**Michael R. Bloomberg**
**Mayor**

The City of New York
Department of Transportation
Division of Bridges

**Janette Sadik- Khan**
**Commissioner**

# REQUEST FOR PROPOSALS

**FOR**

**RESIDENT ENGINEERING INSPECTION SERVICES**
**IN CONNECTION WITH**

**RECONSTRUCTION OF CLAREMONT PARKWAY BRIDGE OVER**
**METRO NORTH RAIL ROAD**

**CONTRACT NO.: HBX1160A**

**PIN: 84110BXBR431**

**RELEASE DATE OF THE RFP:** **July 24, 2009**

**ANTICIPATED CONTRACT TERM:** **821 Consecutive Calendar Days from the Date of Written Notice to Proceed which is inclusive of 60 CCD after the completion of construction contract**

**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) 839-4043

NEW YORK CITY DOT

Department of Transportation

JANETTE SADIK-KHAN, Commissioner

July 24, 2009

Re: Request for Proposals for
Resident Engineering Inspection Services in Connection with
Reconstruction of Claremont Parkway Bridge over Metro North Rail Road
Contract No. HBX1160A
PIN: 84110BXBR431

To Whom It May Concern:

I am pleased to invite your organization to submit a proposal for Resident Engineering Inspection Services to assist the Division of Bridges with its Capital Infrastructure Improvement Program. Specifically, the proposal will be for Engineering Services in connection with the above noted contract.

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, Ground Floor, 55 Water Street, New York, New York 10041 on or before August 20, 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)839-4043

**All questions concerning this invitation must be faxed to Dr. Paul-Michael-Kazas at (212)839-4043 on or before August 10, 2009. If you need to contact by telephone, please call (212) 839-6314 or e-mail** pkazas@dot.nyc.gov .

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 8396314 F: 212 8394043
www.nyc.gov/dot

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## 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) 839-4043**

☐ **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. HBX1160A, PIN 84110BXBR431** Fax # | | |
| RFP Contract Title (Fill in): **Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road** | | |

**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) 839-4043. 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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H) Local Law 34 - Doing Business Data Form


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## SECTION I - TIMETABLE

**A. Release Date of the Request for Proposals: July 24, 2009**

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

| | |
|---|---|
| Telephone #: | (212) 839-6314 |
| Fax #: | (212) 839-4043 |
| E-Mail Address: | pkazas@dot.nyc.gov |

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

**B. Site Visit and/or Inspection of Materials:**

Site visits are not necessary; however, plans and specifications are available for your review upon request. Appointments for site visits and to review the materials must be made to the Authorized Agency Contact Person.

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

**Date:** **August 20, 2009**
**Time:** **NO LATER THAN 2:00 PM**
**Location:** **NYCDOT ACCO Contract Management Unit**
**55 Water Street, Ground Floor**
**New York, New York 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 Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road.

### B. Anticipated Contract Term

It is anticipated that the term of the contract awarded from this RFP will be **821** Consecutive Calendar Days from the date of written Notice to Proceed which is inclusive of **60** Consecutive Calendar Days after the final completion of construction contract.

The anticipated period of construction contract term is **761** Consecutive Calendar Days.

### 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 Resident Engineering 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 firms must be certified by the Department of Small Business Services ("DSBS") to be eligible for participation. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms 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 firms 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 firm(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 if 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

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

## SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL

**Instructions:** Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8 ½" X 11" papers. The City of New York requests that all proposals be submitted on paper with no less than 30% post consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: http://www.epa.gov/cpg/products/printing.htm). Pages should be paginated.

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

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

### A. Proposal Format

#### 1. Component 1: Procedural Forms

A Procedural Forms packet has been supplied with this Request for Proposals and should be fully completed and included in 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: Proposal Narrative

In the case that the proposer was the prime consultant or a sub-consultant on the TD/CSS contract for the Reconstruction of Claremont Parkway Bridge over Metro North Rail Road, or where any proposed sub-consultant, either substantially or incidentally performed on that contract, attach a narrative addressing the following:

- Demonstrate that the proposer, and/or each proposed sub-consultant that substantially performed on the TD/CSS contract, if any, has no conflict of interest that would prevent them from performing properly on the related REI contract (e.g., the firm(s) would appropriately identify any design flaws associated with the cited project). In addition, submit a written affirmation from the proposer, and/or from each sub-contractor attesting to the same.

- Demonstrate that the work of each proposed sub-consultant that incidentally performed on the TD/CSS contract, if any, was, in fact, incidental and that each has no conflict of interest that would prevent them from performing properly on the related REI contract. In addition, submit a written affirmation from each such sub-contractor attesting the same.

**5. Component 2D: 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.

**6. 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** |

**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 2D, & 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 | NYC Department of Transportation<br>ACCO Contract Management Unit |
| Address | 55 Water Street, Ground Floor<br>New York, New York 10041 |

PIN No. 84110BXBR431
CONTRACT No. HBX1160A
RESIDENT ENGINEERING INSPECTION SERVICES IN CONNECTION WITH
RECONSTRUCTION OF CLAREMONT PARKWAY BRIDGE OVER METRO NORTH RAIL ROAD
PROPOSAL SUBMISSION DEADLINE IS AUGUST 20, 2009
NO LATER THAN 2:00 PM

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

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

**CHECKLIST FOR RFP**

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

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

☐ 1P Proposal Cover Letter

☐ 2P Acknowledgment of Addenda

☐ 3P Affirmation Form

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

☐ Proposal Narrative

**5. COMPONENT 2D - 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)***

**6. 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 requirements of this RFP. Proposals that are determined by the agency to be non-responsive will be eliminated from further consideration. The agency's Consultant Selection Committee (CSC) will evaluate and rate all responsive proposals based on the Evaluation Criteria prescribed below.

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

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

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

The agency shall rank proposers by technical merit and pursuant to City's Quality Based Selection Method (QBS). The price proposal of ONLY the highest technically ranked firm will be opened and reviewed by the consultant selection committee (CSC) to determine whether it is responsive or non-responsive. Following analysis of the responsive price proposal by the CSC, the Agency then consider price by negotiating a fair and reasonable price with the highest technically ranked proposer. In the event that the agency has chosen to negotiate a fair and reasonable price with the highest ranked proposer, if such a fee is not successfully negotiated, the agency may conclude such negotiations, and enter into negotiations with the next ranked vendor(s), as necessary.

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

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

### B. Evaluation Criteria

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

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

## D. Conflict of Interest

In the case that the proposer was the prime consultant or a sub-consultant on the TD/CSS for the Reconstruction of Claremont Parkway Bridge over Metro North Rail Road, or where any proposed sub-consultant, either substantially or incidentally performed on that contract, attach a narrative addressing the following:

- Demonstrate that the proposer, and/or each proposed sub-consultant that substantially performed on the TD/CSS contract, if any, has no conflict of interest that would prevent them from performing properly on the related REI contract (e.g., the firm(s) would appropriately identify any design flaws associated with the cited project). In addition, submit a written affirmation from the proposer, and/or from each sub-contractor attesting to the same.

- Demonstrate that the work of each proposed sub-consultant that incidentally performed on the TD/CSS contract, if any, was, in fact, incidental and that each has no conflict of interest that would prevent them from performing properly on the related REI contract. In addition, submit a written affirmation from each such sub-contractor attesting the same.

## 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, is substantially the form that they appear in "Appendix A"- General Provisions Governing Contracts for Consultants, Professional and Technical Services' or , if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. If a copy of the applicable document is not attached, it is available through the Authorized Agency Contact Person.

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

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

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

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

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

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

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

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

**L. Charter Section 312(a) Certification.** The New York City Department of Transportation has determined that the contract to be awarded through this Request for Proposals (PIN 84110BXBR431) for the Reconstruction of Claremont Parkway Bridge over Metro North Rail Road will not directly result in the displacement of any New York City employee.

_____ _____

Agency Chief Contracting Officer/ Date
Assistant Commissioner

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

# SECTION VII

# ATTACHMENTS

**A) Proposed Contractual Agreement &**
**Resident Engineering Inspection Instruction Manual**

**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

**RESIDENT ENGINEERING INSPECTION SERVICES IN CONNECTION WITH**

**RECONSTRUCTION OF CLAREMONT PARKWAY BRIDGE OVER METRO NORTH RAIL ROAD**

**CONTRACT NO.: HBX1160A**

**PIN: 84110BXBR431**

Specific Requirements of the Contract for the Services of the Consultant

**RESIDENT ENGINEERING INSPECTION SERVICES**

**IN CONNECTION WITH**

**RECONSTRUCTION OF CLAREMONT PARKWAY BRIDGE OVER METRO NORTH RAIL ROAD**

**BIN 2-24171-**

**CONTRACT NO.: HBX1160A**

**PIN: 84110BXBR431**

## Scope of Work

Claremont Parkway Bridge is a single span concrete encased steel superstructure with non-composite reinforced concrete deck supported on the stone masonry abutments. The bridge carries utilities, such as, two water mains, a gas main and electrical conduits.
The work to be performed under this contract consists of the replacement of the bridge superstructure. The major items of work to be provided for under this contract shall include but not be limited, to the following:

- The removal of the entire bridge superstructure including deck slab, sidewalks, guard rail, picket fence, chain link fence, and all utilities.
- The removal of the existing approach roadway pavement, sidewalks, curbs and guide rails and repair and modification of a portion of existing abutments.
- The construction of a new single span bridge superstructure, consisting of new prestressed concrete box beams supporting a reinforced concrete deck, new concrete sidewalk, and constructing 3-rail concrete parapets with protective fencing.
- The reconstruction of the approach roadways, including the installation of new roadway pavements, new curbs and sidewalks, new pavement markings, new traffic signals, new signage, and new street lighting.
- The removal of all existing facilities on the bridge and the installation two (2) new 300 mm diameter water mains, a new 324 mm Con Edison gas main and six (6) new Con Edison electrical conduits.

**Maintenance and Protection of Traffic (MPT):** The work will be completed in four (4) stages in order to maintain one lane of vehicular traffic on the bridge in each direction at all times during the construction.

**Special Notice:** The REI shall provide Constructability Review of the Design Documents of the Reconstruction of Claremont Parkway Bridge over Metro North Rail Road to ensure rational bids and minimize problems during construction in accordance with requirements of NYSDOT's EI 99-013. Consultant will be reimbursed for constructability review services through out of pocket expense.

# RECONSTRUCTION OF CLAREMONT PARKWAY BRIDGE

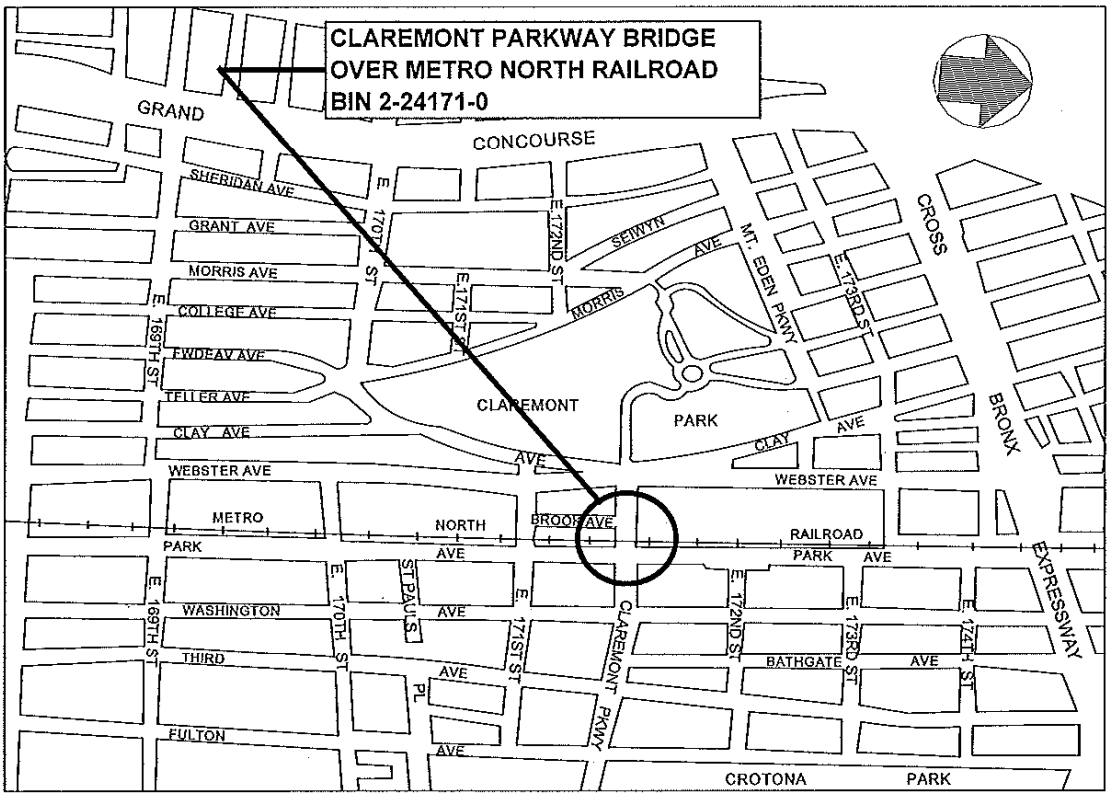
# OVER METRO NORTH RAIL ROAD

# BOROUGH OF BRONX

# P.I.N. 84108BXBR275

# B.I.N. 2-24171-0

# CONTRACT NO. HBX1160




**LOCATION MAP**
NOT TO SCALE

## I. GENERAL REQUIREMENTS

A. The Consultant shall provide continuous resident engineering and inspection services and testing of materials services, with a staff commensurate with the level of construction activity until completion and final acceptance of the Construction Contract work. In the event of a work stoppage or a winter shutdown, or as the situation warrants, the Consultant shall reduce his work force appropriately or as directed by the Commissioner. The relevant **Labor Cost Proposal Form(s) (Form 4T1)** of the General Requirements indicates the approximate level of competence required of the field and office operation staff, together with estimated durations of employment.

B. The Consultant agrees to provide, to the satisfaction of the Commissioner, all necessary resident engineering and inspection services, and such testing of materials as may be required in connection with the actual construction of the project, which includes all general construction and incidental work, such that the completed construction conforms to the plans, specifications, and requirements of the contract and to good construction practice.

The Consultant specifically agrees that: (a) his subconsultants, agents or employees shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform (b) the firm shall not subcontract more than 49% of the contract work; (c) he will comply with the provisions of the Labor Law and all State Laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of the Agreement; including all MWBE provisions and (d) he will secure all licenses and permits, if any, that are necessary for the performance of his duties under this contract. In fulfillment of provision (a) above, the Consultant shall submit a resume for each employee prior to assignment to the contract, for review and approval by the Chief Bridge Officer for the Division of Bridges. The Resident Engineer shall be a Professional Engineer licensed in the State of New York. The remainder of the Consultant Resident Engineering staff who perform any work pursuant to this contract shall meet the following criteria in conformance with the New York State Engineering Licensure Statute. All Engineering positions shall be staffed by Engineers. No technician/technologist can fill an Engineering position; however an Engineer may fill any technician/technologist position.

In accordance with the American Society of Civil Engineers (ASCE) guidelines, ASCE titles are to be used for engineers who have graduated from an Accreditation Board for Engineering and Technology (ABET) recognized engineering program. ASCE defines nine (9) engineering grades, i.e. ASCE I/II through ASCE IX. ASCE IV and above requires a New York State Professional Engineer (PE) license. ASCE grades are applicable to all engineering disciplines.

The National Institute for Certification in Engineering Technologies (NICET) titles are allowed but cannot substitute ASCE titles. However, ASCE titles may replace NICET titles. NICET titles (i.e. NICET I, II, III, IV) were developed to certify various levels of technical competence. The role of NICET certified technicians and technologists is to assist engineers in discharging their responsibilities

Any violation of the above requirements may result in disqualification and removal of the Consultant from the project. In addition, sanctions may be imposed by NY State Professional Engineering Licensure Board. Violation of the Engineering Licensure Law is a serious offense and carries maximum penalty of 4 years of jail time.

No substitutions for approved employees shall be permitted until the resume of the replacement employee is approved. The Commissioner, or duly authorized representative, shall have the right at all times to inspect the work of the Consultant and the Construction Contractor(s).

The following information is required for all of the consultant'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.

C. All technical data in regard to the Contract existing in the Office of the Commissioner or existing in the offices of the Consultant shall be made available to the other party to this Agreement without expense to such other party, or additional compensation to the Consultant.

