

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**

**REHABILITATION OF THE ROOSEVELT AVENUE BRIDGE
OVER THE VAN WYCK EXPRESSWAY**

BOROUGH OF QUEENS

CONTRACT NO.: HBQ1203A

PIN: 84110QUBR437

RELEASE DATE OF THE RFP: April 28, 2010

ANTICIPATED CONTRACT TERM: 1185 Consecutive Calendar Days from the Date of Written Notice to Proceed which is inclusive of 90 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



April 28, 2010

Re: Request for Proposals for
Resident Engineering Inspection Services in Connection with
Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway
Borough of Queens
Contract No. HBQ1203A
PIN: 84110QUBR437

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.

Please be advised that a Pre-Proposal Conference has been scheduled for May 6, 2010 at 1:00 P.M., at 55 Water Street, Ground Floor Bid Room. Due to limited space, no more than (2) representatives from each interested firm will be permitted to attend.

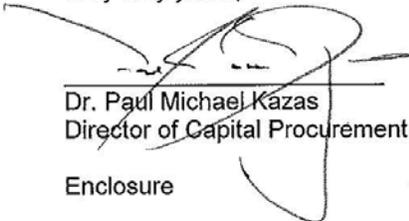
Enclosed for your use in developing your proposal is a set of forms with instructions for the above-referenced project. Be further advised that the selected proposer should not subcontract more than 49% of the contract work. You should follow the submittal instructions carefully.

You should hand deliver your proposal, as indicated in Section IV of the RFP, to the **NYC Department of Transportation, ACCO Contract Management Unit, Ground Floor, 55 Water Street, New York, New York 10041** on or before **May 26, 2010 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 RFP must be emailed to Dr. Paul-Michael-Kazas at pkazas@dot.nyc.gov or faxed to 212-839-4043 on or before May 7, 2010. If you need to contact him by telephone, please call 212-839-6314.

Very truly yours,



Dr. Paul Michael Kazas
Director of Capital Procurement

Enclosure

NYC Department of Transportation
Finance, Contracting and Program Management Division
55 Water Street, New York, NY 10041
T: 212.839.9292 F: 212.839.4231
www.nyc.gov/dot



ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS

**WE STRONGLY RECOMMEND THAT YOU FAX THIS SHEET TO US TO ENSURE THAT YOU RECEIVE ALL
FUTURE ADDENDA TO THIS RFP
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): HBQ1203A , PIN 84110QUBR437		Fax #
RFP Contract Title: Resident Engineering Inspection Services in Connection with Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway, Borough of Queens		

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)442-9885. E-Mail Address: pkazas@dot.nyc.gov

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

Comments: (Please use additional sheets if necessary)

Signature

Title

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SECTION I - TIMETABLE

A. Release Date of the Request for Proposals: **April 28, 2010**

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

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

Proposers should submit questions no later than next business day after the Pre-Proposal Conference since the Agency may be unable to respond to questions received after that date.

B. Pre-Proposal Conference:

Date: **May 6, 2010**
Time: **1:00 P.M.**
Location: **55 Water Street**
 Ground Floor Bid Room
 New York, NY 10041

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

C. 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.

D. Proposal Due Date and Time and Location:

Date: **May 26, 2010**
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 Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway, Borough of Queens.

B. Anticipated Contract Term

It is anticipated that the term of the contract awarded from this RFP will be **1185** Consecutive Calendar Days from the date of written Notice to Proceed which is inclusive of **90** Consecutive Calendar Days after the final completion of construction.

The anticipated period of construction contract term is **1095** 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. (See Section VII, Attachment A)

C. Proposed Contractual Agreement

Each successful proposer shall negotiate an agreement based on the Proposed Contractual Agreement (See Section VII, Attachment A). Such agreement shall contain the appropriate United States Department of Transportation and New York State Department of Transportation requirements, including but not limited to "NYSDOT procedures for Locally Administered Federal Aid Projects"

In addition, the proposers must submit the "Disclosure of Lobbying Activity" and "Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters" attached in Appendix A-II with its Technical Proposal.

D. Opportunity for Disadvantaged Business Enterprise

The NYC Department of Transportation requires firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of **18%**. The successful proposers must show good faith efforts that it attempted to meet the DBE goal.

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

E. Compliance with Local Law 34 of 2007 (See Attachment 'G')

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

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

A. Proposal Format

1. Component 1: Procedural Forms

A Procedural Forms packet has been supplied with this Request for Proposals and should be fully completed and 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.)
FORM 6T	DBE PARTICIPATION
FORM 330	STANDARD FORM

3. Component 2B: Proposal Narrative

In the case that the proposer was the prime consultant or a sub-consultant on the TD/CSS contract for Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway, Borough of Queens, 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.

4. Component 3: Cost Proposal

A Cost Proposal Forms Packet has been supplied with this Request for Proposals and should be fully completed and ONLY one (1) original set should be submitted and included in 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.

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

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

All components should be individually sealed and labeled (i.e., Component 1, Component 2A, Component 2B, Component 3 and Component 4) 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 ACCO Contract Management Unit
Address	55 Water Street, Ground Floor New York, New York 10041
PIN No. 84110QUBR437 CONTRACT No. HBQ1203A RESIDENT ENGINEERING INSPECTION SERVICES IN CONNECTION WITH REHABILITATION OF THE ROOSEVELT AVENUE BRIDGE OVER THE VAN WYCK EXPRESSWAY PROPOSAL SUBMISSION DEADLINE IS MAY 26, 2010 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 and Approach
- 4T Job Titles and Hours Proposed
- 5T NYCDOT Workload Disclosure (2 pgs.)
- 6T DBE Participation
- 330 Standard Form

3. COMPONENT 2B: NARRATIVE - Submit one (1) original and four (4) copies

4. COMPONENT 3: COST PROPOSAL – Submit ONLY one (1) original set

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

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

- Doing Business Data Form

SECTION V: PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures.

All proposals accepted by the Agency will be reviewed to determine whether they are responsive or non-responsive to the 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 Federal/State Method of procurement, (Brooks Law), 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 highest ranked proposer(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 with Similar Projects	
- Proposed staff (Resumes):	35%
- Firm in General:	20%
2. Quality of Proposal	
- Overall Project understanding:	20%
- Approach	15%
- Innovation	05%
3. Staff Availability	
Workload – Staff Availability	<u>05%</u>
TOTAL:	100%

C. Basis for Contract Award

A contract will be awarded to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria which are set forth in this RFP. Award of this contract shall be subject to 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 Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway, Borough of Queens, 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, in substantially the form that they appear in "APPENDIX A2"- General Provisions Governing Contracts for Consultants, Professional and Technical Services' or , if the Agency utilizes other than the formal APPENDIX A2, 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 84110QUBR437) for Resident Engineering Inspection Services in Connection with Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway, Borough of Queens, will not directly result in the displacement of any New York City employee.

Agency Chief Contracting Officer/
Assistant Commissioner

Date

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

SECTION VII

ATTACHMENTS

- A) Proposed Contractual Agreement, Constructability Review & Resident Engineering Inspection Instruction Manual**
- B) General Provisions (Appendix A2) & Macbride Principles Provisions**
- C) Procedural Forms Packet**
- D) Proposal Forms Packet**
- E) Cost Proposal Forms Packet**
- F) Vendex Requirements & Confirmation of Vendex Compliance**
- G) Local Law 34 – Doing Business Instructions and Data Form
(to be submitted in a separate sealed envelope along with the Technical Proposal)**
- H) FHWA Requirements**
- I) FTA Requirements & Standard Clauses for All New York State Contracts**
- J) FHWA/FTA Forms**

SECTION VII

A) PROPOSED CONTRACTUAL AGREEMENT

**RESIDENT ENGINEERING INSPECTION SERVICES
IN CONNECTION WITH**

**REHABILITATION OF THE ROOSEVELT AVENUE BRIDGE
OVER THE VAN WYCK EXPRESSWAY**

BOROUGH OF QUEENS

BIN# 2-24062-0

CONTRACT NO.: HBQ1203A

PIN: 84110QUBR437

Specific Requirements of the Contract for the Services of the Consultant

RESIDENT ENGINEERING INSPECTION SERVICES

IN CONNECTION WITH

**REHABILITATION OF THE ROOSEVELT AVENUE BRIDGE OVER
THE VAN WYCK EXPRESSWAY**

BIN 2-24050-7

CONTRACT NO.: HBQ1203A

PIN: 84110QUBR437

TOGETHER WITH ALL WORK INCIDENTAL THERETO
IN THE BOROUGH OF QUEENS

Scope of Work

General Bridge Description and Construction Project Scope:

The Roosevelt Avenue Bridge over the Van Wyck Expressway is a two level dual use steel viaduct consisting of twenty seven (27) spans. The first level, which carries Roosevelt Avenue, consists of plate girder-floor beam system supported by steel columns, intermediate piers supporting a bascule span spanning over the Van Wyck Expressway and Flushing River. The second level of the viaduct supports the overhead New York City Transit Authority's (NYCT) elevated subway structure which carries the No. 7 Train Flushing Line.

The scope of work for the rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway consists of a new concrete filled steel grating deck in conjunction with the rehabilitation of the existing superstructure and substructure. All work will be performed while maintaining pedestrian and vehicle access along the Roosevelt Avenue and with minimal impact to the NYCT elevated subway operations above.

The scope of rehabilitation work will include but not be limited to the following:

- Replacement of the existing bridge deck with a concrete filled galvanized steel grid deck, including new water proofing membrane and wearing surface.
- New extended sidewalks to accommodate bicycle/pedestrian lane facility.
- Remove and replace steel deck joints.
- Strengthen/Repair areas of the superstructure floor-beams, steel stringers and connections.
- Repair/Replace steel stringer and girder bearings.
- Repair/Reinforce damaged bottom chords of the steel truss in the bascule span.
- Seismic retrofit and repairs to the substructure.

- Seal the cellular abutment and counterweight pits of the bascule piers.
- Remove cracked, delaminated, hollow sounding concrete and spalls from the substructure and control towers.
- Re-point the deteriorated and missing mortar of the stone masonry of the east and west bascule piers at the waterline and tidal zones.
- Repair cracked stone masonry of the east and west bascule piers.
- Demolish and remove the operator's house/control house.
- Reconstruct the deteriorated end of the north retaining wall at the east approach.
- Electrical repairs and installation of new lighting poles and junction boxes.
- Sand blasting, lead removal containment and painting of steel structural elements of the lower level viaduct and bascule structure.

Basic Work Zone Traffic Control: During the entire construction period, vehicular traffic will be maintained on the bridge with one traffic lane for each direction.

Special Notice:

1. The REI shall provide services for Constructability Review of the Design Documents for the Rehabilitation of Roosevelt Avenue Bridge over the Van Wyck Expressway to ensure rational bids and minimize problems during construction in accordance with requirements of NYSDOT Engineering Instruction 99-013.
2. The REI shall provide the services of a Senior Compliance Director and Compliance Specialist to perform compliance reviews, tracking, and reporting in conformation with the current Federal and State Equal Employment Opportunity (EEO), and Disadvantage Business Enterprise (DBE) regulations during the Rehabilitation of the Roosevelt Ave. Bridge over the Van Wyck Expressway. The work will be as directed by the Consultant, and in cooperation with NYCDOT Office of Contract Compliance.
3. In addition to Hard Files record keeping as per MURK, electronic files including all e-mails of the entire project record are to be maintained. Therefore, the Consultant must include DTL for additional effort required for electronic file management.
4. Contractor's Bridge Superstructure Demolition Plans have to be reviewed by REI's independent Professional Engineer licensed in NYS in addition to review by CSS (Construction Support Services).
5. As-Built drawings must be completed and submitted for approval to NYCDOT-ER (Engineering Review Unit) within thirty (30) days of the Substantial Completion date of the project. As-built must be marked on contract drawing mark-up set on a daily basis. No additional time on efforts will be allowed after substantial completion date. No payment shall be made to REI staff for As-Built mark up work after substantial completion date.

To:		<i>New York State Department of Transportation</i> ENGINEERING INSTRUCTION	EI 99-013
Title: CONSTRUCTABILITY REVIEW			
Distribution: <ul style="list-style-type: none"> • Manufacturers (18) • Main Office (30) • Local Govt. (31) • Regions/Agencies (32) • Surveyors (33) • Consultants (34) • Contractors (39) • _____ () 		Approved: <u>/s/ J. F. Tynan</u> James F. Tynan, Construction Division <div style="float: right; text-align: right;"> <u>04/26/99</u> Date </div>	

This Engineering Instruction (EI) supersedes EI 91-30. It is anticipated that this guidance will be contained in a future update to the administrative section of the Construction Supervision Manual

PURPOSE. This EI updates the Department's policy for conducting constructability reviews.

EFFECTIVE DATE. This EI is effective immediately.

BACKGROUND. The Department recognizes the need for contract documents that will ensure rational bids and minimize problems during construction. The Constructability Review establishes a formal as well as a routine plan review. A significant aspect of developing high-quality contract documents is to incorporate review processes in all phases of a project to assess its constructability. Constructability reviews have the potential to minimize the number and magnitude of changes, disputes, cost overruns, and delays during construction.

