port or coastal facilities, including planning, evaluation, total design, condition assessment, and construction supervision of piers, wharves, marine foundations, and marine terminals. This experience must include substantial experience including planning and design of successfully constructed marine fendering systems for marine structures, piers, ferry terminals, or marine terminals generally, handling ships or marine vehicles with a minimum displacement of 2000 tons where the fender systems are designed for intentional contact and relatively frequent use (i.e. bridge fenders will not meet this requirement). The experience cited should include both new construction and repair/ rehabilitation projects. The Proposer must have multidisciplinary capabilities, either in-house or through sub-consultants, in order to provide all professional services needed for the work, including but not limited to marine (civil) engineering, geotechnical engineering, structural engineering, hydrology, meteorology, engineering mechanics, naval architecture, and environmental engineering. Work projects cited to meet this experience requirement should preferably U.S. domestic projects. Planning and design projects cited should be those for which the associated construction was completed and placed in service. Identify the facilities or projects cited including type of facility, its purpose and location, type of project performed (i.e. evaluation, new construction, rehabilitation, expansion, etc.), size and type of vessels served and landing schedule frequency, type and materials of construction, the type of engineering or technical work performed by the Proposer or team member and year completed, the name of the facility's owner, value of construction planned, designed or supervised by the Proposer or team member, and the name and contact information of a person working with the owner who is knowledgeable of the Proposer or team member's performance on the project. The above described information shall be included on Form 1T.
- (3) At least one major completed project, within the past ten years, involving new construction, reconstruction or rehabilitation of a port facility or waterfront structure (may include piers, wharfs, bulkheads, relieving platforms, fender systems, buildings built on platforms over water, bridges, or other structures) within the New York/ New Jersey Port District of \$10,000,000.00 or more that was designed by the Proposer (i.e., prime consultant). The Proposer's design work on the project(s) cited should be comprehensive, and include, as a minimum responsible charge of structural and geotechnical details of the project, as well as project phases during design, up to and including services of the designer during construction. Provide details as in item (2), above. The above described information shall be included on Form 1T.
- (4) Demonstrated recent experience and success in estimating and managing physical construction work on port or facility rehabilitation projects in the New York/ New Jersey Port District of \$1,000,000.00 or more in construction value. List all such projects where the physical work was completed in the past ten years and where the Proposer, or a member of the Proposer's Team was in responsible charge of the work at the site on behalf of the project owner. Provide details as in item (2), above. The above described information shall be included on Form 1T.

(5) Demonstrated satisfactory experience gaining approval for the firm's projects from the New York City Department of City Planning, the New York State Department of Environmental Conservation, the U.S. Army Corps of Engineers, and all other agencies that regulate major waterfront projects in New York City. Provide details as in item (2), above. The above described information shall be included on Form 1T.

- (6) The ability, either in-house or through sub-consulting arrangements to provide all disciplines necessary to complete the work of the proposed contract. The above described information shall be included on Form 3T.
- (7) Project office to handle the work of this contract (provide address) to have staff and equipment (i.e., computers, CAD, e-mail and communication equipment) deemed appropriate to handle work of this contract. Provide description of office facility and equipment on Form 3T. Provide names and resumes of staff (including number of years of employment with the firm) permanently assigned to proposed project office who will or may perform work pursuant to this contract: include on Form 2T. (Note that, where warranted for specific tasks, Consultant may supplement the staff of the proposed project office with staff or capabilities from consultant's other locations or via sub-consultants, however it will be expected that Consultant will handle the bulk of the work from the project office named under this item.) (note that the City reserves the right to visit and inspect the proposed project office to verify claimed facility, equipment, and personnel prior to award.) Do not provide information for non-technical employees. Do not provide information for more than 50 employees; if more than 50 employees are involved; provide information for only the first 50 employees, starting with the highest level or most senior.
- (8) Provide list of proposed categories of technical work to be done in-house and proposed work to be done by sub-consultants. The above described information shall be included on Form 3T.
- (9) Project office to handle the work of this contract located within 75 miles of Times Square, New York City. The above described information shall be included on Form 3T.

C. Proposed Contractual Agreement

The 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, as set forth herein.

In addition, the proposers must submit the "Disclosure of Lobbying Activity" and "Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters" attached in Section VII, Attachment D with its Technical Proposal.

D. Opportunity for Disadvantaged Business Enterprise

The NYC Department of Transportation encourages firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of **15%**. The successful proposers must show good faith efforts that it attempted to meet the DBE goal.

- ◆ List of certified DBE firms can be obtained from the following website:

<http://biznet.nysucp.net/>

E. Compliance with Local Law 34 of 2007

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

SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL

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

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

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

A. Proposal Format

1. Component 1: Procedural Forms

A Procedural Forms packet has been supplied with this Request for Proposals and should be fully completed and included in your proposal package as follows:

FORM 1P	PROPOSAL COVER LETTER
FORM 2P	ACKNOWLEDGEMENT OF ADDENDA
FORM 3P	AFFIRMATION FORM
FORM 4P	STATEMENT OF UNDERSTANDING
	FTA/DBE FORMS
	CONFIRMATION OF VENDEX COMPLIANCE

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

2. Component 2: Proposal Forms

A Proposal Forms Packet has been supplied with this Request for Proposals and should be fully completed and included in your proposal package as follows:

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

3. Component 3: Cost Proposal

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

COST PROPOSAL

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

NOTE:* FORM 4T1 (COLUMNS 3, 4 AND 5) AND FORM 4T2 ARE TO BE COMPLETED AND SUBMITTED IN A SEPARATE SEALED ENVELOPE AS PART OF YOUR COST PROPOSAL PACKET.

Performance Outcome Measures and Financial Incentives and/or Disincentives

Performance outcome measures and their related financial incentives and/or disincentives should be proposed in Form 4T3. List and describe desired performance outcomes or targets for the work to be performed by the proposer under the contract along with the related financial incentives and/or disincentives that could potentially be applied to the contract. The proposer’s proposed performance outcome measures and related financial incentives and/or disincentives may be considered by the agency while awarding the contract and structuring its payments to consultants.

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

A DOING BUSINESS DATA FORM PACKET HAS BEEN SUPPLIED WITH THIS REQUEST FOR PROPOSALS (SECTION VII, ATTACHMENT I) AND SHOULD BE FULLY COMPLETED AND ONLY ONE (1) ORIGINAL SET SHOULD BE SUBMITTED AND INCLUDED WITH THE TECHNICAL PROPOSAL PACKAGE IN A SEPARATE SEALED ENVELOPE.

All components should be individually sealed and labeled (i.e., Component 1, Component 2, Component 3, & Component 4) to indicate the contents of each package and placed in an outer envelope or wrapper. Address all component packages, outer envelope or wrappers as follows:

Proposer's Name	NYCDOT Contract Section
Address	40 Worth Street 8th Floor, Room 824A New York, New York 10013
PIN No. 84108MBPT317	
CONTRACT NO. 841-FERRYRACK	
TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS, STATEN ISLAND FERRY	
PROPOSAL SUBMISSION DEADLINE IS September 15, 2009 NO LATER THAN 2:00 PM	

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

B. Proposal Package Contents (“Checklist”)

CHECKLIST FOR RFP

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

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

- 1P Proposal Cover Letter
- 2P Acknowledgment of Addenda
- 3P Affirmation Form
- 4P Statement of Understanding
- Buy America Certification
- Disclosure of Lobbying Activity
- Certification of a Contractor Regarding Debarment, Suspension and Other Responsibility Matters
- Certification of a Subcontractor/Supplier Regarding Debarment, Suspension and Other Responsibility Matters
- DBE Forms
- Confirmation of VENDEX Compliance

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

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

3. COMPONENT 3: COST PROPOSAL – Submit ONLY one (1) original set in a separate sealed envelope

COST PROPOSAL

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

4. COMPONENT 4: LOCAL LAW 34 –“Doing Business Data Form”- Submit ONLY one (1) original set in a separate sealed envelope along with the Technical Proposal

- Doing Business Data Form

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.

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

Based on these rankings, a "short-list" will be established of only those proposers who submit highly relevant and technically viable proposals with relevant and adequate experience, overall project understanding, approach and innovativeness in all project areas. The Agency reserves the right to limit the number of firms shortlisted. Proposers not included on the "short-list" will not be further considered.

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

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

In the event that the agency has chosen to negotiate a fair and reasonable price with the highest ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next ranked proposer(s), as necessary.

All unopened price proposals will be returned to the respective proposers upon registration of the contract.

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

B. Evaluation Criteria

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

1. Quality & Relevance of Prior Experience	
- Proposed staff (Resumes)	35%
- Firm in general	20%
2. Quality of Proposal	
- Overall Project Understanding	20%
- Approach	15%
- Innovation	05%
3. Staff Availability	
- Workload - Staff Availability	<u>05%</u>
	100%

C. Basis for Contract Award

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

SECTION VI - GENERAL INFORMATION TO PROPOSERS

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

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

C. General Contract Provisions. Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact 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 the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

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

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

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

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

I. Confidential, Proprietary Information or Trade Secrets. Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. 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. Proposer Costs. Proposers will not be reimbursed for any costs incurred to prepare proposals.

L. Charter Section 312(a) Certification.

The New York City Department of Transportation has determined that the contract to be awarded through this Request for Proposals (PIN 841MBPT317) for Total Design and Engineering of Fendering Systems, Staten Island Ferry, will not directly result in the displacement of any New York City employee.

Agency Chief Contracting Officer

Date

SECTION VII

ATTACHMENTS

- A) Proposed Contractual Agreement**
- B) General Provisions (Appendix A)**
- C) FTA Third Party Requirements and Standard State Contract Clause**
- D) FTA/DBE Forms**
- E) Procedural Forms Packet**
- F) Proposal Forms Packet**
- G) Cost Proposal Forms Packet**
- H) Confirmation of Vendex Compliance**
- I) Local Law 34 – Doing Business Instructions and Data Form
*(To be submitted in a separate sealed envelope along with the Technical Proposal)***

SECTION VII

A) PROPOSED CONTRACTUAL AGREEMENT

**TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS
STATEN ISLAND FERRY
BOROUGHS OF MANHATTAN AND STATEN ISLAND**

CONTRACT NUMBER: 841- FERRYRACK

PIN: 84108MBPT317

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

**TOTAL DESIGN &
ENGINEERING**

OF

**FENDERING SYSTEMS
STATEN ISLAND FERRY**

MANHATTAN & STATEN ISLAND

**COMMUNITY BOARD
MANHATTAN 1 STATEN ISLAND 1**

**COUNCIL DISTRICT
MANHATTAN 1 STATEN ISLAND 49**

2009

NEW YORK CITY DEPARTMENT OF TRANSPORTATION
TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS
STATEN ISLAND FERRY

SPECIFIC REQUIREMENTS

GENERAL:

A. Project Description and Location

The work of this contract shall be total design and engineering for reconstruction of a portion or all of the ferry fendering systems at the Staten Island Ferry's Whitehall Ferry Terminal, located in New York County, N.Y., and St. George Ferry Terminal, located in Richmond County, N.Y. (and including the adjacent Ferry Maintenance Facility). The New York City Department of Transportation (the "agency") plans to reconstruct, using designs prepared pursuant to this contract, the fendering systems in at least one slip at each of the two terminals. The total number of slips to be designed and reconstructed using designs prepared under this contract remains to be determined, and will depend upon available funding and estimated and ultimate cost of the reconstruction work, among other factors. Additional goals of this project are to develop fender system design criteria for the Staten Island Ferry System, and to develop, to the extent feasible, a generally standard fendering system design type (superstructure) which can be adapted, as part of follow-on projects, for each slip or berthing location, while meeting site specific requirements by using site specific substructure and physical arrangement designs.

The term "project" as used herein shall mean, according to context, the work of this contract as well as any construction work performed pursuant to any final design documents prepared by the consultant under this contract and changes thereto, and the resulting completed structures.

B. Project Classification

It is projected that the construction arising out of the work of this contract will be funded, in part, with financial assistance furnished by the U.S. Department of Transportation's Federal Transit Administration, and with assistance furnished by the N.Y.S. Department of Transportation.

This project is assumed to be a Class III Action under USDOT Regulations, 23CFR771.

Classification under the New York State Environmental Quality Review Act (SEQR) Part 15, Title 17 of the Official Compilation of Codes, Rules, and Regulations of New York State (17NYCRR Part 15) is assumed to be Non Type II.

During the progress of the work, as environmental impacts of the work become determinate, the Consultant shall advise the agency regarding appropriate project classification under these regulations.

C. Policy and Procedures

1. Compliance with standards

All work prepared by the Consultant shall conform to design criteria developed and selected by the Consultant and accepted by the agency during the Project Development Phase of this contract, including, but not limited to:

- All significant design, physical, operational and technical features of the agency's existing ferryboats. Where extant documentation of significant features of the ferryboats is lacking, the consultant shall develop the necessary information to advance this project. Documentation of the features of the existing ferryboats furnished by the agency, upon which the success of this project is dependant, shall be appropriately verified by the consultant before use.
- All significant design, physical, operational and technical features of the agency's existing facilities, structures and sites with which the new work must interface or function. Where extant documentation of significant features are lacking, the consultant shall develop the necessary information to advance this project. Documentation of the features of the existing facilities and structures furnished by the agency, upon which the success of this project is dependant, shall be appropriately verified by the consultant before use.

- Approved criteria and standards developed or selected during the Project Development (Section 1000) phase.
- Appropriate industrial standards for engineering and construction work, where applicable, including but not limited to those of ANSI, AITC, ASTM, ACI, AWS, AASHTO, ABS, BSI, and NAVFAC.
- Staten Island Ferry operational and maintenance practices.
- For new work affecting NYCT subsurface structures, if any, applicable Rules, Standards, and Guidelines of NYCT. The consultant shall determine if any proposed work will have any significant impact on NYCT structures, and if approved, liaison with NYCT on behalf of the agency for this project.
- Construction capabilities available in New York City.
- All legally binding requirements on the project.

2. Compliance with Environmental Laws, Regulations and Permits

All Consultant work shall meet the requirements of all applicable state and federal environmental laws, regulations and policy specified in the *City Environmental Quality Review Technical Manual, latest edition*.

3. All work shall conform to publication, drawing, GIS, and CADD requirements agreed upon between the agency and the consultant.
4. The Consultant shall prepare for and attend all meetings as directed by the agency's Contract Manager. The Consultant will be responsible for the preparation of all meeting minutes and the minutes shall be submitted to the agency within one (1) week of the meeting date. The Consultant shall distribute minutes to all attendees except as otherwise requested. Minutes shall summarize decisions made and by whom they are made, and open issues including the persons responsible for their resolution and a schedule for resolution.
5. The agency shall prepare and publish all required legal notices, except as otherwise agreed upon.
6. When specifically authorized in writing to begin work, the Consultant shall render all services and furnish all materials and equipment necessary to provide the agency with reports, plans, estimates, and other data specifically described herein under the individual work categories listed below under "D. Categorization of Work". **The Consultant shall not proceed with the work of any section of these specifications prior to receipt of a written notice to proceed for the work of that section from the agency's Project Manager.**
7. Before transmitting each product to the agency, the Consultant shall review it to ensure its conformity to all applicable agency requirements, and to ensure its professional quality, technical correctness, coordination, and accuracy.
8. The Consultant shall coordinate the scheduling and technical compatibility of prime consultant and subconsultant work. The agency will deem subconsultants' work to be directly overseen and reviewed by the prime consultant.
9. **At the completion of Preliminary Project Design (Section 4000), the agency will decide whether to continue to Project Design (Section 7000) under this contract or have the Tasks associated with Project Design completed under a new Consultant Design Contract. In no event shall the Consultant proceed to Project Design until written authorization is received from the agency.**

D. Categorization of Work

Work on this project shall be categorized as follows:

- **1000 PROJECT DEVELOPMENT**
 - 1100 Project Data Development
 - 1200 Project Scoping Analyses
 - 1300 Existing Fendering Condition Evaluation
 - 1400 Development of Project Scoping Alternatives
 - 1500 Project Scoping Report (PSR)
 - 1600 Other Project Deliverables
 - 1700 Pilot Project
 - 1800 Value Engineering
 - 1900 Advisory or Regulatory Agency Review

- **2000 SURVEY AND MAPPING**
 - 2100 Design survey
 - 2300 Geotechnical Survey
 - 2900 Miscellaneous Survey

- **4000 PRELIMINARY PROJECT DESIGN**
 - 4100 Preliminary Studies
 - 4200 Development of Design Alternatives
 - 4300 Development of Draft Design Approval Document (DAD)
 - 4400 Advisory Agency Review
 - 4600 Development of Final Design Approval Document
 - 4700 Miscellaneous Preliminary Project Design Studies

- **5000 ENVIRONMENTAL STUDIES**
 - 5010 Environmental Considerations
 - 5020 Assistance with Permits and Certification
 - 5030 Noise Study
 - 5040 Air Quality Study
 - 5050 General Ecology and Endangered Species
 - 5070 State-regulated Wetlands
 - 5090 Wetland Mitigation
 - 5100 Navigable Waters
 - 5110 Coastal Zone Management
 - 5160 Cultural Resources
 - 5200 Hazardous Waste/Contaminated Materials Screening
 - 5220 Hazardous Waste/Contaminated Materials Remediation Plan
 - 5940 Reevaluation Statement
 - 5950 NYCT Structures
 - 5960 Local Law
 - 5970 Environmental Justification

- **7000 PROJECT DESIGN**
 - 7100 Preliminary Project Design
 - 7200 Detailed Project Design
 - 7300 Vessel Modifications
 - 7400 Services During Construction

- **8000** **PROJECT MANAGEMENT AND MISCELLANEOUS WORK**
 - 8100 Project Familiarization
 - 8200 Project Reporting
 - 8300 Project Coordination
 - 8400 Constructability Review Support
 - 8500 Construction Support Services
 - 8600 Management of Subcontractors Engaged Subsequent to Contract Award
 - 8700 Miscellaneous Project Management

- **9000** **SCOPE, COMPENSATION AND TERM**
 - 9100 Consultant's Services
 - 9200 Consultant's Personnel
 - 9300 Fees and Payments
 - 9400 Definitions
 - 9500 Performance Evaluation
 - 9600 Subconsultants and Subcontractors
 - 9700 Payment Requisitions
 - 9800 Term

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1000 PROJECT DEVELOPMENT

1001 It is intended that the Project Development Phase will accomplish the following:

- Update the agency's existing technical documentation for its ferry fendering system.
- Gather and analyze physical and operational data necessary for the design and evaluation of a ferry fendering system.
- Develop up-to-date needs criteria for the ferry fendering system.
- Develop or adopt design criteria for the ferry fendering system including maximum allowable forces, accelerations, loads and deflections for both the fendering system and the ferry boats, and required energy absorption.
- Evaluate and analyze the capacity of the current ferry fendering system including structural and geotechnical aspects.
- Recommend capacity improvements to the current ferry fendering system.
- Propose and evaluate alternate ferry fendering system designs, materials and types.
- Consistent with safety, constructability, maintainability and cost concerns, seek to reduce, minimize, or eliminate the use of tropical hardwoods in the fender system construction.
- Prepare construction cost estimates and life cycle cost estimates for the alternate ferry fendering systems studied or considered, and including the "no action" option.
- Prepare an implementation plan and schedule, including provision for operational needs during construction, as well as minimization of construction cost and duration.
- Prepare an environmental analysis, based on sustainable design principles, of each alternative considered.
- Prepare a permitting plan/ schedule for the various alternatives considered.
- Prepare a preliminary Engineer's recommendation.

