

Michael R. Bloomberg
Mayor

The City of New York
Department of Transportation
Division of Bridges

Janette Sadik-Khan
Commissioner

REQUEST FOR PROPOSALS

FOR

QUALITY ASSURANCE SERVICES FOR

MATERIAL TESTING AND SAMPLING IN THE UNITED STATES AND CANADA

CONTRACT NO.: HBCD006

PIN 84109MBBR373

RELEASE DATE OF THE RFP: June 19, 2009

ANTICIPATED CONTRACT TERM: 1095 Consecutive Calendar Days from Date of Written Notice to Proceed with an option to renew for an additional one (1) year at the sole discretion of the Department, under the exception for wage increases (to compensate for any escalation).

AUTHORIZED AGENCY CONTACT PERSON

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

Dr. Paul-Michael Kazas
Director, Capital Procurement
55 Water Street, 5th Floor
New York, NY 10041
Telephone: (212) 839-6314
Fax: (212) 839-4236



June 19, 2009

Re: Request for Proposals for
Quality Assurance Services for
Material Testing and Sampling
in the United States and Canada
Contract No. HBCD006
PIN No.: 84109MBBR373

To Whom It May Concern:

I am pleased to invite your organization to submit a proposal for Material Testing and Sampling to assist the Division of Bridges with its Capital Infrastructure Improvement Program. Specifically, the proposal will be for Quality Assurance Services in connection with the above noted contract.

Please be advised that a Pre-Proposal Conference has been scheduled for July 1, 2009 at 2 PM, at 55 Water Street, Ground Floor Bid Room Due to limited space, no more than (2) representatives from each interested Consultant will be permitted to attend.

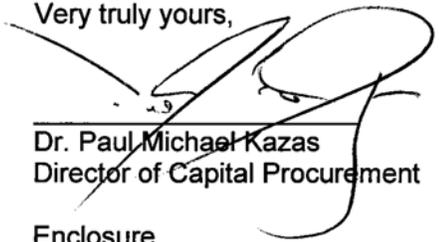
Enclosed for your use in developing your proposal is a set of forms with instructions for the above-referenced project. Be further advised that the selected proposer should not subcontract more than 49% of the contract work. In addition, please ensure compliance with all M/WBE requirements as incorporated in this contract. **Schedule B: Subcontractor Utilization Plan must be submitted in a separate sealed envelope along with the technical proposal.** 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, 55 Water Street, Ground Floor, New York, NY 10041 on or before July 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 Dr. Paul Michael Kazas within 48 Hours of receipt of this RFP by Fax: (212)839-4236.

All questions concerning this invitation must be faxed to Dr. Paul-Michael-Kazas at (212)839-4236 on or before July 6, 2009. If you need to contact by telephone, please call (212) 839-6314.

Very truly yours,



Dr. Paul Michael Kazas
Director of Capital Procurement

Enclosure

NYC Department of Transportation
Office of the Agency Chief Contracting Officer (ACCO)
55 Water Street, Room 825 New York, NY 10041
T: 212 8399297 F: 212 8394236
www.nyc.gov/dot



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.: DR. PAUL-MICHAEL KAZAS- FAX: (212) 839-4236

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. HBCD006 , PIN 84109MBBR373 Fax #		
RFP Contract Title (Fill in): Quality Assurance Services for Material Testing and Sampling in the United States and Canada		

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 Dr. Paul Michael Kazas
Fax: (212) 839-4236. E-Mail Address: pkazas@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: June 19, 2009

All questions and request for additional information concerning this RFP should be directed to Dr. Paul-Michael Kazas, the Authorized Agency Contact Person at:

Telephone #: (212) 839-6314
Fax#: (212) 839-4236
E-Mail Address: pkazas@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 1, 2009**

Time: **2:00 PM**

Location: **55 Water Street
Ground Floor Bid Room
New York, NY 10041**

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

C. Proposal Due Date and Time and Location:

Date: **July 15, 2009**
Time: **NO LATER THAN 2:00 PM**
Location: **ACCO Contract Management Unit
Department of Transportation
55 Water Street, Ground Floor
New York, NY 10041**

Proposals should be hand delivered to NYCDOT ACCO 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 Quality Assurance Services for Material Testing and Sampling in the United States and Canada.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded from this RFP will be **1095** consecutive calendar days from date of written notice to proceed with an option to renew for an additional one (1) year. The renewal shall be at the sole discretion of the Department, under the exception for wage increases (to compensate for any escalation). The agency reserves the right, prior to contract award, to determine the length of the initial contract term and each option to renew, if any.

C. Anticipated Payment Structure

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

SECTION III : SCOPE OF SERVICES

A. Agency Goals and Objectives

The agency's goals and objectives are to have Inspection Services to be performed by the Consultant are to ensure that the work of the Contractor conforms to the provisions of the contract documents 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. (Section VII, Attachment A)

C. Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

This procurement is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law No. 129 of 2005, which added Section 6-129 to the Administrative Code of the City of New York. The requirements of M/WBE participation for this procurement are set forth in Section VII, Attachment F - Minority/Women Business Enterprise Program/Schedule B. The selected proposer must comply with all M/WBE requirements in this procurement and the subsequent negotiated Contract. The participation goals established for this contract are set forth in Section VII, Attachment F. M/WBE Consultants must be certified by the Department of Small Business Services ("DSBS") to be eligible for participation. Such certification must occur prior to the Consultants' commencement of work as subcontractors. A list of M/WBE Consultants may be obtained from the DSBS website at www.nyc.gov/getcertified, by e-mailing mwbe@sbs.nyc.gov or lbe@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William Street, New York, New York 10038, 7th Floor. Eligible Consultants that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

NOTE: Proposers who intend to subcontract services to M/WBE Consultant(s) shall include such services in Schedule B, provided the dollar amount intended to be subcontracted is under \$1 million for each subcontract. The agency shall consider such subcontract(s) as part of the proposers' utilization plan.

Rejection of the Proposal

The proposer must fully complete the Subcontractor Utilization Plan set forth in Section VII, Attachment F. Proposals that do not include a completed Subcontractor Utilization Plan will be deemed to be non-responsive, unless a full or partial waiver of the Target Subcontracting Percentage is granted. In the event that the proposer does not intend to award the Target Subcontracting Percentage, the proposal will be deemed to be non-responsive, unless the Agency has granted a waiver of the target Subcontracting Percentage (Subcontractor Utilization Plan, Part III).

For additional information on the requirements of M/WBE participation for this procurement, please refer to Section VII, Attachment F – Notice to all Prospective Contractors & Schedule B.

D. Compliance with Local Law 34 of 2007(See Attachment "H")

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.

5. **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 & FINANCIAL INCENTIVES AND/OR DISINCENTIVES
PRICE PROPOSAL:	SUMMARY SHEET & PAGES 1 THROUGH 26

NOTE:* FORM 4T1 (COLUMNS 3, 4 AND 5), AND FORM 4T2 ARE TO BE COMPLETED AND SUBMITTED 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. While the proposer's proposed performance outcome measures and related financial incentives and/or disincentives will not be scored, they may be considered by the agency while awarding the contract and structuring its payments to the consultants.

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

Proposer's Name	NYCDOT Contract Section
Address	ACCO Contract Management Unit Department of Transportation 55 Water Street, Ground Floor New York, NY 10041

PIN No. 84109MBBR373
CONTRACT NO. HBCD006
QUALITY ASSURANCE SERVICES FOR
MATERIAL TESTING AND SAMPLING IN THE UNITED STATES AND CANADA
PROPOSAL SUBMISSION DEADLINE IS JULY 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.

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 consists of five (5) individually sealed components as listed below, each bound in an a 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 Consultant(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, Schedule B; and Form 4T1, Form 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 the proposal package as follows:

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

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

2. Component 2A: Proposal Forms

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

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

3. Component 2B: Schedule B: Subcontractor Utilization Plan

Subcontractor Utilization Plan should be submitted in a separate sealed envelope along with the Technical Proposal

4. Component 2C: Local Law 34 – “Doing Business Data Form”

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

B. Proposal Package Contents (“Checklist”)

CHECKLIST FOR RFP

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

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

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

2. COMPONENT 2A – 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.)

3. COMPONENT 2B- Submit one (1) original set

- SCHEDULE B SUBCONTRACTOR UTILIZATION PLAN
(To be submitted in a separate sealed envelope along with the Technical Proposal)

**4. COMPONENT 2C - LOCAL LAW 34 –“Doing Business Data Form”-
Submit ONLY one (1) original set**

- Doing Business Data Form
(To be submitted in a separate sealed envelope as a part of Technical Proposal)

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

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

SECTION V: PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures

All proposals accepted by the Agency will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the Agency to be non-responsive will be rejected. The Agency's 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 Consultant. 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. Proposers not included on the "short-list" will not be further considered. The Agency reserves the right to limit the number of Consultants shortlisted.