A successful constructability review process must follow an established methodology similar to value engineering. The process must be flexible enough to be applied to all types of projects handled by the Department. Furthermore, the process must address the critical issues impacting today's transportation construction projects such as, ease of construction, environmental factors, construction phasing and scheduling, and project safety. To obtain maximum benefit from a constructability review, it must be initiated early enough to give the Regional Construction Group and others sufficient time to review the project, and then sufficient time to allow the designers to incorporate the recommended revisions. It is recommended the constructability review be conducted not later than the Advance Detailed Plans (ADP). The ADP phase provides the reviewers nearly complete detailed plans for Constructability Review. For large projects the Region may want to consider doing reviews during earlier phases of the design.

The Constructability Review Process (CRP) must be flexible in order to adapt it to specific project characteristics and requirements. Similarly, the CRP can be modified to be consistent with the Regions' approach to project development, policies, and resource availability. A key factor in determining the scope or type of the CRP is project complexity. Typically, total project cost and total work-hour effort reflects a level of complexity. Projects located in an urban setting and those involving reconstruction or grade separation are often more complex. Projects that involve many interfaces with other government agencies, utilities, the public, local officials etc. may indicate a higher level of complexity.

El 99-013 Page 2 of 4

Complex projects require more formalized constructability practices. Based on project complexity, the CRP can be classified into three levels of formality:

- Informal,
- Semiformal, and
- Formal

For the simplest of projects, an informal review consists of the review by one or two staff from the Regional Construction Group. This could involve the Construction Supervisor or a staff person assigned by the Regional Construction Engineer to do the review.

For moderately complex projects, a semiformal review consists of the review by a team assigned from within the Regional Construction Group. This could involve the Construction Supervisor, Engineer-In-Charge, Safety Coordinator, etc.

For the most complex projects, a formal review will be performed by an Independent Review Team assigned by the Regional Construction Engineer. The Independent Review team is described in more detail under the section herein entitled INDEPENDENT CONSTRUCTABILITY REVIEW.

SUMMARY OF CHANGES. The primary changes to the current procedure are 1.) establishing selection criteria based on project complexity 2.) identification of the (ADP) as the specific review time during design to ensure sufficient time to make changes if necessary 3.) the development of a constructability review checklist to be used as a guideline by the reviewers, and 4.) transferring the responsibility of determining the need for an Independent Review Team from the Regional Director to the Regional Construction Engineer.

TRANSMITTED MATERIALS.

Checklist for Constructability Review

ACTIONS BY REGIONAL CONSTRUCTION GROUP. The Regional Construction Group will coordinate the CRP so that it is consistent with the review process outlined in the Design Procedure Manual.

Regional Construction Groups will review plans and will consider the "Constructability" of all projects commensurate with project cost, complexity (as outlined above) and risk. The Regional Construction Groups will use the "CHECKLIST FOR CONSTRUCTABILITY REVIEW" as the minimum standard for what to review, when conducting a Constructability review.

When utilizing the checklist the reviewer(s) should address two fundamental questions, can the project be bid rationally and can it be built without significant contract change? The Constructability review should include consideration of economics, availability of materials, site restrictions, local conditions that may affect the construction process, environmental considerations, maintenance and protection of traffic and construction safety. Each of these components is defined on the attached checklist along with some pertinent criteria that should be addressed during design development. The questions listed under each component are not intended to be mutually exclusive nor are they meant to be all inclusive.

RESPONSIBILITY FOR REVIEWS. The Regional Construction Engineer will be responsible for assuring that Regional Construction Groups have qualified construction engineers assigned to a plan review function and that the primary objective of that plan review process is the "constructability" of the proposed plans. In most cases, this function can be performed within the Regional Construction Group as a routine responsibility. Often, the Construction Supervisor (Job Manager) is assigned this responsibility. In certain other cases, a Regional Construction Engineer may determine that an Independent Constructability Review is required,

utilizing some combination of resources from within or Consultants. The Construction Division will be notified of the initiation of each Independent Review, and the Regional Director will be kept informed of the progress of the review. Should the need arise for outside assistance, consultant assistance may be obtained through the Construction Division. Consultant services could be acquired through a Design Services Agreement, new designation, or in rare instances, through the project design agreement.

INDEPENDENT CONSTRUCTABILITY REVIEW. An independent constructability review is a formal review of all project data and documents by a specially selected independent team.

The independent constructability review team will be comprised of individuals with experience in the various aspects of design and construction required for the project at hand. The size of the team will depend on the complexity, regional significance or state significance, and the number of experts from other program areas needed to conduct an effective and timely review. The team will be chaired by a staff person from the Regional Construction Group selected by the Regional Construction Engineer.

TIMING OF REVIEWS. Constructability reviews for all projects should be performed at such a time when the design details are sufficiently completed to facilitate a meaningful review. The review should be conducted no later than the ADP phase. For large projects the Region may want to conduct the review during earlier phases of project design. The Constructability review should be coordinated with the Value Engineering review conducted during design, to ensure that the alternative construction methods adopted as a result of the Value Engineering review are considered when performing the Constructability review. Additionally, the designer must be given sufficient time to incorporate the recommended changes, if they are appropriate.

SCOPE AND DOCUMENTATION OF REVIEW. The individuals selected to perform the constructability review, i.e., construction group staff or the independent review team, will receive a thorough briefing of the project by the project designer and examine the project site (if appropriate). They should receive all available pertinent reference materials, including the design approval document, advanced detail plans, any special specifications or special notes, the construction schedule, Baseline Data provided on CONR 9I, ECOPAC, utility & railroad agreements if available. A reevaluation of decisions made during design phases I-IV should not to be undertaken as part of the constructability review, unless major issues are found. The reviewer(s) will address as a minimum, each of the items listed in the "CHECKLIST FOR CONSTRUCTABILITY REVIEW" of this EI that applies to the project. Additional criteria concerning the bidding or building of the project will be identified by the reviewers on a project by project basis.

Constructability issues that are identified by the reviewer and/or review team will be documented in a memorandum to the Regional Design Engineer and the Project Manager, who will share the information with the RPPM to assess program implications. After review and consideration the Regional Design Engineer, will document the reasons for their course of action concerning each recommendation in a memorandum to the Regional Construction Group, Project Manager and the RPPM. For reviews conducted by an Independent Review team, a copy of the above transmittals will be sent to the Construction Division. .

Constructability reviews performed by independent review teams must be documented in a report prepared addressing , at a minimum the topics outlined in the checklist. The completed report will be submitted to the Regional Director, Regional Design Engineer, Project Manager and the RPPM for their consideration regarding changes to the contract documents. An informational copy must also be provided to the Main Office Construction Division and the Design Division. After review and consideration of the recommendations contained in the report, the Regional Design Engineer must document the reasons for their course of action concerning each recommendation and provide a copy to the independent review team, RPPM, Regional Director, Construction Division, and the Design Division.

EI 99-013 Page 4 of 4

ACTIONS BY THE MAIN OFFICE. The "CHECKLIST FOR CONSTRUCTABILITY REVIEW." will be continuously updated based on project site visits conducted by the Construction Division's Engineering Liaisons during construction , Regional feedback, and disputed work reviews.

COST IMPACT. Constructability reviews as currently conducted should reduce the number of change orders, delays and disputes during construction, resulting in a net savings for the State. The changes introduced in this EI will have a negligible additional cost to the capital construction program.

CONTACT PERSON. Questions regarding this Engineering Instruction concerning interpretation should be directed to Lou DiLillo. Questions concerning the project related issues should be directed to John Grady. They may be reached at (518) 457-6475.

**CHECKLIST
FOR
CONSTRUCTABILITY REVIEW**

PIN # _____ Reviewer(s) _____
 D# _____
 Designer _____
 Projected Letting Date _____
 Date Review Started _____
 Date Review Completed _____

The following is a checklist of project items (if applicable to the project) that need to be reviewed during a Constructability Review :

	Description	YES	NO	NA	MORE INFO NEEDED
I.	BIDDABILITY				
	<i>The clarity of the final plan and proposal to the bidders so that they may submit a fair and accurate bid.</i>				
1	Are bidders unnecessarily restricted in their bids, or has the appropriate degree of flexibility been included in the bidding documents?				
2	Information sufficient to avoid major field changes?				
3	Coordination and agreements with appropriate agencies/parties?				
4	Permits been identified and sufficient time allowed to secure?				
5	MP&T plans adequate and complete?				
6	MP&T plans too restrictive?				
7	Items appropriate?				
8	Items omitted?				
9	Cross referencing between various contract documents consistent?				

**CHECKLIST
FOR
CONSTRUCTABILITY REVIEW**

	Description	YES	NO	NA	MORE INFO NEEDED
II.	BUILDABILITY				
	<i>The accuracy and completeness of the contract plans so that the design as shown on the final plans can be built.</i>				
A.	Site Investigation				
1	Sufficient field investigation been done to ascertain that contract work can be performed as shown on plans?				
2	Current site survey (horizontal & vertical controls)?				
3	Subsurface exploration?				
4	Utility investigation?				
5	Current traffic counts?				
6	Structural inspection?				
7	Emergency/interim structural repairs been considered?				
B.	Right of Way				
1	Sufficient R.O.W. available for all operations				
2	Equipment, material and hazardous waste storage?				
3	Staging?				
4	Field Office?				
5	Access requirements?				
6	Access to work areas?				
C.	Construction Staging				
1	Phased to provide minimum number of stages and reasonable work areas and access?				
2	Are there areas with restricted access?				
3	Are widths of work zones and travel lanes adequate?				

**CHECKLIST
FOR
CONSTRUCTABILITY REVIEW**

	Description	YES	NO	NA	MORE INFO NEEDED
4	Does staging cause special conditions (i.e., structural adequacy/stability)?				
5	Proposed adjacent contracts, restrictions, constraints identified and accounted for?				
6	Can the details as shown on the plans be constructed using standard industry practices, operations and equipment?				
D.	M&PT/Traffic Control				
1	M&PT requirements realistic for site conditions?				
2	Are lane closures reasonable for traffic volumes?				
3	Adequate provisions for access for pedestrians and abutting properties?				
4	Signing and traffic control adequate?				
5	Can construction operations be carried out safely under M&PT and staging?				
6	Design adequate for averting delays /congestion?				
7	Is a detour necessary for averting delays /congestion?				
E.	Schedule				
1	Length of time and production rates for work reasonable?				
2	Is sequence of construction reasonable?				
3	Seasonal limits on construction operations?				
4	Utility relocation schedule reasonable?				
5	Regulatory permit restrictions?				
6	Processing of shop drawings and related approvals?				
7	Materials ordering, fabrication and delivery requirements				
8	Restricted hours impact on production?				

**CHECKLIST
FOR
CONSTRUCTABILITY REVIEW**

	Description	YES	NO	NA	MORE INFO NEEDED
9	All necessary construction operations identified?				
10	Relationship with adjacent contracts?				
11	Impact of additional work (emergency structural repairs, additional quantities of concrete/ steel repair)?				
12	Time related specs - completion / milestone realistic?				
13	Night and weekend work proposed, and impacts considered?				
F.	Special Materials / Conditions				
1	Pertinent provisions and restrictions clearly indicated?				
2	Any special (unique / proprietary) materials, methods of technologies required for contract?				
3	Special coordination required, RR, Permits, Regulatory				
4	Presence of asbestos, hazardous waste or toxic materials?				
5	Safety requirements, fall protection, electric lines, and other utilities, RR requirements				
6	Winter concreting and the schedule for delivery of concrete?				

Additional Comments: _____

MEMORANDUM

TO: Henry Perahla *Henry*
Deputy Commissioner

FROM: Judith E. Bergtraum *Judy*
First Deputy Commissioner

DATE: November 12, 2004

SUBJECT: Review of Bridges Contract Process

As a result of the numerous issues that have arisen during the past few months with contracts for Bridge projects, we have hired an outside consultant to review DOT's overall process for managing bridge construction projects to determine whether improvements or changes are needed. At our first meeting, the consultant recommended two changes:

1. Reinforcing our process for reviewing demolition work, and
2. Reviewing the requirements we place on contractors to provide quality assurance mechanisms, both within their organizations as well as among different contractors working on the same job.

After completing a full review of our process, the consultant will issue recommendations. In the interim, I am requesting that you submit to me any recent changes that have been implemented or that you would like to implement in order to improve DOT's process for overseeing bridge contracts. Please submit this information to me within one week.

C: Commissioner Weinshall



New York City
Department of Transportation

Iris Weinshall, Commissioner

Division of Bridges
2 Rector Street - 8th Floor
New York, New York 10006
Tel: 212/788-2100 Fax: 212/788-9015
Web: www.nyc.gov/dot

MEMORANDUM

TO: Judith E. Bergtraum
First Deputy Commissioner

FROM: Henry D. Perahia, P.E. *HP*
Chief Bridge Officer

SUBJECT: Review of Bridges Contract Process

DATE: November 16, 2004

This is in response to your memo of November 12 wherein you request that I identify the interim changes that are being implemented until such time as the consultant issues recommendations for permanent changes in our contract process and those changes are incorporated into our process.