1100 Project Data Development

The Consultant shall gather or generate data as required to fully define the physical, performance, site, geometric, operational, regulatory, environmental, safety, reliability, maintainability, cost, constructability, and other salient requirements for a fendering system for the Staten Island Ferry and prepare a **Comprehensive Requirements Statement** for the project. Where any relevant data is lacking, such as, but not limited to, up-to-date information on ferry boat motions or geotechnical factors, the Consultant shall develop it through field survey or work, observations, measurements, operational, engineering or economic analysis. In the preparation of the Comprehensive Requirements Statement, the Consultant shall liaise and conduct discussions with the agency project team and designated staff, and other City and governmental officials and non-government personnel as necessary and approved.

The agency will determine the influence, if any, of other existing or proposed projects potentially impacting this project (e. g., contemplated construction or purchase of new ferryboats; contemplated service changes, etc.). The agency shall provide all necessary information pertaining to such other projects.

The agency will furnish the Consultant with existing studies, reports, drawings, and all other available data it has in its possession relative to the project. In the use of such material, the Consultant is advised to exercise caution and to take reasonable steps to verify information. The Consultant is also advised that the agency does not have a drawing maintenance program: hence agency drawings may not be updated to reflect up to date existing conditions.

The Consultant shall advise the agency whenever data or guidance required to advance the Project Development is lacking, and when requested, shall assist the agency in obtaining such data.

1110 The Consultant shall determine:

- Relevant industry standards, if any, for berthing system design on this project.
- Through interviews and field observations, current ferry operations practices, ferry schedules, and current Staten Island Ferry fender rack maintenance practices as well as any changes thereto planned for the near future.
- The relevant physical aspects and maneuvering characteristics of existing and any planned Staten Island Ferryboats, the terminal facilities, and all relevant features of the terminal environments.
- Relevant data on Staten Island Ferryboat landings, maneuvering, and impacts through data development, field observation and measurement. (Staten Island Ferry's current data on this subject is generally deemed obsolete, primarily due to subsequent vessel design changes. See Task 4720)
- General ship design, operational and maneuvering characteristics as they apply to this project. Where necessary, the Consultant shall develop data through calculations, measurements or testing, and detailed expertise on specific factors related to the contemplated work.
- Relevant environmental and site conditions which affect berthing system design on this project, and their effects on this project.
- Relevant New York construction market factors impacting the project.
- Relevant system concept prototypes.
- Other relevant factors for project configuration, selection, and design.

1120 The Consultant shall prepare existing conditions drawings:

Based upon its review of existing data and the development of new supplementary data, **prepare existing conditions drawings** for the slips at each terminal in an approved format and to an approved scale. The drawings shall include site plans, plans of each slip with offsets, elevations, details and sections (including riverbed and subsurface strata). The plans for each terminal shall be fully coordinated with each other, with existing structures, including subsurface structures, on the site likely to impact work on or function of the fender systems, with standard coordinate systems and with relevant boundaries. It is anticipated that the Consultant will have to perform topographic survey at each terminal, bathymetric survey at each slip, and as many as six borings at each terminal to complete this work. Include relevant control points, interferences, overhangs, and navigational equipment and utility lines. See also Section 2000.

1130 The Consultant shall determine preliminary environmental conditions and regulations relating to the project:

- The Consultant shall review the potential impact on the project and particular alternatives, including impacts on feasibility, cost and schedule, of all regulations, permitting requirements and associated reviews listed in the *City Environmental Quality Review Technical Manual*, and such other regulations as it deems relevant to the project.
- The Consultant shall conduct at least one formal meeting with designated City and other governmental officials concerning environmental design as it relates to a fendering improvement project. The meeting(s) shall cover goals for sustainable design and environmentally preferable purchasing, as well as permitting requirements generally, City planning requirements, and the impact of construction and the completed structures on the environment in their proximity. The Consultant shall prepare and submit minutes of this meeting(s).

1200 Project Scoping Analyses

Based upon the Project Data Development, its specialized expertise and experience and based upon discussions with the agency project team and designated agency staff, and other designated City and governmental officials and approved industry experts, the Consultant shall develop a **Statement of Reasonable Goals** for a fendering system improvement project. Insofar as practical, and consistent with the Comprehensive Requirements for the fendering system, the goals should take into account sustainable design principals and environmentally preferable purchasing. The goals should also take into account economic feasibility and relevant risks, such as technology and construction risks.

1300 Existing Fendering Condition Evaluation

The Consultant shall perform a condition inspection of all fender racks at each terminal, and combining historical information from the agency on the date of last reconstruction for each rack or segment thereof, **develop drawings showing the predicted remaining useful life, or recommended date of required reconstruction, for each rack or major segment thereof.** The Consultant shall also evaluate the fendering capacity of the existing fendering structures, including fender racks (superstructure and substructure) and transfer bridges, versus required capacity, and **report on same:** portions of this capacity evaluation may be founded upon previously completed work the agency has available.

1400 Development of Project Scoping Alternatives

Based upon the project data developed and collected, the applicable design criteria specified in the Comprehensive Requirements Statement and Statement of Reasonable Goals, the Consultant's expertise, field work, and a literature search, the Consultant shall **define a minimum of ten viable alternative concepts for a new fendering system based on design concepts which differ from that of the current system.** In addition, the Consultant shall **develop viable recommendations for improvements to the current system.**

The Consultant shall make rudimentary evaluations of the viable alternatives identified, as well as the "no action" alternative against the comprehensive requirements and goals. The Consultant's evaluation shall consider, either quantitatively or qualitatively, operational, technology and construction risk connected with new design concepts evaluated. These evaluations shall not be carried beyond the point of establishing feasibility of each concept as a design alternative, and shall consider only those significant design constraints that bear on this feasibility.

The evaluations shall include:

- Identification of general physical features and type of improvement associated with each solution;
- Ability of each solution to meet the Comprehensive Requirements and Reasonable Goals for the project;
- A level of detail commensurate with evaluating and comparing alternative solutions to needs, but not for evaluating and comparing specific design features;
- Environmental, constructability, operational, cost, maintenance, municipal procurement and community issues;
- For each alternative, prepare an **order of magnitude** (accuracy of -30% to +50%) **cost estimate.**

1401 The Consultant shall discuss the alternatives with the agency as they are being developed, so that unfeasible alternatives or features can be eliminated as soon as practicable.

1410 Working with the agency, **four preferred alternatives** will be identified based upon the Consultant's evaluation. The preferred alternatives will most likely include at least one new concept alternative, and an alternative based on improvements to the current system.

1411 The Consultant shall further develop and analyze the four preferred alternatives and the "no action" alternative.

Consultant shall evaluate each preferred alternative and the no action alternative with specific engineering analyses and considerations. Analyses shall be conceptual only, and limited to determining the relative suitability of each design alternative. They shall include:

- Design Geometry
- Environmental constraints and potential permitting problems
- Potential environmental impact mitigation measures
- Safety and operational considerations

- Structures, new ones required and alterations/ impact on existing
- Energy absorption methods, fendering, mechanisms, and contact elements
- Performance predictions, relative to the project needs and to the other alternatives
- Maintenance needs and responsibility
- Phasing of construction to maintain ferry operations
- Soil and foundation considerations
- Utilities
- Impact on subsurface structures, if any
- Lighting and aids to navigation
- Construction market and cost factors
- Constraints imposed by municipal procurement regulations

1420 The Consultant shall **prepare the following drawings for each design alternative** analyzed under Task 1411 above.

1421 **Plans** to approved scale showing (as a minimum) stationed centerlines and offsets, geometry, major features, construction limits, demolition and dredging limits, fendering elements and major components and structures. At critical locations where more detailed study is required, the Consultant shall provide drawings at a larger scale.

1422 **Profiles**, to approved scale, showing (as a minimum) the vertical datum reference, significant elevations, existing mud line, dredge and fill limits, significant soil strata, critical clearances at structures, transfer bridge positions, centerline stations, significant water levels and ferry deck heights, and construction limits.

1423 **Typical sections** showing the vertical datum reference, significant elevations, existing mud line, dredge and fill limits, significant soil strata, critical clearances at structures, transfer bridge positions, centerline stations, significant water levels and ferry deck heights, and construction limits.

1430 The Consultant shall develop a **budget cost estimate** (accuracy of -15% to +30%) for each preferred alternative.

The budget cost estimates shall be in approved format. For each item or combination of items in the cost estimates, identify the quantity required, the unit of measurement, the unit cost and total cost. Include in the cost estimate general conditions at ten percent, overhead and profit at fifteen percent, and design contingency at fifteen percent. Each cost estimate shall also include estimated total costs for design, professional, and related services, and allowances for any probable additional cost items (physical construction or professional) associated with the particular alternative being considered. Cost estimates shall be updated as designs are developed.

To the extent feasible, both cost of acquisition, and life cycle cost estimates shall be produced for each viable alternative.

1431 The Consultant shall develop a **forecasted implementation schedule** for each preferred alternative.

The schedules shall be in an approved format, and shall show all major milestones and primary activities, including preliminary and final design, permit application and approval, contractor selection, construction, long lead time item purchases (if any), and commissioning.

1500 **Project Scoping Report (PSR)**

The final **Project Scoping Report** shall contain descriptive data and graphic justification in support of recommendations made. The report will serve as a public record in support of capital investment decisions. The final report shall be subject to agency approval and advisory agency review. "Advisory agencies" shall be Federal, New York State, or City government bodies identified by the agency as having an interest in the project.

The agency shall make all determinations not specifically assigned to the Consultant which are needed to prepare the PSR.

- 1510 The Consultant shall prepare and submit six copies of the final PSR to the agency. The report shall be:
- In conformance with the requirements of the contract;
 - Bound with acceptable covers appropriate for presentation purposes;
 - Titled on the cover;
 - Transmitted via letter of transmittal with Consultant's signatures;
 - Organized with a table of contents;
 - Summarized with an executive summary, descriptive text, plans, implementation schedule; design calculations, and cost estimates;
 - Illustrated.

The Consultant shall inform the agency on content and progress of the PSR as necessary during its development.

- 1520 The Consultant shall submit a Draft PSR to the agency for review.

The agency shall review the Draft PSR and provide the Consultant with review comments.

- 1530 The Consultant shall assist the agency in resolving the review comments.

- 1540 The Consultant shall incorporate agency review comments into the Draft PSR and resubmit it as a Final PSR.

- 1550 The Final Report shall contain:

- Introduction and Summary of Requirements:
 - Consists of data, and a full description of the recommendations, which can be used as a project design program;
- Graphic and Descriptive Documentation;
- Site Plans and Features:
 - Include constructed and environmental features relevant to the project;
- Available Data;
- Field Observations;
- Evaluation of Data;
- Review of Berthing Systems Literature;
- Supporting Engineering Calculations;
- Design Criteria, Standards, and Performance Requirements;
- Evaluation of Existing Fendering Systems:
 - At each terminal;
- Basic Methods of Absorbing Energy;
- Recommendations for Improvement of Existing Fendering System;
- New Design Concept Alternatives Investigated;
- Cost Estimates;
- Code Requirements;
- Permitting Requirements;
- Sustainability Considerations and Environmentally Preferable Purchasing;
- Engineer's Analysis and Recommendations;
- Implementation Plan;
- Summary.

1600 Other Project Development Deliverables

In addition to the deliverables mentioned in Subsections 1100 thru 1500, the consultant shall furnish the following additional deliverables during the Project Development phase.

1620 Interim Reports

Interim Reports: as many interim reports as may be reasonably required for review in graphic and descriptive form in the conduct of the Project Development until approvals are granted.

1630 Monthly Progress Reports – See Task 8210

1700 Pilot Project

Subsequent to acceptance of the PSR, but prior to a decision to advance the project to Preliminary Design or Final Design, the agency may deem it advisable to construct a pilot project at any one of its ferry facility properties (including, but not limited to the Whitehall Ferry Terminal in Manhattan, and St. George Ferry Terminal in Staten Island) for validation of accepted design concept(s). The agency may engage the Consultant, through contract change order, to perform professional services including contract design, construction management and resident engineering, and/or post completion testing and monitoring. Construction would be performed by a construction firm engaged directly by the agency.

1800 Value Engineering

If requested by the NYC Office of Management and Budget, a Value Engineering Study may occur subsequent to completion of Project Development. Participation by the Consultant may be required, and if so, the agency will engage the Consultant, through contract change order, to perform professional services during and related to the Value Engineering Study. General Requirements of the Value Engineering study are included in the *NYC Department of Design and Construction Design Consultant Guide*, at page VIII-13.

1900 Advisory or Regulatory Agency Review

1920 The Consultant shall assist the agency in evaluating and preparing **individual responses** to review comments received concerning Consultant prepared deliverables.

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2000 SURVEY AND MAPPING

2100 Design Survey

It is intended that under this Section, the Consultant shall collect and compile data, conduct all necessary surveys and **provide all terrain, seabed, field, geotechnical, hydrographic, meteorological and site data required for design** in accordance with the applicable portions of the *NYSDOT Land Surveying Standards & Procedures Manual*. Topographic surveys shall be performed to include all constructed elements and structures existing at each terminal generally in the area bounded by the terminal property lines, existing bulkheads, and US Pierhead Lines. Topographic surveys shall be performed to an appropriate level of detail and precision for the area and structure being measured, particularly for the lines and offsets of existing fender rack faces, and all existing control and clearance points for the positioning of the ferryboats in their berths. Detailed bathymetric surveys shall be performed at each terminal within the previously described areas.

All survey equipment shall be properly maintained and calibrated, and checked frequently. **Equipment calibration and adjustment records and reports** (not exceeding one year) shall be maintained by the Consultant and submitted to the agency as requested.

2110 Project Control Surveys

The Consultant shall set permanent survey monuments as required to perform the surveys required for the project. The Consultant shall establish horizontal and vertical control on the project sites, tied into the New York State Plane Coordinate System (NYSPCS) NAD 83-96, and NAVD 88. Vertical Datum on all plans and submissions shall be the M&A datum, which approximates mean low water at the terminal sites; plans and submissions, shall reference other appropriate water levels and other key vertical control elevations as required to successfully advance the design.

2140 Topographic Field Survey

2141 The Consultant shall obtain topographic data by means of a ground survey, which may be supplemented by photogrammetric survey where deemed appropriate. **Survey procedures shall be submitted to the agency for approval.**

2200 Site Plans

Based upon the results of the topographic and bathymetric surveys, the consultant shall prepare and submit, in approved format and scale, **fully coordinated site plans for the waterfront area** at each terminal and the Ferry Maintenance Facility, and a detailed line and offset plan and elevations and sections for each ferry slip equipped with fender racks (i.e., three slips at the Whitehall Ferry Terminal, and five slips at the St. George Ferry Terminal). The site plans shall include all structures and dimensions which control the berthed position of the ferry boats, or which can be expected to impact the work of this project or reconstruction or repair work on the current fendering structures.

2300 Geotechnical Survey

2310 Determination of Boring Locations

2312 The agency will provide the Consultant with its extant boring records and subsoil data. Upon review of this material, the Consultant shall provide the agency with approximate **locations where new borings are needed, if any**, together with the locations of all subsurface structures, if any, which may impact the work.

From this information the agency and the Consultant shall agree upon final locations, diameters, and sampling intervals, shall designate soil boring numbers, and the types of sample testing required at each location.

- 2313 Locations of existing borings shall be integrated into all appropriate drawings prepared by the Consultant under this contract.
- 2320 Subsurface Investigation: Operations and Testing
- 2321 For all borings, the Consultant shall determine the locations and take the borings in accordance with current appropriate industry practice for the types of marine structures under consideration. Subsurface exploration work shall conform to applicable portions of NYSDOT Standard Specifications Sections 648 and 732. The nature of the project is such that most borings must be taken from water rigs.
- 2323 The Consultant shall perform sample testing as required to prepare adequate foundation designs and shall provide the agency with a **subsurface exploration report** documenting the resulting subsurface information relevant to the project.
- 2330 Field Survey of Soil Borings
- 2331 The Consultant shall survey the actual boring locations. The Consultant shall add the locations for borings made under this contract, as well as relevant existing borings to the project site plans.
- 2332 Geotechnical Survey, including soil boring operations, survey of actual boring locations, sample testing, and reporting shall be deemed an Out of Pocket Cost.
- 2334 Perform sample and in-situ testing of soil and rock as required to develop all necessary data for design of foundations, including accounting for dead, live, and seismic loads and effects of seismic activity on the capacity of load bearing soil and rock strata.
- 2900 Miscellaneous Survey**
- 2920 Wetland Boundaries
- The Consultant shall **delineate the boundaries and types of tidal wetland** within or contiguous to the project sites as required to obtain environmental permits for the construction of the project.
- 2930 Underground Structures
- The Consultant shall coordinate existing surveys of the subway structure (Whitehall Ferry Terminal only) with the site plans and show the structure thereon, along with the boundaries of established influence lines related to the subway (i.e. NYCT structures).
- The Consultant shall determine and show, on all site plans, the limits of existing footings, piles, and foundations (such as for the ferry terminals), and buried utilities which may impact the work of this project. The work of this task will be deemed part of Topographic Survey work.
- 2940 Ferryboats, Transfer Bridges and Terminal Structures
- While the agency will furnish the Consultant with extant drawings and data, the Consultant shall field measure and verify all key dimensions of the ferryboats, transfer bridges, and terminal structures, all of which will remain in service upon completion of the work designed by this project, as necessary to assure the success of the project and prevent problems due to interference or lack of coordination. The Consultant shall verify existing information, or develop its own information, concerning likely and design water levels and likely and design values of list, trim, and draft of the ferryboats. The range of motion of transfer bridges shall be verified as necessary.
- 2941 The identification and position of existing agency owned navigational beacons and equipment shall be accurately determined for use on the site plans.
- 2942 The work of this task will be deemed part of Topographic Survey work.

2950 Other Survey.

2951 Gather other necessary site and physical data, including but not limited to, hydrographic and meteorological data, as required and as approved by the agency.

2952 The work of this task will be deemed an Out of Pocket cost.

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4000 PRELIMINARY PROJECT DESIGN

4100 Preliminary Studies

4110 This Section details requirements to complete and advance the work identified in Subsection 1400. Under this section, a final project concept, from among the alternatives identified in the PSR shall be recommended and a final project configuration shall be selected for advancement to project design.