D. All office diaries, consultants' and inspectors' diaries, daily records of labor, materials and equipment used, notes, designs, reports including laboratory and plant inspection reports, drawings, tracings, estimates and specifications prepared and furnished by the Consultant shall become the property of the City upon their approval and acceptance in writing by the Commissioner or upon the termination of the Consultant's services, pursuant to Appendix "A" of this Agreement. The Consultant shall deliver to the Commissioner all said diaries, daily records of labor, material and equipment used, notes, designs, reports, drawings, tracings, estimates and specifications, which there-after the City may utilize in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable, without employment of or additional compensation to the Consultant.

E. Public Outreach Liaison

Absolutely no sub-consultant work shall begin without the specific written consent of the Deputy Chief Engineer.

Under the direction of the Engineer, the Consultant shall provide a dedicated Community Relations consultant (PO Liaison) to support the project with the distribution of timely, accurate, and constructive information. The PO Liaison will serve as adjunct to NYC/DOT; attend community meetings, advise and update the community as to a project's plans, schedule and progress. The PO Liaison will also be responsible for responding to and coordinating the following: answering questions from the public, maintaining mailing lists, issuing newsletters, press releases, and brochures, as well as other associated tasks. The PO Liaison will require extensive community and public relations experience, a superior command of the English language, and excellent communication skills in order to carry out the aforementioned responsibilities:

1. Specific Tasks Include:

a. Plan and implement a public outreach program. This plan will detail the outreach procedures that will be utilized throughout the entire project such as: press releases, public advisories, dedicated hotlines and web sites. This plan will also include intense start-up information distribution such as press fact sheets, travel advisories and if directed, require attendance at public and local meetings to establish the sub-consultant office contact.

b. Identify key community leaders and establish points of contact with elected officials, community boards, civic/merchant groups, etc. for ongoing dialogue and liaison.

c. Create mailings lists of elected officials, Community Boards, community groups, etc. for effective information distribution.

d. Foster ongoing communication and coordination through regular updates, telephone contacts, field visits with community and other entities having jurisdiction such as the Transit Authority and OCMC.

e. Maintain telephone and visitor logs.

f. The primary goal of the PO Liaison will be the identification of potential problems/issues concerning the project. Thereafter, the PO Liaison will be responsible for notification of project concerns to the community. Also, the PO Liaison will provide the NYCDOT with possible solutions to these concerns.

2. Prepare and Upon Approval Issue Newsletter

   A quarterly newsletter will be produced by the PO Liaison. It will contain current information about the project: including work completed, work to be performed in the near future, schedule information, and what the public can do to help. No newsletters are to be distributed without the express prior approval of the NYCDOT Division of Bridges Community Affairs Director and the NYCDOT Press Office.

3. Prepare and Upon Approval Issue Brochures

   Project brochures will be printed and distributed prior to roadway closures to inform bridge users of the anticipated closures and offer alternatives. The brochures will be included in the press releases for each roadway closure.

4. Prepare and Upon Approval Issue Direct Mailings

   There will be several direct mailings targeted at bridge users and nearby employers which will include the current brochure and newsletter. Other information related to public transportation or alternate routes may also be included. No direct mailings are to be distributed without the express prior approval of the NYCDOT Division of Bridges Community Affairs Director and the NYCDOT Press Office.

5. Prepare Press Releases for Issue by the NYCDOT

   Whenever a major stage of the construction is scheduled to begin a press release will be made available to the media. This will document information similar to the newsletters for the upcoming project, including roadway and transit closures. All press releases require direct, express prior approval from the Community Affairs Director and the NYCDOT Press Office.

## II. RESIDENT ENGINEERING AND INSPECTION

A. The Consultant shall be the representative of the Department at the site and, subject to review by the Commissioner or his duly authorized representative, shall have the power, in the first instance, to inspect the performance of the work, as delineated in Article 30, "The Resident Engineer", of the Agreement section of the Standard Specifications of the Bureau of Highway Operations, dated June, 1986, as currently amended.

B. The Consultant agrees that he will endeavor to safeguard the City against deficits and deficiencies in the work and that he will use reasonable care and reasonable powers of observation and detection in determining that the work conforms to the Construction Contract documents.

C. It is the responsibility of the Construction Contractor(s), and not the responsibility of the Consultant, to determine the "Means and Methods of Construction", as defined in Article 2 of the Agreement section of the Standard Specifications of the Bureau of Highway Operations, dated June, 1986, as currently amended. However, if the Consultant reasonably believes that the means and methods of construction proposed by the Construction Contractor(s) will constitute or create a hazard to the work, or to the persons or property, or will not produce finished work in accordance with the terms of the Construction Contract, such means and methods must be reported to the Commissioner, or to his duly authorized representative.

D. The Commissioner through his duly authorized representative, the Chief Bridge Officer for the Division of Bridges, will assign a City employed engineer to review the performance of the Consultant and to serve as liaison between the Department and the Consultant. This City engineer shall be the senior authority in the field, and the Consultant Engineer shall be responsible to this representative of the Commissioner.

E. It shall be the responsibility of the Construction Contractor(s) to accomplish the work in accordance with the pre-established construction schedules. The Consultant, however, shall advise the Commissioner or his duly authorized representative when a Construction Contractor's progress falls behind the pre-established and approved construction schedule.

F. If required by the Commissioner, the Consultant shall review the adequacy of the Construction Contractor's personnel and equipment and the availability of his necessary materials and supplies. Special attention shall be directed to the Construction Contractor's adherence to the construction progress schedule prepared by the Contractor under Article 9, "Progress Schedule", of the Agreement section of the Standard Specifications of the Bureau of Highway Operations, dated June 1986, as currently amended.

## III. SERVICES TO BE PERFORMED

### A. Resident Engineering Inspection Services

The Consultant shall provide to the satisfaction of the Commissioner, through his duly authorized representative the Chief Bridge Officer for the Division of Bridges, basic resident engineering and inspection services for all items of work under the Construction Contract from the date the Consultant is ordered to commence work to the completion of the Construction Contractor's operations, and the acceptance of the work under the Construction Contract by the Commissioner. These services are to include monitoring of the Construction Contractor's activities for conformance with the contract documents, coordination with City Agencies and public and private utilities, and monitoring the condition of the contract site for conformance with the contract documents, so as to provide a safe environment for both workers and the general public. These services shall include, but not be limited to, the following:

1. Supervise the erection of structures necessary to protect the public during the construction operations.

2. Check detour and maintenance of traffic routes on a regular basis to insure compliance by the Construction Contractor.

3. Spot check, for accuracy, Survey and Stake-out performed by the Construction Contractor.

4. Be responsible for all field measurements, computations and sketches necessary for payment purposes. The final payment package shall be submitted to the Chief Bridge Officer for the Division of Bridges within one (1) month of the date of final inspection of the Construction Contract.

5. Check the Construction Contractor's layout and concrete form work for correctness, including line and grade.

6. Check placement of all steel reinforcement and structural steel for structures.

7. Notify the Department of any anticipated delays in fabrication, erection or construction.

8. Check the removal, installation and reinstallation of all signs, including the fastening of chains from sign structures.

9. Check layout of conduits, pipes, gas mains, water mains, electrical conduit and lighting equipment, and other miscellaneous structures.

10. Check all electrical wiring, permanent or temporary, for compliance with the plans and specifications.

11. Check the performance of excavation, and compliance with safety standards for sheeting.

12. Check the placement of concrete, structural concrete and asphalt pavements.

    In addition, the Consultant is to supply:

    Two (2) airmeters with carrying case including rubber mallet
    One (1) concrete slump testing set
    One (1) concrete thermometer
    One (1) asphalt thermometer

    These items are considered “Tools of the Trade" and are part of overhead and not to be included in Out-of Pocket Expenses.

13. Check the removal of paints containing lead for compliance with plans, specifications, and safety standards.

14. Check the painting of steel structures.

15. Prepare and certify all estimates for payment, including extra or additional work, computations, payment vouchers, monthly progress reports, and material balances.

16. Prepare reports, including recommendations for additional or extra work which shall include exact records of labor, equipment and materials relative to the extra or additional work, which shall be subject to the approval of the Chief Bridge Officer for the Division of Bridges, prior to the issuance of said reports.

17. Prepare all reports as requested by the Commissioner and/or his duly authorized representative.

18. Prepare reports in a form suitable for transmission to the Comptroller and the Law Department on claims made during the course of the work and within one year after completion and final acceptance of the work.

19. Prepare all replies to the Contractor's letters and complaints for the signature of the Commissioner and/or his duly authorized representative.

20. Furnish assistance and aid to start and advance the work, such as conferences with interested City Agencies and other parties, when requested.

21. Interpret the contract drawings and add explanatory information consistent with the contract documents.

22. Substantiate the quality and check the placement of all pre-cast prestressed structural elements when they are to be used on the project.

23. Obtain all required Manufacturer's Certificates as required under the Construction Contract, in accordance with NYCDOT Quality Assurance Manual for the Bridge Rehabilitation Program, dated June 1990 as currently amended.

24. Perform the detailed inspection work and field tests of all materials and items of work in accordance with NYCDOT Quality Assurance Manual for the Bridge Rehabilitation Program, dated June 1990 as currently amended.

25. Check and approve the Contractor's pile layout, condition of piles, treatment of piles, pile driving equipment and method of pile driving. Also certify pile records, locations and lengths.

26. Check and approve the installation and operation of all electrical and mechanical bridge operating equipment and appurtenances.

27. The Consultant shall monitor contractor compliance with M/WBE and EEO and training requirements and take necessary actions in accordance with the procedures established by the New York City Department of Transportation. The consultant shall seek guidance and direction involving M/WBE issues from the ACCO's Office of Contract Compliance.

28. Establish and maintain project accounts in accordance with all applicable Comptroller Directives and good accounting practices.

29. The Consultant shall evaluate the performance of the prime construction contractors on this project by completing the City's construction contractor performance evaluation form. A form shall be completed when 50% of the contract is vouchered and at substantial completion. The form shall be submitted to the Commissioner no later than fifteen (l5) calendar days after the occurrence of these events.

30. Check and approve all record ("as-built") drawings.

31. Prepare fixed asset inventory forms.

32. Prepare and maintain all project records in accordance with the requirements of the New York State Department of Transportation "Manual for Uniform Record Keeping" (MURK).

33. The Department will make all final determinations regarding structure related plan changes, modifications and additions to the contract.

34. The Consultant will process for approval all shop drawings and or catalog cuts normally approved by City agencies. The Consultant will log and track submission of Shop Drawings to the Departmental personnel designated or the designated Construction Support Services Consultant. These shall include but not be limited to:

    a) Electrical and lighting equipment
    b) NYCTA power, communications and switching equipment
    c) The list of "all" shop drawings.

35. The Consultant shall attend liaison, progress, coordination and other such meetings held during the progress of the contract.

36. When required by the Department, the Consultant shall analyze, review, and provide recommendations on all changes in design or proposed work, particularly as they may apply to "Value Engineering" that is proposed by the Contractor.

37. The Consultant shall inspect the maintenance and protection of traffic operations on a daily basis entering his observation in the Consultants Diary, and shall review and evaluate contractor proposals and make recommendations to the Department. The Consultant's employee assigned this responsibility shall be trained in this area, and approved by the Department for this work. This employee shall be designated the "MPT Safety Officer" for the project.

38. The Consultant shall maintain the schedule for the project, process contractor-supplied data, analyze and evaluate the results. He shall advise the Department to take all necessary actions to the extent feasible to ensure that the project schedule is met.

39. When required by the Department the Consultant shall inspect, review and evaluate the contractor's proposals for handling and disposal of hazardous waste materials.

40. The Consultant shall provide offsite plant inspection of fabricated and/or raw materials used on this project, as directed by the Department. To insure conformance with the material specifications of the construction contract, the Consultant shall review all inspection reports and test results and make recommendations for acceptance or rejection.

41. The Resident Engineer shall act as the agency's representative at the job site for the purpose of implementing the "Memo of Understanding" between the NYC Police Department and the Department for the purpose of Construction Site Security.

42. The Consultant shall have the in-house specialized capability or shall have a specialized subconsultant, to handle the agency's Air Monitoring Program.

43. The Consultant shall take and analyze "surface soil samples for lead before, during and upon completion of any lead paint removal. The Consultant shall submit a sampling/analysis/evaluation plan draft form to the Department for approval prior to implementation. This plan shall comply with the Department's Surface Soil Sampling Requirements.

44. The Consultant shall prepare, furnish, index and microfilm complete sets of accurate shop, working and record as-built drawings, catalog sheets, technical bulletins, manuals, diagrams, other printed matter, etc. as required which shall show the work as actually installed in compliance with the provisions of the Microfilming requirements.

45. The Consultant shall provide a dedicated “Public Outreach Liaison” as describe in section I. (E.), of these General Requirements.

46. The Consultant shall review all payrolls and sign in/out sheet to insure that prevailing wage and benefits are being paid by the contractor and subcontractors. Also, that the sign in/sheet are completely filled out and compared with the payrolls. Any discrepancies shall be reported to the contractor and the ACCO’s Office of Contract Compliance.

47. The Consultant shall, once a month, interview a random sampling of employees of the contractor and subcontractors to insure that prevailing wages and supplemental benefits are being paid. A record of the interviews will be maintained at the Consultant’s field office and copies forwarded to OCC.

B. **Materials Testing Services**

The Consultant shall retain, in accordance with all City rules and regulations in connection with retaining services other than Professional Engineering, the services of a qualified Laboratory to provide detailed testing for all materials normally tested under New York State Department of Transportation construction projects and for which no provisions have been made. In no event however, shall the Consultant utilize the services of the Laboratory without prior written authorization by the Commissioner or his duly authorized representative.

C. **Finalization Services**

For Finalization Services the Consultant shall prepare and submit, in accordance with the directions of the Commissioner, through his duly authorized representative the Chief Bridge Officer for the Division of Bridges, the final payment package; and shall compile and submit to the Commissioner all final project records including all reports (including laboratory and plant testing reports), manufacturer's certificates, survey field books, inspector's reports, monthly and final estimate records, "as-built" drawings (including microfilming and indexing) conforming to New York City Department of Transportation standards showing all changes from contract plans and other pertinent data, photographs of various phases of construction (to be supplied by the Construction Contractor), and all other data which may be required for the proper completion and records of the construction contract.

## IV. FEES AND PAYMENTS

### A. FEE

In full payment for Resident Engineering and Inspection Services, and Materials Testing Services, the City shall pay to the Consultant, and the Consultant agrees to accept a fee not to exceed $_____.

### B. BASIS

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

1. For Resident Engineering Inspection Services, payment shall be made on the basis of total direct technical field salaries, including applicable weekend/night work differential, times a technical field multiplier, plus direct reimbursement for principals' time, authorized overtime premium pay and certain out-of-pocket expenses.

2. For Materials Testing Services, payment shall be made on the basis of direct reimbursement or out-of-pocket expenses.

3. For Finalization Services, payment shall be made on the basis of total direct technical field salaries times a technical field multiplier, plus certain out-of-pocket expenses.

### C. DEFINITIONS

#### 1. Direct Technical Salary Cost

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

Direct technical field salaries, which shall be those salaries directly related to Resident Engineering Inspection Services and Finalization Services.

#### 2. Multiplier

The technical field multiplier shall be applied to the direct technical salary costs of the Consultant and all Professional subconsultants in connection with the project, and shall be considered as including provisions for indirect costs and profit. There shall be one multiplier, as follows:

| Multiplier* | Consultant Name |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

A technical field multiplier is to be applied to direct technical field salaries in connection with Resident Engineering Inspection Services and Finalization Services.

**3. Principals' Time**

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

a. The rate of compensation for Principals' Time as stated herein before, shall not exceed One Hundred Dollars ($100.00) per hour, to be based on actual draw.

b. The Principals participating in the Project shall provide the Commissioner with a demonstration certifying his/her actual draw from the firm on an average weekly basis. Where said rate exceeds Fifty Dollars ($50.00) per hour, the principal participating in the project shall provide the Commissioner with a notarized statement by a certified public accountant that such rate does not exceed the principals' annual direct compensation, excluding profit, computed on an hourly rate. The amount payable for Principals' Time shall not be included in the technical salary cost base and is not subject to any multiplier.

c. The Principals participating in the Project shall maintain a daily log of their participation, which shall be available for inspection by the Commissioner and the Comptroller of the City.

d. The Commissioner shall certify that direct participation by the Principals is essential to the effective and economic completion of the Project.

e. The total compensation for the Principals' Time shall not exceed thirty-five percent (35%) of the total not to exceed fee as stated herein before.

f. In the event that a Principal assumes the specific assignment of responsibilities normally allocated to a technical member of the project team, said Principal shall be compensated at a rate corresponding to the technical salary commensurate with that assignment times an adjusted (where appropriate) multiplier, said multiplier to be established by Department's Engineering Audits Office to avoid duplication of indirect expenses. (The adjusted multiplier is calculated by decreasing the consultant multiplier by 10%).

g. The words “the Principals” or “the Principals of the firm” are understood to mean those individuals in a firm who possess legal responsibility for its management. They may be owners, corporate officers, associates, partners, etc. With respect to a corporation, a principal is further defined as that person who owns ten (10) percent or more of the voting stock.