In addition to the current review performed by the CSS, all engineering calculations and drawings for demolition will be reviewed by an additional, independent outside engineer. This will be done either through a change order to the REI or through an ESA assignment.

cc: Comm. Weinshall, DCE Holcomb, DCE King, DCE Kishore, DCE Novak,
DCE Patel, files

hp3291.doc

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; 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 be substitute for 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 by NYPD 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 "A2" 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 subconsultant 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 subconsultant 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's compliance with DBE 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 and DBE issues from the ACCO's Office of Contract Compliance.

It is anticipated that the contract for construction work will be funded by Federal Highway Administration (FHWA) via the New York State Department of Transportation (NYSDOT).

The work shall include, but will not be limited to performance of all intermediate compliance reviews, tracking, and reporting in conformation with the current Federal and State Equal Employment Opportunity (EEO), and Disadvantage Business Enterprise (DBE) regulations during the Rehabilitation of Roosevelt Avenue Bridge over Van Wyck Expressway (Contract No. HBQ1203A). The work will be as directed by the Consultant, and in cooperation with NYCDOT Office of Contract Compliance.

The work shall also include but not limited to the following tasks:

- Review of all payrolls for compliance with EEO and prevailing wage requirements.
- Inspection of Construction site for conformance of the work executed by the DBE as per the work reported to Office of Contract Compliance.
- Provide training to Consultant, Contractor (including his subcontractors) on DBE programs EEO regulations and the ensuing reporting requirements.
- Attend progress meetings, as and when requested by the Consultant and OCC.
- Prepare, and Submit periodic progress reports, regulatory forms and other submittals as needed and are required for compliance with the current Federal, State and City regulations.

- Any other incidental work necessary to ensure that the Contract is in conformance, in terms of all reporting, with all Federal, State, and City promulgated DBE, EEO and Prevailing Wage requirements.
- Any other tasks as directed by the Consultant in meeting with the requirements specified by the NYCDOT Office of Contract Compliance.

The following two positions will be required by the Consultant for the performance of this task, as directed the NYCDOT Office of Contract Compliance:

1. Senior Compliance/Director (Required for 50% of the Contract Duration)
 2. Compliance Specialist (Required for 100% of Contract Duration)
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 (15) calendar days after the occurrence of these events.
 30. Resident Engineering Services Consultant shall be responsible for preparing and approving the 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, 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 "Specifications for the Preparation of Record Drawings and Electronic Media" attached in this contract (see Attachment No. 2).
45. The Consultant shall provide a dedicated "Public Outreach Liaison" as describe in section I. (E.), of these General Requirements.
46. The Resident Engineer 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 Resident Engineer 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 REI's field office and copies forwarded to OCC.
48. The Consultant shall supply equipment for Engineer's field office such as computers and two way radio communication system etc. as specified in Attachment No. 3 of this contract.

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 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.

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

The overhead portion of the multiplier shall be based on the indirect cost rates established by a cognizant agency audit, defined in 23 CFR 172.3 as "any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has developed in accordance with the requirements of the cost principles contained in 48 CFR part 31." In no event shall the profit portion of the multiplier be increased.

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 cost of MTA Tokens and Tolls within the city borders is 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 supply of equipment services for Engineer's Field Office (such as computers and two way radio communication system, see Attachment No.3) 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

<u>Multiplier*</u>	<u>Consultant Name</u>

* The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, interim overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision in accordance with applicable NYC Comptrollers' Directive 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 contract 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 subconsultants 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) DOT has made a determination that it will NO LONGER HOLD retainage ON FTA/FHWA FUNDED CONTRACTS.
- j) 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.
- k) 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.

- l) (Intentionally Omitted)
- m) 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.

- n) All rate increases are subject to the current DOT's rate increase guidelines. Any increase in salary rates shall not affect the final negotiated cost.

- 1. The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown on Form 4T-1. 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 of Construction 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.

2. Partial Payments:
 - I) The Consultant shall be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with Fees and Payments, Section III (A) of the Contract. 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 Commissioner, or his duly authorized representative.
 - II) 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.
 - III) 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.
 - IV) The Consultant is required to make partial payments to all Sub Contractors and Sub Consultants within (10) calendar days of receipt of payment from the City.
 - V) Accounts of the Consultant shall clearly identify the costs of the work performed under this Agreement and shall be subject to periodic and final audit by the City and, on Federally aided Projects, by the Federal Highway Administration. Such audit shall not be a condition of partial payment.
 - VI) DOT has made a determination that it will NO LONGER HOLD retainage ON FTA/FHWA FUNDED CONTRACTS.
3. 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.
4. 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 Construction Support Services to effect the completion of the work described in said contract. For such 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.
- o) The provisions of the original contract shall be followed in case of a company merger or takeover.

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 \$ 571,769.00*, which is inclusive of \$230,935.00 for Direct Non Salary Cost plus \$340,834.00 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 A2.

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:

<u>Level</u>	<u>Overtime Category</u>
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: **1095 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 **90** consecutive calendar days after final completion of construction.

SECTION VII

B) GENERAL PROVISIONS - (APPENDIX A2)

APPENDIX A2

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

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APPENDIX A2

GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES

ARTICLE 1. DEFINITIONS

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

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 PROCUREMENT OF CONTRACT

- A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Contract and the City relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Agency shall have the right to annul this Contract without liability,

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

2.2. CONFLICT OF INTEREST

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

2.3 FAIR PRACTICES

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

- A. The prices in this Contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- B. Unless otherwise required by law, the prices which have been quoted in this Contract and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the bid or proposal opening, directly or indirectly, to any other bidder/proposer or to any competitor; and
- C. No attempt has been made or will be made by the Contractor to induce any other person, partnership or corporation to submit or not to submit a bid or proposal for the purpose of restricting competition. The fact that the Contractor (a) has published price lists, rates, or

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

ARTICLE 3. AUDIT BY THE DEPARTMENT AND CITY

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

ARTICLE 4. COVENANTS OF THE CONTRACTOR

4.1 EMPLOYEES

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

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

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

C. Minimum Wage

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

4.2 INDEPENDENT CONTRACTOR STATUS

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

4.3 INSURANCE

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

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

1. **Commercial General Liability.** Before performing any work on the Contract, the Contractor shall procure Comprehensive General Liability Insurance in the Contractor's name and naming the City of New York and the Department of Transportation as additional insured thereunder and endorsed to cover the liability assumed by the Contractor under the indemnity provisions of this Contract. This insurance policy shall be maintained during the term of this Contract and shall protect the City of New York, the Contractor and/or its subcontractors performing work under this Contract from claims for property damage and/or bodily injury, including death, which may arise from operations under this Contract, whether such operations are performed by the Contractor or anyone directly or indirectly employed by the Contractor. The coverage provided shall not be less than \$1,000,000 per occurrence. The coverage provided must be "occurrence" based; "claims-made" coverage will not be accepted.
2. **Workers' Compensation Insurance.** Before performing any work on this Contract, the Contractor and each Subcontractor shall provide Workers' Compensation Insurance in accordance with the Laws of the State of New York, and the United States Longshoremen's and Harbor Workers' Act where applicable, on behalf of all employees providing services under this Contract.
3. **Employers' Liability Insurance.** Before performing any work on this Contract, the Contractor shall procure Employers' Liability Insurance, in the amount of at least \$1,000,000 per accident, providing compensation for bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his/her employment by the Contractor.
4. **Automobile Liability.** Before performing any work on this Contract, the Contractor shall procure commercial auto liability insurance covering all owned, non-owned, hired and borrowed vehicles to be used in connection with this Contract. The City of New York and the Department shall be named as additional insureds. Coverage shall be in an amount of at least \$1,000,000.00.

5. **Unemployment Insurance.** Before performing any work on this Contract, Unemployment Insurance coverage shall be obtained and provided by the Contractor for its employees.
6. **Professional Liability.** Before performing any work on this Contract, the Contractor shall procure Professional Liability Insurance covering as insured the Contractor, with a limit of liability of not less than \$3,000,000. All sub-consultants to the Contractor providing professional services under this Contract shall also provide evidence of Professional Liability Insurance to the Commissioner at limits appropriate to the exposures of the sub-consultant's work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to the City.
7. The Contractor agrees to indemnify and hold harmless the City of New York and each officer, agent and employee of the City of New York against any and all claims for personal injury or wrongful death or damage to personal property arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

(B) General Requirements for Insurance Policies:

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

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

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

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

work. No Contract payments will be accepted for processing until such policies are received and approved, and failure to provide the required policies shall be ground for declaring the Contractor in default.

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

4.4 PROTECTION OF CITY PROPERTY

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

4.5 CONFIDENTIALITY

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

4.6 BOOKS AND RECORDS

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

4.7 RETENTION OF RECORDS

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

4.8 COMPLIANCE WITH LAW

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

4.9 INVESTIGATION CLAUSE

- A. The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- B. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York or;

- C. If any person refused to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is an interested party in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation with the City, then;**
- D. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.**
- E. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph (G) below without the City incurring any penalty or damages for delay or otherwise.**
- F. The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:**

 - 1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or**
 - 2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.**

- G. The Commissioner or Agency Head shall consider and address, in reaching his or her determination and in assessing an appropriate penalty, the factors listed in paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph (3) and (4) below in addition to any other information which may be relevant and appropriate:**
- 1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.**
 - 2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.**
 - 3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.**
 - 4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (F) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in (D) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.**
- H.**
- 1. The term "license" or "permit" as read herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.**
 - 2. The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.**
 - 3. The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or permits from or through the City or otherwise transacts business with the City.**

4. The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- I. In addition to and notwithstanding any other provision of this Contract the Commissioner or Agency Head may in his or her sole discretion terminate this Contract upon not less than three (3) days’ written notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

4.10 ASSIGNMENT

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

4.11 SUBCONTRACTING

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

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

1. That the work performed by the subcontractor must be in accordance with the terms of the Contract between the Department and the Contractor.
 2. That nothing contained in such Contract shall impair the rights of the Department.
 3. That nothing contained herein, or under the Contract between the Department and the Contractor, shall create any contractual relation between the Subcontractor and the Department, and
 4. That the Subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Contract between the Department and the Contractor.
- B. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.
- C. The aforesaid approval is required in all cases other than individual employer-employee contracts.
- D. The Contractor shall not in any way be relieved of any responsibility under this Contract by any subcontract.

4.12 PUBLICITY

- A. The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Contract, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Contract.
- B. If the Contractor publishes a work dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, the Department shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

4.13 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.**
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of the Contractor or a substantially-owned affiliated company thereof for participation in international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render this Contract forfeited and void.**
- C. The Contractor shall comply in all respects, with the provisions of § 6-114 of the Administrative Code of the City of New York and the rules and regulation issued by the Comptroller thereunder.**

4.14 INVENTIONS, PATENTS AND COPYRIGHTS

- A. Any discovery or invention arising out of or developed in the course of performance of this Contract shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.**
- B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Contract.**
- C. In no case shall subsection A and B of this section apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Contract.**

4.15 INFRINGEMENTS

The Contractor shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the Department from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Contract.

4.16 ANTI-TRUST

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

ARTICLE 5. TERMINATION

- A. The Department and/or City shall have the right to terminate this Contract, in whole or in part:**
 - 1. Under any right to terminate as specified in any section of this Contract.**
 - 2. Upon the failure of the Contractor to comply with any of the terms and conditions of this Contract.**
 - 3. Upon the Contractor's becoming insolvent.**
 - 4. Upon the commencement under the Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily.**
 - 5. Upon the Commissioner's determination that termination is in the best interest of the City.**
- B. The Department or City shall give the Contractor written notice of any termination of this Contract specifying therein the applicable provisions of subsection A of this section and the effective date thereof, which shall not be less than ten (10) days from the date the notice is received.**
- C. The Contractor shall be entitled to apply to the Department to have this Contract terminated by said Department by reason of any failure in the performance of this Contract (including any failure by the Contractor to make progress in the execution of work hereunder**

which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; or any other case beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Contract terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.

- D. Upon termination of this Contract the Contractor shall comply with the Department or City close-out procedure, including but not limited to:**
- 1. Accounting for and refunding to the Department or City within thirty (30) days, any unexpended funds which have been paid to the Contractor pursuant to this Contract.**
 - 2. Furnishing within thirty (30) days an inventory to the Department or City of all equipment, appurtenances and property purchased through or provided under this Contract carrying out any Department or City directive concerning the disposition thereof.**
 - 3. Not incurring or paying any further obligation pursuant to this Contract beyond the termination date. Any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after such date shall be paid by the Department or City in accordance with the terms of this Contract. In no event shall the "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Contractor and its landlord.**
 - 4. Turn over to the Department or City or its designees all books, records, documents and material specifically relating to the Contract.**
 - 5. Submit, within ninety (90) days, a final statement and report relating to the Contract. The report shall be made by a certified public accountant or a licensed public accountant.**
- E. In the event the Department or City shall terminate this Contract, in whole or in part, as provided in paragraphs 1, 2, 3, or 4 of subsection A of this section, the Department or City may procure, upon such terms and in such manner as deemed appropriate, services similar to**

those so terminated, and the Contractor shall continue the performance of this Contract to the extent not terminated hereby.