The Consultant shall identify and make evaluations of the design alternative concepts that would meet project objectives. These studies shall not be carried beyond the point of establishing the feasibility and desirability of each concept as a design alternative, and shall consider only those significant features that bear on this feasibility and project selection.

4120 For each concept the Consultant shall prepare **rudimentary sketches of plan, profile, and typical section views** which at this stage shall show:

- Where necessary: important existing features;
- On plan: proposed centerlines; controlling offsets and clearances; controlling ferryboat waterline at main deck in controlling structures in phantom; significant river bottom contours and soundings; property lines; existing structures and other interferences or significant features;
- On profile: existing and proposed bottom contours at critical sections; assumed soil and rock strata; controlling ferryboat dimensions, attitudes and projections; critical clearances (with proposed new and existing structure to remain); significant water levels;
- On typical section: same information as "On Profile";
- Where pertaining to feasibility: significant environmental and geometric design constraints, labeled as such.

These sketches shall include only the minimum information needed to select design alternatives to be retained.

4200 Development of Design Alternatives

4210 Cost Estimating

The Consultant shall develop, provide, and maintain **construction cost estimates for each design alternative** using approved format and level of detail and projected accuracy for the purposes of project configuration selection.

4220 Consultant shall update the estimates periodically and as necessary to incorporate significant design changes and advances in the quantity of known features.

4230 Consultant shall evaluate each design alternative identified in the PSR and the null alternative with specific engineering analyses and considerations. Analyses shall be as detailed as necessary for the purpose of determining the relative suitability of each design alternative. They shall include:

- Design Configuration and Geometry;
- Environmental constraints (identified under the Section 5000 tasks)
- Potential environmental impact mitigation measures (identified under the Section 5000 tasks);
- Programmed environmental benefits or betterments (identified under the Section 5000 tasks);
- Maneuvering, berthing and safety considerations;
- Fendering performance attributes;
- All primary structural materials;
- Basic fender elements;
- Structures (limited to establishing basic concepts, accommodating clearances and stream flow, limiting loads and accelerations on the ferryboats, and estimating costs);
- Maintenance requirements and cost;
- Maintenance and protection of traffic during construction
- Soil and foundation considerations;

- All other affected structures and utilities, as applicable;
- Construction cost factors;
- Implementation problems;
- Other considerations deemed relevant during the progress of the work.

4240 The Consultant shall **prepare the following drawings for each design** alternative analyzed under Task 4230 above.

4241 1: 100 plans showing (as a minimum) stationed centerlines, information noted in Subtask 4120, construction limits, dredge and fill limits, and proposed demolition and removal limits. At critical locations where more detailed study is required, the Consultant shall provide details at a larger scale.

4242 Profiles, at a scale of 1:100 horizontal and 1:100 vertical, showing (as a minimum) the vertical datum reference, significant elevations, existing mud line and subsurface profiles, proposed dredge limits, grades, information noted in Subtask 4120, critical clearances at structures and moveable bridge spans, centerline stations and, construction limits.

4243 Typical sections showing (as a minimum) information noted in Subtask 4120.

4250 The Consultant shall develop or collect site-specific information, vessel information and all other information needed to perform the work of this section.

4300 Development of Draft Design Approval Document (DAD)

4310 Initial development of **DAD**

4311 The Consultant shall document the results of Section 4000 (and combine this with the environmental study documentation prepared under Task 5010) in a DAD using the PSR as a basis. The DAD shall be prepared in approved format.

4312 Throughout its initial development the Consultant shall discuss and resolve the DAD

4313 The DAD shall reference the Ferry Landing Design Guidebook.

4314 The DAD shall include a preliminary master plan for complete phase-in of the new design system and phase out of the existing-design system at each terminal, including suggested slips (at least one at each terminal: number of slips and locations to be agreed upon with the agency) to be constructed under the current project, and future work, with phasing and suggested out-years for commencement of construction on each phase, based on appropriate maintenance of traffic considerations, coordination with other forecasted projects, remaining useful life of existing fender elements and structures, and other considerations.

4330 Draft DAD

4331 The Consultant shall submit the draft DAD for formal agency distribution and review.

4332 The Consultant shall assist the agency in resolving the comments received, including preparation of individual responses.

4333 The Consultant shall revise the DAD to incorporate the formal agency comments.

4400 Advisory Agency Review

4410 The Consultant shall provide the agency with the signed DAD for advisory agency distribution and review. The agency shall distribute the DAD to the advisory agencies.

4420 The Consultant shall assist the agency in evaluating and preparing individual responses to the review comments received.

4600 Development of Final Design Approval Document

The agency shall obtain all necessary approvals and concurrences, cause publication of legal notices, and approval of the recommended design with the assistance of the Consultant.

4620 The Consultant shall prepare the Engineer's Design Recommendation.

The Consultant shall modify the DAD to include the Engineer's Design Recommendation, and to reflect updated existing conditions and costs as necessary.

The Consultant shall discuss and resolve the Final DAD content and format with the agency and incorporate the discussion results before submitting it for distribution.

4640 Final FTA and NYSDOT Review

4641 The Consultant shall submit the revised draft Final DAD to the agency for final FTA and NYSDOT review and concurrence. The agency shall transmit it to the FTA and NYSDOT.

4642 The Consultant shall assist the agency in responding to requests for information, questions, or comments concerning the revised Final DAD from the FTA and/ or NYSDOT.

4643 The Consultant shall revise the DAD to incorporate changes resulting from the FTA and NYSDOT review.

4650 The Consultant shall submit the Final DAD to the agency for distribution and design approval processing.

4700 Miscellaneous Preliminary Project Design Studies

4720 Vessels

4724 Reference book on vessel characteristics.

The consultant shall develop, for each Staten Island Ferryboat class, through data collection and verification, measurement, and calculation as required, all necessary vessel physical characteristics governing the design of ferry slip fendering systems and structures. These characteristics shall be tabulated in a **Ferry Landing Design Guidebook** to be prepared by the consultant, and shall include, but may not be limited to:

- Capacities
- Tonnages
- Length
- Beam
- Waterline Beam
- Draft
- Wetted Surface
- Block Coefficient
- Prismatic Coefficient
- Displacement
- Mass
- Power
- Top Speed
- RPM at top speed (and blade positioner settings, where applicable)
- Power
- Projected Areas (transverse and longitudinal; above and below waterline)
- Sea Trial Manoeuvring Data (headreach at speeds tested, turning data at speeds tested, where available)
- Relevant Model Test Results (where available)
-

The “Ferry Landing Design Guidebook” shall include a narrative describing the operation of the steering and propulsion system for each class and drawings of each class, including, but not limited to, outlines of the effects of probable attitudes of list and trim expected in normal operation.

4726 Vessel Local Structure

For each vessel class, perform an **engineering study of the guard structure area** (i.e., “rub rail,” or “gunwale bar” and backup structure) at various critical locations around the periphery of the vessels, to determine allowable berthing pressures and forces. Include the results in the “Ferry Landing Design Guidebook.” In the studies show, in relative terms, clear design deficiencies, and make conceptual recommendations for advisable reinforcement.

4728 Supplementary Manoeuvring Characteristics

Where extant manoeuvring trial data for one or more vessel classes is deemed deficient with regard to information required or desirable for ferry landing structure design, design a full scale testing regimen and, in cooperation with the agency, perform full scale vessel performance testing and monitoring. Data may be gathered using video, and GPS and time correlated with throttle and steering command data and machinery response data. Such data as is gathered shall be appropriately synthesised and presented, including appropriate summarization in the “Ferry Landing Design Guidebook.” Such data may include, but not be limited to, manoeuvring data at typical berthing speeds and power, if different from extant sea trial data, velocity decay characteristics, and propulsion plant and steering system response.

4740 Berthing Manoeuvres

For each ferry slip at each terminal (i.e., three slips in Manhattan, and five slips at Staten Island), and for each ferry vessel class, the consultant shall develop data to permit determination of typical approach directions and velocities; typical contact points and expected contact frequency and severity along the length of the slip berthing structures; contact and velocities and berthing energy to be assumed during the design; as well as other parameters relevant to fendering structure design. Data shall be gathered using video, and GPS and time correlated with throttle and steering command data and machinery response data as well as relevant historical information, current ferry schedules, and interviews of operational staff. Where appropriate, meteorological and hydrological data at times of berthing shall be recorded. Include results in the “Ferry Landing Design Guidebook.”

4760 Design Criteria and Preliminary Slip Layouts and Fendering Structure Choices

Based upon data gathered on the project, prepare ferry slip and fendering structure required design criteria at each point along the length of each slip (i.e., three slips at Whitehall and five slips at St. George). Include the required design criteria in the “Ferry Landing Design Guidebook.”

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5000 ENVIRONMENTAL STUDIES

5010 Environmental Considerations

This task covers general analysis and preparation of the **Environmental Analysis** (EA) and construction permitting, including summarizing of detailed studies and reports performed under other tasks. The Consultant shall perform all necessary subtasks and activities to **obtain required construction permits for the project**, including those listed herein and any others which may be required by government bodies with jurisdiction over the construction work to be performed, or over the completed structures. The Consultant shall prepare an **Environmental Assessment report** for the project in accordance with NEPA and FTA requirements.

5011 Introduction and summary

In the PSR the Consultant shall briefly state the NEPA classification, SEQR, and CEQR requirements, with appropriate references to NEPA, SEQR, and CEQR regulations. The Consultant shall also:

- Summarize the assessment of social, economic and environmental considerations
- Note and list any permit requirements, including development of a **permitting matrix** including all relevant data fields for effective tracking and management of the permitting process
- Note whether the NEPA classification, SEQR, and CEQR requirements, or need for permits varies with the alternatives.

5014 Design Alternatives - Environmental Analyses and PSR Documentation

The Consultant shall analyze all design alternatives and the null alternative with regard to environmental issues (including beneficial and adverse impacts) and document all analyses in the PSR and EA. Wherever appropriate the Consultant shall describe proposed measures to avoid, minimize, or mitigate impacts.

The analyses and reporting shall be performed and presented in accordance with current FTA policy.

The information shall be organized sequentially for each alternative.

The consultant shall consider the effects of the project on Environmental Justice in accordance with Executive Order (EO) 12898 and other relevant guidance. Environmental Justice discussion and documentation shall be included in the PSR and Environmental Assessment Report.

The Consultant shall document the agency's commitment to Title VI of the Civil Rights Act which stipulates that no person in the United States shall on the grounds of race, color, or national origin, be: excluded from participation; denied the benefits of; or be subjected to discrimination under any program or activity receiving federal assistance.

5015 SEQR/ CEQR Environmental Documentation

The Consultant shall assist the agency in preparing all SEQR/ CEQR documentation required for the project.

5020 Assistance with Permits and Certification

5021 Permits and certification

The Consultant shall assist the agency in applying for all required construction permits, including those listed in the *City Environmental Quality Review Technical Manual*, latest edition. The Consultant shall assemble and submit to the agency all specifically-required **information in a suitable form for obtaining each permit or certification**. (This information shall include, as necessary, special reports and other documentation prepared under other tasks.)

The Consultant shall prepare the required **application forms**.

The Consultant shall obtain the permit(s) and certification from the regulatory agencies.

The Consultant shall prepare an **Environmental Assessment for the selected design alternative** and assist the agency in obtaining all required approvals of the Environmental Assessment.

5030 Noise Study

5035 Impact Determination

The Consultant shall determine the noise impacts for each design alternative and the null alternative.

5037 Construction Noise

The Consultant shall analyze construction noise caused by the project and recommend specific appropriate construction noise abatement measures for the plans and specifications in accordance with federal, state, and local requirements.

5039 Noise Study Report

The Consultant shall prepare a **Noise Study Report** documenting the results of the noise analysis, and include the Report as a technical appendix to the project Environmental Assessment as well as a narrative text for the noise portions of the document.

5040 Air Quality Study

5041 Introduction

The Consultant will ascertain and report the impacts of all design alternatives, including the null alternative, on the air quality of the area containing the project and influenced by it.

5045 The Consultant shall assess the construction impacts of the project on the air quality of the study area including requirements to be included in the plans and specifications required such that construction operations comply with applicable local and other law.

5046 The Consultant shall prepare an **Air Quality Report** identifying through text and graphic presentation the impacts of each design alternative and the null alternative on air quality, and shall include this Report in a technical appendix to the Environmental Assessment as required.

5050 General Ecology and Endangered Species

General Ecology (Subtasks 5051-5053)

5051 The Consultant shall conduct a field investigation to determine existing terrestrial and aquatic ecological characteristics in the project area, including (but not limited to):

- General terrain
- Major hydrologic features
- Habitat types
- Relative abundance of each habitat type
- Expected characteristic plant species associated with each habitat type
- Expected characteristic fish and wildlife (i. e., typical fish, mammal, bird, amphibian, and reptile species known or expected to occur in the project vicinity)

5052 The Consultant shall evaluate the nature, extent, and significance of potential impacts (including impacts during construction) of each project alternative on fish, wildlife, and habitat. This analysis shall include

general determinations of the amount and type of vegetation to be disturbed, special habitats that might be damaged.

5053 The Consultant shall determine appropriate avoidance, minimization of harm, and mitigative measures to compensate for project impacts.

5054 Endangered and Threatened Species Determination

The Consultant shall determine presence or absence of endangered, threatened, or rare species within the project boundaries, assess potential impacts of each design alternative on such species and their habitats, and as necessary determine measures for avoidance, mitigation, and minimization of harm.

5055 The Consultant shall include the information gathered in subtasks 5051 – 5054 in the Environmental Assessment.

5070 State-regulated Wetlands

All wetlands studies for state-regulated tidal wetland permit application purposes shall be consistent with 6 NYCRR Part 661.

The Consultant shall investigate types, locations, and extent of state-regulated wetlands (as indicated on the state wetlands map) in or contiguous with the project area, as follows:

The Consultant shall initially determine requirements for state permits for activities in wetlands.

The Consultant shall review NYSDEC Tidal Wetlands Maps, observe the sites, and take soundings, to identify locations of state-regulated wetlands in the project area.

5074 From field observations and wetland classification sheets (available from the NYSDEC regional office) the Consultant shall determine wetland characteristics of each delineated wetland, including:

- Approximate total wetland area
- Approximate wetland area within proposed project area
- NYSDEC wetland classification(s)
- Probable wetland functional values.

5075 The Consultant shall identify and determine the nature, extent, and significance of wetland impacts of each project alternative by identifying type(s) of impacts expected from construction activities and project changes, identifying affected acreage of regulated wetland and regulated adjacent area--i.e., within 300 feet of the tidal wetlands boundary--and assessing resultant potential impact on functional values.

5076 The Consultant shall assess appropriate avoidance, minimization, and mitigation measures to compensate for losses or alterations to regulated wetlands and adjacent areas. This analysis shall be sufficient to demonstrate that the proposed action includes all practicable measures to minimize harm to the regulated wetlands and adjacent areas.

5079 The Consultant shall include the information gathered in subtasks 5070 – 5076 in the Environmental Assessment.

5090 Wetland Mitigation

5091 Mitigation Goals and Objectives

To compensate for permitted unavoidable wetland losses or alterations, the Consultant shall establish mitigation goals and objectives and propose and design a **conceptual compensatory mitigation plan** including specific mitigation site(s), if required for obtaining construction permits for the project. The Consultant shall coordinate closely with the agency to ensure that the wetland mitigation proposed is consistent with the project goals and objectives and works within the project constraints.

The Consultant shall establish the mitigation goals as part of the conceptual wetland mitigation planning. The goals shall relate to the functions and values of the impacted wetlands and the proposed compensatory mitigation wetlands, and shall be expressed in terms that can be quantified and field-measured. They will form the basis for determining the relative success or failure of the mitigation efforts.

Wetland mitigation goals, objectives and plans shall be documented by the Consultant in the Environmental Assessment as required.

5100 Navigable Waters

5101 The Consultant shall determine the nature, extent, and significance of the impacts of the project on U. S. Army Corps of Engineers-defined and U. S. Coast Guard-defined navigable waters of the United States. The Consultant shall identify the nature and extent of all activities requiring U.S. Army Corps of Engineers Section 10 and U. S. Coast Guard Section 9 permits.

5102 The Consultant shall evaluate appropriate avoidance, minimization of harm, and mitigation measures to compensate for project impacts on navigable waters.

5103 Navigable waters impacts and mitigation measures shall be documented by the Consultant in the Environmental Assessment as required.

5110 Coastal Zone Management

5111 The Consultant shall establish whether and how the preferred alternative is consistent with or advances each applicable coastal policy of the Department of State's (DOS) 44 coastal policies, including where applicable those in Local Waterfront Revitalization Program (LWRP) areas.

5112 The Consultant shall prepare a **Coastal Assessment Form (CAF)** or (if appropriate) a **Federal Coastal Assessment Form (FCAF)**, and submit the form(s) to the NYSDEC and NYSDOS.

5160 Cultural Resources

The Consultant shall perform a Cultural Resource Survey of the project. All study limits shall be defined or approved by the agency in advance. The work shall comply with:

- The requirements for the protection of the nation's cultural resources as mandated by Section 106 of the National Historic Preservation Act of 1966, the amended Procedures for Historic and Cultural Properties as set forth in 36 CFR Part 800 and associated guidance, the National Environmental Policy Act of 1969, Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974.
- The current New York State Education Department's (SED) Work Scope Specifications for Reconnaissance Survey and Site Examination (SED work scope).

All persons performing or supervising cultural resource survey work shall qualify under the appropriate professional qualification standards set forth in the Secretary of the Interior's Professional Qualification Standards (48 CFR Part 44738-9).