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

The agency shall rank proposers by technical merit and pursuant to City's Quality Based Selection Method (QBS). The price proposal of ONLY the highest technically ranked Consultant will be opened and reviewed by the consultant selection committee (CSC) to determine whether it is responsive or non-responsive. Following analysis of the responsive price proposal by the CSC, the Agency then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer. In the event that the agency has chosen to negotiate a fair and reasonable price with the highest ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next ranked vendor(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%
-Consultant 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. Contract award shall be subject to the timely completion of contract negotiations 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 (PIN84109MBBR373) for the Quality Assurance Services for Material Testing and Sampling in the United States and Canada will not directly result in the displacement of any New York City employee.

Agency Chief Contracting Officer/
Assistant Commissioner

Date

SECTION VII

ATTACHMENTS

- A) Proposed Contractual Agreement
- B) General Provisions (Appendix A) & Macbride Principles Provisions
- C) Procedural Forms Packet
- D) Proposal Forms Packet
- E) Cost Proposal Forms Packet
- F) Minority /Women Owned Business Enterprise Program
(To be submitted in a separate sealed envelope along with Technical Proposal)
- G) Vendex Requirements & Confirmation of Vendex Compliance
- H) Local Law 34 - Doing Business Data Form
(To be submitted in a separate sealed envelope along with Technical Proposal)

SECTION VII

A) PROPOSED CONTRACTUAL AGREEMENT

**QUALITY ASSURANCE SERVICES FOR
MATERIAL TESTING AND SAMPLING IN THE UNITED STATES AND CANADA**

CONTRACT NO.: HBCD006

PIN: 84109MBBR373

SPECIFIC REQUIREMENTS

MATERIAL TESTING AND SAMPLING IN THE UNITED STATES AND CANADA

CONTRACT NO.: HBCD006

PIN.NO: 84109MBBR373

1. Qualifications, Personnel, Compensation.

The Consultant must be a competent, technically oriented Consultant with the organization, experience, and capability to provide the services required by these specifications. The Department considers the selected Consultant to be in a technical support role wherein the Consultant provides sampling and testing services, reports, indicates any irregularities or deficiencies, and makes evaluations or recommendations. The Department retains the policy and decision making role including devising and establishing quality assurance programs and procedures; making engineering judgments; interpreting plans and specifications; ordering corrective action of the construction contractor, his/her subcontractors, and/or suppliers, as appropriate; and determinations of acceptance or rejection of material. The Department also reserves the right to evaluate the Consultant's overall performance as well as its data providing and reporting accuracy by using Department's technical personnel expertise, periodic locations and site visits, or a third party performance analysis provider.

The services of the selected Consultant shall be under the direction of a person charged by the Consultant with technical managerial responsibility. This manager shall:

- (1) be a full time employee of the Consultant;
- (2) be a registered engineer or a person with equivalent science/engineering education and experience having satisfactorily directed inspection services for transportation construction materials covered by this contract; and
- (3) Have at least three years' experience in inspection and testing of these materials.

In addition there are qualification requirements for certain service assignments involving either company qualification or an individual qualification such as the AASHTO Accreditation Program (AAP), American Concrete Institute (ACI) certification program, American Welding Society (AWS) certification program. Resumes of inspectors are subject to approval of the Department's Director of Quality Assurance prior to assignment by the testing agency.

The Consultant must have adequate testing facility to perform tests outlined in Task 1 (Testing for the basis of Materials Acceptance) and Task 2 (Testing for Product Evaluation). Testing facility should be equipped with at least 400000 pounds Tinius Olsen Universal Testing Machine or Equivalent, Tensile Strength Testing machine, Nondestructive testing equipment, Soil analysis equipment, Nuclear Density testing equipment, and other necessary equipment to satisfactorily perform the tests included in Task 1 through 4

Consultant must have current AASHTO certification, also actively participating in AMRL & CCRL proficiency sample testing program.

It is expected that the laboratory testing of materials be performed by a Consultant accredited by AASHTO Accreditation Program (AAP) in the following fields of construction materials testing: (1) Bituminous Mixtures, (2) Bituminous Concrete Aggregates, (3) Portland Cement Concrete (PCC), and (4) PCC aggregates. The selected Consultant will either: (1) be accredited by AAP or (2) be enrolled and participating in the appropriate proficiency sample programs and has progressed an active AAP application. The selected Consultant will actively pursue accreditation as necessary, with the details of their plan to become accredited approved by the Department's Director of Quality Assurance.

The Consultant shall maintain a database, showing identification of the sampling and testing of the materials performed under various contract items. This database will preclude the duplication/repetition of testing of samples from the same lot, submitted at different times from different sources and will also be utilized to substantiate the quantities requested for payment.

The Consultant will be required to provide qualified and trained personnel, respond to assignments on an as-needed basis in a timely fashion, provide the necessary technical and administrative supervision to their employees and work cooperatively with Department personnel. The expected response time to an assignment is typically 1 to 2 days.

The services may require sampling, witnessing of tests, performance of laboratory and field tests, and other miscellaneous related services. These functions will be performed in accordance with the Department's procedures as referenced in General Requirements, Section IV "Services to be performed". These procedures are generally recognized and accepted by the testing industry. The testing laboratory will be required to obtain samples as directed by the Department, using the most economical means unless instructed otherwise. The Consultant will be reimbursed for the cost of shipment and for the inspector's travel time at the inspector rate and reimbursed for travel expenses in accordance with General Requirements, Section VI (c) (4). Contractors may have the option of shipping samples at their own expense to expedite testing. If this option is exercised, the inspection service will be required to take precautions to assure the integrity of the sample is not compromised during shipment, by means of identifying tags, labels, and seals.

Personnel functioning under contract with the Department will typically be considered either Inspectors or Senior Inspectors and the Department will specify the inspector grade required for each assignment based on the complexity of the assignment. The minimum qualifications are:

Inspector. The Inspector must be at least a high-school graduate with NICET LEVEL II in Civil Engineering Technology-construction materials testing asphalt and concrete and have one year of both sampling, inspection, and testing experience or other related work experience. However, subject to Department review and approval, equivalent combinations of education, training, and experience may also be considered as meeting these requirements.

Senior Inspector. In addition to the educational requirements for inspector, the senior inspector must have NICET LEVEL II in Civil Engineering Technology-

construction materials testing asphalt and concrete and at least a total of three year's sampling, inspection, and testing experience or other related experience. However, subject to Department review and approval, combinations of education, training, and experience may also be considered as meeting these requirements.

Chief Inspector/Project Manager. In addition to the educational requirements for senior inspector, the Chief Inspector/Project Manager must be NICET Level III in Civil Engineering Technology-construction materials testing asphalt and concrete and at least a total of ten (10) year's sampling, inspection, and testing experience or other related experience. However, subject to Department review and approval, combinations of education, training, and experience may also be considered as meeting these requirements.

Additionally for specific assignments, related to sampling of concrete or welding specimens, the qualifications/experience shall be specific to that assignment.

The Consultant will typically be compensated for testing assignments on the basis of the unit price agreed to for each test. Compensation for obtaining samples from other locations will be paid for at the inspector hourly rate agreed to. The hourly rate will include all direct costs, indirect costs, and profit for services rendered, except for travel expenses. Travel expenses including meals and lodging, will be reimbursed in accordance with Directive 6 of the New York City Comptroller's Office. No other direct or indirect costs (e.g. postage for reports, supplies, reproduction, clerical support, etc.) will be reimbursed unless otherwise expressly approved by the Department. Typically, the cost of transmitting samples, mill test reports, and radiographs is reimbursable. All costs associated with certification, qualification, or accreditation of the Consultant or its personnel shall be borne by Consultant.

The Consultant shall not engage, on a full or part-time basis, any professional or technical personnel who are or have been employed by the City of New York or the organization of any other public employer at any time during the period of this contract, except regularly retired employees, without the consent of the public employer of such person.

The Consultant shall fully and fairly represent the interest of the City in the performance of services under this contract without conflict of interest or breach of confidentiality. Prior to the commencement of work under this contract, the Consultant shall notify the City in writing whether or not it has performed, or is currently performing work for any construction contractor, subcontractor, or material supplier which has performed or is performing work on any City project. During the course of this contract, Consultant shall notify the City in writing of its intent to perform work on any City projects not part of this contract. These provisions shall be included in all subcontracts for work performed by subcontractors or Sub-consultants.

2. Sampling and Testing Services

a. General

The services covered by this contract have been congregated and grouped into Task Categories based on their test nature or objective in order to assist with fund distribution for payment as well to provide convenient tracking of expenditures and progress.