- F. Notwithstanding any other provisions of this Contract, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's breach of the Contract, and the City may withhold payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.
- G. The provisions of the Contract regarding confidentiality of information shall remain in full force and effect following any termination.
- H. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Contract.

ARTICLE 6. MISCELLANEOUS

6.1 CONFLICT OF LAWS

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

6.2 GENERAL RELEASE

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

6.3 CLAIMS AND ACTIONS THEREON

- A. Any claim, which is not subject to the Dispute Resolution provisions of the PBB Rules, against the City for damages for breach of contract shall not be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as hereinbefore provided.
- B. No action or proceeding shall be instituted or maintained on any such claims unless such action or proceeding be commenced within six (6) months after the date the Commissioner issues a Certificate of Substantial Completion except that:

1. Any claims arising out of events occurring after the date the Commissioner issues a Certificate of Substantial Completion and before Final Acceptance of the work shall be asserted within six (6) months of Final Acceptance of the work;
 2. Any claims for monies deducted, retained or withheld under the provisions of this Contract shall be asserted within six (6) months after the date when such monies become due and payable hereunder; and
 3. If the Commissioner exercises his/her right to terminate the Contract Pursuant to Article 5, any such action shall be commenced within six (6) months of the date of filing in the Office of the Comptroller of the City of the Certificate for Final Payment hereunder.
- C. In the event any claim is made or any action brought in any way relating to the Contract herein, the Contractor shall diligently render to the Department and/or the City of New York, without additional compensation, any and all assistance which the Department and/or the City of New York may require of the Contractor.
- D. The contractor shall report to the Department in writing within three (3) working days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Contract.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

6.5 WAIVER

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

6.6 NOTICE

The Contractor and the Department hereby designate the business addresses hereinabove specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to

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

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

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

6.8 SEVERABILITY

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

6.9 POLITICAL ACTIVITY

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

6.10 MODIFICATION

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

6.11 PARAGRAPH HEADINGS

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

6.12 NO REMOVAL OF RECORDS FROM PREMISES

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

6.13 INSPECTION AT SITE

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

6.14 MERGER

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

6.15 CONDITIONS PRECEDENT

This contract shall neither be binding nor effective unless:

- A. Approved by the Mayor pursuant to the provisions of Executive Order No. 42 dated October 9, 1975, in the event the Executive Order requires such approval; and
- B. Certified by the Mayor (Mayor's Fiscal Committee created pursuant Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and
- C. Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.

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

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

6.16 PPB RULES

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

6.17 STATE LABOR LAW AND CITY ADMINISTRATIVE CODE

- A. As required by New York State Labor Law § 220-e:
 - 1. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified as available to perform the work to which the employment relates;
 - 2. That neither the Contractor, Subcontractor, nor any person on behalf of such Contractor or Subcontractor shall, in any manner discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, creed, color, sex or national origin;
 - 3. That there may be deducted from the amount payable to the Contractor by the City under this Contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract;
 - 4. That this Contract may be cancelled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.

5. The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.
- B. As required by New York City Administrative Code § 6-108
 1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
 2. It shall be unlawful for any person or any servant, agent or employee of any person, described in subdivision (a) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
 3. Disobedience of the foregoing provisions shall be deemed a violation of a material provision of the Contract.
 4. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

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

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

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

6.19 E.O. 50 APPENDIX A2 RIDER

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

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

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

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

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

- C. The Director of the Bureau may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.**

- D. The Contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.**

- E. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a Subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.**

6.20 NOISE CONTROL CODE PROVISIONS

- A. The Contractor agrees to comply with the provisions of Section 24-216, Noise Abatement Contract Compliance, of Chapter 2 of Title 24 of the Administrative Code of the City of New York which stipulates the following:**
 - 1. Devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the New York City Noise Control Code shall be operated, conducted, constructed or manufactured without causing a violation of the Code.**

 - 2. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection. Regulations promulgated pursuant to Section 24-216 after the proposal received for this Contract shall not alter its terms, conditions and specifications.**

6.21 LIQUIDATED DAMAGES

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

6.22 COPIES OF REPORTS

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

6.23 CONTRACTOR'S PERFORMANCE EVALUATION

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

6.24 CONTRACT CHANGES

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

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

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

6.25 RESOLUTION OF DISPUTES

- A. Except as provided in A(1) and A(2) below, all disputes between the City and the vendor that arise under, or by virtue of, this contract shall be finally resolved in accordance with the provisions of this section and Section 4-09 of the Rules of the Procurement Policy Board (“PPB Rules”). This procedure shall be the exclusive means of resolving any such disputes.
1. This section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.
 2. For construction and construction-related services this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor’s work to the contract, and the acceptability and quality of the vendor’s work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee

of the Commissioner makes a determination with which the vendor disagrees.

- B. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.
- C. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in full force and effect and the vendor shall continue to perform work in accordance with the contract and as directed by the Agency Chief Contracting Officer (“ACCO”) or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of the vendor to continue the work as directed shall constitute a waiver by the vendor of any and all claims being presented pursuant to this section and a material breach of contract.
- D. Presentation of Dispute to Agency Head.
 - 1. Notice of Dispute and Agency Response. The vendor shall present its dispute in writing (“Notice of Dispute”) to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the vendor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the vendor in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the vendor to produce any requested material whose relevancy the vendor has not disputed, or whose

relevancy has been affirmatively determined, shall constitute a waiver by the vendor of its claim.

2. **Agency Head Inquiry.** The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the vendor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other vendor with a contract related to the work of this contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the vendor initiating the dispute.
 3. **Agency Head Determination.** Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the vendor and ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, together with a statement concerning how the decision may be appealed.
 4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this section. The City may not take a petition to the CDRB. However, should the vendor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the vendor and more favorable to the City than the decision of the Agency Head.
- E. **Presentation of Dispute to the Comptroller.** Before any dispute may be brought by the vendor to the CDRB, the vendor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
1. **Time, Form, and Content of Notice.** Within thirty (30) days of receipt of a decision by the Agency Head, the vendor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the agency. The Notice of Claim shall consist of (i) a brief

statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the vendor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head, and (iii) a copy of all materials submitted by the vendor to the agency, including the Notice of Dispute. The vendor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. **Agency Response.** Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the vendor. Willful failure of the vendor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the vendor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.
4. **Opportunity of Comptroller to Compromise or Adjust Claim.** The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in E(3) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the vendor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. The vendor may not present its petition to the CDRB until the period for investigation and compromise delineated in this paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. The chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this section as may be necessary in the execution of the CDRB's

functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. **The City Chief Procurement Officer (“CCPO”) or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and**
3. **A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.**

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this section, the vendor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

1. **Form and Content of Petition by Vendor. The vendor shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the vendor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the vendor to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the vendor to, the Comptroller’s Office. The vendor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the vendor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.**
2. **Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the vendor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH’s offices and one to the vendor. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause**

or, upon the consent of the parties, for an initial period of up to thirty (30) days.

3. **Further Proceedings.** The Board shall permit the vendor to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the vendor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the vendor nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
4. **CDRB Determination.** Within forty-five (45) days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of the contract. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.
5. **Notification of CDRB Decision.** The CDRB shall send a copy of its decision to the vendor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of the vendor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) days after the date the parties are formally notified of the CDRB's decision.
6. **Finality of CDRB Decision.** The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such

proceeding that was not presented to the CDRB in accordance with Section 4-09 of the PPB Rules.

- H. Any termination, cancellation, or alleged breach of the contract prior to or during the pendency of any proceedings pursuant to this section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this section.

6.26 EXTENSION OF TIME FOR PERFORMANCE CONSTRUCTION AND CONSTRUCTION RELATED ONLY

- A. If performance by the Contractor is delayed for a reason set forth in the Contract, the Contractor may be allowed a reasonable extension of time in conformance with this Section and with the Rules of the Procurement Policy Board.
- B. Any extension of time may be granted only by the Agency Chief Contracting Officer or by the Board for the Extension of Time (as set forth below) upon written application by the Contractor.
- C. **Grounds for Extension** – If such application is made, the Contractor shall be entitled to an extension of time for delay in completion of the work caused solely: (i) by the acts or omissions of the City, its officers, agents or employees; or (ii) by the actions or omissions of other contractors on this project; or (iii) by supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, Acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act or omission of the Contractor). The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which the Commissioner or the Board may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all the requirements of Article 9, 10, and 11 of Chapter III, “Time Provisions”, of the City of New York Standard Construction Contract, effective October 2000, as amended.
- D. **Extension for Concurrent Causes of Delay** – The Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the ACCO or the Board for Contract Time Extension irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of his/her Subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

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

E. Application for Extension of Time

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

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

F. Analysis and Approval of Time Extensions

- 1. For time extensions for partial payments, a written determination shall be made by the ACCO who may, for good and sufficient cause extend the time for the performance of the Contract as follows:**
 - (a) If the work is to be completed within six (6) months, the time for performance may be extended for sixty (60) days;**
 - (b) If the work is to be completed within less than one year but more than six (6) months, and extension of ninety (90) days may be granted;**
 - (c) If the Contract period exceeds one year, besides the extension granted in subparagraph (b) above, an additional thirty (30) days may be granted for each multiple of six (6) months involved beyond the one year period; or**
 - (d) If exceptional circumstances exist, the ACCO may extend the time for performance beyond the extensions in (a), (b), and (c) above. In that event, the ACCO shall file with the Director of the Office of Construction a written explanation of the exceptional circumstances.**
- 2. For extensions of time for substantial completion payments and final completion payments, the Department's engineering staff,**

in consultation with the ACCO, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of the Contract). The report shall be subject to review by and approval of the Board of Time Extension, which shall have authority to question its analysis and determinations and request additional facts or documentation. The report as reviewed and made final by the Board of Time Extension shall be made a part of the departmental Contract file.

3. **Approval Mechanism for Time Extensions for Final or Substantial Completion Payments** – An extension of time for a final or substantial completion payment shall be granted only with the approval of a Board of Time Extension comprised of the ACCO, the Corporation Counsel and the Comptroller, or their authorized representatives.

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

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

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

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

6.28 NO DAMAGE FOR DELAY

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

6.29 PROMPT PAYMENT

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

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

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

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

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

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

PART A

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

PART B

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

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
 - (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 - (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
 - (3) ban provocative religious or political emblems from the workplace;
 - (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) establish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement, and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

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

(NO FURTHER TEXT ON THIS PAGE)

**RESIDENT ENGINEERING INSPECTION
INSTRUCTION MANUAL**

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

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 subcontractor's 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)

DOT Bridges.of Construction.

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. MTLIS 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.

ATTACHMENT NO. 1

HAZARDOUS WASTE MANAGEMENT

ATTACHMENT NO. 1

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 side 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 $\frac{3}{4}$ 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 deionized 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 should 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.

ATTACHMENT NO. 2

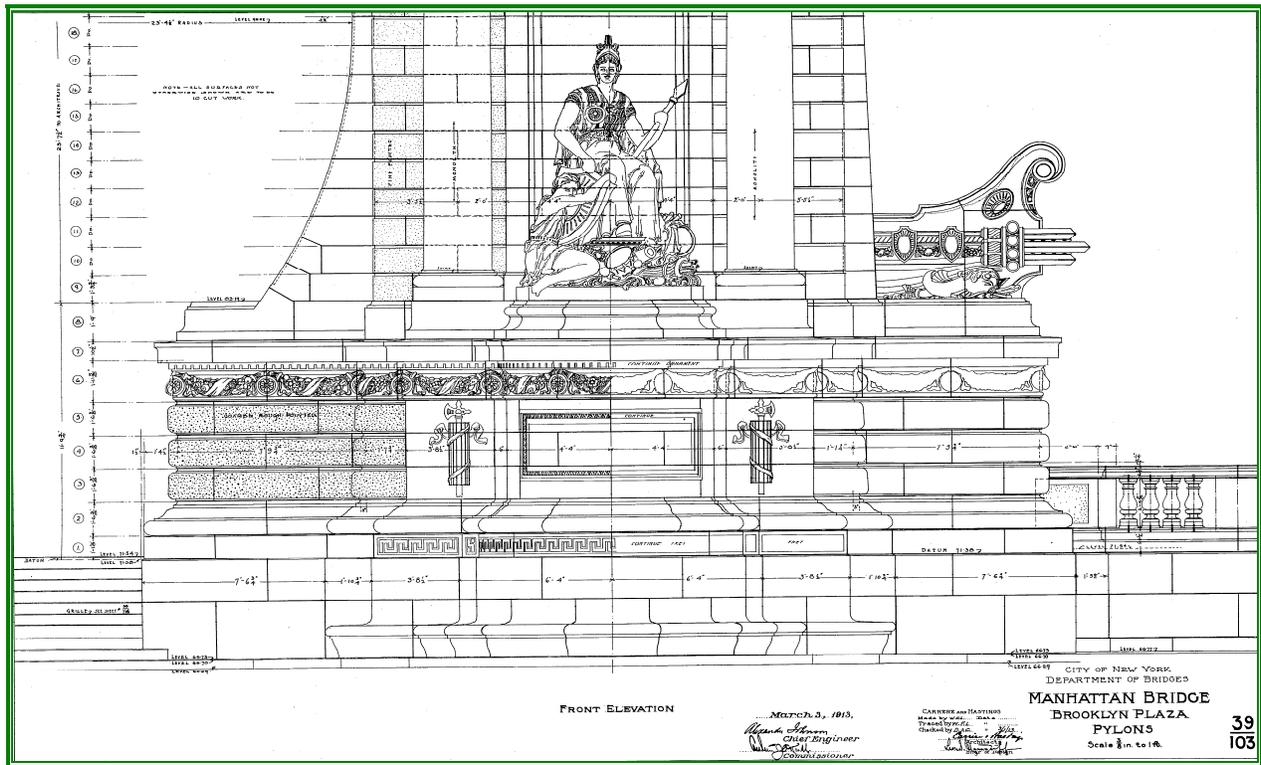
**SPECIFICATIONS FOR THE PREPARATION
OF RECORD DRAWINGS AND ELECTRONIC
MEDIA**

ATTACHMENT NO. 2



Department of Transportation

JANETTE SADIK-KHAN, Commissioner



SPECIFICATIONS

FOR THE PREPARATION OF RECORD DRAWINGS AND ELECTRONIC MEDIA

NYC Department of Transportation
Division of Bridges
Bureau of Engineering Review & Support
55 Water Street, 5th Floor WS
New York, NY 10041
T: 212.839.4036 F: 212.839.4925

www.nyc.gov/dot

November 2009

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Attachments:

Flowchart: Review and approval process for preparation of contractual records

Drawing samples:

- A. Title Sheet format (for FAUS and State Funded Projects only)
- B. Title Sheet format (for City Funded Projects only)
- C. Title Sheet format for Combined Projects
- D. Contract or As-Built drawing format
- E. Shop drawing format

SECTION 1: REQUIREMENTS FOR THE PREPARATION OF RECORD DRAWINGS

1.1 INTRODUCTION

NYCDOT contract documents require that consultants and/or contractors (collectively referred to as the “contractor”) submit the record project drawings (contract, as-built or shop drawings) in an electronic format at the end of the project. Therefore, these specifications (the “requirements”) describe the drafting and electronic data standards which shall be used by the contractor for the preparation of record drawings and digital media.

The requirements shall supercede all previous specifications with respect to the preparation of record drawings and apply to all projects handled in-house at nycdot or by the contractor.

1.2 FINAL SUBMITTALS AND REVIEW PROCESS

As per the NYCDOT contract requirements, the contractor is responsible for the preparation and submission of paper copies of contract, final record as-built and/or shop drawings (the “drawings”). The contractor shall also be required to submit the drawings to the NYCDOT, Division of Bridges – Record Management Section as follows:

A set of two (a master and one duplicate) cds/dvds containing:

- **one final set of the drawings in autocad format**
- **one continuous searchable multi-page file of the approved and signed drawings in a format viewable by NYCDOT using software that it has available, such as adobe acrobat reader.**
- **for shop drawings the submission in AutoCad format is optional.**

It is the responsibility of the Contractor to provide sample submissions to the NYCDOT for approval prior to the start of the Drawing preparation, which should include linework, lettering and formats. The attached flowchart entitled “Review and Approval Process” is provided to illustrate the submission process. The attached drawing samples are for reference purpose only. The Contractor shall include all appropriate information specific to the Project, which shall include up-to-date names and titles for the title sheet (such as the NYSDOT and NYCDOT, officials as required).

If the Contractor shall request any deviation from the Requirements, it shall be the Contractor’s responsibility to submit a sample drawing and obtain written approval from NYCDOT prior to the commencement of the Work.

All Drawings shall comply with the Requirements and must be clear and legible for subsequent reproduction by conventional methods.

1.3 GENERAL REQUIREMENTS

This section describes the drafting standards to be followed in the preparation of the Drawings for the NYCDOT.

Acceptance of the Drawings shall be at the sole discretion of the NYCDOT Division of Bridges – Records Management.

The Drawings shall be prepared in compliance with applicable A.N.S.I. (American National Standards Institute) / A.S.M.E. (American Society of Mechanical Engineers) / I.E.E.E. (Institute of Electrical and Electronic Engineers) standards, latest editions.

The standards to be used include, but are not limited to, the following:

Y14.1 Decimal Inch Drawing Sheet Size and Format (2005 or latest)

Y14.2 Line Conventions and Lettering (2003 or latest)

Y14.38 Abbreviations and Acronyms (2007 or latest)

The Contractor shall also consult the NYS DOT “Highway Design Manual” CADD Standards and Procedures, latest revision as applicable.

1.4 DRAWING FORMAT

Standard size for the Drawings sheets shall be 34" x 22" in U.S. customary units (865mm x 560mm), including the margins. This drawing size shall have the designation "D".

The margin line shall be drawn 1/2" (15mm) from the top, bottom, and right hand edges and 2" (50 mm) from the left-hand edge to permit binding, resulting in a 31½" x 21" (800mm x 530mm) drafting area.

Space shall be reserved for the title, approval, certification and other blocks, and notes. Notes shall be grouped within one area on each of the Drawings. An area within the margins (working area) shall be reserved solely for an "Approval Stamp."

If the Contractor shall request any deviation from the Requirements, it shall be the Contractor's responsibility to submit a sample drawing and obtain written approval from NYCDOT prior to the commencement of the work.

Attachments A through E show the required formats for the individual types of Drawings.

1.5 LETTERING ON DRAWINGS

Lettering on the Drawings shall conform to the following requirement so that acceptable digital reproduction may be obtained:

- The letters/characters shall be at least 1/8" (3 mm) minimum height, uppercase, dense black, properly spaced block letters from the Sans Serif font family. Fine face, thin stroke characters shall not be used for lettering on engineering drawings (for example: Romans style font with 1/8" height and 1.000 width factor may be used). The same style font shall be consistently applied throughout the project. Multiple styles of font shall be avoided if possible. The lowercase font styles shall be reserved for special characters, charts etc.
- The equally-spaced text columns width shall be no more than 7" with 70 letters/characters or spaces per column and no more than 10 characters per inch are permitted (for example: three columns of 7" each with approximately 1" margins around each column shall be used for the general notes)

1.6 DRAFTING REQUIREMENTS

The Drawings shall be neatly drawn and clearly legible and shall comply with the following requirements:

- a) Widths of lines in format features (i.e. borderlines, margins, principal block outlines, block divisions, tables, etc.) shall be in accordance with A.N.S.I./A.S.M.E. Y14.1 requirements.
- b) Abbreviations and symbols are permissible, and shall be used in accordance with the requirements and abbreviations listed in A.N.S.I./A.S.M.E. Y14.38, latest revision, and subject to the restrictions stated elsewhere in the Requirements. When non-standard abbreviations and symbols are used, the Contractor shall be responsible to provide an appropriate legend on each sheet where they are used.
- c) When an AutoCAD platform is used for the Drawings, only the latest version is to be utilized.

1.7 ASSIGNMENT OF MEDIA IDENTIFICATION NUMBER(S)

The NYCDOT Division of Bridges – Records Management shall assign project specific CD/DVD numbers upon the commencement of the Work. The Contractor shall request such identification numbers prior to the start of the preparation of the Drawings or in connection with the scanning of existing drawings. The identification number shall be placed below the contract number on a title sheet(s) or next to the contract number in a typical title box.

In the event that all of the required Drawings cannot be contained in a single CD, the Contractor shall provide the Drawings on DVD media. As a rule as-built or shop drawings shall be assigned the extensions to the contract's identification number (L22 for Contract Drawings, L22A for As-Built and L22B for Shop Drawings).

1.8 PREPARATION OF TITLE AND CERTIFICATION BLOCKS

TITLE BLOCK

The Drawings, except for the title sheet, shall include a title block arranged in accordance with applicable A.N.S.I./A.S.M.E. requirements. The title block and certification block shall conform to the form presented in Attachments A through E herein.

The title block shall contain, as a minimum, the following information:

- The Name of the Government Agency (i.e. City of New York, Department of Transportation, Division of Bridges)
- The Construction Contract Number
- The Project Name, Location, the B.I.N. and CD/DVD Number.
- Drawing Title
- Drawing Number
- Principal Scale or a clear indication that it is not to scale (N.T.S.)
- Date
- Sheet Number

CERTIFICATION BLOCK

In addition, the Drawings shall include the certification block with the name(s) of the contractor(s) and/ or the sub-contractor(s) preparing the drawings, and the name of the resident engineer. The certification block shall be placed over the approval section on the right side of the title sheet. The term "**RECORD AS-BUILT DRAWING**" or "**RECORD SHOP DRAWING**" shall be included in the block with lettering of 9/32" (minimum height), upper case in Sans Serif font style (e.g. Romans), bold and properly spaced.

The As-Built drawings shall display changes, if any, as appropriate in the following form:

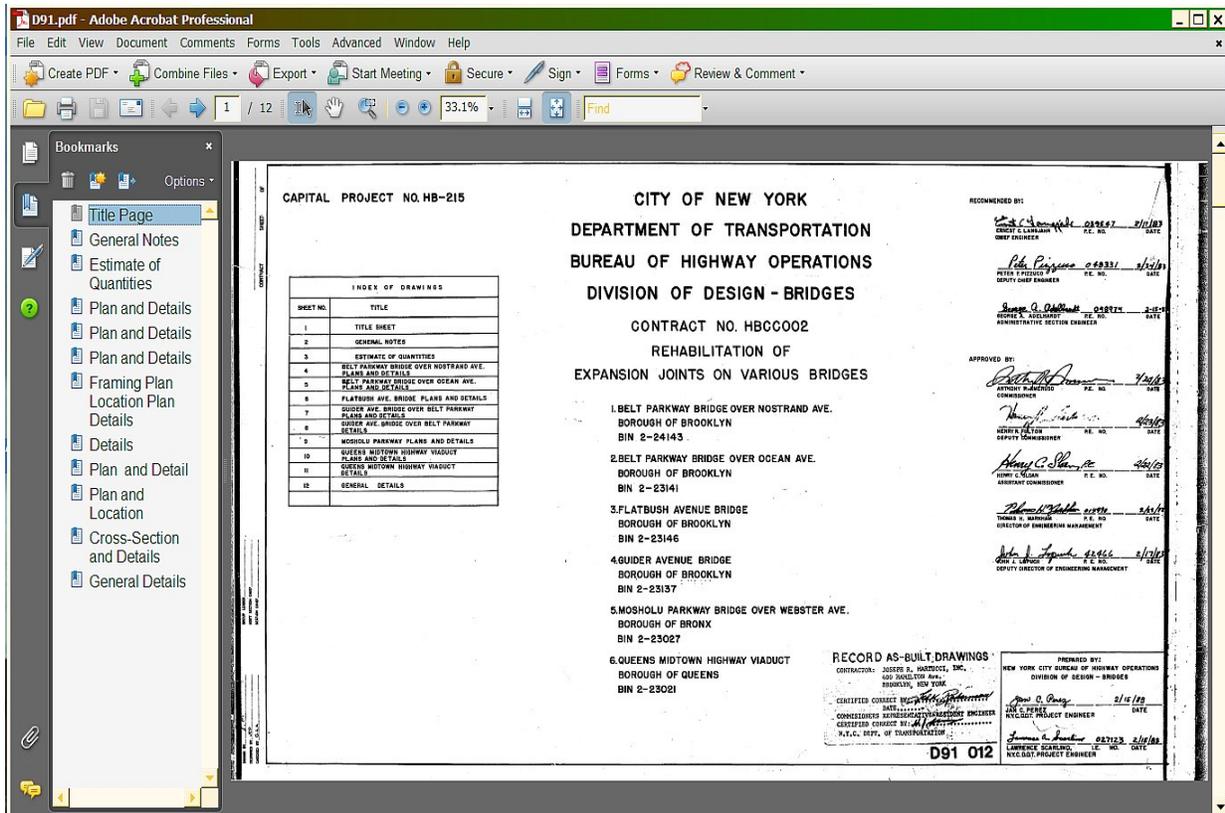
**"NO CHANGE FROM CONTRACT DRAWINGS" or
"Δ INDICATES CONTRACT CHANGE"**

Pursuant to the contract requirements, it shall be the responsibility of the Contractor to ensure that all above-mentioned requirements are followed. The Contractor shall be fully responsible for the proper, accurate and acceptable execution of the work, including the preparation and submission of the Drawings, and nothing contained herein shall relieve it of such responsibility.

SECTION 2: REQUIREMENTS FOR THE PREPARATION OF ELECTRONIC MEDIA

2.1 GENERAL REQUIREMENTS

This section describes the requirements for all electronic records to be prepared and submitted in connection with NYCDOT contracts. A set of two (a master and one duplicate) CDs/DVDs containing one final set of the Drawings in AutoCAD format and an electronic copy in pdf format (600 dpi resolution) as a continuous searchable indexed multi-page file of the approved and signed Drawings in a format viewable by NYCDOT using software available to it, such as Adobe Acrobat Reader. Each set of Drawings shall have indexed individual drawings with their respective titles in the Reader's Bookmarks Navigation Panel (see example below).