5161 The Consultant shall conduct a comprehensive preliminary literature search to identify cultural resources within the project area which are listed on or nominated to the National Register of Historic Places, as well as other cultural resources that may be of or cultural significance. This shall include site files, historic maps, documents, and other records at the following sources:

- New York State Office of Parks, Recreation, and Historic Preservation (OPRHP)
- New York State Education Department (SED)
- New York State Library and Archives
- Universities
- Local and county museums and libraries
- Local and county historians
- Historical societies
- NYC Landmarks Preservation Commission

- 5162 Based on the above research the Consultant shall develop a prehistoric and historic overview, locate existing resources, and predict the location of potential archaeological sites.
- 5163 Based on the Subtask 5161 research the Consultant shall develop an appropriate research design for testing the project area, and shall obtain agency approval of this research design before proceeding with the field reconnaissance survey.
- 5164 The Consultant shall conduct a reconnaissance field survey to locate and document historic properties (archeological sites, buildings, structures, objects and districts) within the study area. This shall include:
- Interviews and an inspection of the entire project area to verify reports, assumptions, and predictions about the presence of cultural resources
 - Color photographs and descriptions of all buildings or other structures
 - Subsurface testing in accordance with the Subtask 5163 research design
- The Consultant shall coordinate field operations with the agency.
- The Consultant shall identify each archeological site requiring a site examination to provide the data needed for the SHPO/OPRHP determination. The agency shall confirm the need for any site examinations.
- 5165 The Consultant shall address the requirements and impact, if any, of any local law concerning landmarks on the project.
- 5166 Cultural Resource Survey Report
- The Consultant shall prepare a **Cultural Resource Survey Report** in approved format describing all work done. The report shall contain sufficient information on the cultural resources in the project area to enable the SHPO/OPRHP to determine National Register eligibility. It shall include:
- Descriptions of all archaeological sites, buildings, and other structures
 - Color photographs keyed to a project map Location and historic maps.
 - Plans showing the relationship of the findings to the design alternatives
 - A discussion of the impact of each alternative on cultural resources.
 - An appendix listing all sources, summaries of interviews, bibliography, artifact inventories, and a shovel test summary.
- 5167 The Consultant shall submit a draft of this report for preliminary review by the agency.
- 5168 The Consultant shall revise the Cultural Resource Survey Report to incorporate agency review comments and resubmit it (with original colored photographs) to the agency for review by the SHPO/OPRHP. If required, the Consultant shall reference the Cultural Resource Survey Report in the Environmental Assessment.
- 5169 It is assumed that the SHPO will determine that the project will have no adverse effect. Upon receipt of the SHPO notification, the Consultant shall prepare summary documentation as described in 36 CFR Part 800.8(a). It is also assumed that the project will not have any adverse affect on any NYC or National Landmarks or Historic Places.

5200 Hazardous Waste/Contaminated Materials Screening

The Consultant shall screen for hazardous wastes and contaminated materials within the project site. This preliminary screening is a general review to identify sources or structures within the project area or in close proximity which could contain or be a source of hazardous wastes or contaminated materials that would impact the project.

5201 The Consultant shall review existing information about past and current land use to identify possible sources of contamination within the project site and corridor. This review shall include information sources (more completely listed in the NYSDOT Environmental Procedures Manual) such as:

- Historical aerial photography
- Sanborn Insurance Company maps (archival; available through NYSDEC regional offices)
- NYSDEC records such as:
 - Registry of Inactive Hazardous Waste Sites
 - Hazardous Substance Waste Disposal Site Study Report
- records of chemical or petroleum storage tanks
- waste incident and chemical release reports
- county and municipal agency sources such as:
 - local assessor and building permit records
 - title abstracts
 - local historical society records
- records of discussions with former employees of industries and other businesses located within or near the project area
- environmental investigations performed by the agency

5202 The Consultant shall visit the project site to look for observable physical evidence of contamination.

5203 The Consultant shall prepare a **Hazardous Waste/Contaminated Materials Screening Report**. It shall contain:

- a list of the site screening objectives
- a summary of the results of the background information search
- an explanation of inspection techniques used
- observations from the project site visit
- an analysis of the information, identifying properties or locations with a reasonable probability of containing hazardous wastes or contaminated materials
- (where possible) maps showing the location of fuel tanks, dry wells, or other structures that could be associated with spills or releases of hazardous substances
- (where appropriate) a brief discussion of which further actions should be taken and why supported by figures or tables
- (where appropriate) site visit or meeting minutes

5204 The Consultant shall submit a draft of this report to the agency for preliminary review.

5205 The Consultant shall revise the draft report per comments received and resubmit it to the agency.

5207 It is assumed that hazardous waste generated by the project may be the result of demolition and removal of structures made from creosoted timber and lumber and/or dredging. Additionally, at a portion of the waterfront at the St. George Ferry Terminal, there is a known underground plume of petroleum product in the sub aqueous and upland soils.

5208 The Consultant shall include the information gathered in subtasks 5201 – 5207 in the Environmental Assessment as appropriate.

5220 Hazardous Waste/Contaminated Materials Remediation Plan

The agency shall provide the Consultant with the **Detailed Site Investigation Report**.

The Consultant shall prepare a **Remediation Plan** proposing specific actions to reduce or eliminate hazardous waste and contaminated materials impacts, using the most cost-effective and expedient methods (e. g., containment, in-situ treatment, on-site or off-site excavation and treatment, or disposal) allowable and appropriate for the type of contaminant and volume of material to be handled.

5228 The agency shall either concur with the recommended remediation method or specify an alternative method. The Consultant shall then design the remediation provisions for this method for incorporation into contract design.

5229 The Consultant shall include the information gathered in subtasks 5220 - 5228 in the Environmental Assessment as appropriate.

5940 Reevaluation Statement

5941 The Consultant shall reevaluate the Environmental Assessment prepared under this Contract to confirm or revise its findings as a result of changes in design (i.e. design development and finalization) and existing conditions since its issuance.

It is assumed that no substantive data gathering or analyses will be required.

5942 The Consultant shall prepare a **Reevaluation Statement** documenting the reevaluation findings

5943 The Consultant shall submit a draft of the Reevaluation Statement to the agency for preliminary review.

5944 The Consultant shall incorporate the agency's preliminary review comments and resubmit the Reevaluation Statement to the agency. The agency shall distribute it to the FTA and other outside agencies for review.

5945 The agency shall provide the Consultant with FTA and other agency comments. The Consultant shall assist the agency in resolving them.

5946 The Consultant shall again revise the Reevaluation Statement to incorporate the resulting changes and resubmit it to the agency for final distribution and approval.

The agency will prepare and obtain publication of all required legal notices.

5950 NYCT Structures (Slip 3, Manhattan)

5951 The Consultant shall prepare a **discussion and analysis of potential impacts of the project**, if any, on NYCT structures in the PSR.

5952 The Consultant shall propose and discuss efforts to avoid or mitigate impacts on NYCT structures, and requirements to coordinate, if necessary, with NYCT in the PSR.

5953 If there will be any impacts, or potential impacts, on NYCT structures for the selected project configuration, the Consultant shall include the results of subtasks 5951 and 5952 in the Environmental Assessment.

5960 Local Law

5961 The Consultant shall analyze and discuss the impact and applicability of local law to the selected project alternative, including, but not limited to, such matters as Environmentally Preferable Purchasing, Landmarks, Art Commission and Percent for Art, ULURP, Waterfront Revitalization and easements (such as view corridors) on the selected project alternative.

5962 The Consultant shall report to the agency on the results of subtask 5961.

5970 Environmental Justification

5971 For cases where continued use of tropical hardwoods will continue in any selected design alternative, including but not limited to, partial retention of existing structures and partial replacement of existing structures with new design structures, the Consultant shall, upon request, prepare an **Engineering and/or Economic Justification Letter or Report** documenting the reasons for the continuing use.

7000 PROJECT DESIGN

7100 Preliminary Project Design

Under Subsection 7100, the following goals will be accomplished:

- Final validation of all necessary field and physical data as needed to prevent design errors;
- Final selection and refinement of project design concept, configuration, and geometry;
- Final predictions of fendering system and structural performance for the selected project design concept and configuration;
- Development of structural and fendering system;
- Development of foundation system and dredging requirements;
- Selection of major materials;
- Planning for facilitated construction, maintenance, and repair;
- Preliminary selection of coatings and corrosion control systems;
- Preparation of preliminary maintenance and protection of traffic and construction phasing plans;
- Identification of proprietary or long lead items required for selected design concept, and determining construction buy-out strategy;
- Preparation and submission of 30% complete final plans and specifications, including demolition and removal plans; structural, fendering, interference/ interface, and utility plans;
- Finalized master plan for complete "phase in" of new system (via this project and follow-on projects) and complete "phase out" of old system;
- Preparation of construction permit application documents, and submission in order to apply for permits;
- Preliminary interference checks;
- Planning of existing subsurface structure mitigation methods, as part of foundation design, and liaison with subsurface structure owners, if applicable;
- Preliminary identification of environmental project mitigation measures, if applicable.

7110 Preliminary project design deliverables shall include:

- **Key plans;**
- **Existing Site Plans;**
- **Site Plans for Completed Project;**
- **Demolition and Dredging Plans;**
- **General Plans, Elevations and Sections;**
- **Foundation Analysis and Plan;**
- **Structural Analysis and Plans, Elevations, and Details;**
- **Permitting Analysis, Plans, and Completed Applications;**
- **Plans of Major Subassemblies or Structural Assemblies** in appropriately large scale to depict major subassemblies and components;
- **Typical Details;**
- **Interference Diagrams**, to include all existing and planned (i.e., fully designed, if any) ferryboats and all fixed structures to remain which must interface with or function with the new work, including appropriate plans, sections, elevations, water levels, and vessel waterlines;
- **Utility layouts;**
- **Material and Coating Specifications: Cathodic Protection System Specifications** (if applicable);
- **Final fendering system analysis**, predicting definitive performance parameters for the new work based on the final selected concept, including effects on the new work and structures, ferryboats, and passengers;
- **Refined Budget Estimate** (accuracy -15% to +30%) based on the completed preliminary design;
- **Preliminary construction schedule;**
- **Proposed buy out strategy;**
- **Other documents as required** to validate the design, assist decision making, and define it to the 30% complete design progress level.

7111 Preliminary Project Design Deliverables shall be submitted to the agency in two iterations: a **comment copy**, and a **final, presentation copy** incorporating agency comments received and adjudicated.

- 7112 The Consultant shall assist the agency in the presentation, explanation, and support of Preliminary Project Design Deliverables to the advisory agencies as needed. Upon request by the agency, the consultant shall submit the **construction permit applications** to the appropriate regulatory agencies, shall monitor these agencies' reviews and provide liaison and supplemental information as necessary until all required permits are obtained to construct the project. In the event the agency retains a separate Construction Manager (CM) or Resident Engineer (REI) for the project prior to the completion or termination of this contract, the Consultant shall cooperate with the oversight and monitoring of the permitting process undertaken by the CM or REI.
- 7113 In instances where the Refined Budget Estimate indicates that the project will be over budget, the Consultant shall work with the agency to undertake design modifications such as to bring the projected cost of the project within budget limitations.
- 7131 In the event the agency or the CM or REI develops an independent cost estimate for the project during the Preliminary Project Design activity, the Consultant shall cooperate in developing a **reconciled Preliminary Design Cost Estimate** with the CM or REI.
- 7140 The Consultant shall develop a **list of long lead items**. In the event the agency chooses to pre-purchase long lead items so as to fast-track construction of the project, the Consultant shall develop bid documents for such items for direct bid and purchase by the agency or for bid and purchase by the CM in the agency's behalf. For such pre-purchases, the Consultant shall assist the agency or CM with vendor/ contractor evaluation and selection as requested.
- 7200 Final Design**
- 7201 Under Final Design, the Consultant shall prepare and submit complete construction documents, including **Plans, Specifications, Estimates (PS&E) and bid forms**, so as to allow for competitive sealed bidding for construction of the project and for production of complete working drawings and proper execution of the work by the construction contractor. For the first slips to be completed at each terminal, the agency may direct that one set of bid documents be prepared to include the work at both terminals, or that separate bid documents be prepared for the work at each terminal. If included in the project program, and required by the agency, the Consultant shall prepare and submit P, S&E and bid forms for Percent for Art work and/or environmental mitigation project work. Final Design Documents shall incorporate all requirements of the agency and decisions reached jointly by the agency and Consultant, and approved comments and requirements of the CM or REI, regulatory agencies, and advisory agencies.
- 7202 A Final Design Kick-off meeting of the Consultant, the agency, and the CM or REI (if engaged at this time) shall be held at the start of Final Design. All project requirements shall be reviewed, including project schedule, significant project decisions, and review of resolution of Preliminary Design issues.
- 7203 The Consultant shall review and verify existing conditions as required to preclude design errors.
- 7204 The Consultant shall undertake a **constructability review** of the Preliminary Design with the CM at the beginning of Final Design, and shall incorporate Final Design features jointly developed to enhance competitive bidding for the work and to reduce unnecessary construction delays and costs.
- 7205 The **drawings and specifications** prepared and submitted under Final Design shall include all pertinent information necessary to fulfill this Contract. They shall be prepared with construction details completely shown and dimensions and critical loads, clearances, and other parameters given. Specifications shall be completely stated so as to enable prospective bidders to make accurate and reliable estimates of the quantities, quality, and character of the labor and materials required to complete the project in a first class manner. For each item specified, the Consultant shall write performance specifications describing the salient characteristics of the product. The Consultant shall suggest all areas where pre-qualification requirements are advisable for the project. The Consultant shall propose necessary pre-qualification requirements of Contractors, Sub-Contractors, or manufacturers, and, upon written approval of the agency, shall include the pre-qualification requirements in the specifications.

Plans shall be developed to an approved format and scale appropriate for the project. Unless otherwise agreed to with the agency, specifications shall be drafted and formatted in accordance with New York State Department of Transportation (NYSDOT) Construction Specification format, using NYSDOT Standard Specifications, adapted to this project, insofar as practicable. The content of all Final Design Documents shall be drafted to fully conform with the applicable portions of the NYC PPB Rules and the New York State Education Law.

Final Design Documents shall include all necessary phasing, maintenance of traffic, security, and construction housekeeping requirements to permit concurrent construction and safe, uninterrupted, ferry operations to occur at the site with a minimum of interference or claims thereof.

- 7210 A **Final Detailed Cost Estimate** for each prime Contract, formatted so as to be keyed to Specification and Bid Items, shall be prepared. The Final Detailed Cost Estimate shall be "Definitive," (accuracy -5% to +15%), shall be reviewed by the Consultant and reconciled with the CM or REI's independent estimates, and shall include no design contingencies. The Consultant shall submit a report highlighting differentials between the Final Detailed Cost Estimate and the Refined Budget Estimate.
- 7211 In instances where the Final Detailed Cost Estimate indicates that the project will be over budget, the Consultant shall work with the agency to undertake design modifications such as to bring the projected cost of the project within budget limitations.
- 7220 The Final Design Documents shall address requirements for mitigation and/ or disposal of hazardous materials disturbed by, or generated by, the work, and shall include plans, specifications, procedures, protocols, phasing plans, and regulatory filings as applicable.
- 7230 During Final Design, the Consultant shall fully design, in consultation with the agency and the regulatory agencies, required and agreed upon environmental mitigation measures upon which the project permits may be conditioned.
- 7240 Unless otherwise approved in writing by the agency, all specified products, items, or processes shall include a minimum of three named manufacturers or suppliers, "or approved equal." In the event conforming to the intent of the Consultant's approved design requires the specification of one or more products, items, or processes from a single source, and this necessity is concurred with by the agency, the Consultant shall prepare and submit, on its signed letterhead, a **complete engineering justification**, which meets the requirements of the NYC PPB Rules and New York State General Municipal Law for justifying "Brand Name Only" specifications.
- 7250 A pre-construction strategy site meeting shall occur when the Final Design is approximately 75% complete. This meeting shall be conducted at the sites and shall be attended by the agency, the CM or REI, and the Consultant. This meeting shall:
- 7251 Review site conditions and ferry operational and security housekeeping requirements so as to ensure that the bid documents issued thoroughly and accurately reflect all site conditions;
- 7252 Review progress issues including regulatory approvals, resolution of previous design issues, construction planning and phasing, and Consultant recommendations on areas where Contractor special experience requirements should be requested;
- 7253 Review the following additional items:
- Tenants on site;
 - Conditions that would affect construction of the project;
 - Ongoing ferry and transit operational requirements;
 - Locations for material storage, field offices, support functions and access routes and times;
 - Conditions involving demolition, partial demolition or deterioration of existing elements;
 - Existing utilities and navigation equipment;
 - Work requirements needed for the operation of existing functions.

- 7254 Be attended by the Consultant and appropriate Subconsultants, the agency, the CM or REI, and other stakeholders who will be affected by construction activities, as identified by the agency.
- 7255 In the event more than 90 days elapses from date of the pre-construction strategy site meeting to the date of final submission of the Final Design Documents, the agency may elect to hold a follow-up site meeting.
- 7260 Consultant Final Design responsibilities include:
- 7261 **Submittals** and reviews in accordance with the approved project schedule;
- 7262 **Submissions** to and obtaining approvals from, all appropriate utilities, regulatory agencies, and affected adjacent structures owners;
- 7263 **Resolution** of all design questions as they arise throughout preparation of the Final Design Documents;
- 7264 Attendance at meetings and production of **meeting minutes**;
- 7265 Production of a **project status report** when the Final Design is approximately 75% complete and review of same at a meeting with the agency. The report shall include the status of all agency submissions and approvals.
- 7270 The Consultant and the CM or REI shall jointly conduct a **final Constructability Review of the P,S&E(s)**, and bid booklet(s), when the Final Design is approximately 75% complete, to ensure that the 100% complete Final Design documents are clear, coordinated, and all inclusive.
- 7271 The Consultant shall assist the CM or REI in developing the final **Engineer's construction schedule**.
- 7280 Documents shall not be considered approved until the agency has notified the Consultant in writing.
- 7281 The agency's reviews or approval of the Consultant's submissions is for the convenience of the agency and is programmatic in nature only: it is not intended to be an expert opinion on the engineering sufficiency of the Consultant's design nor to be a substitute for internal reviews, detailed analysis or quality control/quality assurance to be performed by the Consultant for the Consultant's work product. The failure of the agency to comment on any item shall not be taken to mean either that the item has been reviewed or checked and accepted.
- 7282 **Final Project Design Deliverables** shall be submitted to the agency in three iterations: a **75% complete comment set** (ten copies unless otherwise directed), a 100% complete copy incorporating agency and CM or REI comments received and adjudicated on the 75% complete comment copy (ten copies, unless otherwise directed), and a **final, signed and sealed bid set of Final Design Documents**, comprising complete fully coordinated P,S&Es and bid sheets for each contemplated construction contract and incorporating all agency, CM or REI comments (in PDF format, with plans in full size and half size hard copies, number of copies to be as directed).
- 7283 The 75% complete comment set shall include, to approved scale and in approved format:
- **Key plans;**
 - **Existing Site Plans;**
 - **Site Plans for Completed Project;**
 - **Demolition and Dredging Plans;**
 - **General Plans, Elevations and Sections;**
 - **Foundation Analysis and Plan;**
 - **Structural Analysis and Plans, Elevations, and Details;**
 - **Completed Applications and Permits;**
 - **Plans of Major Subassemblies or Structural Assemblies** in appropriately large scale to depict major subassemblies and components;
 - **Connection and Other Structural Details;**

- **Interference Diagrams**, to include all existing and planned (i.e., fully designed, if any) ferryboats and all fixed structures to remain which must interface with or function with the new work, including appropriate plans, sections, elevations, water levels, and vessel waterlines;
- **Utility Plans**;
- **Hazardous Material remediation program**, plans and specifications;
- **Environmental Remediation program**, plans and specifications;
- **Material and Coating Specifications: Cathodic Protection System Specifications** (if applicable);
- **Final fendering system analysis**, predicting definitive performance parameters for the new work based on the final selected concept, including effects on the new work and structures, ferryboats, and passengers;
- **List of long lead items**, and, if directed, **purchase contracts** therefore;
- **Brand Name Only Engineering Justifications**, if applicable;
- **Final buy out strategy**;
- **75% Complete specifications and bid sheets** for each construction contract, including special conditions and detailed requirements;
- **Documentation** to verify resolution or adjudication of all agency comments, approved advisory agency comments, or regulatory body comments and other issues raised during Final Design.
- **Data** included in the 75% complete submission shall be such as to specify the type and strength of all structural materials; foundation bearing values; size, location, and details of structural elements; bottom elevation of all foundations; design loads; required construction procedures; special shoring or bracing requirements, and structural and foundation calculations.