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

Out-of-pocket expenses shall be limited to:

a. The cost of acquiring, on a per diem basis, the services of other experts or Consultants as may be required for the performance of the Consultant's services are subject to the same audit rules as the prime consultant.

b. The costs of the use of motor vehicles, owned by the Consultant or employees of the Consultant or leased and maintained by the Consultant and used specifically for and only for the performance of this contract, shall be compensated on a direct mileage basis in accordance with the standards as established for reimbursement allowances for City personnel by the current edition of Directive #6, NYC Comptroller. The costs of MTA Metrocards and Tolls within the city borders are reimbursable as out-of-pocket costs. However, cost of parking is not reimbursable.

c. The cost of printing and duplicating for this project by an outside vendor is reimbursable as out-of-pocket costs based on the submitted invoice. However, cost of printing by in-house services is not reimbursable.

d. The cost of renting other materials or equipment, or acquiring services specifically for, and applicable only to, this project may be submitted for direct payment as out-of-pocket costs. This shall not include the purchase of general tools or office supplies whether expendable or reusable.

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

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

g. The cost of acquiring the services of a licensed surveyor, as may be required, for performing surveying and/or plotting of surveys.

h. The cost of project specified microfilming services are reimbursable as out-of-pocket costs.

i. The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs.

j. The cost of retaining the services of a qualified contractor, or contractors, to provide for, Soil Investigation and Testing Services, Test Pits, Soil Boring, Pressure Tests, Video Pipe Surveys, Sounding/Ground Penetrating Radar, Probe Holes, Non Destructive Testing of Watermains, Subsurface Void investigation, and Water Testing, Concrete Coring and Concrete Core Testing Services, Concrete Encasement Removal, Steel Sampling, Underwater Inspection, and other necessary investigative and testing services.

k. The cost of procurement of copies of documents, data sheets, drawings and reports for reference and information.

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

Out-of-Pocket expenses shall be subject to audit by the Department. Consequently, the Consultant 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 subconsultants are subject to the same rules governing the documentation and reimbursement of Out-Of-Pocket expenses as the prime consultant.

**5. Indirect Costs and Overhead**

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

b. Overhead includes that portion of the Consultant's administrative, clerical and financial costs which are applicable to operations, including, but not limited to: rent, utilities, salary costs of administrative and clerical work (including administrative services of the Principal and Technical Typing), fringe

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

**6. Overtime Premium**

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

**7. Weekend/Night Work Differential**

Weekend/night work differential shall be compensation over and above the daily wage rate for normally scheduled non-overtime shift work either on weekends or between the hours of 6:00 P.M. and 8:00 A. M. The weekend/night work differential shall be limited to a maximum of ten percent (10%) of actual base pay for applicable time worked during the differential periods, exclusive of overtime premium pay, and shall be paid in accordance with the standards as established for reimbursement allowances for City personnel. In no event however, shall the rate of overtime premium compensation exceed the Consultant's normal Company Policy relating to such compensation.

**8. Performance Evaluation**

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 consultants for future work.

## D. PAYMENTS

a) 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:

1. For Resident Engineering Inspection Services and Finalization Services, payments shall be made based on direct technical field salaries of the Consultant times a technical field multiplier of

| **Multiplier*** | **Consultant Name** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

* The agency will consider the proposed multiplier for establishing Resident Engineering Inspection 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.

2. For approved out-of-pocket costs, including Materials Testing Services, overtime premium pay and allowable time for Principals' services, payments shall be made on the basis of direct reimbursement at cost to the Consultant, with no markup for the Consultant's overhead and profit.

b) The Consultant shall submit to the Commissioner, but not more than once per calendar month, a certified voucher, and six copies, setting forth in detail the items of work and services performed by the Consultant and the amount of partial payment requested. Vouchers shall be accompanied by statements prepared and certified by the Consultant setting forth the name and title of each of his/her and his/her sub-consultants employees who was engaged in the project during such respective month, the number of hours worked each day, the direct salary and the number of hours worked each day, the direct salary and the compensation attributable to the time for which the voucher is submitted. All vouchers shall be accompanied by a report on the progress of the work properly coded and tabulated to indicate the percentage of completion of each phase of the work. All said vouchers and progress reports shall be subject to review and approval of the Division's designated Project Consultant.

c) The Commissioner 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 and certify that the work and services have been satisfactorily performed by the Consultant.

d) Out-of-pocket expenses, overtime premium pay and compensation for Principals' Time approved by the Commissioner shall be paid at cost to the Consultant, with no markup for the Consultant's overhead and profit.

e) The last and final payment to the Consultant shall become due and payable upon the actual completion of the work under this contract and the filing by the Consultant with the Commissioner of all records and documents in connection with the project, including the record ("as built") drawings of the project.

f) The final voucher shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Consultant attributable to the contract.

g) The fee and all payments hereunder shall be subject to review and audit by the Department of Transportation and subject to a post audit by the Comptroller.

h) The fee shall not be increased for any reason except as provided herein or where such increase is due to a material change in scope of work.

i) To provide full coverage for field operations, the required overtime work must be authorized by the Commissioner. The Consultant shall be paid straight Direct Technical Labor (DTL) for additional actual hours worked times the technical field multiplier. The premium portion of the overtime (overtime premium) will be compensated without any multiplier.

j) The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the average hourly rates as shown on the Labor Cost Proposal Form(s). However, the Consultant may periodically, but not more than once per contract year, request, in writing to the Department, to have these rates adjusted. This adjustment shall be subject to the approval of the Chief Bridge Officer 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 Employment Cost Index Percent. Total of individual raises shall not exceed the pool money per contract year.

k) The City shall retain five percent (5%) from each Consultant’s progress payment.

l) In addition to any other requirements contained 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 payment to consultants. Such 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 Expense); and Directive No. 7 (Audit of Payment Vouchers Issued Under Contracts for Construction, Equipment and Related Consultant Services).

Said Directive may be obtained from Project Engineer.

## E. COST LIMITATIONS

The total "not to exceed" fee of $_____ shall be apportioned as follows:

1) The Direct Technical Salary Cost times the technical field multiplier related to Resident Engineering Services and Finalization Services; plus Overtime Premium Pay and Principal's time shall not exceed $_____.

2) The total cost of out-of-pocket expenses for the project is not anticipated to exceed $ 60,657.00*, which is inclusive of $25, 657 for Direct Non Salary Cost plus $35,000 for Constructability Review.

*The cost limitations for these out-of-pocket expenses are budgetary estimates only and have been established to cover work which may reasonable expected on this project. The actual extent and cost of this work shall be determined during the Consultant's operations in connection with the project, and may or may not exceed the limitations as stated herein. In the event that the cost of required work exceeds the stated cost limitation for this work, the Consultant shall, upon concurrence of the Department and of the Office of Management and Budget, make written request for an increase in funds in accordance with standard change-order procedures and in conformance with Section 6.24 of Appendix A.

## F. OVERTIME

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

a) Personnel other Than Surveyors

Compensation shall be paid according to the following schedule and the Department's policy on overtime reimbursement for consultant employees, subject to an audit by the Department of Transportation and to a post audit by the Comptroller. In no event, shall the rate of overtime compensation exceed the Consultant's normal Company Policy relating to such compensation.

Overtime Compensation Schedule:

| Level | Overtime Category |
|---|---|
| ASCE VI & above | A (No overtime compensation) |
| ASCE IV & V | B (Overtime compensation at straight time rate) |
| ASCE I, II & III | C (Overtime compensation at straight time rate x 1.5) |
| NICET I, II, III & IV | C (Overtime compensation at straight time rate x 1.5) |

b) Surveyors

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

**G. CONSTRUCTION TIME**

In the event that the Consultant's Resident Engineering Services are required to perform field inspection beyond the specified construction duration and the maximum fee has been expended, the maximum fee shall be increased, subject to the approval of the Director of the Office of Management and Budget, and compensation thereafter shall be made as hereinbefore specified. However, the Consultant shall first submit a proposed Manning Schedule, for the anticipated remainder of the construction period, for the approval of the Commissioner and the Director of the Office of Management and Budget. If the Construction Contractor performs the work in such a manner, or at such a number of simultaneous locations, as to require the Consultant, under the direction of the Commissioner, to provide additional inspectors such that the total inspection manpower, in person-days, shown on **Form 4T1 Labor Cost Proposal Form(s)**, will be exceeded, then this condition will be considered a change in the scope of this contract and a change order will be issued, subject to the approval of the Director of the Office of Management and Budget, increasing the maximum fee. For the purposes of this Article, construction duration, in connection with field inspection, is scheduled as follows: **761 Consecutive Calendar Days** from Notice to Proceed for the Construction Contractor. However, final completion of construction occurs after final inspection of the Project and the Commissioner's determination that no further work remains to be done at the site(s).

**H.** The Consultant shall be entitled to the use and occupancy of an Engineer's Field Office as provided for in the detailed specifications of the Construction Contract, during the progress of the Construction Contract and to the completion and acceptance of the work by the Commissioner.

**I.** The Consultant shall not be entitled to any additional compensation as a result of any sum or sums paid to the Construction Contractor(s) in settlement of claims for additional compensation or of any judgment for damages under the construction contract(s). However, in the event it becomes necessary to re-let the construction contract (s), the Consultant shall be compensated for any additional work required as a result of such re-letting as ordered by the Commissioner, under terms to be agreed upon.

**J.** The Consultant agrees that, in the event the City deems it necessary to cancel the Construction Contract of the project for any cause, he will perform the necessary inspection services to effect the close-out of the construction or completion of the work described in said contract if the construction is completed under another contract. For such inspection services, the Consultant shall not receive extra compensation but he shall be compensated in accordance with the terms of this Agreement in the same manner as if the cancellation of such Construction Contract had not occurred.

**K.** Partial Payments

The Consultant shall be paid in monthly progress payments based on actual allowable costs incurred during the period in accordance with Section IV of this Agreement. The Consultant shall submit a breakdown of costs for each specific task provided with request for payment. Bills are subject to the approval of the Chief Bridge Officer for the Division of Bridges, or his duly authorized representative.

a) The Consultant shall inform the City and all Sub-Contractors and Sub-Consultants of the Consultant's schedule for submitting monthly vouchers to the City. Said schedule shall be strictly adhered to by the Consultant.

b) All Sub-Contractor and 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-Contractor or Sub-Consultant of the date the voucher was submitted to the City and the amount included for the Sub-Contractor or Sub-Consultant.

c) The Consultant is required to make partial payments to all Sub-Contractors or Sub-Consultants within ten (10) calendar days of receipt of payment from the City.

**L.** The total length of this continuous Resident Engineering and Inspection contract shall be **60** consecutive calendar days after final completion of construction.

# RESIDENT ENGINEERING INSPECTION

# INSTRUCTION MANUAL

**5/08**

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## RESPONSIBILITY:

The Resident Engineer is the Department's representative at the construction site and has direct responsibility of ensuring that the City's interests and the public safety are protected. It is the Resident Engineer's function to see that the work performed is in full conformance with all the legal, technical, and administrative requirements of the contract and good construction practices. The Resident Engineer takes full responsibility for the work and must take an active and decisive role in guiding the project to completion. To properly carry out his function, the Resident Engineer must anticipate, rather than react to problems and recommend, rather than request solutions.

The following guide is presented as an aid to the Resident Engineer in fulfilling his obligations. It is not intended to be all inclusive and the Resident Engineer must, above all, recognize his obligation to be cognizant of the contract's specific requirements, and to ensure their fulfillment.

## PRIOR TO CONSTRUCTION START:

### Deliverables

Prior to a construction start, the Resident Engineer must familiarize himself with the specific job requirements and ensure that all specified deliverables (certifications, approvals, notifications, requests, permits, etc.) are supplied and approved at the appropriate time.

Typically, these deliverables include:

1) A list of the names and telephone numbers of responsible persons who are empowered to take the necessary steps to correct emergency or hazardous conditions. This list should be forwarded to the DOT Situation Room. See also "Emergencies" on page 6.

2) Contractor's proposed progress schedule and tabulation of anticipated monthly cash flow requirements.

3) Details of proposed procedures and equipment to be used by the Contractor in each phase of construction.

4) A breakdown of the lump sum bid items, showing the value of the component work operations and materials which comprise the lump sum bid.

5) Notifications must be sent to the Departments, agencies, authorities specified in the contract documents of the intended date for construction start.

6) Preconstruction meeting participation must be held with OCMC for final approval of the traffic control measures to be implemented.

**PRIOR TO CONSTRUCTION START:**

**Deliverables (Cont.)**

7) Project signs must be installed as required. Resident Engineer must ensure the correct names on the sign.

8) Design of asphalt and concrete mixes must be submitted and approved.

9) The Contractor must submit a study prepared by a Professional Engineer (P.E.) registered in the State of New York showing condition of the existing structure and the sizes and weights of vehicles and equipment which can safely be used during construction.

10) All shoring which is determined necessary as a result of the above study must be designed by a P.E. and approved by.

11) If called for by the specifications, the Contractor may also be required to provide a tabulation of all vehicles or equipment hauling materials over the public road system, shoring and/or project site. Vehicles weights (laden & unladen) the proposed payloads and permits, if applicable.

12) Preconstruction progress photographs and videos.

13) All applicable permits.

14) Railroad Training, if required.

15) All Lane/Bridge closure conforms to the NYCDOT Standard Operating Procedures (SOP).

16) Community notification and newsletter are prepared and distributed as per NYCDOT Standard Operating Procedures (SOP).

17) Prior to start of field work the Resident Engineer shall request that the contractor submit SAFETY and HEALTH PROCEDURES.

**Specifications**

Prior to construction start the Resident Engineer shall also obtain and become totally familiar with all appropriate specifications pertaining to the project. Typically these include:

a) New York State Department of Transportation Standard Specifications, including all addenda.
b) New York State Steel Construction Manual.
c) MURK
d) City and State Standard Sheets
e) Technical and contractual specifications specifically printed for the project.
f) NYSDOT Construction Inspection Manual.
g) NYSDOT Pre-stressed Concrete Construction Manual.
h) MUTCD
i) Quality Assurance Requirements
j) NYCDOT Lead Protocol

At this time, the Resident Engineer shall compile a list of all items for which materials acceptance Documentation is required. This list shall be broken down by item and shall indicate which proofs of Acceptability are required. Upon approval by Q.A., a copy of this list shall be given to the Contractor for his guidance.

**RESUMES:**

The Resident Engineering Inspection Consultants shall also submit for NYCDOT approval the resumes of all personnel to be assigned to the project.

**DURING CONSTRUCTION (Daily)**

**Maintenance & Protection of Traffic**

Daily the Resident Engineer shall verify that traffic control devices, detour, warning and project signs, lights, and barricades are in place and operating properly. Maintenance & Protection of Traffic status should be documented each day on the Engineer's Report.

It should be noted that the contract provides serious consequences for failure to provide proper traffic protection facilities. Accordingly, the Resident Engineer must fully document, in a written notice to the Contractor, any deficiencies found. The contract section entitled "Damages for Failing to Provide Traffic Facilities" provides for the contractor to be charged a specific dollar amount per calendar day, for each day after receipt of written notice from the Resident Engineer, during which corrections have not been made.

In addition, the New York State specification for Maintenance and Protection of Traffic is typically incorporated into the Bridge Construction contracts. This provides for additional charges against the Contractor as follows:

a) Non-payment for Maintenance of Protection of Traffic for each day (including the first) during which deficiencies exist.

b) Liquidated damages at the same rate specified for failure to complete the project within the time allocated, assessed for each day during which deficiencies exist.

Further, should deficiencies last for more than 24 hours, the Resident Engineer can order corrections to be made by the outside forces and/or stop the work. These last provisions should be used only as a last resort and only with prior concurrence of DOT Bridges.

## Records

Daily, the Resident Engineer shall ensure that all field office records are accurate and up to date. These include:

a) The Resident Engineer's Diary
b) Inspector's Reports
c) Materials acceptance records
d) Correspondence
e) Transmittals
f) Certifications
g) Test results
h) Change Orders
i) Payments (including Railroad)
j) Minutes of meetings
k) As-Built drawings
l) Quantity books
m) Pay Item folders
n) Shop Drawings
o) Force Account (labor, equipment and materials)
p) Field Directives
q) Agency sign-off letters
r) Accident/Incident reports
s) Lane Closure
t) Field Orders
u) Stop Work Order
v) Implementation of Work over Water (WOW) requirements
w) Implementation of Gridlock Alert Days
x) Other files as necessary
(see also QA Checklist, pgs. 12 & 13, attached)

In case of disputed work, careful records must be kept as to the time and materials used.
(See also page 5 "Change Orders")

## Call In or Fax

Daily the Resident Engineer shall call in or fax DOT Bridges at the start and end of each work day.