The image quality of the Drawings presented on the electronic media shall be of a quality acceptable to NYCDOT, Division of Bridges – Records Management; however, all scanned documents shall have a resolution of at least 600 dpi.

In all matters of conformance to the Requirements, the determination of acceptability of the Drawings shall be solely at the discretion of the NYCDOT Division of Bridges - Records Management and its decision shall be final.

2.2 SORTING OF IMAGES OF DRAWINGS FOR EXISTING CONTRACTS

In order to produce acceptable records for the existing or original drawings, all such scans shall be sorted and placed according to their respective Bridge Identification Number (BIN). In case of older contracts where the BIN system had not been utilized, the latest available data shall precede the drawing titles information (for example, Kosciuszko Br. over Newton Creek and BIN 1-07569, must be typed in the media folders, instead of “New Meeker Avenue Bridge” without a BIN obtained from the drawing’s title).

2.3 MEDIA DATABASE ORGANIZATION

The database name shall consist of the CD/DVD identification number. The folders shall be represented by the BIN and divided into subfolders carrying the Year and Contract Number label. All of the Drawings shall reside in the subfolders (see Fig.1). If the Year or Contract Number is not available, the term “NONE” shall be used.

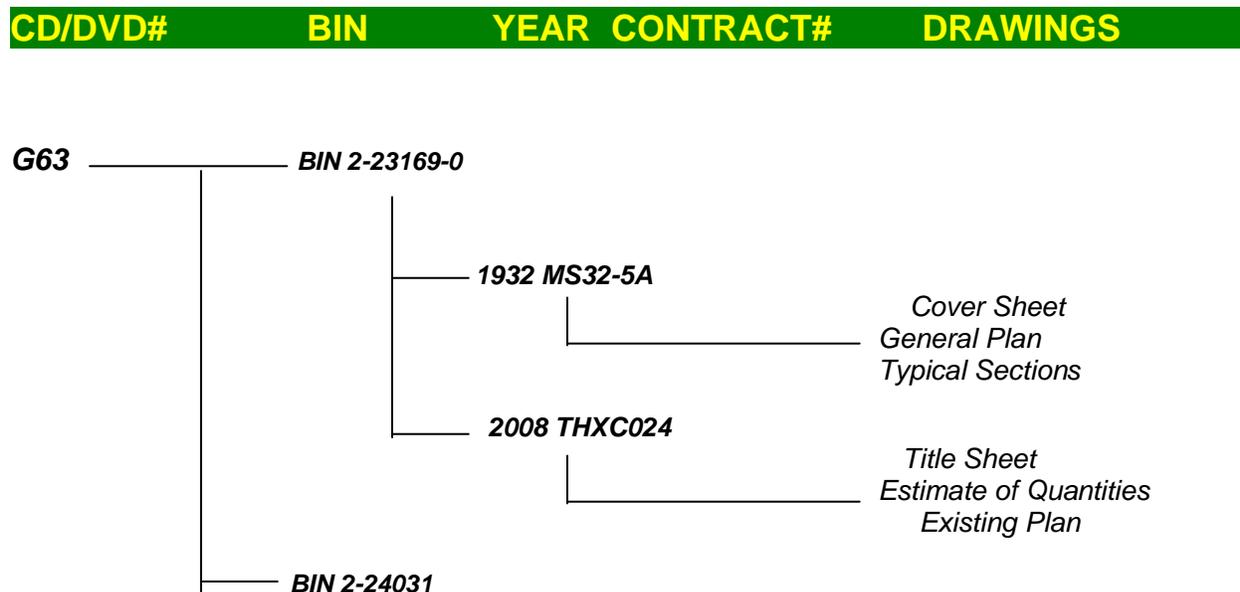


Figure 1. Database Organization

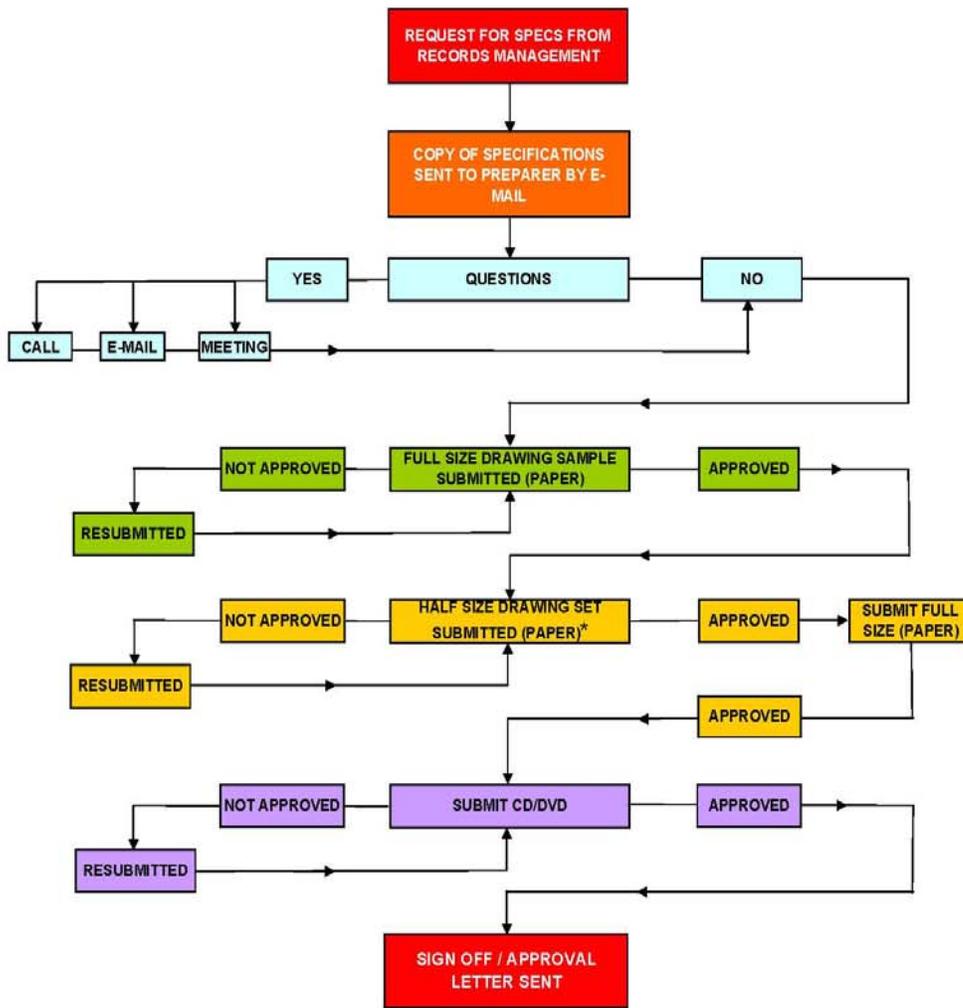
2.4 DISC PACKAGING

Pursuant to the Requirements, each CD/DVD shall be submitted to NYCDOT in a clear, slim case. The disc label shall be permanently affixed and shall include the Department's Name, BIN, Bridge Name, Contract Number, CD/DVD Identification Number, Name of the Contractor, and the Date as shown in Fig.2 below. The lettering shall be done in black, using a bolded San Serif font of size 10, where space allows.



Figure 2. Disc Label

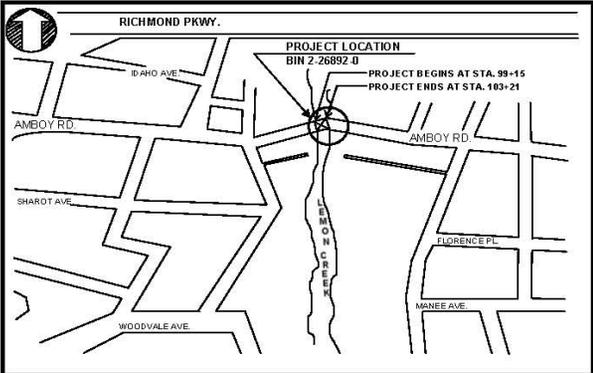
REVIEW AND APPROVAL PROCESS FOR PREPARATION OF CONTRACTUAL RECORDS



**As-Built projects with large number of drawings are exempt from this submission*

TITLE SHEET FORMAT
 SIZE "D"
ALL SAMPLES ARE NOT TO SCALE AND SHALL NOT BE USED TO GENERATE DRAWINGS
THE INFORMATION SHOWN IS FOR REFERENCE ONLY

ATTACHMENT A
 (FOR FAUS AND STATE FUNDED
 PROJECTS ONLY)

1/2" (15 mm)	8	7	6	5	4	3	2	1						
2" (50 mm)	3/6" (10 mm) min. CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION DIVISION OF BRIDGES								9/16" (14 mm) 3/8" (9 mm)	<table border="1" style="font-size: 8px;"> <tr> <th>SHEET NO.</th> <th>TOTAL SHEETS</th> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">76</td> </tr> </table>	SHEET NO.	TOTAL SHEETS	1	76
SHEET NO.	TOTAL SHEETS													
1	76													
D	5/8" min. (16 mm)								1" (25 mm)	1" (25 mm)	1/2" (15 mm)			
<h1 style="margin: 0;">REPLACEMENT OF AMBOY ROAD BRIDGE OVER LEMON CREEK</h1>														
C	RECOMMENDED BY: NEW YORK STATE DEPARTMENT OF TRANSPORTATION REGION 11 NAME _____ DATE _____ REGIONAL DIRECTOR NAME _____ DATE _____ DIRECTOR OF STRUCTURES			1/4" min. (6 mm)			BIN 2-26892-0 PIN 84195SI399BR CONTRACT NO. HBRC007 CD NO. L21A FEDERAL AID PROJECT NO.118-0371-104 BOROUGH OF STATEN ISLAND COUNCIL DISTRICT: 38 COMMUNITY BOARD: 7			1/8" min. (3 mm) lettering				
(FOR FAUS AND STATE FUNDED PROJECTS ONLY)														
NEW YORK CITY MAINTENANCE NOTE THE DIVISION OF MAINTENANCE RESPONSIBILITY FOR THE BRIDGE AFTER THE COMPLETION OF THIS CONTRACT WILL REMAIN THE SAME AS THE DIVISION OF MAINTENANCE RESPONSIBILITY WHICH EXISTED BEFORE THIS CONTRACT. ALL EXISTING SANITARY AND OTHER SEWERS NOT DEEMED PART OF THE PROJECT BY THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION COMMISSIONER, WATER MAINS, HYDRANTS, AND OTHER MUNICIPALLY OR PRIVATELY OWNED FACILITIES WITHIN THE LIMITS OF THE RIGHT OF WAY WHICH REMAIN IN SERVICE UNCHANGED AND ALL SUCH FACILITIES RELOCATED OR PROTECTED AS PART OF THE WORK PERFORMED UNDER THE PROJECT WHETHER CROSSINGS LOCATED, WITHIN OR ADJACENT TO THE RIGHT OF WAY SHALL BE MAINTAINED AS THE CASE MAY BE BY THE MUNICIPALITY OR BY THE AGENCY OR UNIT HAVING CONTROL OR JURISDICTION THEREOF AT NO COST OR EXPENSE TO THE D.O.T. MAINTENANCE GUIDELINES FOR THE REHABILITATION WORK UNDER THIS CONTRACT SHALL BE IN ACCORDANCE WITH THOSE CONTAINED IN THE AASHTO MANUAL.														
B	RECOMMENDED BY: NEW YORK CITY DEPARTMENT OF TRANSPORTATION DIVISION OF BRIDGES NAME _____ P.E. _____ DATE _____ DIRECTOR NAME _____ P.E. _____ DATE _____ ENGINEER-IN-CHARGE NAME _____ P.E. _____ DATE _____ PROJECT ENGINEER						APPROVED BY: JANETTE SADIQ-KHAN _____ DATE _____ COMMISSIONER LORI ARDITO _____ DATE _____ FIRST DEPUTY COMMISSIONER HENRY D. PERAHIA, P.E. _____ DATE _____ DEPUTY COMMISSIONER/ CHIEF BRIDGE OFFICER JAY PATEL, P.E. / LAWRENCE S. KING, P.E. _____ DATE _____ DEPUTY CHIEF ENGINEER EAST RIVER/MOVABLE BRIDGES/ ROADWAY BRIDGES KAMAL KISHORE, P.E. _____ DATE _____ DEPUTY CHIEF ENGINEER ENGINEERING REVIEW & SUPPORT RUSSELL HOLCOMB, P.E. _____ DATE _____ DEPUTY CHIEF ENGINEER BRIDGE MAINTENANCE, INSPECTIONS AND OPERATIONS							
A	PREPARED BY: NAME OF CONSULTANT NAME _____ P.E. _____ DATE _____ CONSULTANT			9/32" min. (7 mm) lettering			6 1/4"			1/2" (15 mm)				
RECORD AS-BUILT (SHOP) DRAWINGS														
1. CONTRACTOR: ADDRESS: CERTIFIED CORRECT BY _____ DATE: _____ 2. COMMISSIONER'S REPRESENTATIVE - RESIDENT ENGINEER OR CONSTRUCTION SUPERVISION CONSULTANT ADDRESS: CERTIFIED CORRECT BY _____ DATE: _____														
CERTIFICATION BLOCK FOR AS-BUILT OR SHOP DRAWINGS ONLY														
4 1/4" (108 mm)														
34" (865 mm)														