7284 The 100% complete comment set, and Final Design Documents shall include Final Versions of:

- **Key plans**;
- **Existing Site Plans**;
- **Site Plans for Completed Project**;
- **Demolition and Dredging Plans**;
- **General Plans, Elevations and Sections**;
- **Foundation Analysis and Plan**;
- **Structural Analysis and Plans, Elevations, and Details**;
- **Plans of Subassemblies or Structural Assemblies** in appropriately large scale to depict major subassemblies and components;
- **Connection and Other Structural Details**;
- **Interference Diagrams**, to include all existing and planned (i.e., fully designed, if any) ferryboats and all fixed structures to remain which must interface with or function with the new work, including appropriate plans, sections, elevations, water levels, and vessel waterlines;
- **Utility Plans**;
- **Hazardous Material remediation plans and specifications**;
- **Environmental Remediation plans and specifications**;
- **Material and Coating Specifications: Cathodic Protection System Specifications** (if applicable);
- **Purchase contracts** for long lean items;
- **Multiple specifications** for multiple contracts as required;
- **Reference boring and subsurface information**;
- **Final Estimate**;
- **Engineer's Final Construction Schedule**.

7300 **Vessel Modifications**

7301 In the event that deficiencies are identified in vessel local structure (see subtask 4726) and the Consultant and the agency determine that it is necessary or desirable to correct these deficiencies, the Consultant shall furnish all relevant documentation and data it has developed pursuant to this Contract to the agency's Naval Architect, and provide guidance to the Naval Architect as requested, so that the Naval Architect can prepare designs to implement the necessary corrective reinforcement of vessel local structure.

7302 The agency may determine it is in its best interest to have the Consultant prepare any necessary designs for vessel local structure reinforcement. Should the agency make this determination, the Consultant will be tasked to perform such design work via a contract change order.

7400 **Services During Construction.** See Subsection 8500.

8000 PROJECT MANAGEMENT AND MISCELLANEOUS WORK

8100 Project Familiarization

The agency will provide the Consultant with a copy of the following project documents and other information sources

- Initial project Proposal
- Extant plans, specifications, and technical information in its possession for the structures, vessels, facilities and sites affected by the project.
- Direction concerning which berths/ slips/ structures will be brought to contract design under this contract, prior to the commencement of final design

These sources shall provide the Consultant with the following basic project information:

- Project Type
- Project Location
- Project Fund Source(s)
- Transportation needs
- Capacity information
- Safety information
- Permits and approvals (initial determination)
- Environmental Initiative design elements
- Partial data needed to develop design criteria
- Available Record Plans
- Available Operational Records

Before starting any other work, The Consultant shall become familiar with the project. This shall include the following:

8110 The Consultant shall thoroughly review the project-related information supplied by the agency, with particular emphasis on understanding the project's, scope, schedule, and quality parameters and identifying geometric, operational, maintenance and environmental design constraints.

8120 The Consultant shall visit the project site for the purpose of becoming familiar with actual field conditions.

The Consultant shall notify the agency of any conditions that may affect the currently-assumed Environmental Processing Category.

8130 The Consultant is advised to propose or recommend amendments to the Specific Requirements which it believes would enhance the project, both during the Proposal Stage and during project execution.

8140 Project Familiarization activities undertaken subsequent to Contract Notice To Proceed will be deemed included in Section 1000 work.

8200 Project Reporting

- 8210 For the duration of work under this agreement the Consultant shall prepare and submit to the agency on a monthly basis a **Cost Control Report**, a **Progress Report**, and a **Project Schedule** in a format approved by the agency. The beginning and ending dates defining the reporting period shall wherever applicable correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the agency, this task will not be performed during the suspension period.)
- 8220 Project Reporting shall be billed along with the work in progress at the time the Project Reporting is performed.

8300 Project Coordination

- 8310 Project Meetings
The Consultant shall inform the agency Project Manager of all meetings pertaining to the project which the Consultant attends or plans to attend. Such meetings shall include, but may not be limited to, those listed in this Task and in other Tasks.
- 8311 Progress Design Meetings
During the work of Sections 1000 through 8000, the Consultant shall attend regularly scheduled and other necessary meetings, and keep and submit minutes of these meetings, as directed by the agency Project Manager.
- 8312 Design Review
The agency Project Manager shall invite stakeholders from the agency and advisory agencies to design progress meetings as necessary. On-board design review may also be requested by the agency or the Consultant as necessary.
- 8313 Scheduling
Scheduling of meetings with the agency or advisory agency staff shall be done through the agency Project Manager.
- 8314 Consultant's Schedule
Meetings with the agency shall be as indicated on the **Consultant's Project Schedule** and will include regular Design Progress Meetings, as agreed upon with the agency Project Manager. In addition, the Consultant will be required to attend or conduct meetings with advisory agencies, regulatory agencies, other persons and entities related to the project, and the public as necessary to advance the project.
- 8315 Job Meetings
During construction of the project the Consultant shall attend job meetings at the site and other meetings as are reasonably required to interpret the Final Design Documents.
- 8316 Meeting Minutes
Meeting minutes shall be recorded by the Consultant for each design review meeting, project meeting, and all other meetings attended by the Consultant during the work of Sections 1000 through 8000. The Consultant shall also record all contractor and job meetings unless the CM or REI is present at such meetings. **Draft minutes** shall be submitted to the agency Project Manager within three working days of the meeting. When recording minutes, the Consultant shall number each meeting consecutively and record the date, time, location and attendees. The minutes shall include the agenda, all items discussed, conclusions, and questions for resolution. The party responsible for the resolution of open issues, and the date the resolution is due shall be noted. Unresolved issues shall continue to appear in the minutes until they are resolved and resolution of open items shall be noted. Similarly, corrections and approvals of minutes shall be recorded. An updated **Progress Schedule** and an updated **Look Ahead Schedule** shall be attached to each Progress Design Meeting minutes submission. Subsequent to acceptance or correction of the draft minutes by the agency Project Manager, the Consultant shall transmit a copy of the draft minutes to each meeting attendee for their comments or acceptance. Where necessary, attendee comments on minutes shall be resolved with the agency Project Manager: once all comments are resolved or all attendees accept minutes they will be deemed final: **final minutes** shall be distributed as agreed upon with the agency Project Manager.

8317 Communications

Copies of correspondence, records of telephone conversations, meeting minutes, e-mails, activity reports, trip reports and similar **communications to document information exchange** relative to the decision making, study, and design process when deemed appropriate by the Consultant or whenever requested by the agency.

8320 Coordination Assistance

(This work is in addition to any direct coordination to gather data and responses to agency review comments on formal submissions, all of which is covered under other tasks.)

The Consultant shall assist the agency whenever necessary in its ongoing coordination with outside agencies. This shall include but not be limited to all agency coordination regarding the project environmental and permitting work.

8321 The Consultant shall perform issue-specific analyses whenever necessary.

8322 Whenever necessary the Consultant shall prepare and submit to the agency technical information responding to issue-specific agency questions and concerns.

8330 Project Coordination shall be billed along with the work in progress at the time the Project Coordination is performed.

8400 Constructability Review Support

8410 The Consultant shall supply the CM or REI with necessary design documents, supplemented as necessary by computations and other supporting documentation.

8420 The Consultant shall conduct an informal oral presentation and site visit with the CM or REI at the beginning of Constructability Review Tasks.

8430 The Consultant shall respond to inquiries from the CM or REI.

8440 The Consultant shall prepare and submit to the agency a list of individual responses to CM or REI comments.

8450 Constructability Review Support shall be billed along with Section 7000 work.

8500 Construction Support Services

The Consultant shall provide support services consisting of design response to unanticipated or changed field conditions, analysis and participation in proposed design changes, and ongoing interpretation and classification of design plans.

Construction support services work shall always be in response to a specific assignment from the agency under one of the tasks below. For each assignment the Consultant shall submit a staffing and budget estimate, and shall await written agency authorization to proceed before starting the work.

Not reimbursable under this agreement are:

- **Corrections of design errors and omissions**
- **Straightforward interpretations of plans and designer intentions (i. e., beyond specific agency-requested interpretations under 8530 below)**

The Consultant shall perform the following tasks in response to specific agency directives:

8510 In response to unanticipated and varying field conditions or changes in construction procedures, the Consultant shall conduct on-site field reconnaissance and where required prepare Field Change Sheets modifying pertinent contract plan sheets.

8520 The Consultant shall analyze and recommend on the implementation of design changes proposed by the agency or the construction contractor and provided by the agency. This shall include Construction Phasing Plans.

8530 The Consultant shall interpret and clarify design concepts, plans and specifications.

8540 The Consultant shall review and release upon acceptance structural shop drawings for construction.

8550 Job Meetings:

The Consultant shall attend job meetings with the agency when requested.

8560 Construction Support Services shall be billed along with Section 7000 work.

8600 Management of Subcontractors Engaged Subsequent to Contract Award

8610 For each subcontract greater than \$10,000.00 in value deemed necessary subsequent to contract award, Consultant shall prepare a (sub)**contract document** describing the work, schedule, and method of payment in sufficient detail for obtaining sealed bids for the work. The Consultant shall provide the **work description** and shall submit it to the agency for review. The Consultant shall modify the work description as necessary before including it in the (sub)**contract document**.

8620 The Consultant shall solicit sealed bids from a sufficient number of prospective qualified subcontractors to ensure that at least three (3) bids are received. Upon receipt of at least three bids, the Consultant shall **submit all bids to the agency along with a recommended choice**, and, if applicable, **vendor responsibility data**. It is assumed that the agency will either concur with the recommendation or accept one of the other bids. The agency will then advise the Consultant in writing to proceed. The lowest bidder who is responsible and fully responsive to the invitation to bid will most often be chosen.

8630 Upon receipt of written authorization from the agency to proceed, the Consultant shall execute the contract with the subcontractor and oversee the subcontractor's operations/services to the extent of assuring that the work is performed as described in the contract and that the work performed conforms to agency and all other applicable requirements.

8640 Management of Subcontractors shall be billed along with the work in progress at the time the work of this subsection is performed, only to the extent that it involves direct technical labor for performing Task 8610, or out of pocket costs for work associated with the subsection. Any labor on the part of the Consultant associated with Tasks 8620 or 8630 will be deemed overhead.

8700 Miscellaneous Project Management

8710 Security.

8711 All Consultant personnel shall obtain and wear photo identification badges issued by the agency. The badges are available at the office of the Staten Island Ferry Facility Security Officer, 1 Bay Street, Staten Island, New York. The Facility Security Officer or Chief Security Officer, Staten Island Ferry, shall be notified in advance by the Consultant of all Consultant personnel to be brought on site in connection with any work. The agency reserves the right to require any Consultant, Subconsultant, or Subcontractor, to undertake background checks on any personnel to be assigned to the work. The Consultant shall observe all relevant U.S. Coast Guard regulations or orders relating to port, vessel or marine facility security.

8712 In addition to the agency photo identification badge (subtask 8711), all Consultant Personnel requiring access to secure areas of the terminals or vessels will be required under U.S. Department of Homeland Security regulations to acquire a Transportation Worker Identification Credential (TWIC). TWIC is an identification credential that will be issued nation-wide to maritime workers who require unescorted access to secure areas of a port. It will be issued after a background check has been conducted that includes a fingerprint-based criminal history records check conducted by the FBI, an immigration status check, and a name-based terrorism watch list check conducted by the Transportation Security Administration (TSA). The work of this Contract will be performed in secure areas of the vessels and terminals.

- 8713 In the event that the Consultant must work on an agency vessel located at non agency premises, the Consultant shall cooperate with the property owner's security procedures.
- 8714 While Consultant personnel, including those of Sub-consultants and Sub-contractors, are at work on agency vessels or other agency facilities, they shall comply with all policies and directives issued by the agency's ranking person in charge at the site, who may be an agency engineer, the agency Project Manager, the Director of Ferry Operations, or a vessel's Master or Chief Engineer, or the Ferry Terminal Supervisor.
- 8715 The cost of compliance with project specific security procedures (specified in Tasks 8711, 8713, and 8614) shall be billed along with the work in progress at the time the Project Reporting is performed. The cost of compliance with Task 8712 will be deemed overhead.
- 8720 Technology in Design.

Where beneficial to the performance of the project selection and design work of this contract, appropriate computer modeling, visualization, simulation, analysis and data processing should be employed.

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9000 SCOPE, COMPENSATION AND TERM

9100 Consultant's Services

9110 General Description of Technical Services: The Consultant shall provide, to the satisfaction of the agency, all architectural, engineering, construction related and other technical services required to complete the Tasks described herein and satisfactorily construct the project. The services the Consultant may be required to provide shall include, without limitation, the services set forth in these Specific Requirements. The Consultant shall provide the services through its own employees and/ or through Subconsultants and/ or Subcontractors. All Final Design documents prepared by the Consultant shall comply with applicable law.

9120 Technical Services Included: The technical services provided by the Consultant shall include all necessary and customary components and/ or services in connection with the scope of work described in these specific requirements, including without limitation the following: (1) architectural design; (2) structural design; (3) electrical design; (4) naval architecture; (5) hydrography and meteorology ; (6) land surveying; (7) historic preservation design; (8) ship operations analysis; (9) master planning; (10) cost estimating services, (11) environmental engineering; (11) coordination of the design, and (12) other specialized disciplines deemed required by the agency to complete the project.

9130 Hazmat Services: The Consultant shall provide investigative and design services in connection with the removal of hazardous materials ("Hazmat Services"), as directed.

9140 Reimbursable Services: The Consultant may be directed to provide Reimbursable Services as set forth below. The Consultant shall provide such services if so directed in writing by the agency. The Consultant shall provide such Reimbursable Services through entities approved by the agency, and shall use the method of procurement and form of payment directed.

Reimbursable Services shall be such services determined by the agency to be necessary for the project, and may include, without limitation, the services set forth below:

- a) Conducting exploratory probes and/ or tests to investigate concealed construction;
- b) Printing design documents;
- c) Laboratory services for controlled inspection;
- d) Travel and lodging;
- e) Filing fees and related application fees for government agencies;
- f) Specialty Sub-consultants;
- g) Underwater inspection;
- h) Inspection launches;
- i) Topographic survey (beyond that identified in Section 2000);
- j) Transit Authority Force Account.
- k) Soil or rock borings or probes: soil or rock testing;
- l) Structure or vessel instrumentation and testing;
- m) Any other services deemed necessary by the agency to advance the project

9150 Assistance to Agency: Should any claim be made or any action be brought against the Commissioner, the agency, or the City of New York relating to the design or technical services furnished hereunder, the Consultant shall diligently render to the agency without additional compensation any and all assistance which may be requested by the agency.

9160 Commissioner's Decision Final: The Agency Commissioner's decision shall be final and binding upon the Consultant as to all matters arising in connection with or relating to this contract. The Commissioner shall determine the amount, quality, acceptability and fitness of work being performed hereunder and shall determine all matters relative to the fulfillment of this Contract on the part of the Consultant and such determination shall be final and binding on the Consultant. Acceptance by the Commissioner of any document hereunder shall not relieve the Consultant of sole responsibility for final design of the Project, including the plans, specifications and all supporting documents, except as to any feature thereof which the Commissioner has specifically directed in writing to be included over the written objection of the Consultant.

9170 Provisions Regarding Changes to the Design Documents:

9171 Changes Not Involving Scope:

- The Consultant shall revise and correct, without additional compensation therefore, any and all design documents until the same shall be accepted by the agency and by all other agencies whose approval is required by law;
- Should any substantial change, other than a change in Project scope, make it necessary for the Consultant to change design documents after approval of the preliminary or final design documents, the Commissioner shall direct the change in writing. Such change shall constitute a contract change.

9172 Decrease in Scope: **The Commissioner shall have the right to reduce the scope of the services of the Consultant hereunder, at any time and for any reason, upon written notice to the Consultant, specifying the nature and extent of such reduction.** In such event, the Consultant shall be paid, in accordance with the payment terms set herein, for services already satisfactorily performed prior to receipt of written notification of such reduction in scope, as determined by the Commissioner. Any services performed by the Consultant to revise the design documents as a result of the reduction in scope of the Project shall constitute a contract change.

9180 Resident Engineering Services: The Consultant may be requested to furnish Resident Engineering Inspection (REI) services to supervise the implementation of all or a portion of the designs produced under this Contract, pursuant to a contract change.

9200 Consultant's Personnel

9210 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required architectural, engineering and construction related services in accordance with these Specific Requirements. The Consultant shall provide such services through its own personnel and/ or through its Sub-consultants. The Consultant specifically agrees that its employees, agents and Sub-consultants shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform.

9220 Staffing Requirements: Any personnel provided by the Consultant and/ or its Sub-consultants must satisfy the requirements for the specific title in which he/ she is performing services. The requirements for any given title shall be equal to or greater than those specified in the bid documents for the corresponding hourly rate at which the Consultant proposes to bill for the said person's services. The Consultant shall provide resumes and other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the requirements per title.

9230 Key Personnel: Key Personnel shall include the following personnel of the Consultant and/ or any of its Sub-consultants performing services: (1) Principal, (2) Project Manager, (3) any personnel performing services in a title for which the minimum experience requirement is five (5) years or more, excluding the title of senior draftsman.

9230 Staffing Plan: The Consultant shall submit a proposed Staffing Plan with its proposal, and shall resubmit the staffing plan, with revisions as necessary, when requested, which will generally be whenever the agency is contemplating providing the Consultant with a notice to proceed for the work of a Section of the Scope of Services. Whenever work is in progress, there must be a Staffing Plan approved by the agency in place; the approved staffing plan at any time will be arrived at through mutual agreement between the agency and the Consultant. Such Staffing Plan shall include the information listed below, and shall include only those Key Personnel and titles necessary for the provision of the required services:

1. required titles of Key Personnel;
2. specific personnel performing services as Key Personnel;
3. a list of required titles of personnel other than Key Personnel;
4. annual daily rate for all specified Key Personnel and all other required titles, in accordance with the amounts bid;
5. total estimated hours for all specified Key Personnel and all other required titles;
6. total estimated amount for all specified Key Personnel and all other required titles.