## DURING CONSTRUCTION (Periodically)

## Progress Meetings

The Resident Engineer shall hold frequent regularly scheduled (i.e., monthly or more often if operations or problems require) job meetings with the Contractor to discuss the job status and to:

a) Learn the schedule of; and prepare for the upcoming operations.

b) Discuss and resolve to the extent possible present and potential problems.

Attendees will include the Resident Engineer, the Contractor, the Project Engineer, the Engineer-in-Charge and/or the Director. Other parties should also attend as appropriate. An agenda should be prepared in advance. A typical agenda is shown on page 14 of this checklist. The meeting will be chaired by the Resident Engineer and minutes shall be kept under his direction. Draft Minutes of the Meeting shall be distributed within four (4) days of the meeting.

**DURING CONSTRUCTION (On an on-going basis)**

**Prior to any new Operation**

The Resident Engineer shall:

1. Have on hand, and in working order, all necessary field testing equipment and backup equipment.

2. Ensure that all inspectors are thoroughly trained in the inspection requirements of the particular operation to which they have been assigned, i.e., concrete slump testing, maximum delivery times allowed, delivery certification, etc.

3. Ensure that the Contractor has sufficient and adequate manpower and equipment to perform the operations planned in conformance with contract requirements. On critical operations, backup equipment and material must be available.

4. Ensure that the associated subcontractors and/or suppliers (if any) have been approved. (See also "subcontractors" below).

5. Provide all Insurance requirements.

**Field Directives**

The Resident Engineer will issue field directives as required. Directives relating to the Contractor's failure to comply with the plans and specifications should be brought to the attention of the NYCDOT Project Engineer at once. If the Contractor's noncompliance continues after receiving a field directive, the Resident Engineer will reject the work and document the incident.

**Subcontractors**

The Resident Engineer will ensure that all subcontractors qualifications are submitted to DOT Bridges for approval.

The Resident Engineer will ensure that Business Entity, Subcontractor and Principal Questionnaires are submitted to ACCO for all subcontractors whose aggregate business with the City during last 12 months is $100,000.00 or more.

**Change Orders / Material Substitutions**

The Resident Engineer cannot authorize Change Orders. Department procedures for Construction Change Requests and Change Orders will be followed. Change Orders for work involving other City agencies will require that Agency's approval.

The Resident Engineer must promptly evaluate allegations of changed conditions and submit a finding to the Project Engineer.

The Resident Engineer must document all disputed work. If CCR is required, the Resident Engineer will evaluate the cost estimate submitted by the Contractor and prepare the CCR. The Resident Engineer may sign the MURK forms for disputed work, but must write in as "DISPUTED WORK".

## DURING CONSTRUCTION (on an on-going basis)

### Change Orders/Material Substitutions (continued)

Changes to the contract which do not involve additional cost must be approved in advance by the DOT Bridges.

**Material substitutions must be approved in advance by DOT Bridges.**

### Overtime

Overtime, other than covering unforeseen situations, requires prior approval.

### Payments

The Resident Engineer is responsible for the preparation of payments to the Contractor (and the Railroad, when required). The Resident Engineer shall ascertain that the payment package is complete (e.g., vouchers, affidavits, payrolls, overrun statements with explanations, contractor's requests, contractor's certificate, LBE letters, stored materials' forms, Change Orders, appropriate materials acceptance records) accurate and is promptly submitted. Payments for change orders will be done separately. Only one partial payment and one change order payment can be done in 30 days.

Payments for storage materials will be a separate payment.

Payments for Traffic Agents will be a separate payment.

### Emergencies

Emergencies shall immediately be reported to DOT Bridges. Emergencies involving traffic should also be reported to the Department of Transportation Situation Room (718) 433-3340.

### Interviews

Requests for interviews from the media, job related information, etc., must be approved by the Department of Transportation, Public Information Office. (Contact: (212) 442-7033)

### Correspondence

All letters are to be written in coordination with the Project Engineer from the Division of Bridges.

### Pedestrian Ramps

The Resident Engineer will ensure that pedestrian ramps are built according to the latest standard, which will be provided by the Project Engineer. If a ramp cannot conform to the standard, it will be deleted and the Resident Engineer will secure a waiver.

## DURING CONSTRUCTION (On an on-going basis)

### Coordination

The Resident Engineer will be responsible for coordination between the Contractor, other Agencies and Utilities. The Resident Engineer will be responsible for inviting all participating agencies to the Final Inspection.

### Renegotiable Pay Items

The Resident Engineer will monitor all renegotiable pay items. If the quantity of a renegotiable item exceeds the specified limit, the Resident Engineer will prepare a cost analysis of that item. The costs will be negotiated with the Engineering Audit Bureau.

### Time Extension

If the contract time is in danger of running out, the Resident Engineer will be required to evaluate the contractor's request for a time extension in enough time to preclude payment delays.

### Communications

The Resident Engineer will keep the Project Engineer informed of all progress, problems, possible bottle necks, delays, safety violations, poor workmanship, and non-cooperation from their contractor and shall document everything in writing.

### Measurements

- Measurements are to be made expeditiously and timely. (Don't wait for sewer to be backfilled before measuring length of pipe.)
- Make measurements with a Contractor's representative to eliminate differences of opinions in the future.
- Measurement and calculations are to be independently checked and initialed.

## SPECIAL TOPICS FOR CONSULTANT RESIDENT ENGINEERS

- No personnel changes can be made without Department of Transportation's prior approval. All requests for personnel change approval must be accompanied by a resume of the person to be considered for appointment.
- Regular Consultant partial payments must be submitted monthly. Also one change order partial payment per month may be submitted simultaneously.
- A job safety letter signed by the Consultant Project Manager must accompany each payment.
- The Consultant's Project Manager shall monitor all REI costs and notify the Department Project Engineer of any shortage or surplus. Manpower is to be based on the Contractor's activity and the Consultant's proposal.
- Rates for Consultant personnel are subject to adjustment once in a contract year.
- The Resident Engineer's primary contact with the Department of Transportation shall be the Division of Bridges' Project Engineer.
- The cost of procuring all specification publications other than those specifically published for the project will be considered as overhead and will not be reimbursable as an out of pocket expenses.

## SPECIAL NOTES FOR STATE OR FEDERAL FUNDED CONTRACTS

Projects funded by the State and/or Federal government are also subject to review by those Agencies. The following checklist is used by the New York State DOT Region 11 engineers monitoring such projects. The Resident Engineer shall also use this checklist to assure that all necessary steps, test procedures, recordkeeping are performed in full compliance with State requirements.

A. Monitoring Checklist

1. Preliminary Documentation

    a. Recommendation to Award & Preconstruction Meeting
    b. Order on Letter from NYCDOT
    c. Adequacy of City personnel
    d. Adequacy of Field Office
    e. Contractor Submissions
        1) Progress schedule
        2) Preliminary cross sections
        3) Preconstruction photos
    f. Notification to all utility companies to make necessary relocations or necessary upgradings.
    g. Bid item list, share breakdown
    h. Schedule A

2. Engineer's Project Records

    a. Diary
    b. Inspector's Daily Report (IDR)
    c. Quantity reports from other agencies – Water, Street Lighting, and Traffic
    d. Other source documents – sketches, field books, check all for location, dimensions, references
    e. Sidewalk cards – broken down assessable and non-assessable
    f. Cross Sections
    g. Other required documentation
        1) Material certifications
        2) Approved mix designs
        3) Approved plants and concrete delivery trucks documents
        4) Plant reports, truck tickets
        5) Suppliers, manufacturer, subcontractor approvals
        6) Shop Drawings – structural steel, rebars, catch basins, manholes, electrical
        7) Mill Reports
        8) Standard Sheet conformance
        9) New York City Department of Highways stamp on Vitrified Pipe or State Stamp
        10) Field samples taken, submitted, and results recorded on asphalt, concrete cylinders, sand, brick, curing compound tack coat, cores, rebars, etc.

    h. Special documentation – EEO reports, trainee conformance, payrolls; done by Bureau of Labor Services

## SPECIAL NOTES FOR STATE OR FEDERAL FUNDED CONTRACTS

B. Construction Practices Documentation

1. For All Pay items – follow proper construction practices and conformance with specifications shall be assured.

2. Major things to watch
   a. Maintenance and Protection of Traffic – cones, signs, PVC barricades with flashers, side street closings, problems with merchants, residents and Sanitation Department moving barricades shall follow special traffic stipulations from the contract proposal book and detour schemes from the plans.
   b. Tree removals – Parks Department to be inspected and approved by them.
   c. Limits of sidewalk to be removed shall be marked out.
   d. Excavation or demolition – assure prompt removal and safe shoring..
   e. Safety – trenches shall be backfilled promptly and all hazards be delineated.
   f. Periodic Federal Highway Administration inspections.

C. Orders on Contract (Change Orders)

1. Major changes to the contract require approval from the New York State DOT and FHWA prior to work being started. Under special circumstances, verbal approval may be given by the New York State DOT and FHWA for the work to proceed before the Order on Contract has been approved.

2. Extra work – provide detailed breakdown for agreed price.

3. CONR 7 – provide by fiscal share when applicable.

D. Extensions of Time Documentation

1. Request shall be sent by the Contractor to the New York City DOT.

2. New York City DOT will forward the requests to the New York State DOT with:
   a. Acceptable reason
   b. Reasonable Time request
   c. Liquidated damages recommendation

E. Partial Payments Documentation

1. Transmittal Letter
2. FIN 392
3. Capital Payment Voucher (with proper signatures)
4. Payment sheets (with proper signatures)
5. Overrun statements (with proper signatures)
6. Share breakdown (with proper signatures)

## SPECIAL NOTES FOR STATE OR FEDERAL FUNDED CONTRACTS

F. Final Inspection Documentation

1. Completed Punch List (preliminary)
2. Final Punch List created during final inspection
3. Other agencies separate final inspections' document approval shall be received from the Traffic, Water Department, Street Lighting, the Parks Department, and Sewers.

G. Final Payment & Estimate Package includes:

1. Final Punch List Inspection completed.
2. All final quantities completed – Contractor agrees
3. Proper format shall be used (similar to partial payment format) as follows:
   a. Overrun/Underrun statements (for all items)
   b. Credits, deductions documents
   c. PR47
   d. HC144 or Contractor's Wage Certification
   e. Engineer's Affidavit of Materials (HC 193)
   f. Certificate of Acceptance by the New York City DOT
   g. Statements of granular material, cores, contract time, etc.
   h. DBE Compliance Statement from

4. All records shall be in the proper boxes and sent to Borough Office for a 3 years storage after Final Acceptance by FHWA

H. Final Acceptance Documents – The requirements are basically the same as for the State let Non-Certifications Acceptance (NCA) project. A New York City acceptance form is acceptable as a substitute for the State form. Upon completion of the contract work, five copies each of the following documents will be distributed as follows: 1 copy to Region 11 field office; 1 copy to Region 11 Construction Office; 3 copies to Construction Division in Albany.

1. Final Agreement – shall include a tabulation of authorized quantities, final quantities and final amounts for all contract items, similar in format to the Department's CONR 22, together with explanations for all increases and decreases.

2. Statement of Material and Labor on a Federal Form PR-47. One original of this form shall be sent to FHWA.

3. Contractor's Final Wage Certificate: The required text for this certificate is contained in the Federal Form PR-1273 and is reproduced on the Department's Form HC-144. The HC-144 does not have to be used, but the text of the certification must be the same. One copy of the certificate must be the same. On copy of the certificate must obtain an original signature.

## SPECIAL NOTES FOR STATE OR FEDERAL FUNDED CONTRACTS

Final Inspection (continued)

4. Materials Certification: The certification should be similar to the Department's HC-193 Certification but shall include reference to NYC specifications. One copy of the copy of the certificate must contain an original signature. See #5 Evidence of Contract Acceptance, below.

5. Evidence of Contract Acceptance: A letter of acceptance from the City is required. It is possible to combine the Material Certification and NYC Acceptance in a single document.

6. FHWA also requires a NYS Acceptance (Form R45C) which the Construction Division will add to the documentation package. NYS Region 11 completes the R45C with the following statement: "the checking by (name of contractor) was monitored by spot checking by (name of NYSDOT representative), State Representative and the same was found to be generally completed in accordance with the contract specifications."

**NOTE:** Additional copies of the Final Agreement and Evidence of Contract Acceptance may be required for the payment estimate. All projects require a signed Schedule A.

**ATTACHMENT A**

**QUALITY ASSURANCE CHECKLIST**

1. A list of all proposed subcontractors and suppliers must be submitted to the NYCDOT Construction office for review and approval.

2. MTLS Inspection and Approval should be performed in accordance with the NYSDOT Procedures and Methods, and it should be the responsibility of the Consultant.

   Only NYCDOT approved Plants, Manufacturers, Suppliers and Equipment may be used on the project.

   Materials requiring sampling, testing or offsite inspection will be approved by the Quality Assurance (Q.A.) (Construction). CMS will provide the description and review all materials testing data to certify compliance with the standards and specifications and issue the Acceptance/Rejection documentation.

3. The Contractor shall provide approved copies of shop drawings to Q.A.

4. Contract "Buy America" provisions must be met on Federal Projects.

5. Mix Design Formulae of Asphalt and Concrete should be submitted to Q.A. for review and approval.

   NYCDOT Ordering procedures of Asphalt and Concrete are to be followed.

6. Record Keeping (MURK) requirements:

   a. Engineer's Diary (MURK 26), Exhibit No. 1.02, PR 3-2 shall include:

      review of all materials testing data, certifications of their compliance with standards and specifications.
      Visitor Sign in (separate book)
      Reviews by Project Engineer with signatures

   b. Inspection Daily Reports – MURK Forms 1c(p3-4); 3a(p3-20), 5c(p-3-22), 4c(p3-25)

      No white-outs are allowed
      Must include sketches and calculations for payment
      If there are no activities, no IDRs are required. However, MPT, if required, must be reported.
      All field samples taken, testing and materials, arriving at job-site shall be documented.

**QUALITY ASSURANCE CHECKLIST (continued)**

c. MTLS Acceptance Record (M.A.R.)

Develop a M.A.R. (in a binder) forms for all pay items.

A MURK 14b Form, Exhibit .03B Pages 3-10, must be filled out for each item.

Develop a folder for each pay item, titled with item number and description. In each of these Folders, the following must be kept:

i. All documents required for acceptance and payment for the item

ii. Any Mill Test Reports or Inspection Reports or Lab Test Reports

All above documents must be originals with the exception of Mill Reports.

Folders for Concrete and Asphalt Documentation.

Concrete Cylinders Test Reports

d. Monthly and Final Estimate Book (Quantities Book)

e. Correspondence Folder

(Approval Letters, job related correspondence)

7. Air Pots (2), Slump Cone, Thermometers, Weather Stations and all equipment required for concrete sampling and control testing must be provided, and in working condition, before concrete arrives at the job-site.

8. Concrete Cylinder Curing Box must be maintained, full of water, temperature controlled, etc., at all times when cylinders are being cured.

9. A pre-placement for concrete and asphalt prior to placement.

10. Fabrication Management Services (FMS), a unit within the Quality Assurance Section of Bridge Construction, will monitor In-Process Inspections for prestressed/precast concrete elements, structural steel elements and various metal components conducted by inspection agencies hired through the Consultant.

The Consultant will coordinate the initial start up of shop inspections for each fabricator and monitor inspection reports .

FMS will determine the scope and intensity of the shop inspections, advise inspectors and their agencies what is expected of them, communicate directly with shop inspectors to resolve problems and reject/accept fabricated materials.

## ATTACHMENT B

### TYPICAL PROGRESS MEETING AGENDA

Contract Name: _____ Contract No. _____

Date: _____

PRESENT STATUS

Approximate Cost to Date: _____

% Complete: _____

% of Contract Time Elapsed: _____

Work done in past Month _____

_____

Work to be done this Month _____ _____

_____

Work ahead of schedule _____

_____

Reason: _____

Work behind Schedule _____

_____

Reason: _____

Any Issues:* _____

_____

Old business: _____

_____

New business: _____

_____

Next Meeting Date: _____

*Construction Issues, Change Order, Quality Assurance, Utility Issues, Inter-Agency, Railroad Issues, Safety Issues, Community Issues, etc.

**RESIDENT ENGINEER'S CERTIFICATION**

On _____ I attended an orientation meeting at which the duties and responsibilities of Resident Engineers, as outlined on the forgoing checklist, were discussed in detail.

During the supplemental discussions, the following modifications (if any) were made to the checklist requirements.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Attach additional sheets if necessary.

I hereby certify that I fully understand the requirements and duties of my position and agree to abide by them without deviation.