TITLE SHEET FORMAT FOR COMBINED PROJECTS

SIZE "D"

ALL SAMPLES ARE NOT TO SCALE AND SHALL NOT BE USED TO GENERATE DRAWINGS
THE INFORMATION SHOWN IS FOR REFERENCE ONLY

ATTACHMENT C

	8	7	6	5	4	3	2	1	
1/2" (15 mm) 2" (50 mm) 22" (560 mm) 13"	3/8" (10 mm) min. 3/8" (10 mm) min. 3/8" (10 mm) min. 3/16" min. (5mm) 1/8" min. (3 mm)	CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION DIVISION OF BRIDGES RECONSTRUCTION OF WEST 232ND STREET BRIDGE OVER HENRY HUDSON PARKWAY BIN 2-22945-0 PIN 84195SI399BR CONTRACT NO. HBRC123 CD NO. L21A RECONSTRUCTION OF WEST 239TH STREET BRIDGE OVER HENRY HUDSON PARKWAY BIN 2-22947-0 PIN 84195SI400BR CONTRACT NO. HBRC124 CD NO. L22A RECONSTRUCTION OF WEST 252ND STREET BRIDGE OVER HENRY HUDSON PARKWAY BIN 2-22950-0 PIN 84195SI401BR CONTRACT NO. HBRC125 CD NO. L23A BOROUGH OF THE BRONX COUNCIL DISTRICT: 11 COMMUNITY BOARD: 8	SHEET NO. 1 TOTAL SHEETS 99	3/16" (14 mm) 3/8" (9 mm)	1" (25 mm) 1" (25 mm) 1/2" (15 mm)	1 1 1 1 1 1 1	1 1 1 1 1 1 1	1 1 1 1 1 1 1	1 1 1 1 1 1 1
RECOMMENDED BY: NEW YORK CITY DEPARTMENT OF TRANSPORTATION DIVISION OF BRIDGES NAME _____ P.E. _____ DATE _____ DIRECTOR NAME _____ P.E. _____ DATE _____ ENGINEER-IN-CHARGE NAME _____ P.E. _____ DATE _____ PROJECT ENGINEER PREPARED BY: NAME OF CONSULTANT _____ NAME _____ P.E. _____ DATE _____ TITLE	LOCATION PLAN IS OPTIONAL (SPACE PERMITTING)	APPROVED BY: JANETTE SADIK-KHAN _____ DATE _____ COMMISSIONER LORI ARDITO _____ DATE _____ FIRST DEPUTY COMMISSIONER HENRY D. PERAHIA, P.E. _____ DATE _____ DEPUTY COMMISSIONER/ CHIEF BRIDGE OFFICER JAY PATEL, P.E. / LAWRENCE S. KING, P.E. _____ DATE _____ DEPUTY CHIEF ENGINEER EAST RIVER/MOVABLE BRIDGES/ ROADWAY BRIDGES KAMAL KISHORE, P.E. _____ DATE _____ DEPUTY CHIEF ENGINEER ENGINEERING REVIEW & SUPPORT RUSSELL HOLCOMB, P.E. _____ DATE _____ DEPUTY CHIEF ENGINEER BRIDGE MAINTENANCE, INSPECTIONS AND OPERATIONS							
1/2" (15 mm) 4 1/4" (108 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)	1/2" (15 mm)
	34" (865 mm)								

ATTACHMENT NO. 3

EQUIPMENT FOR ENGINEER'S FIELD OFFICE

ATTACHMENT NO. 3

1. EQUIPMENT FOR ENGINEER'S FIELD OFFICE

The following equipment shall be provided by the REI Consultant for Engineer's Field Office for City let contract.

NO.	EQUIPMENT	QUANTITY
1.	Personal Computer meeting the latest operating system with the following minimum requirements: 4GB DDR SDRAM, 250GB Serial ATA Hard Drive (7200RPM), DVD+R/+RW Drive, 48x CD-RW Drive, 10/100 Ethernet network card, 19" or bigger wide screen LCD monitor, 64MB NVIDIA GeForce 7500 LE, 15-in-1 USB media card reader, power supply with built-in surge suppression; 101- key keyboard with optical mouse. Anti virus protection subscription should be provided up to completion of the contract.	SEE TABLE 1 BELOW
2.	Every Desktop and Notebook computer should have Microsoft Office 2007 Professional or latest including CD-ROM/diskettes, operations manual and valid software license agreements or approved equal programs.	SEE TABLE 1 BELOW
3.	<p>a. Two-way radio communication system (mobile telephone with two-way radio capabilities) which shall be similar to Nextel or approved equal.</p> <p>b. Mobile telephone equipment and service with both telephone and two-way radio capabilities.</p> <p>The following requirements are applicable to both of the above:</p> <p>Minimum of 500 minutes per month air time calling plan and minimum of 500 minutes per month two-way radio (or mobile to mobile) air time calling plan. Must provide continuous coverage across the entire regional area. All necessary hardware, accessories, operating manuals and other pertinent media for all the components shall be provided. The accessories shall include AC power charging unit, hands-free operation accessories, belt clip/holster and DC power cord for in-vehicle use.</p> <p>All equipment and services furnished shall be subject to approval by the Engineer. The REI Consultant shall submit to the Engineer a list of at least 3 service providers with their available phone equipment and calling plan options. The list shall include the following information for each service provider:</p> <ul style="list-style-type: none"> • Name of the Company including contact information • Available calling plans • Available telephone equipment • Service contract details and pricing information <p>The Engineer will select the service provider, equipment and calling plan to be provided. As soon as the mobile telephones are provided, the Contractor shall supply qualified instruction to Department personnel regarding their proper operation. The Contractor shall maintain all furnished equipment and services in good working condition and shall provide replacement, due to breakdown, damage, loss, or theft within 24 hours of notification.</p>	SEE TABLE 1 BELOW

TABLE 1
REQUIRED QUANTITIES

DESCRIPTION	Field Office					
	TYPE 1	TYPE 2	TYPE 3	TYPE 4	TYPE 5	TYPE 6
PERSONAL COMPUTERS	2	3	4	5	6	8
SOFTWARE PACKAGES	2	3	4	5	6	8
TWO-WAY RADIO COMMUNICATION SYSTEMS	2	3	4	5	6	8
MOBILE TELEPHONES	2	3	4	5	6	6

NOTE: ALL Personal computers, software packages and manuals shall become the property of the REI Consultant at the end of the project.

BASIS OF PAYMENT

Payment shall be made from out of pocket expenses account in accordance with the PPB Rules upon submission of original voucher for purchasing computers, software packages, two-way radio communication systems and mobile phones. Monthly payment shall be made for two-way radios and mobile phones upon furnishing of monthly bills or as the directed of the Engineer.

2. ENGINEER’S FIELD OFFICE/PC SETUP

- a) The REI Consultant shall furnish required number of personal computers (PC’s) and software packages as listed in Table 1 for selected type of Engineer’s Field Office (Type 1 to type 6).
- b) PC’s and software are to be delivered to the NYCDOT Division of Procurement and Technology, IT & Telecom Unit, for initial setup. Advance notification shall be made to this unit before the shipment is made. Shipping address is:

NYCDOT Division of Procurement and Technology
IT & Telecom Unit
Attn: John Sotomayor
55 Water Street, 7th Floor
New York, NY 10041

When set up is complete, the REI Consultant will be notified to pick up the equipment. A DOT employee will help with the initial set up at the project site.

- c) The Contractor is responsible for the physical security of all equipment and software at the Engineer’s Field Office.
- d) Back up of all data on the Server (PC) to the Division of Bridges will occur automatically each night. It is therefore the Contractor’s responsibility to insure that electrical service and phone connections are available at all times during the Project. In the event that there is an interruption in these services, the REI Consultant shall promptly contact the IT & Telecom unit at the address above.

- e) The REI Consultant shall be responsible for servicing and maintaining computer systems throughout the duration of the contract. The REI Consultant shall be responsible for upgrading the computer system every 12 months as appropriate.

The Contractor shall provide High Speed Internet Service (Speed 3 Mbps or higher) with wireless router for the duration of the project.

The system shall remain in service until the Engineer requests its removal in writing or the City relinquishes the Engineer's Field Office, at which time the system shall become the property of the City.

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

REHABILITATION OF THE ROOSEVELT AVENUE BRIDGE OVER THE VAN WYCK
EXPRESSWAY

BOROUGH OF QUEENS

Bin# 2-24050-7

Contract No. HBQ1203A

PIN: 84110QUBR437

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)
7. FORM 6T - DBE PARTICIPATION
8. FORM 330 - STANDARD FORM

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

FORM 1T

QUALITY & RELEVANCE OF PRIOR EXPERIENCE
(FIRM IN GENERAL)

PIN: 84110QUBR437

PROJECT NAME: Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway

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 and Federal agencies. 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: 84110QUBR437

PROJECT NAME: Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway

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 owner/client 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: 84110QUBR437

PROJECT NAME: Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway

CONTRACT NO.: _____

CONSULTANT: _____

OVERALL APPROACH TO PROJECT: (Staffing Sheet)

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 Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway

PIN# : 84110QUBR437

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.	
<u>TOTALS:</u>	_____

DO NOT INCLUDE SALARIES ON THIS FORM

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

FORM 5T NYCDOT CURRENT WORKLOAD DISCLOSURE

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

PIN: _____ FIRM NAME: _____

CONTRACT NO.: _____ CONTACT PERSON: _____

PROJECT NAME: _____ PHONE NUMBER _____

BIN: _____ ADDRESS OF OFFICE(S) TO PERFORM WORK _____

DATE OF RFP: _____

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

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

- I. Remaining NYC-DOT work of proposed office(s) (from back of sheet) with:
 All NYC-DOT \$ _____ Bureau of Bridges ONLY \$ _____
- II. Expected billings for next 18 months:
- A. NYC-DOT WORK: total expected billings in next 18 months. \$ _____
- B. WORK WITH OTHER PUBLIC AGENCIES: total expected in the next 18 months \$ _____
- C. PRIVATE WORK: total expected billings on projects in next 18 months. \$ _____
- TOTAL (A + B + C) \$ _____

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

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

- IV. Other firm(s) proposed for use on this project
- | | | |
|-------|---------------|----------|
| _____ | _____ % _____ | \$ _____ |
| _____ | _____ % _____ | \$ _____ |

CERTIFICATION

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

DATE

SIGNATURE (OFFICER OR PARTNER)

FORM 5T

Remaining work with NYCDOT (within Department)

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

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

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

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

Construction Division (includes only Resident Engineering Inspection)				

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

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

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

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

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

Use the following as a ratings guide:

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

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

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

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

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

FORM 6T

DBE PARTICIPATION

PIN: _____

PROJECT NAME: _____

CONTRACT NO.: _____

CONSULTANT: _____

Participation by DBE Consultants:

Is being proposed

Participation by DBE Consultants:

Is being not proposed

If being proposed, attach the following:

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

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

ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0157
Expires: 6/30/2007

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 1101 - 1104) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of

pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

SPECIFIC INSTRUCTIONS

Part I - Contract-Specific Qualifications

Section A. Contract Information.

1. **Title and Location.** Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.
2. **Public Notice Date.** Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.
3. **Solicitation or Project Number.** Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact.

- 4-8. **Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address.** Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

Section C. Proposed Team.

9-11. **Firm Name, Address, and Role in This Contract.** Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. **Name.** Self-explanatory.

13. **Role in This Contract.** Self-explanatory.

14. **Years Experience.** Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. **Firm Name and Location.** Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. **Education.** Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. **Current Professional Registration.** Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. **Other Professional Qualifications.** Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. **Relevant Projects.** Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. **Example Project Key Number.** Start with "1" for the first project and number consecutively.

21. **Title and Location.** Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. **Year Completed.** Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. **Project Owner.** Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. **Point of Contact Name.** Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. **Point of Contact Telephone Number**
Self-explanatory.

24. **Brief Description of Project and Relevance to This Contract.** Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

Section G. Key Personnel Participation in Example Projects.

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information.

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

Section I. Authorized Representative.