No personnel other than those listed in the approved Staffing Plan shall bill against the work. The agency may, at any time, direct revisions to the approved staffing plan, including increasing or decreasing the specified personnel.

9240 Subconsultants: The Consultant shall engage such Subconsultants as shall be necessary to perform the Work. The Consultant is responsible for the performance of services by all its Subconsultants, including maintenance of schedules, and coordination of their work. Expenses incurred by the Consultant in connection with furnishing Subconsultants for the performance of required services hereunder are deemed included in the payments by the agency to the Consultant, as set forth herein. The Consultant shall pay its Subconsultants the full amount due them for their proportionate share of the requisition, as paid by the agency. The Consultant shall make such payment not later than seven (7) calendar days after receipt of payment by the agency.

The Consultant shall inform all Subconsultants engaged for this Contract fully and completely of all terms and conditions of this Contract relating either directly or indirectly to the services to be performed. The Consultant shall stipulate in all subcontracts with its Subconsultants that all services performed and materials furnished thereunder shall strictly comply with the requirements of this Contract. If requested by the Commissioner, the Consultant shall furnish copies of subcontracts with its Subconsultants.

9250 All personnel assigned to the project by the Consultant shall cooperate fully with personnel assigned the project by the agency, and in the event Consultant personnel fail to so cooperate, the Consultant shall relieve them of their duties on the project as requested by the Commissioner.

9260 Payment for the cost of compliance with Task 8710 and associated subtasks will be deemed included in the payments by the agency to the Consultant.

9300 Fees and Payments

9310 Fee

In full payment for all services to be rendered hereunder, the City will pay to the Consultant and the Consultant agrees to accept a fee not to exceed \$_____.

9311 The maximum value of the work of each section shall be as follows:

Section 1000	\$_____.
Section 2000	\$_____.
Section 4000	\$_____.
Section 5000	\$_____.
Section 7000	\$ 853,000.00 _____ Budgetary Amount*
Section 8000	<u>No separate payment will be made. See text of subsections.</u>

The agency reserves the right, via direction of the agency Project Manager, to reapportion maximum amounts between Sections 1000, 2000, 4000, and 5000 as the work progresses and required levels of effort become more fully determined, provided that the agency Project Manager shall not have the authority to agree to increase the total not-to-exceed fee for the Preliminary Design phase (i.e. total of Sections 1000, 2000, 4000, and 5000) listed under Task 9310.

The maximum value of Sections 1000, 2000, 4000, and 5000, with complete cost breakdowns for each, will be established prior to contract award.

** Fee for Project Design, Section 7000, is an estimate based on information currently available to the Department and the assumption that the project construction work will include one Slip at each ferry terminal (i.e., one Slip in Manhattan and one Slip in Staten Island). Should the scope of work develop during the Preliminary Design phase (Sections 1000, 2000, 4000 and 5000) indicate that more work will be required for Project Design than is currently anticipated, any proposed fees for Final Design and Construction Support in excess of the amounts above are subject to the approval of the office of Management and Budget. The initial encumbrance for this contract will be for services in sections 1000 – 5000. Encumbrances for work in section 8000 will occur at the sole discretion of DOT.*

- 9312 The Consultant shall not be entitled to any additional compensation as a result of any sum or sums paid to the Construction Contractor(s) in settlement of claims for additional compensation or of any judgment for damages under contracts awarded for the execution of the plans and specifications of the project. It is agreed, however, that in the event of the necessity of reletting a Construction Contract or Contracts or in the event of any claims being made or any action brought on a Construction Contract or Contracts, the Consultant shall render the Agency any and all assistance required by the Commissioner, at an additional compensation to be agreed upon.
- 9320 Basis
- 9321 Office Work:
- The payment for the services rendered herein will be made on the basis of total direct technical office salary costs of the Consultant attributable to the contract times a technical office multiplier, plus direct reimbursement for Principals' Time and certain out-of-pocket expenses.
- 9322 Field Work:
- For field work, payment will be made on the basis of total direct technical field salaries, including applicable weekend/night work differential, times a technical field multiplier, plus direct reimbursement for principals' time, authorized overtime premium pay and certain out-of-pocket expenses.
- 9400 Definitions
- 9410 Direct Technical Salary Cost
- Direct technical salary cost shall include only architecture, engineering, surveying and drafting salaries, exclusive of Principals' Time, and should be derived from direct individual salaries, not including overtime premium pay, vacation pay, holiday pay, social security, unemployment insurance, worker's compensation, sick pay or other fringe benefits. Any salary increases prior to or during the contract period shall be within parameters as established in the Engineer Pay Index of the U.S. Bureau of Labor Statistics-Employment Cost Index for Professional Specialty and Technical Workers-Wages and Salaries. *
- 9420 Technical Office or Field Multiplier
- The technical office or field multiplier will be applied to the direct technical office or field salary costs of the Consultant in connection with the project, and will be considered as including provisions for indirect costs and profit.
- 9430 Principals' Time
- The words "the Principals" or "the Principals of the firm" are understood to mean those individuals in a firm who possess legal responsibility for its management. They may be owners, corporate officers, associates, partners, etc. With respect to a corporation, a principal is also defined as that person who owns ten (10) percent or more of the voting stock. Principals of the firm should be compensated for their time when summoned by the Commissioner to provide technical assistance, to the extent that they perform services other than administrative or supervisory services, as follows:
- 9431 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.
- 9432 The Principals participating in the project should provide the Commissioner with a demonstration certifying his/her actual draw from the firm on an average weekly basis. Where said rate exceeds Fifty Dollars (\$50.00) per hour, the principal participating in the project should provide the Agency's Commissioner with a notarized statement by a certified public accountant that such rate does not exceed the principals' annual direct compensation, excluding profit, computed on an hourly rate. The amount payable for Principals' Time shall not be included in the technical salary cost base and is not subject to any multiplier.

- 9433 The Principals participating in the project should maintain a daily log of their participation, which shall be available for inspection by the Commissioner and the Comptroller of the City.
- 9434 Certification by the Commissioner that participation by the Principals is essential to the effective and economic completion of the project is required for direct compensation of Principal's time.
- 9435 The total compensation for the Principals' Time shall not exceed Thirty Five Percent (35%) of the total not to exceed fee as stated herein before.
- 9436 In the event that a Principal assumes the specific assignment of responsibilities normally allocated to a technical member of the project team, said Principal will 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 Agency's Engineering Audit Bureau to avoid duplication of indirect expenses. The adjusted multiplier is calculated by decreasing the Consultant's Multiplier by 10%.

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

- 9440 Out-of-Pocket Expense.
- 9441 The cost of acquiring, on a per diem basis, the services of other experts or engineers as may be required for the performance of the Consultant's services are subject to the same audit rules as the prime consultant.
- 9442 The costs of the use of motor vehicles, owned by the Consultant or employees of the Consultant or leased and maintained by the Consultant and used specifically for and only for the performance of this contract, shall be compensated on a direct mileage basis in accordance with the standards as established for reimbursement allowances for agency personnel by the current edition of Directive #6, NYC Comptroller. The cost of MTA Tokens and Tolls within the city borders are reimbursable as out-of-pocket costs. However, cost of parking is not reimbursable.
- 9443 The cost of printing and duplicating for this project by an outside vendor is reimbursable as out-of-pocket costs based on the submitted invoice. However, cost of printing by in-house services is not reimbursable.
- 9444 The cost of renting any other materials or equipment or acquiring services specifically for, and applicable only to, this project may be submitted for direct payment as out-of-pocket costs. This should not include the purchase of general tools or office supplies whether expendable or reusable.
- 9445 The costs of the specified registered mailing and/or FEDEX type services directed by the agency are reimbursable as out-of-pocket costs. However, routine postage, messenger service, etc. are not reimbursable.
- 9446 The cost of project related long distance telephone calls are reimbursable as out-of-pocket costs.
- 9447 The cost of project specified cellular communications, approved by the Director of Engineering are reimbursable as out-of-pocket costs.
- 9448 The cost of project specified microfilming services are reimbursable as out-of-pocket costs.
- 9449a The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs, including the cost of providing digital photographs.
- 9449b The cost of retaining the services of a qualified contractor, or contractors, to provide for Non Destructive Testing, Localized Dismantling and Restoration of Structure or Equipment, Electrical or Machinery Testing, Steel Sampling, Underwater Inspection, Specialized Investigation and Testing Services, Geotechnical Exploration, Topographic Survey, or means of access for inspection, as required.

- 9449c Living and travel expenses, approved by the agency, for personnel performing Resident Engineering or Inspection Services required under this contract outside of the New York Metropolitan Area.
- 9449d The cost of business trips, other than subtask 9449c, above, approved by the agency and specifically to perform the services required under this contract.
- 9449e The cost of project specified miscellaneous items approved by the Director of Engineering are reimbursable as out-of-pocket costs.
- 9449f The cost of project specified professional liability insurance for the consultant and sub-consultants.

Note: Expenditures for subtasks 9449c and 9449d above shall be in accordance with the guidelines in New York City Comptroller's Directive No. 6 – Travel, Meals, Lodging and Miscellaneous Agency Expenses, of October 23, 1996. The agency has provided the Consultant with a copy of Directive No. 6.

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

- 9449g For the Preliminary Design phase (Sections 1000, 2000, 4000, and 5000), the Consultant shall assume a total \$350,000.00 out of pocket cost budgetary allowance.
- 9449h For the Project Design phase, (Section 7000), a \$150,000.00 out of pocket cost budgetary allowance has been assumed.

9450 Indirect Costs and Overhead

9451 Indirect Costs shall include costs of a general nature which could be applied to the Consultant's entire operation and which are not readily attributable to any one project. These shall include: fringe benefits, taxes, insurance premiums, postage, office supplies, motor vehicles, equipment, office machine and computer rentals, depreciation on purchased equipment, maintenance and operation costs, recruitment, temporary facilities, consultant fees, overhead (see below) and any such costs as are necessary to conduct the Consultant's operations with the exception of those cost items which are submitted to direct payment as out-of-pocket expenses.

9452 Overhead includes that portion of the Consultant's administrative, clerical and financial costs which are applicable to operations, including, but not limited to: rent, utilities, salary costs of administrative and clerical work (including administrative services of the Principal and Technical Typing), fringe benefits, payroll expenses, taxes, insurance, legal and professional fees, bank service charges, depreciation, office supplies and equipment, maintenance.

9460 Overtime Premium

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

9470 Weekend/Night Work Differential

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

9500 Performance Evaluation

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

9600 Subconsultants and Subcontractors

Subconsultant and/or Subcontractor services must be performed on a time and material basis with a not to exceed maximum cost. Reimbursement will be based on time and material invoices verified by the same rules governing the prime consultant.

9700 Payments

9710 During the course of the Contract, all payments, including the final payment, shall be paid to the Consultant on a monthly basis as they occur, as follows:

9711 Payment shall be made based on direct technical office or field salaries of the Consultant and all Professional subcontractors in connection with the project, times a technical office or field multiplier of:

___ for office work *

___ field work*

9712 For approved out-of-pocket costs and allowable time for Principals' services, payments shall be made on the basis of direct reimbursement at cost to the Consultant, with no markup for the Consultant's overhead and profit.

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

The same procedure will be followed at the beginning of Project Design Phase.

9711 The Consultant shall submit to the Commissioner, or his duly authorized representative, but not more than once per calendar month, a certified requisition, and six copies, setting forth in detail the items of work and services performed by the Consultant and the amount of partial payment requested. Requisitions, shall be accompanied by statements prepared and certified by the Consultant setting forth the name and title of each of his/her employees and his/her sub-consultants' employees who was engaged in the project during such respective month, the number of hours worked each day, the direct salary and the compensation attributable to the time for which the requisition is submitted. All requisitions shall be accompanied by a report on the progress of the work, properly coded and tabulated to indicate the percentage of completion of each phase of the work.

9712 The Commissioner, or his duly authorized representative, will review the said requisition and if, in his/her judgment, the work and services therein set forth have been performed, the Commissioner will endorse his/her approval of payment of said requisition and certify that the work and services have been satisfactorily performed by the Consultant.

9713 Out-of-Pocket expenses and compensation for Principals' Time approved by the Commissioner should be paid at cost to the Consultant, with no markup for the Consultant's overhead and profit.

9714 The last and final payment to the Consultant will become due and payable upon the actual completion of the work under this contract and the filing by the Consultant with the Commissioner of all records and documents in connection with the project.

- 9715 The final voucher shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Consultant attributable to the contract.
- 9716 The fee and all payments hereunder shall be subject to review and audit by the Department of Transportation and subject to audit by the Comptroller.
- 9717 The Fee will not be increased for any reason except as provided herein or where such increase is due to a material change in scope only.
- 9718 Included hereunder are the major provisions/requirements applicable to all services.
- The annual daily wage rates, exclusive of applicable weekend/night work differential, should not exceed the rates as shown in the proposal, except as may be amended by approval of the Agency's Engineering Audit Bureau from time to time.
- 9720 Payment Requisitions:
- The Consultant will be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with Subsection 8900 of this Agreement. The consultant shall submit a breakdown of costs for each specific task provided with request for payment. Payment requests are subject to the approval of the Commissioner, or his duly authorized representative.
- 9721 The Consultant shall inform the Agency and all Sub Contractors and Sub Consultants of the Consultant's schedule for submitting monthly requisitions to the Agency; said schedule shall be strictly adhered to by the Consultant.
- 9722 All Sub Contractor and Sub Consultant requisitions received by the Consultant at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the Consultant does not have other costs to be billed for that period. The Consultant shall inform the Sub Contractor or Sub Consultant of the date the requisition was submitted to the Agency and the amount included for the Sub Contractor or Sub Consultant.
- 9723 The Consultant is required to make partial payments to all Sub Contractors and Sub Consultants within (10) calendar days of receipt of payment from the Agency.
- 9724 Accounts of the Consultant shall clearly identify the costs of the work performed under this Agreement and should be subject to periodic and final audit by the Agency and by the New York State Department of Transportation and the Federal Transit Administration. Such audit should not be a condition of partial payment.
- 9800 **Term:** The total duration of this Consultant Service Agreement Contract shall be **1460 consecutive calendar days** from the date of written notice to proceed.

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SECTION VII

B) GENERAL PROVISIONS (APPENDIX A)

APPENDIX A

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

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APPENDIX A

GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES

ARTICLE 1. DEFINITIONS

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

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

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 PROCUREMENT OF CONTRACT

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

2.2. CONFLICT OF INTEREST

The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of the Contract no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part from the City Treasury, shall participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof.

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 \$3,000,000. All sub-consultants to the Contractor providing professional services under this Contract shall also provide evidence of Professional Liability Insurance to the Commissioner at limits appropriate to the exposures of the sub-consultant's work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to the City.
7. The Contractor agrees to indemnify and hold harmless the City of New York and each officer, agent and employee of the City of New York against any and all claims for personal injury or wrongful death or damage to personal property arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(B) General Requirements for Insurance Policies:

1. All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New York by the New York State Department of Insurance. The Contractor must first obtain the written approval of the City's Risk Manager of the Mayor's Office of Operations, or its delegate, in the event it wishes to maintain any type of required insurance with a company not licensed to do business in the State of New York.

- 2. The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City is an insured under the policy.**

- 3. All insurance policies shall include, without limitations, the following endorsements/requirements.**
 - (a) Notice under the Policy to the City as Additional Insured shall be addressed to each of the following: (1) the Commissioner; (2) Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and**

 - (b) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the City as Additional Insured of any occurrence, offense, or claim, if such notice is required, will be deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Comptroller; however, in no event shall notice be deemed untimely so long as it is given within 180 days of the filing of the Notice of Claim; and**

 - (c) Any notice, demand other writing by or on behalf of the Contractor to the Insurance Company relating to any occurrence, offense, claim or suit shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured, and any response thereto on behalf of the Insurance Company shall be sent to the Contractor, to the City at New York City Law Department, Insurance Law Unit, Affirmative Litigation Division, 100 Church Street, New York, NY 10007, and to the Comptroller at Insurance Unit, NYC Comptroller's Office, 1 Centre Street, Room 1222, New York, NY; and**

 - (d) Notice of Cancellation of Policy: In addition to any other requirements concerning notice of cancellation, this policy shall not be cancelled, terminated, modified or changed by the Insurance Company unless sixty (60) days' prior written notice is sent to the Named Insured by Registered Mail and also sent to the Commissioner and to the Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007, nor shall this policy be cancelled, terminated, modified or changed by the Named Insured without the prior consent of the said Commissioner; and**

 - (e) It is agreed that the Insurance Company, in the event of any payment under these policies, will waive its rights of recovery, if any, against the City; and**

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

Submission of Insurance Certificates and Policies. For all insurance coverage required under the Contract, two (2) certificates of such insurance shall be furnished to the Commissioner not later than twenty (20) days after receipt of the Notice of Award, unless otherwise directed by the Commissioner. In addition, with respect to all insurance coverage required by the contract, with the exception of Workers' Compensation and Employer's Liability Insurance, two (2) executed copies of the insurance POLICIES shall be provided to the Commissioner as soon as is practicable, but in not event later than thirty (30) days after the commencement of work. No Contract payments will be accepted for processing until such policies are received and approved, and

failure to provide the required policies shall be ground for declaring the Contractor in default.

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

4.4 PROTECTION OF CITY PROPERTY

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

4.5 CONFIDENTIALITY

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

4.6 BOOKS AND RECORDS

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

4.7 RETENTION OF RECORDS

The Contractor agrees to retain all books, records, and other documents relevant to this Contract for six years after the final payment or termination of the Contract, whichever is later. City, State and Federal auditors and any other persons duly authorized by the

Department shall have full access to and the right to examine any of said materials during said period.

4.8 COMPLIANCE WITH LAW

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

4.9 INVESTIGATION CLAUSE

- A.** The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- B.** If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York or;
- C.** If any person refused to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is an interested party in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation with the City, then;
- D.** The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- E.** If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license

pending the final determination pursuant to paragraph (G) below without the City incurring any penalty or damages for delay or otherwise.