_____

Signature

# HAZARDOUS WASTE MANAGEMENT

## DESCRIPTION OF WORK

Under this item the Consultant shall provide a Hazardous Waste Management Team (HWMT) which shall be responsible for but not limited to the following:

## I. GENERAL REQUIREMENTS

A. Personnel
   1. The HWMT shall have on site at all times during abrasive blasting paint removal:
      a. an individual with a bachelors degree in Environmental Engineering and at least one year of experience in hazardous material abatement supervision to oversee testing and monitoring;
      b. an individual with a bachelors degree in Industrial Hygiene, Environmental Health Science, or equivalent, and one year of experience in hazardous material abatement worker safety to observe contractor compliance with United States Occupational Safety and Health Administration (OSHA); and
      c. an individual, possibly one of the two above mentioned, trained to detect visible emissions as per 40 CFR 60.
   2. The HWMT shall provide a competent person to be on site during hazardous material transportation pick-up, and to be on site at least once every twenty cumulative days of activity during non-"abrasive blasting" paint removal activities to spot check contractor compliance with OSHA, conduct real time monitoring, and perform other HWMT tasks as directed by the NYCDOT.

B. Oversight of Contractor's paint removal operations
   1. The HWMT shall review and be responsible for the approval of the Contractor's proposed Worker Health and Safety Plan, containment System Plan, and Decontamination Measures.
   2. The HWMT shall observe the Contractor's compliance with all applicable OSHA requirements during abrasive blasting, spot check compliance during any non-"abrasive blasting" paint removal activity at least once every twenty cumulative days of activity, and promptly notify the New York City Department of Transportation (NYCDOT) of compliance problems.
   3. The HWMT shall observe decontamination of all abrasive blasting containment structures, removal and disposal of lead paint debris, and promptly notify the NYCDOT of any violations of applicable federal, state, and local laws, rules, regulations and codes.
   4. The HWMT shall order the contractor to temporarily halt abrasive blasting activities if the containment fails to perform as it was designed until such time as those activities may be properly continued.
   5. The HWMT shall inspect and document the number and locations of the blasting guns and their hours of operation, and the condition of the containment structure throughout the abrasive blasting operation.
   6. The HWMT shall maintain records of all hazardous waste associated identification numbers, certificates, manifests and other incidentals necessary pursuant to all applicable statutes, regulations, and contract specifications and submit them to the NYCDOT.
   7. The Resident Engineer will be responsible for implementation of "Final Environmental Impact Statement (FEIS).

C. The HWMT shall be required to attend a Pre-Construction Meeting (to be scheduled by the NYCDOT) and notify representatives from the following regulatory bodies so that they may be aware of the meeting and have the option to attend.
   1. United States Environmental Protection Agency (USEPA)
   2. United States Occupational Safety and Health Administration (OSHA)
   3. New York State Department of Environmental Conservation (NYSDEC)
   4. New York City Department of Environmental Conservation (NYCDEC)
   5. New York State Department of Health (NYCDOH)
   6. Mayor's Office of City Wide Occupational Safety and Health (COSH)

D. The HWMT shall conduct all work, including quality assurance and quality control procedures, monitor preparation, installation, operation, inspection, analysis and the reporting of all results in compliance with all local, state, and federal regulations related to air monitoring and analysis, and shall adhere to national hygiene standards.

E. The HWMT shall certify to the Commissioner that all abrasive blasting paint removal containment structures, paint waste storage, paint waste disposal and abrasive blasting paint removal worker safety work were accomplished in accordance with the contracts, plans, and specifications that are associated with this agreement. All contracts, plans, and specifications associated with this agreement are available for review at the office of the NYCDOT.

## II TESTING AND MONITORING REQUIREMENTS

The HWMT shall perform paint testing, paint residue testing, real time air monitoring, visible emissions observation, ambient air monitoring, and surface soil sampling as described below. The HWMT will provide a detailed quality assurance plan for NYCDOT approval prior to conducting any sampling.

A. Testing of paint and paint residue.

The HWMT shall be required to test for lead in the existing paint on the bridge (as per method 6010 in EPA SW-486) and to conduct Toxic Characteristic Leaching Procedure [TCLP] tests (as per Appendix II of 40 CFR 261) of the paint residue generated, contained, and disposed of as a result of the paint removal activities associated with this agreement.

1. The sampling and testing of paint chips prior to the beginning of the paint removal activities, is to establish whether the paint is lead containing by analyzing the sample for total lead. At least three samples of the existing paint shall be taken in order to provide representative samples that will characterize the bridge paint. The HWMT may request additional tests if required in order to achieve a representative test. When removing paint samples from a bridge, it is essential that the total thickness of paint be removed without including rust or mill scale in the samples sent to the laboratory.

2. The TCLP tests shall be conducted to determine if the waste contains hazardous levels of contaminants as per 40 CFR 262.11 with the procedures found in 40 CFR 261. A minimum of four composite samples shall be taken per bridge, selected randomly from the residue material deposited into storage drums on a daily basis during the projected time frame of the paint removal project. The HWMT shall confirm the validity of the sample selection process at each individual site and may request additional samples.

3. The HWMT shall deliver a report to the NYCDOT promptly after the analysis of each sample taken. The reports shall detail at minimum, the following:
   a. name and address of the laboratory
   b. sampling and laboratory analysis procedures and results, contaminant, USEPA Hazardous Waste number, Chemical abstracts service number, and regulatory level.

B. Real Time Monitoring

1. The HWMT shall perform real time air monitoring with an instrument such as the hand-held air monitor (HAM) or the MINIRAM during abrasive blasting lead paint removal operations.

2. Background readings will be taken around the work site each day at least one half hour before blasting begins to determine background. On at least an hourly basis, readings will be taken of the entire perimeter of the worksite. A minimum of five ten-second readings per hour shall be taken at the air filtration and/or dust collection filters. Readings will be taken whenever and wherever any suspected or visible lapses in the containment occur.

3. Readings by the hand-held instruments should not exceed three times the background. If such readings are observed, immediate assessment of the cause, development of solutions, ordering of the correction, and observation of the correction of conditions causing the exceedance will be done by the HWMT. If a particulate level of greater than 450 ug/m3 is observed, and the cause is not found and corrected so that the level is not reduced to below 450 ug/m3 within one half hour, the HWMT will order that blasting be suspended until the cause is found and corrected. In addition, any reading in excess of 250 ug/m3 will require assessment.

4. Records of any exceedances and associated corrective measures shall be kept by the HWMT and submitted to the NYCDOT as soon as possible. Results for this parameter will be expressed as concentrations in micrograms per cubic meter (ug/m3).

5. Particulate levels and the time and place of the readings shall be recorded in a daily log. A written report documenting the results of each days air monitoring activity shall be provided to the NYCDOT, NYCDEP Deputy Commissioner of the Bureau of Air Policy and Programs, NYCDOH Deputy Commissioner of Environmental Health Services, Director of the Mayor's Office of Construction, affected Community Boards, affected Borough Presidents, and affected Council Districts within four days of the monitoring Reports shall begin with a summary page high-lighting any exceedances, problems, and associated corrections. The reports shall be submitted to the NYCDOT first, with a delay, not to exceed 24 hours before submittal to the remainder of the recipients listed above. Reports shall detail at minimum, for each instance of monitoring:
   a. date, name and location of job site, time monitoring begins and ends
   b. identification and serial number of monitoring unit
   c. specific location of monitoring unit on a map, not to scale
   d. specific location of lead paint removal activity on a map, not to scale
   e. equalitative estimate of wind direction/velocity (as observed on-site)
   f. the flow chart that records the rate of air flow across the filter throughout the sampling period, and the signature of the data collector.

**C. Visible Emissions**

1. The HWMT will be required to maintain records of any observed visible emissions during abrasive blasting lead paint removal operations. All visible emissions, not just those that exceed the New York State Standard (the standard) listed below will result in the HWMT conducting prompt assessment, developing solutions and observing corrective action. If corrective action is not completed within five minutes, or if the standards are exceeded, the HWMT shall order blasting suspended until corrections are made. New York State regulations (see NYCRR Part 211) prohibit visible emissions of 20 percent or greater average opacity for more than one six minute period in an hour. The opacity must not exceed 57 percent during that period.

2. In the event that fugitive particulate emissions are observed, at minimum, the HWMT shall note:
   a. Emission Frequency – the percentage of time that emissions are visible during the observation period.
   b. Emission Time – the accumulated amount of time that emissions are visible during the observation period.
   c. Opacity of Emission – percent blockage of light as determined by a trained observer.
   d. Source of Emissions – location on the containment structure or the structure being cleaned.
   e. Observer's name: organization.
   f. Qualitative estimate of wind velocity/direction (determined on-site by visual observation), and Sky (weather) condition.
   g. Observer location relative to the source of the emission and the sun.

3. Each observation period, during a visible emission shall not be less than six minutes in duration. The observers shall be located at a position which enables a clear view of the potential emission points of
the affected operation (A position at least 15 feet, but not more than 0.25 miles from the emission source is recommended). The position shall be selected so that the sun is not directly in the observer's eyes.
A written report documenting the results of each day's air monitoring activity shall be provided to the NYCDOT, NYCDEP Deputy Commissioner of the Bureau of Air Policy and Programs, NYCDOH Deputy Commissioner of Environmental Health Services, Director of the Mayor's Office of Construction, affected Community Boards, affected Borough Presidents, and affected Council Districts within four days of the monitoring. Reports shall begin with a summary page high-lighting any exceedances, problems, and associated corrections. The reports shall be submitted to the NYCDOT first with a delay not to exceed 24 hours, before submittal to the remainder of the recipients listed above.

**D. Ambient Air Monitoring**

1. The HWMT shall conduct ambient air monitoring for particulates and lead emissions during abrasive blasting lead paint removal operations using high volume air samplers. The HWMT will collect nominal eight-hour air filter samples at fixed locations that will be analyzed for all particulate matters less than ten micrometers in diameter (PM10) and for the lead content of total suspended particulate matter (TSP). PM 10 is the mass concentration of particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. TSP is the Total Suspended Particulate matter to determine lead levels. Results for both of these parameters will be expressed as concentrations in micrograms per cubic meter (ug/m3).

2. Ambient air monitoring will be performed on a continuous basis for a nominal eight hour period, beginning at least ½ hour prior to abrasive blasting and continuing for a minimum of ½ hour after abrasive blasting has ended, including clean up activities and dismantling of the containment structure. If these activities take longer than eight hours on any day, the sampling period will be extended to include all blasting, clean up and disassembly. Air monitoring will be evaluated on a continuous basis.

3. Information recorded for each monitor on each day of operation shall include the following at a minimum:
   a. date, name and location of job site, and time monitoring begins and ends
   b. identification and serial number of monitoring unit
   c. specific location of monitoring unit on a map, not to scale
   d. specific location of lead paint removal activity on a map, not to scale
   e. qualitative estimate of wind direction/velocity (as observed on-site)
   f. the flow chart that records the rate of air flow across the filter throughout the sampling period, and the signature of the data collector.

4. A written report documenting the results of each day's air monitoring activity shall be provided to the NYCDOT, NYCDEP Deputy Commissioner of the Bureau of Air Policy and Programs, NYCDOH Deputy Commissioner of Environmental Health Services, Director of the Mayor's Office of Construction, affected Community Boards, affected Borough Presidents, and affected Council Districts within four days of the monitoring. Reports shall begin with a summary page high-lighting any exceedances, problems, and associated corrections. The reports shall be submitted to the NYCDOT first, with a delay not to exceed 24 hours, before submittal to the remainder of the recipients listed above. Reports shall detail at minimum the information recorded for each monitor as listed above and the analysis results for both lead and particulates.

5. To collect samples for the analysis of both lead and particulate matter, a minimum of five sets of high volume air monitors shall be used. At each sampling station, a minimum of two monitors shall be required, one for the collection of PM10 and one for the collection of TSP. The ultimate placement of each monitoring station shall be subject to approval by the NYCDOT. The placement of the monitors shall be as follows:

   a. Four sampling stations located in the closest public access areas to the work area and positioned in such a way as to measure community exposure to any matter escaping from the containment. The four monitoring stations should roughly surround the work area when possible. The determination of where to place monitors at any particular work site must be based on a combination of factors, including wind direction, size and position of the structure and containment, and proximity to the surrounding community.

   b. A fifth sampling station to measure background lead and particulate levels should be located approximately one-half mile from the work site. At this sampling station, both PM10 and TSP will be monitored. This sampling station shall be located in a location not in the vicinity of a local source of lead/dust emissions.

6. Air samples shall be collected using sampling apparatus that meet USEPA specifications for TSP and PM10 analysis outlined in 40 CFR 50, Appendices B, G. J for TSP and PM10 analysis. Samples shall be collected with high volume air pumps and 20.3 +/-0.2 X 25.4 +/-0.2 cm (nominal 8 x 10 in.) glass fiber (or relatively inert, nonhygroscopic material) filters. The laboratory shall be a New York State Department of Health certified laboratory and shall meet USEPA certified laboratory protocol (CLP) for this type of analysis.

7. The filters shall be pre-weighed for gravimetric sampling. The sampling train shall be pre-calibrated. Minimum sample flow rate, heavily loaded filter: 39 cubic feet/minute. Maximum sample flow rate. Clean filter: 60 cubic feet/minute. (Note: filters shall be replaced as often as necessary to ensure a constant flow rate and to prevent caking of material on the filter face.) Post calibration shall be performed at the end of each day.

8. The monitoring levels for PM10 are based on the 24-hour National Ambient Air Quality Standard for particulate matter, which is 150 ug/m3 as a 24-hour average. The criterion of 450 ug/m3 minus two times background is a mathematical expression of compliance with that National Ambient Air Quality Standard, based on an eight-hour worksite sample. The lead criteria are derived from the National Ambient Air Quality Standard for lead which is 1.5 ug/m3 averaged over 90 days. The criterion of 4.5 ug/m3 minus twice background for TSP is the mathematical expression of achieving 1.5 ug/m3 as a 24-hour averaged based on an eight-hour worksite sample.

9. TSP in the ambient air that may be affected by emissions from the operations shall not exceed 4.5 ug/m3 minus twice the background level during any eight-hour period on each day of lead paint removal and PM10 in the ambient air that may be affected by emissions from the operation shall not exceed 450 ug/m3 minus two times the background level during any eight-hour period on each day of lead paint removal (as recorded using the methodology herein). The HWMT shall promptly notify the NYCDOT of any exceedance.

10. The TSP action level for an 8-hour period is 13.5 ug/m3 minus twice the background, the TSP basic criterion is 4.5 ug/m3 minus twice background:

    a. If an action level for 8-hour samples is exceeded at any monitor, the HWMT will promptly notify the NYCDOT and attempt to identify a cause.
    b. If sampling results for any monitor exceed the basic criterion, the HWMT will assess all field data for that day, develop solutions, observe and make note of all corrective measures.
    c. If the basic criterion is exceeded on two days of blasting at the same location, the HWMT will order blasting suspended, conduct a full assessment, develop solutions, and observe corrections.
    d. Should the results of any monitoring indicate an ongoing problem with the lead paint removal activity not meeting all Federal, State and local regulations/guidelines, the HWMT will order blasting suspended until a cause is identified and corrected.

11. Upon delivering the air monitoring results to the NYCDOT, the HWMT shall inform the NYCDOT if air monitoring results indicate particulate or lead emissions above federal, state or local regulations or guidelines, or national industrial hygiene standards and outline recommended specific modifications in the operation which will bring the operation into compliance with all of the appropriate ambient air regulations, guidelines and standards, including, but not limited to, modifications in the installation and maintenance of containment systems.

**E. Surface Soil Sampling**

1. Surface soil samples shall be taken by the HWMT and analyzed for lead before, during, and upon completion of the lead paint removal project if appropriate soil sampling locations exist, and if abrasive blasting paint removal occurs during the project. The HWMT shall submit a sampling plan in draft form to the NYCDOT for approval prior to implementation. This sampling plan shall include the positions of the proposed test locations, analysis and evaluation description, and a site map with enough detail to accurately position test locations.

2. The specific position of soil sampling locations in every case will be selected on the basis of whether there is bare soil present in any of the general areas specified. A test location shall be eliminated if there is no suitable bare soil within 50 feet. Locations should be selected to reflect areas of high potential public exposure such as bare soil in playground areas or bare pathways in open areas such as parks. Selecting a location under a tree, under sod in a well manicured lawn, in dirt on pavement or in pavement cracks, on private property, or in isolated and inaccessible areas would not be appropriate and should not be done. If there are no appropriate soil test locations, the HWMT will prepare a report detailing the reasons why no soil tests are proposed, using descriptions and photographs.