There are identified four task categories:

- **Task 1** TESTING FOR BASIS OF MATERIALS ACCEPTANCE – addresses Standard Specifications materials testing as called for by the basis of acceptance of specified materials on use with bridge rehabilitation Items. (See Attachment marked “Price Proposal Summary”)
- **Task 2** TESTING FOR PRODUCT EVALUATION – addresses testing and sampling as used to qualify various materials not included in Standard Specifications. They comprise materials as called for by Job Bid Proposals and Specifications Books; various new substitution materials; questionable quality check on accepted or from approved lists materials, routine checks of materials within the plant inspection process — cementitious, admixtures, asphalt or aggregates; investigation and evaluation of quality achieved on some construction incorporated products by coring and testing procedures as well as nondestructive testing or other miscellaneous tests. (See Attachment marked “Price Proposal Summary”)
- **Task 3** SAMPLING FOR BASIS OF MATERIALS ACCEPTANCE – addresses Standard Specifications materials onsite/offsite inspection and sampling as called for by the basis of acceptance of specified materials on use with bridge rehabilitation Items. (See Attachment marked “Price Proposal Summary” and Form 4T1.)
- **Task 4** TESTING FOR THE BASIS OF BRIDGE PAINTING ACCEPTANCE – addresses Standard Specifications paint testing as called for the basis of acceptance of specified materials on use with bridge rehabilitation items. (See Attachment marked “Price Proposal Summary”)

Under this contract the testing shall typically involve materials and processes used for bridge components as bearings, guide rails, concrete members, backfill, joints, and other bridge related appurtenances.

These services will be required at various locations in the United States and Canada. The selected Consultant must have offices or branch locations to ensure timely response to assignments. A significant part of the sampling services will involve bridge bearings at the manufacturing location. The majority of bridge bearings are currently manufactured in Connecticut, Ohio, Illinois, Texas, or Washington. The Consultant may make arrangements with other Consultants to cover assignments in areas where they do not have an office. Consultants intending to use other Consultants must provide the names and credentials of such Consultants with their proposal. Outside Consultants are subject to the approval of the Department. The Consultant awarded this contract shall be fully responsible for the performance of its subcontractors.

The sampling shall typically involve materials and processes used in bearings, guide rails, concrete members, backfill, joints, polymer constituents, high strength fasteners and other components. Inspectors will be required to inspect materials and fabrication processes as well as witness tests or coring performed by the manufacturer. Inspectors will be required to obtain samples and send them to designated testing laboratories.

Services are to be provided generally in accordance with the requirements of the New York State Department of Transportation's Standard Specifications, Materials Method manuals, Materials Procedures, Soils Control Procedures, and directives of the New York State or New York City department of Transportation.

It is estimated that **48180** compensable inspection hours will be required over the three-year period. Of this total, it is estimated that about 35% will involve bridge bearings, 45%

will involve backfill material, and 10% will involve joint seals. The balance will be for various other items. The majority of the bearings are sampled and inspected in Connecticut, Ohio, Illinois, Texas, or Washington. Backfill material will generally be sampled in the New York City area. Other items may require sampling anywhere in the continental of United States and Canada.

GENERAL REQUIREMENTS

MATERIAL TESTING AND SAMPLING IN THE UNITED STATES AND CANADA

CONTRACT NO. HBCD006

PIN: 84109MBBR373

GENERAL REQUIREMENTS

I. SCOPE

This agreement provides funding for “Material Testing and Sampling” in the United States and Canada associated with the construction and rehabilitation of New York City bridges at various locations. These services will be required at various locations in the United States and Canada. The Consultant must have offices or branch locations to ensure timely response to assignments. A significant part of the sampling services will involve inspection and sampling of bridge bearings and compression seal at the manufacturing location. The majority of bridge bearings currently are manufactured in Connecticut, Ohio, Illinois, Texas, or Washington. The Consultant may make arrangements with other Consultants to cover assignments in areas where they do not have an office. The Consultant intending to use other Consultants must provide the names and credentials of such Consultants with their proposal. The Consultant for this contract shall be fully responsible for the performance of its sub-Consultant.

The City considers the Consultant to be in a technical support role, wherein the Consultant provides inspection and the related testing services, accurate and reliable inspection and test reports, identifies the out of specification testing results and recommends acceptance/rejection based upon a strict interpretation of the specifications.

The Consultant is required to provide qualified and trained personnel who can respond to assignments on an as-needed basis in a timely fashion. The Consultant will establish its internal necessary administrative supervision to the assigned plant inspection personnel and will work cooperatively with the Department.

The Consultant shall fully and fairly represent the interest of the City in the performance of services under this contract without conflict of interest or breach of confidentiality prior, during, upon and after the completion of work under this contract. The Consultant shall notify the City in writing whether or not it has performed, or is currently performing work for any construction contractor, subcontractor, or material supplier which has performed or is performing work on any city project. During the course of this contract, the Consultant shall notify the City of New York in writing of its intent to perform work on any city projects not part of this contract. These provisions shall be included in all subcontract work performed by subcontractors or sub consultants.

All proposed Sub-Consultants must be approved by the Department prior to services rendered. The Consultant shall not sub-contract more than 49% of the Contract work. The Sub-Consultants will be subject to all provisions of this agreement. The Consultant (prime) will receive a 5% mark up only on **subcontracted** services.

The duly authorized representatives of the City; and on Federally Aided Projects, representatives of the New York State Department of Transportation and the Federal Highways Administration, shall have the right at all times to inspect the work of the Consultant. The City through its agency; Division of Bridges, Quality Assurance Unit, reserves the rights to monitor and evaluate the Consultant performance by the Departments' own performance evaluation system.

In addition to the requirements stipulated herein, the Consultant is advised that all payments due under this contract are subject to various Directives issued by the office of the comptroller regarding the auditing of Consultant payments. The comptroller's Directives are:

Directive No. 2 ("Guidelines for Audit of Vouchers submitted under cost reimbursable contractual Agreements"); Directive No. 6 ("Travel, Meals, Lodging and Miscellaneous Agency Expenses"); and Directive No. 7 ("Audit of Payment Vouchers Issued Under Contracts for Construction, Equipment and Related Consultant Services") with any revisions thereof. Copies of the aforementioned Directives may be obtained from the Department.

The following information is required for all of the contractor's employees that require access to the work area and who have not been screened pursuant to security zone/exclusionary area requirements: name, date of birth, alien registration number and social security number. The information will be submitted to the Coast Guard for background screening purposes. Social security numbers will not be submitted if a written request is received along with the information that the social security number is not to be submitted. Failure to submit a social security number may result in a delay in the Coast Guard's assessment which may prevent access to restricted areas within the work area.

II. DURATION OF CONTRACT

The term of this agreement is for a three-year period, commencing from the date a Notice to Proceed is issued, and may be renewed at the sole option of Department for an additional one year at the same condition as set forth herein, except for the wage increases and Test Prices (to compensate for any escalation) mentioned in the section "VI" (Fees & Payments). Such renewal may be exercised upon at least 30 days written notice prior to the expiration of this Contract. During the term of this Inspection Services Agreement, projects and work assignments will be identified. It is estimated that a total of **48,180** compensable inspector hours for various titles included in the contract will be required over the three-year period.

III. DEFINITION

"The Department", as used in this agreement and the above referenced documents shall refer to the New York City Department of Transportation (DOT). "Materials Bureau" as referred in NYSDOT standard specifications shall mean the New York City DOT Quality Assurance Unit or its testing service retained under a separate contract. "D.C.E.S." as referred in NYSDOT standard specifications shall mean Deputy Chief Engineering Review and Support, Division of Bridges the New York City Department of Transportation.

IV. SERVICES TO BE PERFORMED

The services for this contract have been grouped into four Task Categories, (detailed in Specific Requirement pages), based on the tests nature or objective, in order to facilitate funds distribution for payments as well as to provide convenient tracking of their expenditure and progress usage.

The Consultant will provide inspectors, senior inspectors and chief inspector/project manager on

an as-needed basis, to perform inspection and incidental testing services for various materials including bituminous materials, cementitious material, admixtures, joint sealers, masonry unit, reinforcing steel, bridge bearings, backfill, etc.

Services rendered under this contract will be administered by the Director of Quality Assurance, Division of Bridges, New York City Department of Transportation. No services shall be performed without prior approval of the Department. Based on the complexity of the work, the Department will determine the level of inspection personnel.

The Consultant shall familiarize itself with the standard practices of the New York State Department of Transportation prior to beginning any of the work of this contract. All work required under this agreement shall be performed in accordance with these practices, standards, and criteria, and any special requirements which include the New York State Department of Transportation Standard Specifications, Manual for Uniform Record Keeping (MURK), Materials Methods and Directives, American Standard for Testing of Materials (ASTM) and Directives of the New York City Department of Transportation. The Consultant shall perform the work with diligence and skill expected of a Consultant with extensive experience in the performance of work of the type described. The Consultant shall, at no cost to the City, provide all necessary safety training and personnel safety equipment for its employees performing work under this agreement.

The Consultant shall comply with all the latest revisions and/or additions to NYS Standard Specifications as described in the Engineering Instructions, Engineering Bulletins issued by NYSDOT and/or the Department and endorsed by Quality Assurance Unit, Division of Bridges.