- F. The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:**
- 1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or**
 - 2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.**
- G. The Commissioner or Agency Head shall consider and address, in reaching his or her determination and in assessing an appropriate penalty, the factors listed in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph (3) and (4) below in addition to any other information which may be relevant and appropriate:**
- 1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.**
 - 2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.**
 - 3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.**
 - 4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (F) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in (D) above gives notice and proves that such interest was previously acquired.**

Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

- H.
 - 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**
 - (2) forms of compensation, layoff, termination, and all other terms and conditions of employment;**
 - (3) 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;**
 - (4) 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;**
 - (5) 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**
 - (6) 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. Except as provided in A(1) and A(2) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board (“PPB Rules”). This procedure 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 vendor’s work to the contract, and the acceptability and quality of the vendor’s work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the vendor 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 vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer (“ACCO”) or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.**
- D. Presentation of Dispute to Agency Head.**
- 1. Notice of Dispute and Agency Response. The vendor 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 written 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 vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor 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, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 vendor to produce any requested material whose relevancy the vendor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the vendor 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 vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same**

rights and obligations under this section as the vendor 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 vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor 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 vendor to the CDRB, the vendor 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 receipt of a decision by the Agency Head, the vendor 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 vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor 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 vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, 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(3) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor 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 CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

1. **Form and Content of Petition by Vendor.** The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor 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 vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller's Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the vendor

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 receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the vendor. 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 Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by 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 vendor 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, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, 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. **CDRB Determination.** Within forty-five (45) days of the conclusion of all 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 CDRB Decision.** The CDRB shall send a copy of its decision to the vendor, 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, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor 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 CDRB 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 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 Section 4-09 of 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)

SECTION VII

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
I. State Grantees						
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 ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/ 5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award

II. <u>Non State Grantees</u>	Yes ³	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 ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 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 of termination on the Contractor. The notice shall state whether the termination is for convenience of NYCDOT or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from NYCDOT, or property supplied to the Contractor by NYCDOT. If the termination is for default, NYCDOT may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall

promptly submit its termination claim to NYCDOT and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. STATE AND LOCAL LAW DISCLAIMER

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

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

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

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. **The goal for this contract shall be 15%.**

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 its 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 30th and to submit the Management Information System (MIS) reports before March 15th 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 30th, 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.

SECTION VII

D) FTA/DBE FORMS

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 _____

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

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.

REQUIRED CONTRACT PROVISIONS

DBE PROGRAM

FTA ASSISTED CONTRACTS THAT NYCDOT LETS WILL INCLUDE, AS APPROPRIATE, THE MODEL CONTRACT PROVISIONS THAT ARE INCLUDED AS APPENDIX B AND INCORPORATED HEREIN. NYCDOT SHALL HAVE DISCRETION TO MODIFY THE PROVISIONS FOR PARTICULAR CONTRACTS AS NEEDED. THESE REQUIRED CONTRACT PROVISIONS CONSIST OF:

1. NOTICE OF DBE CONTRACT REQUIREMENTS IN THE INVITATION FOR BIDS
2. GENERAL CONDITIONS
 - A. ASSURANCES
 - B. DBE POLICY
 - C. DBE OBLIGATION
 - D. PROMPT PAYMENT TO SUBCONTRACTORS
 - E. LEGAL AND CONTRACT REMEDIES
 - F. CONTRACTOR REPORTING REQUIREMENTS
 - G. RETAINAGE POLICY

1. Notice of DBE Contract Requirements in the Invitation for Bids

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:

Disadvantaged Business Enterprise (DBE) Requirements

The successful Proposer/ Bidder will be required to meet a NYCDOT Disadvantaged Business Enterprise (DBE) goal. For Engineering Services and Construction a goal of 15% is currently in effect, for Non-Transit Vehicle Manufactured (TVM) purchases a DBE goal of 4% is currently in effect, for Marine work a DBE goal of 2% goal is in effect. the total value of the contract should be subcontracted to a DBE firm or firms. To be qualified as a DBE, a firm should be certified in the NYSCUP, in accordance with Federal Regulation 49 CFR Part 26. Application for certification can be obtained at:

MTA - New York City Transit, Office of Business Programs, 2 Broadway- 16th Floor, New York, NY 10004. Telephone (646) 252-1378.

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

Port Authority of NY & NJ, Office of Business & Job Opportunity
233 Park Avenue South, 4th Floor
New York, NY 10003-1604. Telephone (212) 435-7821.

Niagara Frontier Transportation Authority

181 Ellicott Street

Buffalo, New York 14203

Telephone: (716)855-7300

Disadvantaged Business Enterprise (DBE) Certification

Only firms certified by the NYS Unified Certification Program (NYSUCP) as DBEs are eligible to be used by the contractor in order to meet the DBE participation goal set on a NYCDOT Federally funded contract.

The NYSUCP Directory can be found at: <http://www.nysucp.net>

2. General Conditions

All applicants and recipients shall agree to abide by the statements in paragraphs (a) through(e) listed below:

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 **PRIME CONTRACTOR SIGNED WITH A SUBCONTRACTOR AND/OR EACH SUBCONTRACTOR SIGNED TO A CONTRACTOR** 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. 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."

C. 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 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 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 and Compliance
55 Water Street – 8th Floor, Room 825
New York, NY 10013
Telephone 212-839-9411

Attn: Charles Bartolotta, DBE Contract Compliance Officer

D. PROMPT PAYMENT TO SUB-CONTRACTORS

In accordance with NYCDOT's DBE Program, the Contractor shall pay all Subcontractors for work that has been satisfactorily performed no later than thirty (30) days from the date of the Contractor's receipt of progress payments by NYCDOT. Within thirty (30) days of satisfactory completion of all work payment is required to be paid to the Subcontractor. Contractor shall release any retainage payments withheld to the Subcontractor at the time of satisfactory acceptance of work.

E. LEGAL AND CONTRACT REMEDIES

THE DBE COMPLIANCE UNIT SHALL MONITOR AND TRACK THE ACTUAL DBE PARTICIPATION THROUGH CONTRACTOR AND SUBCONTRACTOR REPORTS OF PAYMENTS, AND OTHER APPROPRIATE MONITORING, AS FURTHER DESCRIBED IN THIS PROGRAM PLAN. THE DBE REPRESENTATIVE SHALL ENSURE THAT DBE PARTICIPATION IS COUNTED TOWARD CONTRACT GOALS AND THE OVERALL ANNUAL GOAL IN ACCORDANCE WITH THE REGULATIONS. IN ACCORDANCE WITH 49 CFR PART 26, PRIME CONTRACTORS MAY NOT TERMINATE SUB-CONTRACTORS FOR CONVENIENCE. WHEN DBE CONTRACTORS ARE TERMINATED, PRIME CONTRACTORS WILL BE REQUIRED TO SUBSTITUTE DBE SUB-CONTRACTORS IN ORDER TO MEET ITS DBE COMMITMENT.

NYCDOT will monitor compliance of its contractors on FTA assisted contracts within the requirements of the Regulations and the DBE Program. NYCDOT may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part.

F. CONTRACTOR REPORTING REQUIREMENTS

ALL SUB-RECIPIENTS OF FTA FUNDS ARE REQUIRED TO UTILIZE THE NYCDOT DBE PROGRAM PLAN AND COMPLY WITH USDOT REGULATIONS 49 CFR PART 26.

SUB-RECIPIENTS, CONTRACTORS AND SUBCONTRACTORS ARE SUBJECT TO CONTRACT COMPLIANCE REVIEWS TO ENSURE THAT DBE REQUIREMENTS ARE BEING MET. THEY ARE EXPECTED TO COOPERATE WITH THE NYCDOT DBE REPRESENTATIVE DURING DESK AUDITS AND / OR ON-SITE REVIEWS. NYCDOT HAS A FIELD REPRESENTATIVE RESPONSIBLE FOR PROJECT OVER SITE TO ENSURE THAT CONTRACT WORK IS BEING PERFORMED BY DESIGNATED DBE SUB-CONTRACTORS AND THAT THE NYCDOT PROJECT ACCOUNTANT TRACKS PAYMENTS TO ENSURE THAT PROJECT GOALS, WHEN APPLICABLE, ARE FOLLOWED. THE COMPLIANCE OFFICER, AND FIELD REPRESENTATIVE ALSO REPORTS WORK AND PAYMENT PROGRESS TO THE PROJECT ACCOUNTANT WHO THEN TRACKS DBE UTILIZATION WITH THE DBE REPRESENTATIVE. THE DBE COMPLIANCE OFFICER AND DBE REPRESENTATIVE ENSURE THAT SUB-CONTRACTOR DBE PARTICIPATION IS CREDITED TO OVERALL GOALS AFTER THE DBE HAS RECEIVED PAYMENTS.

A sample of our DBE Commitment Letter specifying the Prime Contractors DBE Responsibilities is attached as Appendix E.

G. RETAINAGE

DOT HAS MADE A DETERMINATION THAT IT WILL NO LONGER HOLD RETAINAGE ON FTA FUNDED CONTRACTS.

Sub-recipients must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

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

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

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

Determining Good Faith Efforts

To determine whether a bidder that has failed to meet the DBE contract goal(s) may receive the contract, the Department will decide whether the efforts the Bidder made to obtain DBE participation were “good faith efforts” to meet the goal(s). Efforts that are merely pro forma are not good faith efforts to meet the goal(s). Efforts to obtain DBE participation are not good faith efforts to meet the goal(s), even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal(s).

In order to evaluate the Bidder’s conformance to this subsection, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The following is a list of the types of actions which the Department will consider as part of the Bidder’s good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exhaustive or exclusive. Other factors or types of efforts may be relevant in appropriate cases.

The following is a list of the kinds of efforts that the Department will evaluate to determine if the Bidder has demonstrated a good faith effort:

1. Efforts to secure participation by certified DBE firms for work that they are listed to perform that is in the contract. Only DBE’s certified by the NYS UCP shall be used to fulfill the established goal on Federal-Aid contracts.
2. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidder shall solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder shall determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.
3.
 - a. The Bidder shall, at a minimum, seek certified DBEs in the same geographic area where the contract is located. This is defined as a one hundred (100) kilometer radius around the city, town or borough where the contract is located as identified in the contract proposal. For specialty work such as pavement markings, guide rail, etc. (as defined in the contract proposal) the Bidder shall, at a minimum, solicit on an upstate or downstate basis, depending upon the location of the contract.
 - b. The Department has facilitated identification of upstate, downstate and areas within a 100 km radius through its NYS UCP website, which is accessible on the Internet at www.nysucp.net For more information contact the NYCDOT at (212) 839-9411. For bidders who do not have internet capability, a hard copy solicitation report for a specific contract can be requested by contacting the Office of Contract and Compliance Unit at (212) 839-9411.
4. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal(s) will be achieved. This includes, where appropriate, either breaking down operations within the contract or combining like or related operations in the contract into logistically and economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
5. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

6. a. Negotiating in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the work available to DBEs Subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available DBEs Subcontractors and material suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBES to perform the work.
b. The fact that there may be some additional cost involved in finding and using DBEs is not itself sufficient reason for a bidder's failure to meet contract DBE goal(s), as long as such cost are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
7. Not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the Department.
9. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance.
10. Effectively using the services of available disadvantaged business focused media, trade associations, and contractors' groups; local, state, and Federal disadvantaged business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
11. All bidders shall keep records of efforts to solicit and negotiate with DBEs, using the Solicitation Log as a continuing record of pre- and post-letting solicitation activity. When submitting a DBE Schedule of Utilization to the Department, the Apparent Low Bidder will attach the log, together with the supplemental information specified in the instructions for the Solicitation Log as evidence of good-faith efforts when the established DBE goal(s) for the contract have not been met utilizing certified DBEs. Such supplemental efforts shall include at least the following:
 - a. All envelopes of solicitation inquires that were returned as undeliverable; and
 - b. Any quotations submitted by DBEs that are not included in the DBE Schedule of Utilization with an explanation for the Bidder's action in case.
12. Promptly executing an agreement with DBE Subcontracts/vendors.

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

PROMPT PAYMENT AFFIDAVIT

(SAMPLE PRIME CONTRACTOR PROMPT PAYMENT AFFIDAVIT)

Contractor will place a check in the appropriate box below that applies to this payment request.

I, _____ (Name), the _____ (Title - e.g., President, Vice President, etc.) of _____ ("Company"), do state the following with regard to payments made under Contract No. _____ ("Contract"):

1. _____ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. _____, were paid no later than thirty (30) business days after Company received payment from NYCDOT.
2. _____ Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the DBE Department. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by NYCDOT. **(Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the NYCDOT DBE Department may cause the Payment Request to be rejected by NYCDOT).**
3. _____ There was no delay in or postponement of any payment owed to a DBE subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the NYCDOT.

Company Name

Signature

Print Name

Date: _____

Subscribed and sworn to before me this _____ day of _____ 20__.

Notary Public

SAMPLE PRIME CONTRACTOR AWARD LETTER

Date

Prime Contractor Winner, Inc.
Attn: Mr. Buck Stops Here, President
1111 Bottom Line Street
Anywhere, New York 10000

Re: Contract Name and/or Description

Dear Mr. John 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.

Please be advised that you will be required to meet your Disadvantaged Business Enterprise Goals of 11%

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

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

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 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.

Please contact the DBE Department at (212) 839-9411, if you have any questions or you may contact NYCDOT's Contract Administrator at (212)_____.

Thank you for your continued commitment and cooperation.

Cordially,

DBE Administrator

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

Minority Owned Financial Institutions

See Attached:

<http://www.federalreserve.gov/releases/mob/>

NEW YORK CITY SUB-CONTRACTORS UTILIZATION REPORT - TO BE SUBMITTED WITH THE DBE UTILIZATION REPORT

CONTRACT #:
CONTRACTOR:

DATE:

The sub-contractors listed below are intended to be utilized under this contract.

SUB-CONTRACTOR	DBE (Y/N)		Total Amount Intended for Sub- Contract	EXISTING CONTRACT (Y/N)
TOTAL:				
<i>REMARKS:</i>				

CONTRACTOR'S SIGNATURE _____ DATE _____

PRINT NAME _____ TITLE _____

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET**

CONTRACT No.	COUNTY	F. A. PROJECT No.	AGE No. _ OF _	DATE SUBMITTED
---------------------	---------------	--------------------------	---------------------------	-----------------------

CONTRACTOR		SUBCONTRACTOR		
NAME	_____	NAME	_____	
ADDRESS	_____	ADDRESS	_____	
PHONE	_____	PHONE	_____	
FED. ID No.	_____	FED. ID No.	_____	

The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc. are to be submitted in the same manner and number as required of the Prime Contractor.	EST. BEGINNING DATE	EST. COMPLETION DATE
	(Mo & Yr)_____/____/_____	(Mo & Yr)_____/____/_____

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No Work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the City for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The contractor and Subcontractor hereby certify that the subcontract is in writing, and contains all the pertinent provisions of the prime contract in regard to Federal, State, and City Laws and Regulations.

Contractor's Signature		Date		Subcontractor's Signature		Date	
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	ITEM No.	NAME	< 100 %	BID AMOUNT		AGREED AMOUNT \$
				\$ SPECIALTY	\$ NON-SPECIALTY	
1						
2						
3						
4						
5						
TOTALS:				\$	\$	\$

The Subcontractor named above is approved for utilization under the DBE General Provisions. Approval of this worksheet conveys only the Department's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract. Regional approval of an Approval to Subcontract form AAPHC 89 is required prior to subletting or otherwise assigning any part of the contract.

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
PRIME CONTRACTOR REPORT OF PAYMENTS TO SUBCONTRACTORS**

FINAL REPORT YES <input type="checkbox"/> NO <input type="checkbox"/>	CONTRACT NUMBER	COUNTY	REPORT DATE
CONTRACTOR		SUBCONTRACTOR	
NAME _____		NAME _____	
ADDRESS _____		ADDRESS _____	
PHONE _____		PHONE _____	
FED. ID No. _____		FED. ID No. _____	
TOTAL PAYMENTS DUE: \$ _____ * FINAL RETAINAGE OR OTHER WITHHOLDING: \$ _____ TOTAL PAYMENTS \$ _____			

*** STATEMENT OF EXCEPTIONS (See Instructions)**

New York City Department of Transportation DBE General Provisions requires that prior to contract award , Prime Contractors must obtain written consent of the Department to a utilization plan that identifies certified disadvantaged owned business enterprises that have committed to perform work on a proposed contract. Authority for approval of utilization has been delegated to the Office of Contract Compliance (OCC). The DBE Utilization Worksheet is used to describe in item detail the utilization plan for each proposed subcontractor.

DBE Provisions require Prime Contractors to obtain written consent of the Department prior to subletting or otherwise assigning any part of the contract. Authority for approval to subcontract has been delegated to the office of Contract Compliance.

The DBE Utilization Worksheet has been designated for use as form AAPHC 89. When submitting forms for firms included in the Contractor's Utilization Plan, prepare a signed copy as described below. All DBE Utilization Worksheets are to be submitted directly to OCC as attachments to a revised Utilization Plan, form AAP 19.

CONTRACT No.: Enter New York City contract number. (Example: BRC100)

COUNTY: Enter name of county or counties of this project. (Example: Bronx)

F.A. Project No.: Enter only for Federal Aid Projects. (Example: I-87-3(177))

PAGE No.: Enter 1 of 1, 1 of 2, or 2 of 2 etc. Use additional forms as needed.

DATE SUBMITTED: Enter date completed forms are submitted to OCC (MM/DD/YY)

CONTRACTOR AND SUBCONTRACTOR DATA: Enter names, and addresses (including ZIP code), telephone numbers (including area codes) and Federal Identification Numbers for both the Contractor and Subcontractor.

EST. BEGINNING DATE: Enter estimated month and year in which subcontractor work will begin.

EST. COMPLETION DATE: Enter estimated month and year in which subcontractor work will completed.

SIGNATURES: Authorized representatives of both the prime and subcontractor sign and date.

ITEM No. AND NAME: Enter each item or specification number and name. If only part of an item is to be subcontracted check the "less than 100%" box and attach a description of the specific work to be performed.

BID AMOUNT: Enter the prime contractor total bid price for items of work being subcontracted, item by item, under appropriate heading of "Specialty" or Non-Specialty" and enter totals for each "Specialty" items, if any, are designated in the contract proposal. If only part of an item is to be subcontracted enter the amount of the prime contractor bid amount that represents the portion of the item that is being subcontracted: For other than subcontract work, i.e. material supplier and off-site trucking or other services no entry is required under "Specialty" or "Non-Specialty" headings.

DBE ONLY AGREED AMOUNT: In addition to completing the appropriate bid amount columns as described above on the utilization worksheet enter the agreed amount for each item of work to be performed by a certified DBE. Indicate if the contractor's Utilization Plan whether subcontractor, material supplier, trucker or provider of other services

Subcontractor Approvals and Approval Amendments will be sequentially numbered for each prime contract in the order that may be approved. An approved copy will be provided to the prime contractor and the Engineer-in-Charge of the contract in each instance.

**NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET AMENDMENT**

CONTRACT No.	COUNTY	F. A. PROJECT No.	PAGE No. OF	DATE SUBMITTED
CONTRACTOR		SUBCONTRACTOR		
NAME _____		NAME _____		
ADDRESS _____		ADDRESS _____		
PHONE _____		PHONE _____		
FED. ID No. _____		FED. ID No. _____		

The Contractor shall inform the Engineer in Charge the dates when the Subcontractor starts and completes all work under the subcontract. When work performed by the Subcontractor is included in an estimate for payment, labor affidavits, copies of payrolls, etc. are to be submitted in the same manner and number as required of the Prime Contractor.