3. The number of samples taken at each project site and the distance away from the structure shall be dependent upon factors such as height and length of the structure, wind conditions, other obstacles, and the topography of the land. The specific location of each sampling location shall be measured and photographed at the time of sampling to allow re-sampling of the same location.

   a. For structures for which the length of the overland portion of the lead paint removal activity is less than or equal to 50 feet, soil test locations shall be selected as follows, unless otherwise directed by the NYCDOT:

      1) directly beneath the structure (if bare soil is present);

      2) in each of four directions (or directions in which bare soil is present), at 50 foot intervals up to a distance of 200 feet (300 feet if any part of the containment structure is more than 50 feet above the ground). The soil test locations shall be on lines starting at midpoints of each site of the structure upon which lead paint removal is conducted and radiating out from the site at angles of 60 degrees (or directions in which bare soil is present).

   b. For structures for which the length of the overland portion of the lead paint removal activity is greater than 50 feet soil test locations shall be selected as follows, unless otherwise directed by the NYCDOT:

      1) directly beneath the structure (if bare soil is present);

      2) on lines parallel to the structure at approximate intervals of 50 feet from the structure, out to 200 feet (300 feet if any part of the containment structure is more than 50 feet above the ground). On the first line, there shall be test locations at the middle of the length of the repainting sections and 25 feet beyond each end. There shall be additional test locations on this line as necessary to ensure that there is not more than 75 feet between test locations. There shall also be test locations with the same spacing along lines at 100, 150, 200 (in some cases 250 and 300 feet) from the structure, on each side of the structure (or the sides on which bare soil is present).

4. The sampling procedures and documentation shall include, at a minimum:

   a. Measure and record the specific position of each of the locations. The documentation must be of sufficient accuracy to allow a technician to return to the precise locations at mid-project and upon project completion.
   b. At each location, center and align a composite 50 foot grid. Surface soil taken from a template area within the 40 foot grid shall make up each sample.
   c. Remove a sample of soil ¾ inch in diameter and one inch (or two centimeters) deep at the center of a one meter square template and at each of the four corners of the template. Place each of the five plugs in a single bag. This represents the sample at the specific location.
   d. Seal each bag/container and record the date of testing, specific location, name of technician removing the sample, names of others present, and signatures. The following information shall also be recorded by the sampling technician: presence or absence of vegetative cover or paint chips, and other relevant data.

e. Enter the sample information into a log book, and record the name of the laboratory to which the samples are sent for testing, and the date of shipment. If the samples are stored, identify the name of the facility.
f. Upon receipt of the results from the laboratory, enter them into the same logbook.
g. Chain of custody shall be initiated at the time of sample collection and maintained throughout the sample handling process.
h. At the sampling intervals outlined herein, return to the precise locations and repeat the process. Upon re-sampling at specific locations, the center of the sampling template shall be shifted several Inches from its previous position and the template shall be rotated roughly 45 degrees relative to its previous sampling orientation. This technique prevents re-sampling of the same exact spot where topsoil had previously been removed by earlier sampling.

5. If there are visible paint chips at the soil sampling locations, two separate samples should be collected at that location. One sample should include paint chips but no vegetation, litter or other large objects such as stones. The second sample should not include paint chips, vegetation, litter or large objects such as stones. The samples should be air dried and stored in sealed containers until analyzed. In the laboratory, the sample containing paint chips should be weighed before removing the paint chips; then the paint chips should be removed and the paint chips and remaining material weighted separately. Then the lead content of the paint chips should be determined. The results for that sample should be expressed in the general form: "Paint chips were found to comprise _____ percent by weight of the top one inch of soil at this location; the lead content of those paint chips was found to be _____ percent by weight." The sample from which paint chips and other material has been removed should be analyzed in the ordinary fashion.

6. Prior to taking each soil sample, the field sampling technician shall don a pair of new, clean disposable gloves and wash the sampling apparatus (or surface soil sampling spoon) using dilute Nitric Acid and a rinse of distilled dionized water. During sampling rounds, field blank-rinse samples of the stainless steel sampling apparatus (or spoon) shall be obtained by rinsing the apparatus with distilled deionized water. Rinse waters shall be collected in 250 millimeter pre-cleaned collection vials that contain nitric acid preservative, and analyzed for lead content expressed as micrograms of lead per liter of water (ug/l).

7. Samples shall be taken in accordance with the following schedule, unless directed by the NYCDOT, based on project size and determined need:

a. One week prior to the start of the lead paint removal activity, to determine background levels;
b. Upon 50 percent completion of the lead paint removal activity,
c. Upon 100 percent completion of the lead paint removal activity, and
d. Within 24 hours of suspension of work based on observation of a visible emission and/or the NYCDOT's receipt of ambient air monitoring results which indicate an exceedance of lead concentrations above the action level.

8. The sampling results shall be used to determine if the lead paint removal activity conducted during sampling has contributed to increased concentrations of lead in the soil. The HWMT shall provide reports of sampling results (taken at intervals outlined above) which contain all information recorded, test results, and which detail all indications of statistically significant differences in lead concentrations at the project site as compared to previous findings, using paired differences and a one-sided t-test. The significance level shall be determined by comparing average increases in soil lead. If a paired difference t-test is performed with a one-sided 0.05 significance level and a standard deviation of the difference of 500, an average increase above 170 ppm would be considered significant. The test is dependent not only on the average difference in lead concentration but also on the standard deviation of the differences and the number of samples taken. As the standard deviation of the differences increases the average increase in lead concentration that is considered statistically significant also increases. As the number of samples decreases, the average difference in lead concentration that is considered statistically significant increases. For example, if only 5 samples were taken and all the other parameters used above remain the same, an average increase in lead concentration of 477 ppm would be considered statistically significant. Also, if the standard deviation of the difference was 1000 and everything else remained the same, an increase of 340 ppm would be considered statistically significant. However, if the standard deviation of the difference was only 250, an average difference of just 85.5 ppm would be considered statistically significant. Alternative methods of determining statistical significance shoud be proposed by the HWMT if appropriate. A written report documenting the results of each sampling interval shall be provided to the NYCDOT, NYCDEP Deputy Commissioner of the Bureau of Air Policy and Programs, NYCDOH Deputy Commissioner of Environmental Health Services, Director of the Mayor's Office of Construction, and the NYSDEC promptly after each sampling interval. The final report of surface soil sampling results shall also be distributed to the affected Community Boards, Council Districts, and Borough Presidents. Reports shall begin with a summary page high-lighting any exceedances, problems, and associated corrections. The reports shall be submitted to the NYCDOT first, with a delay, not to exceed 24 hours before submittal to the remainder of the recipients listed above.

9. The laboratory analysis for lead in the surface soil samples shall be accomplished in accordance with EPA Method 3050, "Acid Digestion of Sediments, Sludges and Soils." Laboratory analysis must be performed by a laboratory that is accredited by the American Industrial Hygiene Association for analysis of environmental samples for metals. USEPA SW-846, Method 6010 shall be utilized to analyze lead content of samples. The laboratory utilized shall be approved for analysis of lead in soil by the Environmental Laboratory Approval Program of the New York state Department of Health. A portion of each sample will be saved for at least six months after completion of the abrasive blasting work to permit confirmation of any soil sampling results. Lead is the only contaminant to be tested for, unless specified otherwise by the NYCDOT.

10. Should any soil sampling results indicate an ongoing problem with lead paint removal activities not meeting Federal, State & Local regulations/guidelines, the HWMT will notify NYCDOT immediately in writing.

## Resident Engineering Inspection Services

## RECORD AS-BUILT AND SHOP DRAWINGS, MANUALS, PRINTED MATTER: PREPARATION OF COMPUTERIZED INDICES, MICROFILMS OR CD MEDIA

### A. GENERAL REQUIREMENTS

The consultant shall prepare the record as-built drawings and shall index and microfilm and create CD media of the completed sets of accurate record as-built and shop drawings, catalog sheets, technical bulletins, manuals, diagrams, other printed matter, etc., as required which shall show the work as actually installed in compliance with the provisions of this article and the following:

1. Articles 1.06.13 and 1.06.14 of the "General Provisions."

2. SPECIFICATIONS OF THE CITY OF NEW YORK, DEPARTMENT OF TRANSPORTATION, BUREAU OF BRIDGES, DIVISION OF DESIGN-BRIDGES, titled "SPECIFICATIONS FOR THE PREPARATION OF RECORD DRAWINGS, INDICES, MICROFILMS AND CD MEDIA," latest revision thereof, hereinafter referred to as the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS".

3. A.N.S.I (American National Standards Institute) standards latest edition, as listed below:

| | |
|---|---|
| Y1.1-1972 | Abbreviations for use in Drawings and in Text (Where Applicable) |
| Y10.1-1972 | Glossary of Terms Concerning Letter Symbols |
| Y14.1-1980/1992 | Drawing Sheet Size and Format |
| Y14.2M-1979/1992 | Line Conventions and Lettering |

4. Copies of the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS" are available at the Bureau of Bridges – Office of the Division of Design, 2 Rector Street, 7th Floor, New York, New York 10006 .

5. ANSI STANDARDS MAY BE OBTAINED FROM THE AMERICAN NATIONAL STANDARDS INSTITUTE, 1430 BROADWAY, NEW YORK, NEW YORK 10018.

### B. RECORD AS-BUILT AND SHOP DRAWING REPRODUCIBLES

1. Subsequent to the time of substantial completion of construction as solely determined by the NYCDOT, the Department will furnish to the Consultant, at no cost, a complete set of wash-off mylars/vellums of the contract drawings. These are to be used as a basis for the preparation of the record as-built drawings required to be prepared and furnished by the Consultant. The furnishing of these drawings shall not relieve in any manner the Consultant of compliance with the drawing preparation requirements of this specification.

2. At the same time the Department will furnish a marked-up paper set of the contract drawings prepared by Department personnel. It shall be the Consultant's responsibility to modify the contract drawings and prepare and furnish any additional drawings based on the information submitted.

   All changes and corrections to the contract drawings shall be conspicuously identified and listed on each sheet of the record as-built drawings. Where there are no changes from the contract drawings, the note "NO CHANGE FROM CONTRACT DRAWINGS" in upper case gothic block letter, 7 mm (9/32") high, shall be placed above or adjacent to "RECORD AS-BUILT DRAWING."

3. The Consultant shall identify and describe all changes from the original designs as shown on the contract drawings. Where said changes occur, the note (DELTA SYMBOL – BOLD LINEWORK) Δ INDICATES CONTRACT CHANGE shall be placed thereon as near as possible to the title block. Numerals, or other identification inserted within each delta symbol shall agree with the identification number shown in the tabular listing placed on each sheet. The tabular form shall list date(s), descriptions, zone location(s), and such other information as the Engineer may require to be entered thereon. When, in the sole opinion of the Engineer, it is not feasible to place this information on each sheet, the Engineer may, at his/her sole option, direct the Consultant to prepare a separate drawing sheet(s) for the listing of all changes from the original designs as shown on the contract drawings.

4. The Consultant shall prepare a "Shop Drawing Index Sheet," which shall list in tabular form the Drawing Numbers, Titles and Microfilm Identification Numbers. When drawing titles are insufficient, descriptions shall be added. The legend "RECORD SHOP DRAWINGS" in letters 7mm (9/32") minimum high shall be placed thereon.

5. Whenever sample(s) of drawings are submitted for review or acceptance as to type, quality, format, etc., said sample(s) shall be retained by the NYCDOT, unless corrections are indicated.

6. The Consultant shall, at the completion of the project submit two (2) sets of half-sized record as-built drawings to the Engineer for distribution to Bridge Inspection (one set) and NYSDOT's Region 11 Office (one set).

## C. CERTIFICATION BLOCK

1. Adjacent to the title block of each record as-built drawing and each final approved shop drawing the Consultant shall place, in heavy block lettering of 7mm (9/32") minimum height, the words "RECORD AS-BUILT DRAWING," or 'RECORD SHOP DRAWING," as appropriate, together with the following information (2.4mm (3/32") high typed, 3.2mm (1/8") high otherwise.)

**SAMPLE CERTIFICATION BLOCK FOR CONSTRUCTION CONSULTANT RESIDENT**

**RECORD AS-BUILT DRAWING**
(OR RECORD SHOP DRAWING)

**1. CONTRACTOR**
**ADDRESS:**
**CERTIFIED CORRECT BY** _____ **DATE:**_____

**2. COMMISSIONER'S REPRESENTATIVE - RESIDENT ENGINEER**
**OR CONSTRUCTION SUPERVISION CONSULTANT**
**ADDRESS:**
**CERTIFIED CORRECT BY** _____ **DATE:**_____

2. ALL SIGNATURES AND ENTRIES ON CERTIFICATION BLOCKS SHALL BE MADE WITH PERMANENT BLACK OPAQUE WATERPROOF DRAWING INK SPECIFICALLY FORMULATED FOR USE ON MYLARS/VELLUMS.

3. ALL SIGNATURES SHALL BE CLEARLY LEGIBLE. WHERE SIGNATURES ARE NOT LEGIBLE, IN THE SOLE OPINION OF THE ENGINEER, THE SIGNER'S NAME SHALL BE PRINTED IN ADDITION TO THE SIGNATURE.

**D. SUMMARY OF PREPARATION REQUIREMENTS**

Drawing preparation requirements include, but are not limited to, the following:

1. All lettering and linework must be easily legible, in full or reduced size copy and any accepted method of reproduction, including microfilming.

2. All final drawings shall be right-reading. Reverse or wrong reading reproducibles are prohibited.

3. All final drawings shall be in black ink on vellum (if the final output shall be in the form of CDmedia and digital microfilm) or on 2-step wash-off mylar (if the final output shall be in form of conventional/non-digital microfilm). The mylar shall be base 4 mil thick (Dupont Crovex DraftingFilm or approved equivalent) or camera photo wash-off mylar 4 mil thick (Dupont Crovex Erasable Reproduction Films or approved equivalent), produced from full-size film negatives. ALL ENTRIES AND SIGNATURES ON FINAL MYLAR REPRODUCIBLES SHALL BE MADE WITH PERMANENT BLACK OPAQUE WATERPROOF DRAWING INK SPECIFICALLY FORMULATED FOR USE ON MYLAR/VELLUM.

4. Use of the diazo-print, diazo-sepia reproduction process and use of the electrostatic process to produce final original equivalent drawings (tracings, reproducibles) is prohibited. The use of a decal made by these processes on the final drawings is prohibited.

5. All lettering and linework shall be opaque black, uniform, cleancut and properly spaced.

6. All lettering shall be upper case gothic style. Condensed lettering is prohibited.

7. All linework and lettering shall conform to ANSI (American National Standards Institute) Standards Y 14.2m. The minimum character height of ANSI Y 14.2M may be reduced to 3.2mm (1/8”) minimum.

8. Typewritten characters shall be gothic style, oversized type, bold, 2.4mm (3/32”) minimum height ten (10) pitch maximum, opaque dense black, properly spaced.

9. All fractions shall have horizontal division lines. When horizontal division lines are not appropriate diagonal fraction lines may be used, providing maximum slope from the horizontal is not more than forty-five degrees.

10. When non-standard abbreviations are used, an abbreviation legend is to be provided on each drawing.

11. When non-standard symbols are used, a symbol legend is to be provided on each drawing.

12. Halftone or dot pattern drawings are prohibited.

13. The use of screening, shading, or color designation is prohibited.

14. Drawing on both sides of a sheet is prohibited. All drawings shall be right reading, (when reading the drawing, the surface upon which the intelligence is produced is facing the reader). There shall be no intelligence on the surface away from the reader.

15. The use of rubber stamps on mylar/vellum is prohibited. Stanpat Decals, or equivalent, may be used instead of rubber stamps. Rubber stamps are permitted on paper prints only (example: approvals, inspections). The rubber stamp impression shall be ANSI drafting standard letter size, clean, clear and opaque black. Decals on final reproducibles or tracings shall not be reproduced by diazo or electrostatic process.

16. On the final ink on mylar/vellum or camera photo wash-off mylar, decals may be used solely for the certification blocks and microfilm identification numbers.

17. Decals shall be preprinted, permanent adhesive type, as manufactured by the Stanpat Corporation, or an approved equal.

18. On final mylar/vellum, ink or wash-off drawings, decals shall not be used in the body of the drawings.

19. Drawing format shall be modified in compliance with the “DOT DRAFTING AND MICROFILMING SPECIFICATIONS”.

20. Drawings shall be zoned horizontally and vertically.

21. Drawings shall have vertical and horizontal microfilm alignment arrowheads or marks.

22. The use of sprays and/or coatings on the final approved mylar/vellum reproducibles is prohibited.

## E. MAINTENANCE MANUALS, OPERATING MANUALS, CATALOG SHEET, TECHNICAL BULLETINS, ETC.

1. Maintenance manuals, operating manuals, catalog sheets, technical bulletins and other printedmatter submitted as shop drawings in lieu of prepared drawings shall be accurate, complete and clearly legible, and shall possess suitable line work, character size, color and contract characteristics to produce acceptable microfilm and microfilm reproduction in accordance with the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS." For those manuals, catalog sheets, technical bulletins and other printed matter which, in the sole opinion of the City, fail to meet these criteria, the Contractor shall prepare and submit shop drawings which shall completely show all pertinent data.