The initial assignments for Testing and Sampling of Materials to be performed upon a new construction project will be made in writing to the Consultant with specific instructions detailing the duties to be performed, location of work, inspector level (regular and senior inspectors), number of inspectors anticipated, reporting procedures, and contact person(s) in the Consultant who will assign and monitor the work. The Director of Quality Assurance will give authority and responsibility for day-to-day operations.

All testing and sampling personnel are subject to Department approval and may be removed upon request by the Department.

V. INSPECTION PERSONNEL

The Consultant shall appoint qualified Inspectors, Senior Inspectors and Chief Inspector/Project Manager to perform the required inspection services. Based on the complexity of the work, the Department will ascertain jointly with the Consultant the proper level of inspection personnel as required for each assignment. The Department prior to assignment must approve all inspection personnel.

VI. FEES AND PAYMENTS

A. FEE

In full payment for all services to be rendered hereunder, the City shall pay to the Consultant and the Consultant agrees to accept a fee not to exceed: \$ _____ that includes a not to exceed amount of \$ 250,000 for out-of-pocket expense.

B. BASIS

1. TESTING AND SAMPLING WORK:

Payment shall be made on the basis of total direct technical labor salaries, times an Consultant multiplier, plus authorized overtime premium pay and certain out-of-pocket expenses. (Task 3 of Testing and Sampling Services: See SR pages).

Payment shall be made on the basis of unit price. (Task 1, 2, and 4 of Testing and Sampling Services: See SR pages)

2. WAGES:

The following average hourly wage rates shall apply to this contract:

TITLE / LEVELS	AVERAGE HOURLY WAGE RATE
Inspector	\$
Senior Inspector	\$
Chief Inspector/ Project Manager	\$

The average hourly wage rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown on the Labor Cost Proposal Form(s). Actual salary rates may vary up to 10% from the established average hourly rate shown, as approved by Engineering Audit Office. However, the Consultant may periodically, but no more than once per contract year, request, in writing to the Department, to have these rates adjusted. This adjustment shall be subject to the approval of the Chief Engineer for the Division of Bridges and the Engineering Audit Officer, and shall be within the parameters as established in the U.S. Bureau of Labor Statistics Employment Cost Index for Professional Specialty and Technical Workers- Wages and Salaries**.

**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 150% of the Annual Cost Index Percent. Total of individual raises shall not exceed the pool money per contract year.

3. TEST PRICES:

In the event that this contract is extended beyond the three-year period, the Consultant may request, in writing to the Department, to have these test prices adjusted. This adjustment shall be subject to the approval of the Department and the Engineering Audit Bureau.

C. DEFINITIONS

1. Direct Technical Labor Cost:

Direct technical labor cost shall include only the wages and salaries of Inspectors, Senior Inspectors and Chief Inspector/Project Manager exclusive of project management and administrative personnel. This cost shall be derived from individual wages, but shall not include overtime-premium pay, vacation pay, holiday pay, social security, unemployment insurance, workers compensation, sick pay or other fringe benefits. Any salary increases 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. The overtime premium when applicable shall be paid in accordance with "overtime premium".

2. Consultant Multiplier:

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

3. Overtime Premium:

a. Overtime premium compensation shall be those services rendered by any designated inspection personnel in the form of sampling, and testing and falling into one of the following categories:

- Services in excess of eight straight time hours per day worked on our project.
- Services in excess of forty straight time hours per week on our project.
- Services performed on Saturdays, Sundays and any of the following holidays, if it is a designated Material Testing and Sampling Consultant's holiday.

<i>New Year's Day</i>	<i>Columbus Day</i>
<i>President's Day</i>	<i>Martin Luther King Day</i>
<i>Memorial Day</i>	<i>Veteran's Day</i>
<i>Independence Day</i>	<i>Thanksgiving Day & the Day after</i>
<i>Labor Day</i>	<i>Christmas Day.</i>

Services provided which do not meet the requirements of any of the above criteria but are specifically approved by the Department.

b. The Overtime premium is limited to 0.5 multiplied by the straight individual wage rate. No overtime services shall be performed without prior approval of the Department. The Consultant multiplier shall not be applied to overtime premium.

4. Travel, Meals, Lodging:

a. Travel, meals, and lodging shall be authorized and reimbursed by the Agency in accordance with the prevailing rates established by Directive 6 of the Comptroller's Office of the City of New York. The Consultant's personnel will be subject to the same rules applied to New York City Department of Transportation Employees.

b. Travel time for the day will not be paid for the first and last half (1/2) hour of travel from the inspectors home (or starting point) and return. Total travel time for the day in excess of the aforementioned will be compensated in fifteen (15) minute increments. Any part of a quarter hour shall be rounded to the next quarter hour. Travel time between two or more points of continuous service during the course of a daily assignment will be compensated under "Direct Technical Salary Cost".

5. Show Up Time:

There shall be no charge for services canceled on or before the close of business day (4 P.M.) prior to the day of scheduled inspection. If a cancellation notice is not given within this time frame a maximum of four hours shall be charged for that day if the inspector shows up for work. In addition, if an inspector arrives at a location in which inspection was scheduled and authorized by the Department, and no work is being performed at the location or the required inspection takes less than four hours a maximum of four hours shall be charged for that day. If an inspection assignment takes more than four hours but less than eight hours a maximum of eight hours shall be charged for that day. In all cases the Department reserves the right to reassign the inspector to another location for that day or direct the inspector to perform other duties related to the contract.

6. Out-Of-Pocket Expense:

Out-of-pocket expenses shall be limited to:

a. Cost of automobile travel or mass transit when work is within New York City limits. Travel cost will be limited to cost incurred by inspection personnel only.

b. The cost for 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 (as modified below) in accordance with the standards as established for reimbursement allowances for city personnel and with the prevailing rates established by Directive 6 of the comptroller's office of the City of New York.

c. Mileage will not be paid for travel to and from an assignment location, which is within 15 miles from the inspector's home or starting point whichever is closer to the assignment location for that day. Mileage between assignments in any one day, if applicable, will be reimbursable. Similarly, mass transportation cost incurred between assignments in any one day, will be reimbursable.

d. All other out-of-pocket expenses shall be authorized by the Department prior to travel. The authorized travel expenses, other than automobile travel or mass transit, including, but not limited to car rental, car service parking etc. will be reimbursed under out of pocket expenses in accordance with the Comptroller's Directive 6, Section 4.5.

e. The costs of the specified registered mailing and/or FedEx type services directed by the Department are reimbursable as out-of-pocket costs. However, routine postage, messenger services, etc. are not reimbursable.

f. The cost of project related long distance telephone calls are reimbursable as out-of-pocket cost.

g. The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs, when directed by the department.

h. The costs of project specific miscellaneous items approved by the Deputy Chief Engineer are reimbursable.

i. Out-Of-Pocket expenses shall be subject to audit by the Department. Consequently, the Engineer shall maintain, and submit to the Department as part of his/her monthly payment voucher, time and material records for all out-of-pocket expenses incurred during that month and submitted for reimbursement in connection with the services herein contained. Subcontractors and Consultants are subjected to the same rules governing the documentation and reimbursement of Out-Of-Pocket expenses as the prime Consultant.

7. Indirect Costs and Overhead:

a. Indirect Costs shall include costs of a general nature which could be applied to the Material Testing and Sampling 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 Material Testing and Sampling Consultant's operations with the exception of those cost items which are submitted to direct payment as out-of-pocket expenses.

b. Overhead includes that portion of the Material Testing and Sampling 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, etc.

8. Performance Evaluation:

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

D. PAYMENTS

1. 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:

a. Payment under Task 3 shall be made based on direct technical salaries of inspection personnel in connection with the project, times an Consultant multiplier of _____* (Consultant) for Inspection Services, plus any overtime premium as defined under definition of "overtime premium"

b. For approved out-of-pocket costs, payments for Task 3 shall be made on the basis of direct reimbursement at cost to the Consultant, with no markup for the overhead and profit.

c. Payment for Tasks 1, 2 and 4 will be based on the per-test price set forth in the attached price schedule. If tests not specified in the schedule are needed, the price will be negotiated on a per-test basis.

* The agency will consider the proposed multiplier for Quality Assurance Services of Material Testing and Sampling Operations Total Fee (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.

2. The Consultant shall submit to the Commissioner, or his duly authorized representative, but not more than once per calendar month, certified voucher, and four copies, setting forth in detail the items of work and services performed by the Consultant and the amount of Partial payment requested. The Consultant vouchers, shall be accompanied by the statements prepared and certified by the Consultant setting forth the name and title of each of their inspectors who were engaged in the project during such respective month, the number of hours worked each day, the direct salary along with their certified payroll and time sheets.

3. The Commissioner or his duly authorized representative, shall review the said voucher and if, in his/her judgment, the work and services therein set forth have been performed, the Commissioner shall endorse his/her approval of payment of said voucher.

4. All Sub-Consultant vouchers 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-Consultant of the date the voucher was submitted to the NYCDOT-QA and the amount included for Sub-Consultant.