EST. BEGINNING DATE	EST. COMPLETION DATE
(Mo & Yr) /	(Mo & Yr) /

This approval may be rescinded at any time in the progress of the work if work of the Subcontractor is determined unsatisfactory.

No work may be assigned by the Subcontractor to a second tier Subcontractor. No work may be performed by a Subcontractor other than that specifically approved by the Regional Director. The signators below agree that violations of the foregoing may result in no payment by the City for the related work.

No work shall be started by the Subcontractor prior to filing the required insurances. The contractor and Subcontractor hereby certify that the subcontract is in writing, and contains all the pertinent provisions of the prime contract in regard to Federal, State, and City Laws and Regulations.

Contractor' Signature	Date	Subcontractor's Signature	Date
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ONLY LIST ITEMS TO BE ADDED, DELETED, INCREASED OR DECREASED: See Instructions.

ITEM No.	NAME	Previous or New Entry	< 100%	BID AMOUNT		AGREED AMOUNT \$	% to CNT
				\$ SPECIALTY	\$ NON-SPECIALTY		
1		PREV					
		NEW					
2		PREV					
		NEW					
3		PREV					
		NEW					
4		PREV					
		NEW					
5		PREV					
		NEW					
TOTALS				\$	\$	\$	

The Subcontractor named above is approved for utilization under the DBE General Provisions. Approval of this worksheet conveys only the Department's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract. Regional approval of an Approval to Subcontract (Amended) form AAPHC 89-1 is required prior to subletting or otherwise assigning any new work shown on this worksheet.

APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY:	DATE APPROVED / /
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**INSTRUCTIONS FOR COMPLETING FORM AAPHC 89-1
DBE UTILIZATION WORKSHEET AMENDMENT**

New York City Department of Transportation DBE Provisions requires that prior to contract award, Prime Contractors must obtain written consent of the Department to a utilization plan that identifies certified disadvantaged owned business enterprises that have committed to perform work on a proposed contract. Authority for approval of utilization has been delegated to the Office of Contract Compliance (OCC). The DBE Utilization Worksheet is used to describe in item detail the utilization plan for each proposed subcontractor. The DBE Utilization Worksheet Amendment is used to describe in item detail any change (addition, subtraction, increase and/or decrease) to a previously approved worksheet.

DBE Provisions require Prime Contractors to obtain written consent of the Department prior to subletting or otherwise assigning any part of the contract. Authority for approval to subcontract has been delegated to the Office of Contract Compliance.

The DBE Utilization Worksheet Amendment has been designed for use as form AAPHC 89-1, when submitting forms for firms included in the Contractor's Utilization Plan, prepare a signed copy as described below. All DBE Utilization Worksheet Amendments are to be submitted directly to OCC as attachments to a revised Utilization Plan, form AAP 19.

Approval of the Utilization Worksheet Amendment conveys only the Department's concurrence in the use of the named subcontractor for the items specified, and application of the DBE Agreed Amount to the participation goals of the contract.

Only one DBE Utilization Worksheet is to be submitted for each subcontractor on this prime contract. DO NOT submit amendments to the item(s) or amount(s) of work proposed for a subcontractor on another form AAPHC 89. After initial forms have been filed for a given subcontractor, any amendments to the item(s) or amount(s) of work to be performed by this subcontractor will be submitted on form AAPHC 89-1.

Examples: (1) To add or delete items of work and/or increase or decrease the value of an item of work on a previously approved Utilization Worksheet: complete form AAPHC 89-1.

(2) To transfer part of a previously approved Utilization Worksheet from one subcontractor to another previously approved subcontractor: complete two sets of forms AAPHC 89-1. On the first request approval to decrease previously approved value(s) and on the second request approval to increase previously approved value(s).

(3) To transfer part of a previously approved Utilization Worksheet from one subcontractor to a new, not previously approved subcontractor: complete form AAPHC 89-1 and one form AAPHC 89. On the form AAPHC 89-1, request approval to decrease the value of a previously approved subcontract; on the form AAPHC 89, request approval to execute an entirely new subcontract with a new subcontractor.

AN AMENDMENT THAT REDUCES THE UTILIZATION OF AN APPROVED DBE MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION (i.e.. a letter of unavailability from the DBE).

CONTRACT NO.: Enter NYC contract number. Example: BRC100

COUNTY: Enter name of county or counties. Example: Manhattan & Brooklyn

F.A. PROJECT No.: Enter only for Federal-Aid projects. Example: I-87-3(177)

BIDDER'S LIST FORM

**(To Be Filled Out by Each Prime Contractor for each Federally Funded Project)
FOR INFORMATION PURPOSES ONLY**

PROJECT

DATE OF BID OPENING

NAME OF BIDDER

TRADE

SUB-CONTRACTORS

(check if sub-contractors are DBE)

**TRADE WORK TO BE
PERFORMED
PER
SPECIFICATION**

_____-_____-_____-_____-

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**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: 15%

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, 1st 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, 16th Floor
New York, New York 10004
Telephone: 646-252-1378

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

Disadvantaged Business Enterprise Officer

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

Bidder Designated DBE Officer: _____

Name, Title

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

RETURN THIS PAGE WITH BID

Federal Transit Administration Third Party Contract Requirements

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

A. Disadvantaged Business Enterprise (DBE) Requirements

The successful Proposer will be required to meet a NYCDOT 15.0% 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 - 16th Floor, New York, NY 10004, Telephone: (646) 252-1372.

New York State DOT, Office of Equal Opportunity Development & Compliance, 50 Wolf Road, 1st 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, 16th 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
55 Water Street, 8th Floor, Room 825
New York, NY 10041
Telephone: (212) 839-9411
Facsimile: (212) 839-4237
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
 - 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.

SECTION VII

E) 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

**TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS
STATEN ISLAND FERRY**

IN THE BOROUGHS OF MANHATTAN AND STATEN ISLAND

PIN 84108MBPT317

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

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

Proposer's Authorized Representative:

Name: _____

Title: _____

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

Signature: _____ **Date:** _____

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

Yes No

FORM - 2P

ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS

PIN: 84108MBPT317

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

Part I

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

Addendum # 1, Dated: _____

Addendum # 2, Dated _____

Addendum # 3, Dated _____

Addendum # 4, Dated _____

Addendum # 5, Dated _____

Addendum # 6, Dated _____

Addendum # 7, Dated _____

Addendum # 8, Dated _____

Addendum # 9, Dated _____

Addendum #10, Dated _____

Part II Acknowledgement of No Receipt

_____ No Addendum was received in connection with this RFP

Part III

Proposer's Name: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

FORM - 3P

AFFIRMATION FORM

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

except _____.

Full Name of Proposer or Bidder

Address

City

State

Zip Code

Check below and include appropriate number:

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

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

___ Corporation
Employer Identification Number - _ _ _ _ _ - _ _ _ _ _

If a corporation, place seal here:

by Signature _____

Print Name _____

Title _____

Must be signed by an officer or duly authorized representative.

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

FORM 4P

STATEMENT OF UNDERSTANDING

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

**REQUEST FOR PROPOSAL
TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS
STATEN ISLAND FERRY**

**CONTRACT NO.: 841-FERRY RACK
PIN: 84108MBPT317**

PRIME CONSULTANT _____

CONSULTANT ON THIS FORM _____

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

- a. PRIME CONSULTANT
- b. 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

FORM IT

QUALITY & RELEVANCE OF PRIOR EXPERIENCE (FIRM IN GENERAL)

PIN: 84108MBPT317

PROJECT NAME: TOTAL DESIGN AND ENGINEERING OF
FENDERING SYSTEMS

CONTRACT NO.: 841 FERRYRACK

CONSULTANT: _____

PROFESSIONAL ENGINEERING/ ARCHITECTURE

OTHER/ _____

DESCRIBE

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

- 1) Proposer will include relevant experience in Marine (Civil) Engineering and/or Ports & Harbors (Civil), work in the last five (5) years. Proposer should consider work with City, State and Federal agencies; and demonstrated ability to complete these jobs in a timely fashion.
- 2) List all current and prior projects completed within the last five (5) years for Total Design & Engineering services. Specifically identify whether any of those projects involved a scope similar to the referenced contract. For each project, provide the following information:

- Description/Name of Project
- Dollar Value of Project
- Contract Term
- Contract Status
- Owner/Client
- Owner Project Manager
- Telephone No.
- Email

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

- 3) Provide a discussion on the form'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 1st of last year _____ . (a)
Number of technical employees who left firm during last calendar year _____ . (b)
Total number of technical employees as of August 1st 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 1st of 2nd previous cal. Year _____ . (e)
Number of technical employees who left firm during 2nd 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

PIN: 84108MBPT317

PROJECT NAME:

TOTAL DESIGN AND ENGINEERING OF
FENDERING SYSTEMS

CONTRACT NO.: 841 FERRYRACK

CONSULTANT: _____

PROPOSED STAFF:

1. Provide an organization chart for staffing this project and attach resumes of all key personnel including any sub-consultants. The chart must provide the key personnel proposed titles/roles for this project.
2. Provide a description of all relevant experience for key personnel (including any sub consultants).

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

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

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

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

FORM 3T

OVERALL PROJECT UNDERSTANDING AND APPROACH

PROJECT NAME: TOTAL DESIGN AND ENGINEERING OF
FENDERING SYSTEMS

PIN NO.: 84108MBPT317

PRIME CONSULTANT: _____

CONTRACT NO.: 841 FERRYRACK

CONSULTANT ON THIS FORM: _____

OVERALL APPROACH TO PROJECT: (Staffing Sheet)

1. Describe your overall approach and understanding to providing TD & Engineering services for this project. This discussion should clearly demonstrate your understanding of the TD & Engineering environment, including how it impacts the provision of these services. Provide enough detail to permit NYCDOT to assess the extent of the proposer's understanding of TD & Engineering potential problems and proposed solutions.
2. Describe your overall approach and 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.
3. Explain the duration of each task and demonstrate the Proposer's ability to complete these tasks on time with the proposed staffing. Please elaborate on how the positions assigned for this project as shown in your organization chart will assist you in the execution of each identified task.
4. 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
PHASE I AND PHASE II ONLY

PROJECT NAME: TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS

PIN NO.: 84108MBPT317

PRIME CONSULTANT: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/
ARCHITECTURAL SERVICES OTHER/ _____

(COLUMN 1) JOB TITLES & ASCE or NICET Grade/ Level	(COLUMN 2) TOTAL HOURS
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
<u>TOTALS:</u>	_____

DO NOT INCLUDE SALARIES ON THIS FORM

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

This form must be completed for the prime and each of the proposed sub-consultants (use additional pages, if necessary)

FORM 5T NYCDOT CURRENT WORKLOAD DISCLOSURE

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

PIN: _____ FIRM NAME: _____
 CONTRACT NO.: _____ CONTACT PERSON: _____
 PROJECT NAME: _____ PHONE NUMBER: _____
 BIN: _____ ADDRESS OF OFFICE(S) TO PERFORM WORK
 DATE OF RFP: _____

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

Name of Personnel (Proposed Office(s)): Administration _____ Total Personnel _____

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

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:

SUBCONSULTANT FIRM NAME	PROPOSED % OF PROJECT	# OF TECHNICAL PERSONNEL	WORKLOAD
_____	_____ %	_____	\$ _____
_____	_____ %	_____	\$ _____
_____	_____ %	_____	\$ _____

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

_____	_____ %	_____	\$ _____
_____	_____ %	_____	\$ _____

CERTIFICATION

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

DATE

SIGNATURE (OFFICER OR PARTNER)

FORM 5T

Remaining work with NYCDOT (within Department)

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

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

Design Division (includes Highway Design, Bridge Design and Construction Support Services)				

Total Firmwide Design Workload \$ _____

Assigned Office(s) Miscellaneous Workload \$ _____

Construction Division (includes only Resident Engineering Inspection)				

Total Firmwide REI Workload \$ _____

Assigned Office(s) REI Workload \$ _____

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

Total Firmwide Miscellaneous Workload \$ _____

Assigned Office(s) Miscellaneous Workload \$ _____

Total Firmwide Overall Workload with NYC-DOT \$ _____

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

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

Use the following as a ratings guide:

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

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

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

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

If R is greater than or equal to 100%, a rating of 0 may be appropriate.
 If R is equal to 75 %, a rating of 5 may be appropriate.
 If R is less than or equal to 25%, a rating of 10 may be appropriate.

FORM 6T

DBE PARTICIPATION

PROJECT NAME:

PIN NO.:

CONTRACT NO.:

CONSULTANT: _____

The NYC Department of Transportation requires firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of **15%**. The successful proposers must show good faith efforts that it attempted to meet the DBE goal.

Participation by DBE Consultants:

Is being proposed

Attach the following:

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

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



SF-330.pdf (551
KB)

FORM 330S SPECIAL SUPPLEMENT

FOR USE IN PREPARING PROPOSALS FOR

Total Design & Engineering of Fendering Systems – Staten Island Ferry

Contract No: 841-FERRYRACK

PINs: 84108MBPT317

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.

Code	Discipline
63	Naval Architect
64	Marine (mechanical – ship propulsion) Engineer

SECTION VII

G) COST PROPOSAL FORMS PACKET

CONTENTS

COST PROPOSAL

1. FORM 4T1 LABOR COST PROPOSAL
2. FORM 4T2 COST PROPOSAL SUMMARY
3. FORM 4T3 - PERFORMANCE OUTCOME MEASURES
AND RELATED FINANCIAL INCENTIVE
AND/OR DISINCENTIVE

NOTE: Please copy and use separate sheets for each sub-consultant (if any). Principal's Time (if any) is charged direct without multiplier. Make copies of format sheet as needed.

FORM 4T1 – LABOR COST PROPOSAL

**PROJECT NAME: TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS
PHASE I AND PHASE II ONLY**

PIN NO.: 84108MBPT317

PRIME CONSULTANT: _____ CONTRACT NO.: 841-FERRYRACK

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
 OTHER/ _____

<u>(COLUMN 1)</u> <u>JOB TITLE</u>	<u>ASCE/</u> <u>NICET</u> <u>GRADE</u>	<u>(COLUMN 2)</u> <u>TOTAL</u> <u>HOURS</u>	<u>(COLUMN 3)</u> <u>HOURSTHIS FIRM</u>	<u>(COLUMN 4)</u> <u>AVERAGE HOURLY</u> <u>RATE – FY 2010</u> \$	<u>(COLUMN 5)</u> <u>LABOR COST</u> <u>COL3X COL4</u> \$
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____	_____
7. _____	_____	_____	_____	_____	_____
8. _____	_____	_____	_____	_____	_____
TOTALS				\$	\$ (T)

MULTIPLIER FOR OVERHEAD	<u>(A)</u>	<u>(A)</u>
MULTIPLIER FOR PROFIT (Max. 10%)	<u>(B)</u>	<u>(B)</u>
TOTAL MULTIPLIER	<u>(1+A)X(1+B)</u>	<u>(M)</u>
TOTAL LABOR COST (T x M)		\$ <u>(C)</u>
TOTAL LABOR ESCALATED TO PROJECT MIDPOINT	MAXIMUM ESCALATION FACTOR =	<u>1.04(D)</u>
GRAND TOTAL COST (C X D)		\$ _____

INSTRUCTIONS:

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

The same procedure will be followed at the beginning of Project Design Phase.

FORM 4T2 – COST PROPOSAL SUMMARY (FY 2009)

**PROJECT
NAME:**

TOTAL DESIGN AND ENGINEERING OF FENDERING SYSTEMS

PIN NO.: 84108MBPT317

PRIME CONSULTANT: _____ **CONTRACT NO.:** 841-FERRYRACK

	<u>(COLUMN 1)</u> <u>CONSULTANT</u>	<u>(COLUMN 2)</u> <u>HOURS</u> <u>ALL FIRMS</u>	<u>(COLUMN 3)</u> <u>ESCALATED</u> <u>LABOR COST</u> <u>TO PROJECT</u> <u>MIDPOINT</u> \$	<u>(COLUMN 4)</u> <u>DIRECT</u> <u>NON-SALARY</u> <u>COST</u> \$	<u>(COLUMN 5)</u> <u>TOTAL COST</u> \$
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
	GRAND TOTALS	_____	\$ _____	\$500,000.00	\$ _____ (T)

INSTRUCTIONS:

1. The costs entered in Column 3 are the totals shown on line (D) of Form 4T1 "Labor Cost Proposal" for each consultant on the project team.
2. The Total Direct Non-Salary Cost shown in the shaded area below Column 4 is an out of pocket expense budgeted amount allowed to all proposers and must not be changed.
3. The Total Direct Non-Salary Cost provided by each consultant of the project team MUST SUM to the total shown in the shaded area at the bottom of the Column 4.

FORM 4T3

**PERFORMANCE OUTCOME MEASURES AND RELATED
FINANCIAL INCENTIVES AND/OR DISINCENTIVES**

Instructions: Provide the information requested below for proposed performance outcome measures

	Performance Outcome (Target Goal)	Measure of Performance	Associated Financial Incentive/Disincentive
1.			
2.			
3.			
4.			
5.			

SECTION VII

H) VENDEX REQUIREMENT & CONFIRMATION OF VENDEX COMPLIANCE

ATTACHMENT H

VENDEX Requirements

Pursuant to Section 6-112.2(b) of the New York City Administrative Code, all vendors that are under consideration for the award of a sole source contract or a contract valued at \$100,000 or more, or whose aggregate business with the City in the last 12 months, including the proposed contract, is \$100,000 or more, must complete and submit a VENDEX Business Entity or Not-For-Profit Organization Questionnaire when notified by the Agency. The principals and individuals thereof must also submit a Principal of Individual Questionnaire.

Upon selection, the successful proposer (including their subconsultants) will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of Vendex Compliance to the NYCDOT Vendor Responsibility Unit within five days of official notification.(Section VII, Attachment G). A form for this confirmation is set forth in the RFP.

The proposer is advised that Vendex Questionnaires and procedures have changed. See www.nyc.gov/vendex to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact NYCDOT's Vendor Responsibility Unit at 212-442-7757.

(a) Submission: Vendex Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9th Floor, New York, New York 10007.

(b) Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. If required, 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 H

CONFIRMATION OF VENDEX COMPLIANCE
--

The Proposer (including its subconsultant) shall submit this Confirmation of Vendex Compliance

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

Vendex Compliance: To demonstrate compliance with Vendex requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.

- (1) **Submission of Questionnaires to MOC:** By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted Vendex Questionnaires to the Mayor's Office of Contract Services, Attn: VENDEX, 253 Broadway, 9th Floor, New York, New York 10007.

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

- (2) **Submission of Certification of No Change to NYCDOT:** By signing in the space provided below, the Proposer certifies that it has read the instructions in a "Vendor's Guide to Vendex" and that such instructions do not require the Proposer to submit Vendex Questionnaires. The Proposer has completed **TWO ORIGINALS** of the Certification of No Change.

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

SECTION VII

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

Hyper Link: [Doing Business Data Form-092408.pdf](#)