2. For those manuals, catalog sheets, technical bulletins and other printed matter approved for scanning or microfilming, sufficiently large paper tabs containing description, approval, certification and identification data shall be permanently attached thereto, all as directed by the Engineer. Prior to scanning or microfilming, the Consultant shall submit the aforementioned, with completed tabs, to the Engineer for approval. After CD(s) or master and duplicate microfilm(s) have been approved, the aforementioned manuals, catalog sheets, technical bulletins and other printed matter shall be transmitted to the Engineer.

3. The Consultant shall digitize or microfilm and index the operational and maintenance manuals and such other printed materials, drawings, charts, diagrams, etc., which the Contractor is required to furnish as part of his contractual requirements. Digitizing and microfilming shall be performed in compliance with the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS" submissions, and the requirements shall be the same as these stated for the record as-built and shop drawings.

## F. COMPUTERIZED INDEXING AND MICROFILMING

1. The Consultant shall digitize or microfilm and index all as-built and shop drawings and prepare Contract and Drawing Record Pages in compliance with the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS." This shall include, when applicable, all printed matter submitted such as manuals, bulletins, catalog sheets, charts, diagrams, etc., which are required to be submitted, or which the Contractor submits, in accordance with the contract specifications.

2. The Consultant shall prepare Contract and Drawing Record Pages which shall describe the work as actually executed, together with a summary of major changes (as solely determined by the Engineer) from the original design shown on the contract drawings, in compliance with the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS". Contract and Drawing Record Pages shall, when applicable, include descriptions of operating and maintenance manuals with microfilm roll numbers.

3. The Consultant shall permanently apply to each shop drawing, catalog sheet, bulletin, etc., a microfilm identification number, in accordance with the requirements of the "DOT DRAFTING AND MICROFILING SPECIFICATIONS." This number shall consist of the Bridge Identification Number (BIN), the microfilm roll number, and the frame number. The roll number and starting frame number will be assigned by the NYC DOT – Division of Design-Bridges.

4. The Consultant shall prepare the Contract and Drawing Record Pages of all printed matter, all record as-built drawings, all record shop drawings, all bulletins, all catalog sheets, etc. in strict compliance with the "DOT DRAFTING AND MICROFILMING SPECIFICATIONS".

5. The Consultant shall furnish, as his submissions prior to the final accepted submission, one copy of a 3 ½" indexing diskette listing of the Contract and Drawing Record Pages and one copy of the computer printout of both indices. The Contract Record will contain a description of the work as actually executed.

6. All submissions shall include both the “CONTRACT RECORD PAGES” and the “DRAWING RECORD PAGES”.

## G. COMPLIANCE

1. The Consultant is hereby notified that if the drawing preparation at the time of the initial submission of any record as-built and shop drawing does not comply with the drawing preparation requirements as prescribed hereinabove, all costs to the City for the review of all subsequent submissions of said record as-built and shop drawings will be charged to the Consultant, as liquidated damages and not as a penalty, and the city will deduct from the final payment due to the Consultant the amount of all such charges. Such charges to the Consultant shall be based on the sum of direct labor, labor overhead, indirect overhead, and expenses incurred to properly execute the review and check of the said resubmissions.

# SECTION VII

## B) GENERAL PROVISIONS - (APPENDIX A)

# APPENDIX A

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

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# APPENDIX A

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

### ARTICLE 1. DEFINITIONS

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

**A. "City" shall mean the City of New York, its departments and political subdivisions.**

**B. "Comptroller" shall mean the Comptroller of the City of New York.**

**C. "Department" or "Agency" shall mean the New York City Department of Transportation.**

**D. "Commissioner" or "Agency Head" shall mean the Commissioner of the Department of Transportation or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.**

**E. "Law" or "Laws" shall include but not be limited to the New York City Charter, the New York City Administrative Code, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.**

### ARTICLE 2. REPRESENTATIONS AND WARRANTIES

**2.1 PROCUREMENT OF CONTRACT**

**A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution hereof.**

**B. For a breach or violation of such representations or warranties, the Agency shall have the right to annul this Contract without liability,**

**entitling the City to recover all monies paid hereunder and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Contract.**

## 2.2. CONFLICT OF INTEREST

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

## 2.3 FAIR PRACTICES

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

**A. The prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;**

**B. Unless otherwise required by law, the prices which have been quoted in this Contract and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the bid or proposal opening, directly or indirectly, to any other bidder/proposer or to any competitor; and**

**C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a bid or proposal for the purpose of restricting competition. The fact that the Contractor (a) has published price lists, rates, or**

**tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of the above.**

## ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY

**3.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as orders and regulation promulgated pursuant thereto.**

**3.2 The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.**

**3.3 All books, vouchers, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the City of New York, the State of New York, the Federal Government and any other person duly authorized by the City. Such audit may include examination and review of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.**

**3.4 The Contractor shall not be entitled to final payment under the Contract until all requirements have been satisfactorily met.**

## ARTICLE 4. COVENANTS OF THE CONTRACTOR

### 4.1 <u>EMPLOYEES</u>

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

**benefits and social security, or, except as specifically stated in this Contract, to any person, firm or corporation.**

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

**C. <u>Minimum Wage</u>**

**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 convenants 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. <u>Required Insurance Coverage:</u> 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. **<u>Commercial General Liability.</u> 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. **<u>Workers' Compensation Insurance.</u> 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. **<u>Employers' Liability Insurance.</u> 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. **<u>Automobile Liability.</u> 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. **<u>Unemployment Insurance.</u> Before performing any work on this Contract, Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.**

6. **<u>Professional Liability.</u> 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) <u>General Requirements for Insurance Policies:</u>**

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

## 4.4 PROTECTION OF CITY PROPERTY

**A. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Contract and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Contractor as an expert, consultant, specialist or subcontractor hereunder.**

**B. In the event that any such City property is lost or damaged, except for normal wear and tear, the City shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover such loss of damage.**

**C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection 4.4A above.**

**D. The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Contract.**

## 4.5 CONFIDENTIALITY

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

## 4.6 BOOKS AND RECORDS

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

## 4.7 RETENTION OF RECORDS

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

## 4.8 COMPLIANCE WITH LAW

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

## 4.9 INVESTIGATION CLAUSE

**A. The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.**

**B. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York or;**

**C.** **If any person refused to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is an interested party in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation with the City, then;**

**D.** **The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.**

**E.** **If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (G) below without the City incurring any penalty or damages for delay or otherwise.**

**F.** **The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:**

**1.** **The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or**

**2.** **The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation of termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.**

**G.** **The Commissioner or Agency Head shall consider and address, in reaching his or her determination and in assessing an appropriate penalty, the factors listed in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph (3) and (4) below in addition to any other information which may be relevant and appropriate:**

**1.** **The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.**

**2.** **The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.**

**3.** **The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.**

**4.** **The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (F) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in (D) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.**

**H.** **1.** **The term "license" or "permit" as read herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.**

**2.** **The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.**

**3.** **The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or permits from or through the City or otherwise transacts business with the City.**

**4. The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.**

**I. In addition to and notwithstanding any other provision of this Contract the Commissioner or Agency Head may in his or her sole discretion terminate this Contract upon not less than three (3) days' written notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.**

## 4.10 ASSIGNMENT

**A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Contract, unless the prior written consent of the Agency shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.**

**B. Failure of the Contractor to obtain any required consent to any assignment, shall be cause for termination for cause, at the option of the Agency; and if so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees or transferees, and all monies that may become due under the Contract shall be forfeited to the City except so much thereof as may be necessary to pay the Contractor's employees.**

**C. The provisions of this clause shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.**

**D. This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.**

## 4.11 SUBCONTRACTING

**A. The Contractor agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Contract without the prior written approval of the Department. Two copies of**

**each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval. All such subcontracts shall contain provisions specifying:**

**1. That the work performed by the subcontractor must be in accordance with the terms of the Contract between the Department and the Contractor.**

**2. That nothing contained in such Contract shall impair the rights of the Department.**

**3. That nothing contained herein, or under the Contract between the Department and the Contractor, shall create any contractual relation between the Subcontractor and the Department, and**

**4. That the Subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Contract between the Department and the Contractor.**

**B. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.**

**C. The aforesaid approval is required in all cases other than individual employer-employee contracts.**

**D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.**

## 4.12 PUBLICITY

**A. The prior written approval of the Department is required before the Contractor or any of it 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 Contact shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.**

## 6.8 SEVERABILITY

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

## 6.9 POLITICAL ACTIVITY

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

## 6.10 MODIFICATION

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

## 6.11 PARAGRAPH HEADINGS

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

## 6.12 NO REMOVAL OF RECORDS FROM PREMISES

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

## 6.13 INSPECTION AT SITE

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

## 6.14 MERGER

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

## 6.15 CONDITIONS PRECEDENT

**This contract shall neither be binding nor effective unless:**

**A. Approved by the Mayor pursuant to the provisions of Executive Order No. 42 dated October 9, 1975, in the event the Executive Order requires such approval; and**

**B. Certified by the Mayor (Mayor's Fiscal Committee created pursuant Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and**

**C. Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.**

**D. It has been authorized by the Mayor and the Comptroller shall have endorsed his or her certificate that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this Contract.**

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

## 6.16 PPB RULES

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

## 6.17 STATE LABOR LAW AND CITY ADMINISTRATIVE CODE

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

**1. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified as available to perform the work to which the employment relates;**

**2. That neither the Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex or national origin;**

**3. That there may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract;**

**4. That this Contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.**

5. **The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.**

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

1. **It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.**

2. **It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.**

3. **Disobedience of the foregoing provisions shall be deemed a violation of a material provision of the Contract.**

4. **Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.**

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

A. **This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York.**

B. **The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Court") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Contract and intent, the Contractor agrees:**

1. **If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made on the Contractor either in person, wherever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Contract, or to such other address as the Contractor may provide to the City in writing;**

2. **With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of <u>forum non conveniens</u>; (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 <u>E.O. 50 APPENDIX A RIDER</u>

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 it 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. <u>Application for Extension of Time</u>**

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. <u>Analysis and Approval of Time Extensions</u>**

**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. <u>Approval Mechanism for Time Extensions for Final or Substantial Completion Payments</u> – 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. <u>Assessment of Liquidated Damages</u> – 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 <u>EXTENSION OF TIME FOR PERFORMANCE (NON-CONSTRUCTION ONLY</u>

**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 grater 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 contact, the contractor shall be liable for such difference in price fore 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 RESIDENT ENGINEERING INSPECTION SERVICES IN CONNECTION WITH**
**RECONSTRUCTION OF CLAREMONT PARKWAY BRIDGE OVER**
**METRO NORTH RAIL ROAD**
**CONTRACT NO. HBX1160A**
**PIN 84110BXBR431**

**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.

# SECTION VII

## D) PROPOSAL FORMS PACKET

### CONTENTS


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


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

# FORM IT

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

**PIN: 84110BXBR431** **PROJECT NAME:** **Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road**

CONTRACT NO.:_____ CONSULTANT:_____

☐ PROFESSIONAL ENGINEERING/ ARCHITECTURAL SERVICES

☐ OTHER/_____

DESCRIBE

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

1) **Proposer will include relevant experience in Bridge REI work in the last five (5) years. Proposer should consider work with City, State, Federal agencies and prior work over railroad, and demonstrated ability to complete these jobs in a timely fashion.**

2) **List all current and prior projects completed within the last five (5) years for REI services. Specifically identify whether any of those projects involved a scope similar to the referenced contract. For each project, provide the following information:**

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

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

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

Average attrition rate for past 3 calendar years:

Total number of technical employees as of August 1st of last year ___ . (a)
Number of technical employees who left firm during last calendar year ___ . (b)
Total number of technical employees as of August 1st of previous cal. year ___ . (c)
Number of technical employees who left firm during previous calendar year ___ . (d)
Total number of technical employees as of August 1st of 2nd previous cal. Year ___ . (e)
Number of technical employees who left firm during 2nd previous calendar year ___ . (f)

b/a = ___ (g) d/c = __ (h) f/e = __ (i)

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

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

# FORM 2T

## PROPOSED STAFF (RESUMES)/EXPERIENCE

**PIN: 84110BXBR431** **PROJECT NAME:** **Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road**

CONTRACT NO.:_____ 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 projects and projects over railroads.**

   **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: 84110BXBR431** **PROJECT NAME: Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road**

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

**OVERALL APPROACH TO PROJECT:**

1. **Describe your overall approach and understanding to providing REI services for this project. This discussion should clearly demonstrate your understanding of the construction environment, including how it impacts the provision of the REI services. 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:** **Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road**

**PIN# :** **84110BXBR431**

**PRIME CONSULTANT:** _____

**CONSULTANT ON THIS FORM:** _____

☐ PROFESSIONAL ENGINEERING/ ARCHITECTURAL SERVICES

☐ OTHER/_____

| (COLUMN 1) JOB TITLES/ ASCE/NICET GRADE | (COLUMN 2) TOTAL HOURS |
|---|---|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |
| 6. | |
| 7. | |
| 8. | |
| 9. | |
| 10. | |
| | |
| **TOTALS:** | |

**DO NOT INCLUDE SALARIES ON THIS FORM**

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

(For Use in REI & CSS Contacts)

# FORM 5T
# NYCDOT CURRENT WORKLOAD DISCLOSURE

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

PIN: _____

CONTRACT NO.: _____

PROJECT NAME: _____

BIN: _____

DATE OF RFP: _____

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

FIRM NAME: _____

CONTACT PERSON: _____

PHONE NUMBER _____

ADDRESS OF OFFICE(S) TO PERFORM WORK

_____

---

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

---

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

II. Expected billings for next 18 months:

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

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

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

TOTAL (A + B + C) $ _____

III. Certified Disadvantaged Business Enterprise (DBE) firm(s) for Federal Aid Projects or for Non-Federal air Projects proposed for use on this project:

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

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

| | | | |
|---|---|---|---|
| _____ | _____% | _____ | $ _____ |
| _____ | _____% | _____ | $ _____ |

CERTIFICATION

Ihereby certify that the above figures are actual contract amounts (when available) or my best estimate of expecte d billings.

_____ DATE

_____ SIGNATURE (OFFICER OR PARTNER)

# FORM 5T
# Remaining work with NYCDOT (within Department)

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

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

Total Firmwide Design Workload $ _____ Assigned Office(s) Miscellaneous Workload $ _____

| Construction Division (includes only Resident Engineering Inspection) | | | | |
|---|---|---|---|---|
| | | | | |

Total Firmwide REI Workload $ _____ Assigned Office(s) REI Workload $ _____

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

Total Firmwide Miscellaneous Workload $ _____ Assigned Office(s) Miscellaneous Workload $ _____

---

Total Firmwide Overall Workload with NYC-DOT $ _____

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

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

---

Use the following as a ratings guide:

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

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

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

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

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

## SECTION VII

## E) COST PROPOSAL FORMS PACKET

## CONTENTS


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


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

# FORM 4T1 – LABOR COST PROPOSAL

**PROJECT NAME:** **Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road** **PIN: 84110BXBR431**
**BIN:** **2-24171-0**

**PRIME CONSULTANT:**_____ **CONTRACT NO.: HBX1160A**
**CONSULTANT ON THIS FORM**:_____

☐ PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
☐ OTHER/_____

| | (COLUMN 1) JOB TITLE ASCE/ NICET GRADE | (COLUMN 2) TOTAL HOURS | (COLUMN 3) HOURSTHIS FIRM | (COLUMN 4) AVERAGE HOURLY RATE (FY 2010) | (COLUMN 5) LABOR COST COL3X COL4 |
|---|---|---|---|---|---|
| 1. | | | | $ | $ |
| 2. | | | | $ | $ |
| 3. | | | | $ | $ |
| 4. | | | | $ | $ |
| 5. | | | | $ | $ |
| 6. | | | | $ | $ |
| 7. | | | | $ | $ |
| 8. | | | | $ | $ |
| 9. | | | | $ | $ |
| 10 | | | | $ | $ |
| | **TOTALS** | | | | **(T)** |

| | | | |
|---|---|---|---|
| **MULTIPLIER FOR OVERHEAD** | **(A)** | | **(A)** |
| **MULTIPLIER FOR PROFIT** | **(B)** | | **(B)** |
| **TOTAL MULTIPLIER (*)** | | **(1+A)X(1+B)** | **(M)** |
| **TOTAL LABOR COST (T x M)** | | | **$** **(C)** |
| **TOTAL LABOR ESCALATED TO PROJECT MIDPOINT** | **MAXIMUM ESCALATION FACTOR =** | | **1.06 (D)** |
| **GRAND TOTAL COST (C X D)** | | | |

**INSTRUCTIONS:**

1. 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).
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).
3. 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).
4. The maximum escalation factor "D" indicated in the shaded area shall not be changed.
5. 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.
6. The agency will consider the proposed multiplier for establishing Resident Engineering Inspection 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:** **Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road** **PIN: 84110BXBR431**
**BIN:** **2-24171-0**

**PRIME CONSULTANT:**_____ **CONTRACT NO.: HBX1160A**

| | (COLUMN 1) CONSULTANT | (COLUMN 2) HOURS ALL FIRMS | (COLUMN 3) ESCALATED LABOR COST TO PROJECT MIDPOINT | (COLUMN 4) DIRECT NON-SALARY COST | (COLUMN 5) TOTAL COST |
|---|---|---|---|---|---|
| 1. | | | | $ | $ |
| 2. | | | | $ | $ |
| 3. | | | | $ | $ |
| 4. | | | | $ | $ |
| 5. | | | | $ | $ |
| 6. | | | | $ | $ |
| 7. | | | | $ | $ |
| 8. | | | | $ | $ |
| 9. | | | | $ | $ |
| | **TOTALS** | | | **$ 25,657.00** | **(T)** |
| | **Constructability Review** | | | | **$35,000.00** |
| | **GRAND TOTAL** | | | | |

**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. | | | |

## F) MINORITY/WOMEN BUSINESS OWNED ENTERPRISES PROGRAM

1. **NOTICE TO ALL PROPSECTIVE 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)***

# NOTICE TO ALL PROSPECTIVE CONTRACTORS

## PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

## ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

**If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.**

**The Contractor must comply with all applicable M/WBE requirements for this Contract.**

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

### PART A

### PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line (1)).

The **"Target Subcontracting Percentage"** is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under $1 million for construction and professional services.