5. 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.

6. The City shall retain five percent (5%) from each progress payment until a maximum of fifty thousand Dollars is retained (\$50,000).

SECTION VII

B) GENERAL PROVISIONS -(APPENDIX A) MACBRIDE PRINCIPLES PROVISIONS

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, Consultant, 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, Consultant or corporation.

- B. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person or damage to any property sustained during its operations and work on the project under this Contract resulting from any negligent or wrongful act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, of independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the 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 \$2,000,000. All sub-consultants to the Contractor providing professional services under this Contract shall also provide evidence of Professional Liability Insurance to the Commissioner at limits appropriate to the exposures of the sub-consultant's work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to the City.
7. The Contractor agrees to indemnify and hold harmless the City of New York and each officer, agent and employee of the City of New York against any and all claims for personal injury or wrongful death or damage to personal property arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(B) General Requirements for Insurance Policies:

1. All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New York by the New York State Department of Insurance. The Contractor must first obtain the written approval of the City's Risk Manager of the Mayor's Office of Operations, or its delegate, in the event it wishes to maintain any type of required insurance with a company not licensed to do business in the State of New York.
2. The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City is an insured under the policy.
3. All insurance policies shall include, without limitations, the following endorsements/requirements.
 - (a) Notice under the Policy to the City as Additional Insured shall be addressed to each of the following: (1) the Commissioner; (2) Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and

- (b) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the City as Additional Insured of any occurrence, offense, or claim, if such notice is required, will be deemed timely if given to the Insurance Company as soon as practicable after a Notice of Claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Comptroller; however, in no event shall notice be deemed untimely so long as it is given within 180 days of the filing of the Notice of Claim; and**
- (c) Any notice, demand other writing by or on behalf of the Contractor to the Insurance Company relating to any occurrence, offense, claim or suit shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured, and any response thereto on behalf of the Insurance Company shall be sent to the Contractor, to the City at New York City Law Department, Insurance Law Unit, Affirmative Litigation Division, 100 Church Street, New York, NY 10007, and to the Comptroller at Insurance Unit, NYC Comptroller's Office, 1 Centre Street, Room 1222, New York, NY; and**
- (d) Notice of Cancellation of Policy: In addition to any other requirements concerning notice of cancellation, this policy shall not be cancelled, terminated, modified or changed by the Insurance Company unless sixty (60) days' prior written notice is sent to the Named Insured by Registered Mail and also sent to the Commissioner and to the Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007, nor shall this policy be cancelled, terminated, modified or changed by the Named Insured without the prior consent of the said Commissioner; and**
- (e) It is agreed that the Insurance Company, in the event of any payment under these policies, will waive its rights of recovery, if any, against the City; and**
- (f) The Insurance required for this contract must be on forms acceptable to the City and offered by Insurers acceptable to the New York State Insurance Department; and**
- (g) Where circumstances warrant, the Commissioner may, at his discretion and subject to acceptance by the Law Department and/or the Office of the Comptroller, accept**

letters of credit or custodial accounts in lieu of specific insurance requirements; and

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

policies are received and approved, and failure to provide the required policies shall be ground for declaring the Contractor in default.

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

4.4 PROTECTION OF CITY PROPERTY

- A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Contract and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, Consultant, 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 Consultant, 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, Consultant, 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, Consultant 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 Consultant or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

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

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

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

6.19 E.O. 50 APPENDIX A RIDER

- A. This Contract is subject to the requirements of Executive Order No. 50 (1980) as revised (“E.O. 50”) and the Rules and Regulations promulgated have been complied with in their entirety. By signing this Contract, the Contractor, agrees that it:
 - (1) Will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other

forms of compensation, layoff, termination, and all other terms and conditions of employment;

- (2) Will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;**
- (3) Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;**
- (4) Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and**
- (5) Will furnish all information and reports including an Employment Report before the award of the Contract which are required by E.O. 50 rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services ("Bureau"), and will permit access to its books, records and accounts by the Bureau for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.**

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

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

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

6.20 NOISE CONTROL CODE PROVISIONS

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

6.21 LIQUIDATED DAMAGES

- A. In case the Contractor shall substantially fail to complete the work within the times fixed in the General Provisions of this Contract or within the times to which such completion may have been extended by agreement, the Contractor must pay to the City the sum of one hundred (\$100) dollars for each and every calendar day that the time consumed in completing the work exceeds the time allowed, provided, however, that the delay in completing the work is within the control of the Contractor and is caused solely by the Contractor's acts or failures to act. Delays beyond the control of the Contractor shall include, but not be limited to, those caused by the following:**
- 1. On the part of the City, its agencies, employees and representative acts or failures to act, to provide necessary information, prompt reviews, expeditious decisions and other matters essential to the progress of the project.**
 - 2. On the part of private utilities and agencies, acts or failure to act to provide necessary information, prompt reviews, expeditious decisions and other matters essential to the progress of the project.**
 - 3. Unavoidable casualties, including Acts of God.**
 - 4. The enforcement of laws and regulation by the City, the State of New York and/or Federal Government enacted subsequent to the date of this Contract.**
- B. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the completion of the work hereunder, the sum of one hundred (\$100) dollars is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.**
- C. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification or the Contractor's obligation to indemnify the City, or any other remedy provided for by contract or by law.**
- D. The Comptroller will deduct and retain out of the monies which may be due hereunder, the amount of any such liquidated damages; and in case the amount which may be due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the Comptroller.**

6.22 COPIES OF REPORTS

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

6.23 CONTRACTOR'S PERFORMANCE EVALUATION

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

6.24 CONTRACT CHANGES

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

for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten percent of the original Contract amount or \$100,000 shall be approved by the City Chief Procurement Officer (CCPO) (for non-construction contracts) or the Director of the Office of Construction (for construction and construction-related contracts);

3. Extensions of a Contract term for good and sufficient cause for a cumulative period not to exceed one (1) year from the date of expiration of the current Contract. Requirements contracts shall be subject to this limitation;
4. Changes in delivery location;
5. Changes in shipment method; and
6. Any other changes not inconsistent with the PPB Rules.

D. Any Contractor may be entitled to a price adjustment for extra work performed or to be performed pursuant to a written change order. If any part of the Contract work is necessarily delayed by a change order, the Contractor may be entitled to an extension to time of performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

6.25 RESOLUTION OF DISPUTES

A. 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) PROCEDURAL FORMS PACKET

CONTENTS

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

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

FORM 1P

PROPOSAL COVER LETTER

Request for Proposals for Material Testing and Sampling in the
United States and Canada

Contract No. HBCD006 PIN 84109MBBR373

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: _____

PIN: _____

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 IT

QUALITY & RELEVANCE OF PRIOR EXPERIENCE
(FIRM IN GENERAL)

PIN: 84109MBBR373

PROJECT NAME: MATERIAL TESTING AND SAMPLING IN THE UNITED STATES AND CANADA

CONTRACT NO.: HBCD006

CONSULTANT: _____

ARCHITECTURAL SERVICES

PROFESSIONAL ENGINEERING/

OTHER/ _____

DESCRIBE

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

- 1) Proposer will include relevant experience in Quality Assurance Services for Material Testing and Sampling in the last five (5) years. Proposer should consider work with City, State and Federal agencies.
- 2) List all current and prior projects completed within the last five (5) years for Quality Assurance Services for Material Testing and Sampling. I 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 firm's ability to retain its employees. Complete the attrition chart below:

Average attrition rate for past 3 calendar years:

Total number of technical employees as of August 1st of last year _____ . (a)
Number of technical employees who left Consultant 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 Consultant 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 Consultant 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: 84109MBBR373

**PROJECT NAME: MATERIAL TESTING AND SAMPLING IN
THE UNITED STATES AND CANADA**

CONTRACT NO.: HBCD006

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

PIN: 84109MBBR373

PROJECT NAME: MATERIAL TESTING AND SAMPLING IN
THE UNITED STATES AND CANADA

CONTRACT NO.: HBCD006

CONSULTANT: _____

OVERALL APPROACH TO PROJECT: (Staffing Sheet)

1. Describe your overall approach and understanding to providing Inspection services for this project. Provide enough detail to permit NYCDOT to assess the extent of the proposer's understanding of 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

PROJECT NAME: Material Testing and Sampling in the United States and Canada
PIN: 84109MBBR373

PRIME CONSULTANT: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/ ARCHITECTURAL SERVICES OTHER/ _____

(COLUMN 1) JOB TITLES	(COLUMN 2) TOTAL HOURS
Inspector	12,834
Senior Inspector	29,946
Chief Inspector/Project Manager	5,400

DO NOT INCLUDE SALARIES ON THIS FORM

1. Job titles and hours proposed should be the same as those proposed on the Labor Cost Proposal forms 4T1.
2. No salary information should be included on this form.
3. This form must be completed for the prime and each of the proposed 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 Consultants 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 Sub-Contractors 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:

SUB-CONSULTANT NAME	PROPOSED % # OF TECHNICAL OF PROJECT PERSONNEL	WORKLOAD
_____	_____ % _____	\$ _____
_____	_____ % _____	\$ _____
_____	_____ % _____	\$ _____

IV. Other Consultant(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)

SECTION VII

E) COST PROPOSAL FORMS PACKET

CONTENTS

- | | |
|---------------------------|---|
| 1. FORM 4T1: | LABOR COST PROPOSAL |
| 2. FORM 4T2: | COST PROPOSAL SUMMARY |
| 3. FORM 4T3: | PERFORMANCE OUTCOME MEASURES
AND RELATED FINANCIAL INCENTIVE
AND/OR DISINCENTIVE |
| 4. PRICE PROPOSAL: | SUMMARY SHEET & PAGES 1 THROUGH 26 |

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

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 Consultant wide Design Workload \$ _____ Assigned Office(s) Miscellaneous Workload \$ _____

Construction Division (includes only Inspection Services)				

Total Consultant wide REI Workload \$ _____ Assigned Office(s) REI Workload \$ _____

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

Total Consultant wide Miscellaneous Workload \$ _____ Assigned Office(s) Miscellaneous Workload \$ _____

Total Consultant wide 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 4T1 – LABOR COST PROPOSAL

PROJECT NAME: Material Testing and Sampling in the United States and Canada
 PIN NO.: 84109MBBR373

PRIME CONSULTANT: _____
 CONSULTANT ON THIS FORM: _____

CONTRACT NO.: HBCD006

- PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
 OTHER/ _____

	<u>(COLUMN 1)</u> <u>JOB TITLE</u> <u>ASCE/ NICET</u> <u>GRADE</u>	<u>(COLUMN 2)</u> <u>TOTAL</u> <u>HOURS</u>	<u>(COLUMN 3)</u> <u>HOURS THIS FIRM</u>	<u>(COLUMN 4)</u> <u>AVERAGE HOURLY</u> <u>RATE (FY'09)</u>	<u>(COLUMN 5)</u> <u>LABOR COST</u> <u>COL 3 X COL 4</u>
1.	Inspector	12,834	_____	\$ _____	\$ _____
2.	Senior Inspector	29,946	_____	_____	_____
3.	Chief Inspector/ Project Manager	5,400	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
	TOTALS	48,180	_____	_____	(T)
	MULTIPLIER FOR OVERHEAD	_____	(A)	_____	(A)
	MULTIPLIER FOR PROFIT	_____	(B)	_____	(B)
	TOTAL MULTIPLIER	_____	(1+A)X(1+B)	_____	(M)
	TOTAL LABOR COST	_____	(LINE T X LINE M)	_____	(C)
			MAXIMUM ESCALATION FACTOR =	1.045	(D)
	TOTAL LABOR ESCALATED TO PROJECT MIDPOINT (C X D)	_____	_____	_____	(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 maximum escalation factor "D" indicated in the shaded area shall not be changed.
- Total Multiplier (M) shall be rounded off to three (3) decimal figures. Total Labor Cost (C) and Column 4 & Column 5 entries shall be rounded off to two (2) decimal places.
- The agency will consider the proposed multiplier for establishing Material Testing & Sampling Services Total Fee (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.

FORM 4T2 – COST PROPOSAL SUMMARY

PROJECT NAME: Material Testing and Sampling in the United States and Canada
 PIN NO.: 84109MBBR373

PRIME CONSULTANT: _____

CONTRACT NO.: HBCD006

	<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>	<u>(COLUMN 3)</u>	<u>(COLUMN 4)</u>	<u>(COLUMN 5)</u>
	<u>CONSULTANT</u>	<u>HOURS ALL FIRMS</u>	<u>ESCALATED LABOR COST TO PROJECT MIDPOINT</u>	<u>DIRECT NON-SALARY COST</u>	<u>TOTAL COST</u>
1.	_____	_____	_____	\$ _____	\$ _____
2.	_____	_____	_____	\$ _____	\$ _____
3.	_____	_____	_____	\$ _____	\$ _____
4.	_____	_____	_____	\$ _____	\$ _____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
	<u>TOTALS</u>			<u>\$250,000.00</u>	<u>(T)</u>

INSTRUCTIONS:

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

FORM 4T3

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

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

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

PRICE PROPOSAL SUMMARY

TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

(Page 1 to 19)

Total Price of Specified Tests

TASK 2.

TESTING FOR THE PRODUCT EVALUATION

(Page 20 to 24)

Total Price of Specified Tests (A+B+C+D+E)
MUT-00 Allowance for Miscellaneous Unspecified Tests
OS-01 Obtaining of Samples by Inspector 6,000 hrs. @ \$ _____ per hr.
ME-01 Miscellaneous Reimbursible Expenses (See Form 4T2)

\$350,000

\$50,000

TOTALS Task 2

TASK 3.

SAMPLING FOR THE BASIS OF MATERIALS ACCEPTANCE

(Page 25)

Total Price of Sampling Expenses (Form 4T1, see page 25)
Total Price of Travel and Shipping Expenses (Form 4T2)

\$200,000

TOTALS Task 3

TASK 4.

TESTING FOR THE BASIS OF BRIDGE PAINTING ACCEPTANCE

(Page 26)

Total Price of Specified Tests

TOTAL PROPOSAL PRICE

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
701-01	Portland Cement				
	Chemical Requirements				
	1- Silicon dioxide (SiO2)	20	tests		
	2- Aluminum oxide (Al2O3)	20	tests		
	3- Ferric oxide (Fe2O3)	20	tests		
	4- Magnesium oxide (MgO)	20	tests		
	5- Sulfur trioxide (SO3)	20	tests		
	6- Tricalcium silicate (C3S)	20	tests		
	7- Dicalcium silicate (C2S)	20	tests		
	8- Tricalcium aluminate (C3A)	20	tests		
	9- Tricalcium aluminoferrite plus twice the tricalcium aluminate (C4AF + 2(C3A)) or solid solution (C4AF + 2(C3A))	20	tests		
	10- Loss on Ignition	20	tests		
	11- Insoluble residue	20	tests		
	12- Alkalies (Na2O + 0.658K2O)	20	tests		
	Physical Requirements				
	1- Air content of mortar	20	tests		
	2- Fineness Turbidimeter test Air permeability test	20 20	tests tests		
	3- Compressive strength	400	tests		
	4- Time of setting Gilmore test Vicat test	20 20	tests tests		
	5- Autoclave expansion	20	tests		
	6- False set, final penetration	20	tests		
ITEM TOTAL					

**TEST ITEMS PRICE SCHEDULE
TASK 1.**

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
703-06	Cushion Sand				
	1- Gradation	20	tests		
	2- Visual Test	20	tests		
					ITEM TOTAL
703-09	Recycled Asphalt Pavement (RAP)				
	1- Extraction	35	tests		
	2- Gradation Test	35	tests		
	3- Penetration of Bituminous Material	35	tests		
	4- Absolute Viscosity Test	35	tests		
	5- Kinematic Viscosity Test	35	tests		
					ITEM TOTAL
703-10	Lightweight Aggregate				
	1- Soundness	20	tests		
	2- LA Abrasion	20	tests		
	3- Gradation	20	tests		
	4- Unit Weight	60	tests		
					ITEM TOTAL
704-01	Common Brick				
	1- Compressive Strength	15	tests		
	2- Cold Water Absorption	15	tests		
	3- Boiling Absorption	15	tests		
	4- Saturation Coefficient	15	tests		
					ITEM TOTAL

**TEST ITEMS PRICE SCHEDULE
TASK 1.**

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
704-02	Concrete Brick				
704-04	Concrete Brick (Slope Paving)				
704-08	Brick Pavers				
	1- Compressive Strength	30	tests		
	2- Absorption	30	tests		
	ITEM TOTAL				
704-05	Precast Concrete Median Barrier				
704-06	Precast Concrete Cribbing				
	1- Air Content of Hardened Concrete	30	tests		
	2- Compressive Strength	30	tests		
	3- Chloride Content	30	tests		
	ITEM TOTAL				
704-11	Precast Concrete Coping				
704-12	Decorative Concrete Block				
	1- Compressive Strength	20	tests		
	2- Absorption	20	tests		
	3- Air Content	20	tests		
	ITEM TOTAL				
704-13	Precast Concrete Pavers				
	1- Compressive Strength	30	tests		
	2- Absorption	30	tests		
	3- Freeze Thaw	30	tests		
	ITEM TOTAL				
705-09	Performed Elastic Bridge Joint Sealer				
705-10	Performed Elastic Longitudinal Joint Sealer				
705-12	Performed Elastic Transverse Contraction and Expansion Joint Sealer				
	1- Geometric Properties	100	tests		
	2- Tensile Strength	100	tests		
	3- Elongation at Break	100	tests		
	4- Hardness	100	tests		
	5- Aged Tensile Strength	100	tests		
	6- Aged Elongation	100	tests		
	7- Aged Hardness	100	tests		
	8- Oil Swell	100	tests		
	9- Low Temperature Recovery	100	tests		
	10- High Temperature Recovery	100	tests		
	11- Compression Deflection Properties	100	tests		
	ITEM TOTAL				