A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at **accomail@dot.nyc.gov** or via facsimile at **(212) 839-4241**. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under $1 million.

3. If **Subcontractor Participation Goals** have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under $1 million, Contractor shall be subject to the **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If **Subcontractor Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under $1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under $1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below.

**THE BIDDER/PROPOSER MUST COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). SUBCONTRACTOR UTILIZATION PLANS WHICH DO NOT INCLUDE THE REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT VENDOR HAS SUBMITTED A SUBCONTRACTOR UTILIZATION PLAN WHERE THE REQUIRED AFFIRMATIONS ARE COMPLETED**

**BUT OTHER ASPECTS OF THE PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE AFFIRMATION, 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 COMPLETED PLAN TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE 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. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5), i.e., a contract valued at or below $3M (for projects in New York City) where the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any of the Wicks trades, regardless of what point in the life of the contract such subcontracts will occur, at the time of bid submission.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing MWBE@sbs.nyc.gov, or calling the DSBS certification helpline at (212) 513-6311.

7. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has

obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.

9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

10. Pre-award waiver of **Target Subcontracting Percentage**. Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under one million dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5), i.e., a contract valued at or below $3M (for projects in New York City) where the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its Subcontractor Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's Subcontractor Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(a) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;

(h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

12. If **Subcontractor Participation Goals** have been established for this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

## PART B

## MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.

4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

## ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements this Section 6-129, including, but not limited any Subcontractor Utilization Plan, Agency may determine that one of the following actions should be taken:

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of Contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

(i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercise rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) take any other appropriate remedy.

4. Whenever Agency has reason to believe that an MBE or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129), or has violated any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

5. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

6. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

Tax ID #: _____

PIN #: 84110BXBR431

THE CITY OF NEW YORK

## SCHEDULE B – Subcontractor Utilization Plan – Part I: Agency's Target

This page to be completed by contracting agency

**Contract Overview**

**Pin #** 84110BXBR431 **FMS Project ID#:** HBX1160A

**Project Title** Reconstruction of Claremont Parkway Bridge over Metro North Rail Road

**Contracting Agency** New York City Department of Transportation

**Agency Address** 55 Water Street, Ground Floor **City** New York **State** NY **Zip Code** 10013

**Contact Person** Dr. Paul-Michael Kazas **Title** Director, Capital Procurement

**Telephone #** (212) 839-6314 **Email** pkazas@dot.nyc.gov

**Project Description** *(attach additional pages if necessary)*

Resident Engineering Inspection Services in Connection with Reconstruction of Claremont Parkway Bridge over Metro North Rail Road

**(1)** ✓ **Target Subcontracting Percentage**
Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under $1 million for construction and professional services. 30 %

**Subcontractor Participation Goals**
*Complete and enter total for each Construction or Professional Services, or both (if applicable)*

| Group | Construction | Professional Services |
|---|---|---|
| Black American | % | 10 % |
| Hispanic American | % | 10 % |
| Asian American | % | No Goal |
| Caucasian Female | No Goal | 10 % |
| **Total Participation Goals** | (2) % | (3) 30 % |

Tax ID #: _____ PIN #: _____

## SCHEDULE B – Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan

This page and the next (Part II herein) are to be completed by the bidder/proposer. AFFIRMATIONS; Bidder/proposer must check the applicable boxes below, affirming compliance with M/WBE requirements.

**Bidder/proposer ☐ AFFIRMS or ☐ DOES NOT AFFIRM [statement below]**

**It is a material term of the contract to be awarded that, with respect to the total amount of the contract to be awarded, bidder/proposer will award one or more subcontracts for amounts under one million dollars, sufficient to meet or exceed the Target Subcontracting Percentage (as set forth in Part I) unless it obtains a full or partial waiver thereof, and it will award subcontracts sufficient to meet or exceed the Total Participation Goals (as set forth in Part I) unless such goals are modified by the Agency.**

**Bidder/proposer ☐ AFFIRMS that it intends to meet or exceed the Target Subcontracting Percentage (as set forth in Part I); or**

**☐ AFFIRMS that it has obtained a full/partial pre-award waiver of the Target Subcontracting Percentage (as set forth in Part I) and intends to award the modified Target Subcontracting Percentage, if any; or**

**☐ DOES NOT AFFIRM**

### Section I: Prime Contractor Contact Information

**Tax ID #** _____ **FMS Vendor ID #** _____

**Business Name** _____ **Contact Person** _____

**Address** _____

**Telephone #** _____ **Email** _____

### Section II: General Contract Information

1. **Define the industry in which work is to be performed.**
   - **Construction** includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.
   - **Professional Services** are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

**a. Type of work on Prime Contract *(Check one):***

☐ **Construction** ☐ **Professional Services**

**b. Type of work on Subcontract *(Check all that apply):***

☐ **Construction** ☐ **Professional Services** ☐ **Other**

2. **What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts?** _____ %
3. **Will you award subcontract(s) in amounts below $ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract?** ☐ **Yes** ☐ **No**

### Section III: Subcontractor Utilization Summary

**IMPORTANT:** ***If you do not anticipate that you will subcontract at the target level the agency has specified, because you will perform more of the work yourself, you must seek a waiver of the Target Subcontracting Percentage by completing p. 4).***

| **Step 1:** Calculate the percentage (of your total bid) that will go towards subcontracts under $1M for construction and/or professional services | **Subcontracts under $1M (4)** (construction/professional services) | | **Total Bid/Proposal Value** | | **Calculated Target Subcontracting Percentage** |
|---|---|---|---|---|---|
| | $ _____ | ÷ | $ _____ | x 100 = | _____ % |

- **Subcontracts under $1M (construction/professional services):** Enter the value you expect to award to subcontractors in dollars for amounts under $1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2.
- **Total Bid/Proposal Value:** Provide the dollar amount of the bid/proposal.
- **Calculated Target Subcontracting Percentage:** The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under $1 million for construction and/or professional services. **This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1).**

NOTE: The "Calculated Target Subcontracting Percentage" MUST equal or exceed the Target Subcontracting Percentage listed by the agency on Page 1, Line (1).

Tax ID #: _____ PIN #: _____

## SCHEDULE B – cont.

**Step 2:**
Calculate value of subcontractor participation goals

| | | Subcontracts under $1M (construction/professional services) | |
|---|---|---|---|
| a. | Copy value from Step 1, line (4) – the total value of all expected subcontracts under $1M for construction and/or professional services | $ _____ | |
| b. | • From line a. above, allocate the dollar value of "Subcontracts under $1M" by Construction and Professional Services,<br>• If all subcontracts under $1M are in one industry, enter '0' for the industry with no subcontracts.<br>• Amounts listed on these lines should add up to the value from line a. | **Construction** | **Professional Services** |
| | **Subcontracts under $1M by Industry** | $ _____ | $ _____ |
| c. | • For Construction enter percentage from line (2) from Page 1.<br>• For Professional Services enter percentage from line (3) from Page 1.<br>• **Total Participation Goals Percentages must be copied from Part I, lines (2) and (3).** | | |
| | **Total Participation Goals** | x _____ % | x _____ % |
| d. | **Value of Total Participation Goals** | $ _____ | $ _____ |

**Step 3:**

✓ **Subcontracts in Amounts Under $1 M Scope of Work – Construction**

*Enter brief description of type(s) of subcontracts in amounts under $1M anticipated, by type of work, not by name of subcontractor*

✓ **Subcontracts in Amounts Under $1 M Scope of Work – Professional Services**

*Enter brief description of type(s) of subcontracts in amounts under $1M anticipated, by type of work, not by name of subcontractor*

## Section IV: Vendor Certification and Required Affirmations

*I hereby 1) acknowledge my understanding of the M/WBE requirements as set forth herein and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder; 2) affirm that the information supplied in support of this subcontractor utilization plan is true and correct; 3) agree, if awarded this Contract, to comply with the M/WBE requirements of this Contract and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this contract; 4) agree and affirm that it is a material term of this contract that the Vendor will award subcontract(s) sufficient to meet the Target Subcontracting Percentage, unless a waiver is obtained, and the Vendor will award subcontract(s) sufficient to meet the Total Participation Goals unless such goals are modified by the Agency; and 5) agree and affirm, if awarded this contract the Vendor intends to make all reasonable, good faith efforts to meet the Target Subcontracting Percentage, or if the Vendor has obtained a waiver, the Vendor intends to meet the modified Target Subcontracting Percentage, if any , and the Vendor intends to to solicit and obtain the participation of M/WBEs so as to meet the Total Participation Goals unless modified by the Agency.*

**Signature** _____ **Date** _____

**Print Name** _____ **Title** _____

## SCHEDULE B – PART III – REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE

### Contract Overview

Tax ID # _____ FMS Vendor ID # _____

Business Name _____

Contact Name _____ Telephone # _____ Email _____

Type of Procurement ☐ Competitive Sealed Bids ☐ Other Bid/Response Due Date _____

PIN # (for this procurement) _____

Type of work on Prime Contract *(Check one)*: ☐ Construction ☐ Professional Services

Type of work on Subcontract *(Check all that apply)*: ☐ Construction ☐ Professional Services ☐ Other

SUBCONTRACTING *as described in bid/solicitation documents (Copy this % figure from the solicitation)*

_____ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below $1 million (each)

ACTUAL SUBCONTRACTING *as anticipated by vendor seeking waiver*

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for construction/ professional services subcontracts valued below $1 million (each)

### Basis for Waiver Request: *Check appropriate box & explain in detail below (attach additional pages if needed)*

☐ Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.

☐ Vendor subcontracts *some* of this type of work but at *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.

☐ Other _____

### References

*List 3 most recent contacts/subcontracts performed for NYC agencies (if any)*

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

*List 3 most recent contracts/subcontracts performed for other agencies/entities*
(complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No.) _____

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No.) _____

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____
Manager at agency/entity that hired vendor (Name/Phone No.) _____

### VENDOR CERTIFICATION: *I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.*

Signature: _____ Date: _____

Print Name: _____ Title: _____

*Shaded area below is for agency completion only*

*AGENCY CHIEF CONTRACTING OFFICER APPROVAL*

Signature: _____ Date: _____

*CITY CHIEF PROCUREMENT OFFICER APPROVAL*

Signature: _____ Date: _____

## SECTION VII

## G) VENDEX REQUIREMENTS & CONFIRMATION OF VENDEX COMPLIANCE

# ATTACHMENT G

## VENDEX Requirements

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

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

The City of New York
Mayor's Office of Contract Services
Doing Business Accountability Project

# Doing Business Data Form

| To be completed by the City Agency prior to distribution | | | |
|---|---|---|---|
| Agency: _____ | Transaction ID: _____ | | |
| Check One: | Transaction Type (check one): | | |
| ☐ Proposal | ☐ Concession | ☐ Contract | ☐ Economic Development Agreement |
| ☐ Award | ☐ Franchise | ☐ Grant | ☐ Pension Investment Contract |

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

**Please return the completed Data Form to the City Agency that supplied it.** Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

## Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

**Entity Filing Status (select one):**

☐ Entity has never completed a Doing Business Data Form. *Fill out the entire form.*

☐ Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*

☐ No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: ☐ Yes ☐ No

Entity Type: ☐ Corporation (any type) ☐ Joint Venture ☐ LLC ☐ Partnership (any type) ☐ Sole Proprietor ☐ Other (specify): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

## Section 2: Principal Officers

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

### Chief Executive Officer (CEO) or equivalent officer

☐ This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former CEO: _____ on date: _____

### Chief Financial Officer (CFO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former CFO: _____ on date: _____

### Chief Operating Officer (COO) or equivalent officer

☐ This position does not exist

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

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former COO: _____ on date: _____

## Section 3: Principal Owners

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

**There are no owners listed because (select one):**

☐ The entity is not-for-profit ☐ There are no individual owners ☐ No individual owner holds 10% or more shares in the entity

☐ Other (explain): _____

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

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: ____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

**Remove the following previously-reported Principal Owners:**

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

## Section 4: Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers:**

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

**Remove the following previously-reported Senior Managers:**

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

### Certification

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

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

**Return the completed Data Form to the agency that supplied it.**

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

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DOING BUSINESS ACCOUNTABILITY PROJECT

# QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM

**What is the purpose of this *Data Form*?**

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

**Why have I received this *Data Form*?**

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this *Data Form* is completed. Most transactions valued at more than $5,000 are considered business dealings and require completion of the *Data Form*. Exceptions include transactions awarded on an emergency basis or by publicly advertised, non-pre-qualified competitive sealed bid. Other types of transactions that are considered business dealings include real property and land use actions with the City.

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

Entities that hold $100,000 or more in grants, contracts for goods or services, franchises or concessions ($500,000 or more for construction contracts), along with entities that hold any economic development agreements or pension fund investment contracts, are considered to be doing business with the City for the purposes of LL 34 and will be included in the *Doing Business Database*. Because all of the business that an entity does or proposes to do with the City will be added together, the *Data Form* must be completed for all covered transactions even if an entity does not currently do enough business with the City to be listed in the *Database*.

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

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

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the *Data Form* for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% of more of the entity. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the Data Form will be considered incomplete.

**I provided some of this information on the VENDEX Questionnaire; do I have to provide it again?**

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

**My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the Data Form be completed?**

A joint venture that does not yet exist must submit Data Forms from each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.



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

The names and titles of the officers, owners and senior managers reported on the *Data Form* will be made available to the public, as will information about the entity itself. However, personal identifying information, such as home address, home phone and date of birth, will not be disclosed to the public, and home address and phone number information will not be used for communication purposes.

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

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

**I have already completed a *Doing Business Data Form*; do I have to submit another one?**

Yes. An entity is required to submit a *Doing Business Data Form* each time it proposes on or enters a transaction considered business dealings with the City. However, the *Data Form* has both a No Change option, which only requires an entity to report its EIN and sign the last page, and a Change option, which allows an entity to only fill in applicable information that has changed since the previous completion of the *Data Form*. No entity should have to fill out the entire *Data Form* more than once.

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

Any person who believes that s/he should not be listed may apply for removal from the *Database* by submitting a Request for Removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manger of the entity, or the entity no longer being in business. Entities may also update their database information by submitting an update form. Both of these forms are available online at www.nyc.gov/mocs (once there, click MOCS Programs) or by calling 212-788-8104.

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

- **Contract, Concession and Economic Development Agreement holders**: generally for the term of the transaction, plus one year.
- **Franchise and Grant holders**: from the commencement or renewal of the transaction, plus one year.
- **Pension investment contracts**: from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
- **Line item and discretionary appropriations**: from the date of budget adoption until the end of the contract, plus one year.
- **Contract proposers**: for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers**: for one year from the proposal submission date.

For information on other transaction types, contact the Doing Business Accountability Project.

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

Contributions to City Council candidates are limited to $250 per election cycle; $320 to Borough President candidates; and $400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nyccfb.info, or 212-306-7100.

**The *Data Form* is to be returned to the contracting agency.**

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

*5/16/08*