**TEST ITEMS PRICE SCHEDULE
TASK 1.**

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
705-11	Polyvinyl Chloride Extruded Shapes and Sheet Materials				
	1- Tensile Strength	30	tests		
	2- Ultimate Elongation	30	tests		
	3- Hardness	30	tests		
	4- Resistance to Alkali	30	tests		
	5- Water Absorption	30	tests		
	6- Specific Gravity	30	tests		
	7- Cold Bend Test	30	tests		
	8- Dimensional Evaluation	30	tests		
				ITEM TOTAL	
706-01	Non-Reinforced Concrete Pipe				
706-02	Reinforced Concrete Pipe Classes II, III, IV, V				
706-03	Reinforced Concrete Elliptical Pipe Classes HE-II, HE-III, HE-IV, VE-V, VE-VI				
	1- Absorption	30	tests		
	2- Air Content of Hardened Concrete	30	tests		
				ITEM TOTAL	
706-04	Precast Concrete Drainage Units				
	1- Compression Test	30	tests		
	2- Absorption	30	tests		
	3- Air Content of Hardened Concrete	30	tests		
				ITEM TOTAL	
706-07	Reinforced Concrete Pipe End Sections				
	1- Air Content of Hardened Concrete	30	sets		
				ITEM TOTAL	
706-17	Precast Concrete Box Culverts				
	1- Compression Test	30	sets		
	3- Air Content of Hardened Concrete	30	sets		
				ITEM TOTAL	
708-08	Ready-Mixed Aluminum Paint				
	A Pigment Type I				
	1- Matter Not Volatile	10	tests		
	2- Fatty or Oil Matter	10	tests		
	3- Total Impurities	10	tests		
	4- Mica, Fillers, and Other Adulterants	10	tests		
	5- Coarse Particles	10	tests		
	6- Total Impurities	10	tests		
	7- Coarse Particles	10	tests		
	8- Leafing	10	tests		
				ITEM TOTAL	

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
B Liquid (Both Types I and II)					
1-	Non Volatile Matter	10	tests		
2-	Volatile Thinner and Drier	10	tests		
3-	Viscosity	10	tests		
4-	Acid Number	10	tests		
5-	Non Volatile	10	tests		
6-	Kaurf Reduction	10	tests		
7-	Drying Time	10	tests		
8-	VOC Content	10	tests		
C Paint (Types I and II)					
1-	Pigment Content	10	tests		
2-	Total Impurities	10	tests		
3-	Coarse Particles	10	tests		
4-	Vehicle Content	10	tests		
5-	Non Volatile in Vehicle	10	tests		
6-	Moisture Content	10	tests		
7-	Weight/Gallon	10	tests		
8-	Drying Time	10	tests		
9-	Viscosity	10	tests		
10-	Paint Flexibility	10	tests		
D Paint (Type II)					
1-	Preparation of Standard Comparison Paint	10	tests		
2-	Smoothness, Color, Luster, Capacity	10	tests		
3-	Aged Leafting Test	10	tests		
ITEM TOTAL					

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
709-01	Bar Reinforcement, Grade 60				
	A Deformed and Plain Bar				
	1- Bend Test	30	tests		
	2- Tensile Strength	30	tests		
	3- Yield Strength	30	tests		
	4- Elongation	30	tests		
	5- Unit Weight	30	tests		
	6- Deformation Spacing	30	tests		
	7- Deformation Height	30	tests		
	8- Gap	30	tests		
	B Plain Steel Wire				
	1- Bend Test	10	tests		
	2- Tensile Strength	10	tests		
	3- Yield Strength	10	tests		
	4- Reduction of Area	10	tests		
				ITEM TOTAL	
709-02	Wire Fabric for Concrete Reinforcement				
	1- Tensile Strength	30	tests		
	2- Reduction of Area	30	tests		
	3- Bend Test	30	tests		
	4- Weld Shear Test	30	tests		
				ITEM TOTAL	

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
709-06	Prestressing Steel				
1-	Breaking Strength	30	tests		
2-	Yield Strength	30	tests		
3-	Elongation	30	tests		
4-	Dimensional Evaluation	30	tests		
	ITEM TOTAL				
709-12	Stainless Steel Clad Bars				
1-	Thickness of Cladding	20	tests		
2-	Bond Strength	20	tests		
3-	Inter Granular Corrosion Resistance	20	tests		
4-	Bend Test	20	tests		
5-	Tensile Strength	20	tests		
6-	Yield Strength	20	tests		
7-	Elongation	20	tests		
8-	Unit Weight	20	tests		
9-	Deformation Spacing	20	tests		
10-	Deformation Height	20	tests		
11-	Gap	20	tests		
	ITEM TOTAL				
709-13	Stainless Steel Bars				
1-	Bend Test	20	tests		
2-	Tensile Strength	20	tests		
3-	Yield Strength	20	tests		
4-	Elongation	20	tests		
5-	Unit Weight	20	tests		
6-	Deformation Spacing	20	tests		
7-	Deformation Height	20	tests		
8-	Gap	20	tests		
9-	Chemical Analysis	20	tests		
	ITEM TOTAL				

**TEST ITEMS PRICE SCHEDULE
TASK 1.**

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
710-01	Aluminum Fence Fabric				
1-	Breaking Strength	40	tests		
2-	Wire Diameter	40	tests		
3-	Chemical Composition	40	tests		
	ITEM TOTAL				
710-02	Galvanized Steel Fence Fabric				
1-	Breaking Strength	60	tests		
2-	Weight and Thickness of Coating	60	tests		
3-	Wire Diameter	60	tests		
	ITEM TOTAL				
710-03	Vinyl Coated Steel Fence Fabric				
1-	Breaking Strength	40	tests		
2-	Weight and Thickness of:				
	A. Zinc Coating	30	tests		
	B. Vinyl Coating	35	tests		
3-	Wire Diameter	35	tests		
4-	Mandel Bend Test	35	tests		
5-	Adhesion Test	35	tests		
	ITEM TOTAL				
710-04	Aluminum Coated Steel Fence Fabric				
1-	Breaking Strength	40	tests		
2-	Wire Diameter	40	tests		
3-	Chemical Composition	40	tests		
	ITEM TOTAL				
710-20	Corrugated Beam Guide Railing and Median Barrier				
1-	Reduced Section (Tension)	15	tests		
2-	Side Bend Test	15	tests		
3-	All Weld Metal test	15	tests		
4-	Charpy V-Notch Impact	15	tests		
5-	Chemical Analysis	15	tests		
6-	Macroetch test	15	tests		
	ITEM TOTAL				

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
710-21	Box Beam Guide Railing and Median Barrier				
	1- Drop Weight Tear Test	10	tests		
	2- Tensile Strap Test	10	tests		
	3- Reduced Section (Bending)	10	tests		
	4- Side Bend Test	10	tests		
	5- All Weld Metal Test	10	tests		
	6- Charpy V-Notch Impact	10	tests		
	7- Chemical Analysis	10	tests		
	8- Ultrasonic Test	10	tests		
	9- Macroetch Test	10	tests		
	10- Radiographic Test	10	tests		
				ITEM TOTAL	
710-23	Steel Bridge and Culvert Railing				
	Drop Weight Tear Test (All rails except round rail tubes and pipes)	20	tests		
	Charpy V-Notch Impact (For all round rail tubes and pipes)	20	tests		
	3- Reduced Section (Tension)	20	tests		
	4- Side Bend Test	20	tests		
	5- All Weld Metal Test	20	tests		
	6- Chemical Analysis	20	tests		
	7- Ultrasonic Test	20	tests		
	8- Macroetch Test	20	tests		
	9- Radiographic Test	20	tests		
				ITEM TOTAL	

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
710-25	Guide Rail and Median Barrier Systems (Rustic)				
	A Box Beam Guide Railing and Median Barrier				
	1- Drop Weight Tear Test	30	tests		
	2- Tensile Strap Test	30	tests		
	3- Radiographic Test	30	tests		
	B Corrugated Guide Railing and Median Barrier				
	1- Reduced Section (Tension)	30	tests		
	2- Side Bend Test	30	tests		
	3- All Weld Metal Test	30	tests		
	4- Charpy V-Notch Impact	30	tests		
	5- Chemical Analysis	30	tests		
	6- Ultrasonic Test	30	tests		
	7- Macroetch Test	30	tests		
	ITEM TOTAL				
711-09	Emulsified Carbon Black				
	1- Compressive Strength	10	tests		
	ITEM TOTAL				
711-10	Fly Ash				
	1- Fineness	30	tests		
	2- Moisture Content	30	tests		
	3- Specific Gravity	30	tests		
	4- Loss on Ignition	30	tests		
	5- Soundness	30	tests		
	ITEM TOTAL				
713-01	Topsoil				
	1- pH	70	tests		
	2- Organic Content	70	tests		
	3- Gradation	70	tests		
	ITEM TOTAL				
715-01	Structural Steel				
	1- Reduced Section (Tension)	30	tests		
	2- Side Bend Specimen	30	tests		
	3- All Weld Metal Test	30	tests		
	4- Charpy V-Notch Impact Test	30	tests		
	5- Chemical Analysis	30	tests		
	6- Radiographic Test	30	tests		
	7- Ultrasonic Test	30	tests		
	8- Macroetch Test	30	tests		
	ITEM TOTAL				

**TEST ITEMS PRICE SCHEDULE
TASK 1.**

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
715-14	H.S. Bolts, Nuts, and Washers				
	I Physical and Mechanical Tests				
	1- Bolts				
	A. Dimensional Check	2000	tests		
	B. Fitness Check	2000	tests		
	C. Hardness	2000	tests		
	D. Tensile Requirements				
	D1, Full Size				
	Tensile Strength	20	tests		
	Proof Load	20	tests		
	Wedge Tension Test	20	tests		
	D2 Machined Specimen				
	Tensile Strength	20	tests		
	Yield Strength	20	tests		
	Elongation	20	tests		
	Reduction of Area	20	tests		
	E. Rotational Capacity Test (Zinc Coated)	20	tests		
	2- Nuts				
	A. Dimensional Check	1500	tests		
	B. Hardness	1500	tests		
	C. Proof Load Test	20	tests		
	D. Cone Proof Load Test	20	tests		
	3- Washers				
	A. Dimensional Check	1500	tests		
	B. Hardness	1500	tests		
	III Chemical Analysis				
	A. Bolts	120	tests		
	B. Nuts	120	tests		
	C. Washers	120	tests		
	ITEM TOTAL				

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
715-16	Stainless Steel Connecting Products				
	I. Physical Properties and Mechanical Tests				
	1- Bolts				
	A. Dimensional Check	20	tests		
	B. Fitness Check	20	tests		
	C. Hardness	20	tests		
	D. Tensile Strength	20	tests		
	E. Yield Strength	20	tests		
	F. Elongation	20	tests		
	G. Reduction of Area	20	tests		
	2- Nuts				
	A. Hardness	20	tests		
	B. Proof Load Test	20	tests		
	C. Cone Proof Load Test	20	tests		
	3- Washers	0			
	A. Hardness of Flat Washers	20	tests		
	B. Hardness of Lock Washers	20	tests		
	II. Chemical Analysis				
	A. Bolts	20	tests		
	B. Nuts	20	tests		
	C. Flat Washers	20	tests		
	D. Lock Washers	20	tests		
	E. Set Screws	20	tests		
	ITEM TOTAL				

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT	
717-01	Epoxy Resin Protective Coating					
	A Component A					
	1- Viscosity	30	tests			
	2- Weight per Gallon	30	tests			
	3- Percent Filler and Pigment	30	tests			
	B Component B					
	1- Viscosity	30	tests			
	2- Weight per Gallon	30	tests			
	C Mixture of Components A and B					
	1- Viscosity	30	tests			
2- Pot Life	30	tests				
3- Initial Cure	30	tests				
4- Shore "D" Hardness	30	tests				
5- Color	30	tests				
6- Color Fastness	30	tests				
	ITEM TOTAL					
721-01	Epoxy Resin System					
	A Mixture of Components A and B					
	1- Pot Life	30	tests			
	2- Initial Viscosity	30	tests			
	B Epoxy Mortar					
	1- Compressive Strength	30	tests			
	2- Tensile Strength	30	tests			
		ITEM TOTAL				
	721-03	Epoxy Polysulfide Grout				
		A Component A				
1- Color		60	tests			
2- Epoxide Equivalent		60	tests			
B Compound B						
1- Color		60	tests			
2- Sulfur Content		60	tests			
C Mixture of Components A and B						
1- Pot Life		60	tests			
2- Initial Viscosity		60	tests			
3- Tack Free Time	60	tests				
4- Degree of Temporary Gelation	60	tests				
5- Ash Content	60	tests				
6- Volatiles	60	tests				
D Cured Materials						
1- Compressive Shear	60	tests				
2- Beam Break	60	tests				
	ITEM TOTAL					

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
721-05	Epoxy Repair Paste				
	A Mixture of Components A & B				
	1- Pot Life	60	tests		
	B Cured Material				
	1- Compressive Strength of 2" Cubes	60	tests		
	2- Bond Test Modulus of Rupture	60	tests		
	3- Freeze-Thaw	60	tests		
					ITEM TOTAL
727-01	White and Yellow Thermoplastic ReflectORIZED Pavement Markings				
	1- Physical Properties				
	a. Color white	30	tests		
	b. Drying Time yellow	30	tests		
	c. Yellowness	30	tests		
	d. Softening Point	30	tests		
	e. Specific Gravity	30	tests		
	2- Reflective Glass Spheres				
	a. Sphericity	30	tests		
	b. Reflective Index	30	tests		
	c. Silica Content	30	tests		
	d. Crushing Resistance	30	tests		
	e. Gradation	30	tests		
	3- Primers				
	a. Type I Primer Composition	30	tests		
	b. Type II Primer Composition	30	tests		
	c. Type III Primer Composition	30	tests		
					ITEM TOTAL
18685.07	Epoxy ReflectORIZED Pavement Markings - 20 mils				
	A. Epoxy Material Composition				
	1- White pigment, Titanium Dioxide	30	tests		
	2- Yellow pigment, Medium Chrome Yellow	30	tests		
	3- Epoxy Content - Part A	30	tests		
	Amine value - Part B	30	tests		
	Physical Properties of Mixed Comp. (Part A & Part B)				
	1- Color White	30	tests		
	2- Color Yellow	30	tests		
	3- Directional Reflectance	30	tests		
	4- Drying Time (Lab)	30	tests		
	5- Drying Time (Field)	30	tests		
	6- Abrasion Resistance	30	tests		
	7- Hardness	30	tests		
	8- Infrared Spectrophotometer Analysis	30	tests		
	B. Reflective Glass Spheres	30	tests		
					ITEM TOTAL

TEST ITEMS PRICE SCHEDULE
TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
18685.08	Epoxy ReflectORIZED Pavement Markings - 15 mls				
	A. Epoxy Material Composition				
	1- White pigment, Titanium Dioxide	30	tests		
	2- Yellow pigment, Medium Chrome Yellow	30	tests		
	3- Epoxy content - Part A	30	tests		
	4- Amine value - Part B	30	tests		
	Physical Properties of Mixed Comp. (Part A & Part B)				
	1- Color White	30	tests		
	2- Color Yellow	30	tests		
	3- Directional Reflectance	30	tests		
	4- Drying Time (Lab)	30	tests		
	5- Drying Time (Field)	30	tests		
	6- Abrasion Resistance	30	tests		
	7- Hardness	30	tests		
	8- Infrared Spectrophotometer Analysis	30	tests		
	B. Reflective Glass Spheres	30	tests		
	ITEM TOTAL				

TEST ITEMS PRICE SCHEDULE

TASK 1.

TESTING FOR THE BASIS OF MATERIALS ACCEPTANCE

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT
728-03	Plain Rubber Pad				
A	Polychloroprene				
B	Natural Rubber				
1-	Tensile Strength	60	tests		
2-	Elongation	60	tests		
3-	Hardness	60	tests		
4-	Aged Tensile Strength	60	tests		
5-	Aged Elongation	60	tests		
6-	Aged Hardness	60	tests		
7-	Compression Set	60	tests		
8-	Oil Immersion	60	tests		
ITEM TOTAL					
Totals: Task 1					

SECTION VII

F) MINORITY/WOMEN BUSINESS OWNED ENTERPRISES PROGRAM

- 1. NOTICE TO ALL PROSPECTIVE CONTRACTORS (7 Pages)**
- 2. SCHEDULE B - SUBCONTRACTOR UTILIZATION PLAN**
(To be submitted in a separate sealed envelope along with the Technical Proposal)

PART I: AGENCY'S TARGET
(To be completed by NYCDOT)

PART II: BIDDER/PROPOSER SUBCONTRACTING PLAN
(pages 2 and 3 to be completed by Consultant)

PART III: REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE
(page 4, if applicable, to be submitted no later than 7 days prior to the proposal due date)

SECTION VII

G) VENDEX REQUIREMENT & CONFIRMATION OF VENDEX COMPLIANCE

ATTACHMENT G

VENDEX Requirements

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

Upon selection, the successful proposer (including their subconsultants) will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification, the proposer must submit a Confirmation of Vendex Compliance to the NYCDOT Vendor Responsibility Unit within five days of official notification. (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 G

CONFIRMATION OF VENDEX COMPLIANCE

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

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

SECTION VII

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

Doing Business Data Form

Doing Business Questions and Answers