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mech. Engineer	X	X	X	X						
Tara C. Donovan	Chief Elec. Engineer	X	X		X						

29. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport RI

Part II - General Qualifications

See the "General Instructions" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was

effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

List of Disciplines (Function Codes)

Code	Description	Code	Description
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Nav aids; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
		E13	Environmental Testing and Analysis
B01	Barracks; Dormitories	F01	Fallout Shelters; Blast-Resistant Design
B02	Bridges	F02	Field Houses; Gyms; Stadiums
C01	Cartography	F03	Fire Protection
C02	Cemeteries (<i>Planning & Relocation</i>)	F04	Fisheries; Fish ladders
C03	Charting: Nautical and Aeronautical	F05	Forensic Engineering
C04	Chemical Processing & Storage	F06	Forestry & Forest products
C05	Child Care/Development Facilities	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C06	Churches; Chapels	G02	Gas Systems (Propane; Natural, Etc.)
C07	Coastal Engineering	G03	Geodetic Surveying: Ground and Airborne
C08	Codes; Standards; Ordinances	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C09	Cold Storage; Refrigeration and Fast Freeze	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C10	Commercial Building (<i>low rise</i>); Shopping Centers	G06	Graphic Design
C11	Community Facilities	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C12	Communications Systems; TV; Microwave	H02	Hazardous Materials Handling and Storage
C13	Computer Facilities; Computer Service	H03	Hazardous, Toxic, Radioactive Waste Remediation
C14	Conservation and Resource Management	H04	Heating; Ventilating; Air Conditioning
C15	Construction Management	H05	Health Systems Planning
C16	Construction Surveying	H06	Highrise; Air-Rights-Type Buildings
C17	Corrosion Control; Cathodic Protection; Electrolysis	H07	Highways; Streets; Airfield Paving; Parking Lots
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H08	Historical Preservation
C19	Cryogenic Facilities	H09	Hospital & Medical Facilities
D01	Dams (<i>Concrete; Arch</i>)	H10	Hotels; Motels
D02	Dams (<i>Earth; Rock</i>); Dikes; Levees	H11	Housing (<i>Residential, Multi-Family; Apartments; Condominiums</i>)
D03	Desalinization (<i>Process & Facilities</i>)	H12	Hydraulics & Pneumatics
D04	Design-Build - Preparation of Requests for Proposals	H13	Hydrographic Surveying
D05	Digital Elevation and Terrain Model Development		
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

List of Experience Categories (Profile Codes)

Code	Description	Code	Description
I01	Industrial Buildings; Manufacturing Plants	P09	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P10	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P11	Postal Facilities
I04	Intelligent Transportation Systems	P12	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P13	Public Safety Facilities
I06	Irrigation; Drainage		
J01	Judicial and Courtroom Facilities	R01	Radar; Sonar; Radio & Radar Telescopes
L01	Laboratories; Medical Research Facilities	R02	Radio Frequency Systems & Shieldings
L02	Land Surveying	R03	Railroad; Rapid Transit
L03	Landscape Architecture	R04	Recreation Facilities (Parks, Marinas, Etc.)
L04	Libraries; Museums; Galleries	R05	Refrigeration Plants/Systems
L05	Lighting (Interior; Display; Theater, Etc.)	R06	Rehabilitation (Buildings; Structures; Facilities)
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R07	Remote Sensing
M01	Mapping Location/Addressing Systems	R08	Research Facilities
M02	Materials Handling Systems; Conveyors; Sorters	R09	Resources Recovery; Recycling
M03	Metallurgy	R10	Risk Analysis
M04	Microclimatology; Tropical Engineering	R11	Rivers; Canals; Waterways; Flood Control
M05	Military Design Standards	R12	Roofing
M06	Mining & Mineralogy	S01	Safety Engineering; Accident Studies; OSHA Studies
M07	Missile Facilities (Silos; Fuels; Transport)	S02	Security Systems; Intruder & Smoke Detection
M08	Modular Systems Design; Pre-Fabricated Structures or Components	S03	Seismic Designs & Studies
N01	Naval Architecture; Off-Shore Platforms	S04	Sewage Collection, Treatment and Disposal
N02	Navigation Structures; Locks	S05	Soils & Geologic Studies; Foundations
N03	Nuclear Facilities; Nuclear Shielding	S06	Solar Energy Utilization
O01	Office Buildings; Industrial Parks	S07	Solid Wastes; Incineration; Landfill
O02	Oceanographic Engineering	S08	Special Environments; Clean Rooms, Etc.
O03	Ordnance; Munitions; Special Weapons	S09	Structural Design; Special Structures
P01	Petroleum Exploration; Refining	S10	Surveying; Platting; Mapping; Flood Plain Studies
P02	Petroleum and Fuel (Storage and Distribution)	S11	Sustainable Design
P03	Photogrammetry	S12	Swimming Pools
P04	Pipelines (Cross-Country - Liquid & Gas)	S13	Storm Water Handling & Facilities
P05	Planning (Community, Regional, Areawide and State)	T01	Telephone Systems (<i>Rural; Mobile; Intercom, Etc.</i>)
P06	Planning (Site, Installation, and Project)	T02	Testing & Inspection Services
P07	Plumbing & Piping Design	T03	Traffic & Transportation Engineering
P08	Prisons & Correctional Facilities	T04	Topographic Surveying and Mapping
		T05	Towers (<i>Self-Supporting & Guyed Systems</i>)
		T06	Tunnels & Subways

List of Experience Categories (Profile Codes)

Code	Description
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

ARCHITECT - ENGINEER QUALIFICATIONS

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

C. PROPOSED TEAM

(Complete this section for the prime contractor and all key subcontractors.)

	<i>(Check)</i>			9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J-V PARTNER	SUBCON- TRACTOR			
a.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		

D. ORGANIZATIONAL CHART OF PROPOSED TEAM

(Attached)

E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT
(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION <i>(City and State)</i>			
16. EDUCATION <i>(DEGREE AND SPECIALIZATION)</i>		17. CURRENT PROFESSIONAL REGISTRATION <i>(STATE AND DISCIPLINE)</i>	
18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i>			

19. RELEVANT PROJECTS

	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
a.	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
b.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
c.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
d.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
e.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
23. PROJECT OWNER'S INFORMATION		
a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(Include scope, size, and cost)</i>		

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT		
a. (1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
b. (1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
c. (1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
d. (1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
e. (1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
f. (1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE

H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

I. AUTHORIZED REPRESENTATIVE
The foregoing is a statement of facts.

31. SIGNATURE

32. DATE

33. NAME AND TITLE

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 Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway PIN: 84110QUBR437
 BIN: 2-24050-7

PRIME CONSULTANT: _____ CONTRACT NO.: HBQ1203A

CONSULTANT ON THIS FORM: _____ PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
 OTHER/ _____

(COLUMN 1) JOB TITLE ASCE/NICET GRADE	(COLUMN 2) TOTAL HOURS	(COLUMN 3) HOURS THIS FIRM	(COLUMN 4) AVERAGE HOURLY RATE (FY 2011)	(COLUMN 5) LABOR COST COL3X COL4
1. _____	_____	_____	\$ _____	\$ _____
2. _____	_____	_____	\$ _____	\$ _____
3. _____	_____	_____	\$ _____	\$ _____
4. _____	_____	_____	\$ _____	\$ _____
5. _____	_____	_____	\$ _____	\$ _____
6. _____	_____	_____	\$ _____	\$ _____
7. _____	_____	_____	\$ _____	\$ _____
8. _____	_____	_____	\$ _____	\$ _____
9. _____	_____	_____	\$ _____	\$ _____
TOTALS	_____	_____		\$ _____ (T)

INTERIM OVERHEAD FACTOR _____ (A)
 PROFIT FACTOR _____ (B)
 INTERIM MULTIPLIER _____ (1+A)X(1+B) = M

TOTAL LABOR COST (T x M) \$ _____ (C)

MAXIMUM ESCALATION FACTOR = _____ 1.09 (D)

TOTAL LABOR ESCALATED TO PROJECT MIDPOINT (GRAND TOTAL COST) (C X D) \$ _____

INSTRUCTIONS:

- Each consultant of the project team is to submit a separate "Labor Cost Proposal Form". For each job title, the hours proposed by each firm of the project team in Column (3) MUST SUM to the total hours provided in Column (2).
- For Column (4), use actual average salary rates for firm for each job title at regional offices. Attach a listing of current average rates for all titles/grades/levels as approved by NYSDOT for regional offices (if available). A regional office is defined as one located within a 75 mile radius of Columbus Circle (NYC).
- The labor costs to be included in Column (5) are obtained by multiplying the hours in Column (3) by the average hourly rate in Column (4).
- The maximum escalation factor "D" indicated in the shaded area shall not be changed.
- Interim Multiplier (M) shall be rounded off to three (3) decimal figures. Total Labor Cost (C) and Column 4 & Column 5 entries shall be rounded off to two (2) decimal places.
- The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, interim overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision in accordance with applicable NYC Comptrollers' Directive 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 contract 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 Rehabilitation of the Roosevelt Avenue Bridge over the Van Wyck Expressway

PIN: 84110QUBR437

BIN: 2-24050-7

PRIME CONSULTANT: _____ CONTRACT NO.: HBQ1203A

	<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>	<u>(COLUMN 3)</u>	<u>(COLUMN 4)</u>	<u>(COLUMN 5)</u>
	<u>CONSULTANT</u>	<u>HOURS ALL FIRMS</u>	<u>ESCALATED LABOR COST TO PROJECT MIDPOINT</u>	<u>DIRECT NON-SALARY COST</u>	<u>TOTAL COST</u>
				\$	\$
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
	TOTALS	_____	_____	\$ 230,935.00	(T)
	CONSTRUCTABILITY REVIEW	_____	_____	_____	\$ 340,834.00
	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.			

SECTION VII

F) VENDEX REQUIREMENTS & CONFIRMATION OF VENDEX COMPLIANCE

ATTACHMENT F

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, each 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 212-839-9426.

(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 F

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

- G) LOCAL LAW 34
DOING BUSINESS DATA FORM AND INSTRUCTIONS**



Doing Business Data Form

To be completed by the City Agency prior to distribution			
Agency: _____		Transaction ID: _____	
Check One:	Transaction Type (check one):		
<input type="checkbox"/> Proposal	<input type="checkbox"/> Concession	<input type="checkbox"/> Contract	<input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise	<input type="checkbox"/> Grant	<input type="checkbox"/> 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.



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% or 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.



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 manager 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.

SECTION VII

H) FHWA REQUIREMENTS

FHWA BOILER PLATE
US DOT REQUIREMENTS

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts
(Included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

8. Selection of Labor: During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to ensure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employee and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHAW and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
- (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1321. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 275c)) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conforming under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1466) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 275a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made.

or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to shift, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

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

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

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

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

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

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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification

from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

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

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted in the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentage of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has obtained prior approval, evidenced by formal certification by the DOT, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyman shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOT withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOT withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Apprenticeship contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and rates and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number G28-006-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

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

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

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide safety for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph f of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY; ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by

engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation, or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 353), as amended and supplemented,

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of the contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 306 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonawmpt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "List of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indebted to or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XX. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 48 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specialty experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION CONTRACTING
REQUIREMENTS**

ATTACHMENT B

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

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

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

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

A bidder or offeror must submit to NYCDOT the appropriate Buy America certification with its proposal on this contract.

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

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

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

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

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

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

6. CLEAN WATER (33 U.S.C. §§ 1251)

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

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000.00.

7. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 5323(l) to submit the following certifications:

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

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

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

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

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

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

1. In accordance with 18 CFR 18.36(i), the Contractor agrees to provide NYCDOT, the Federal Highway Administration ("FHWA") Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees to provide the FHWA Administrator or his/her authorized representatives access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where NYCDOT, in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to NYCDOT, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NYCDOT, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (Reference 49 CFR 18.39 (i)(11)).

10. FEDERAL CHANGES (49 CFR Part 18)

The Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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

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

(2) The Contractor shall also agree to include these requirements in each subcontract exceeding \$100,000.00.

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

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

13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

14. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

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

(2) The Contractor agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

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

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FHWA assisted project for which this contract work is

being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

16. TERMINATION (49 U.S.C. Part 18)

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

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

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

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

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

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

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

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

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and

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

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

g. Termination for Convenience of Default (Cost-Type Contracts) NYCDOT may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of NYCDOT or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from NYCDOT, or property supplied to the Contractor by NYCDOT. If the termination is for default, NYCDOT may fix the fee, if

the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to NYCDOT and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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

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

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

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

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

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

(b) **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities

Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FHWA may issue.

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

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

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. ~~The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The NYCDOT's overall goal for DBE participation is currently 11%. The goal for this contract shall be 7%.~~ 18 %.

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

Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following:

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

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

For the purpose of design and construction work associated with this contract, the Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than ~~30~~ ¹⁴ days after the Contractor's receipt of payment for that work from the NYCDOT. ~~In addition, the Contractor is required to return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the NYCDOT and Contractor's receipt of the partial retainage payment related to the Subcontractor's work. Incremental acceptance shall be at 25%, 50%, 75% and 100% completion of~~

~~the design, and at 25%, 50%, 75% and 100% completion of the construction.~~

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

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

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

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

**STANDARD CLAUSES FOR ALL NEW YORK STATE
CONTRACTS**

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STANDARD CLAUSES FOR ALL NYS CONTRACTS

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$3,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term

STANDARD CLAUSES FOR ALL NYS CONTRACTS

specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BUY AMERICA CERTIFICATION

NEW YORK CITY DEPARTMENT OF TRANSPORTATION

**CONTRACTOR'S (OR SUB-CONTRACTOR'S CERTIFICATE OF COMPLIANCE WITH
CONTRACT PROVISIONS FOR BUY AMERICA**

(To be attached to each application for partial or final payment)

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

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

Please verify that all materials purchased to date are in compliance with Buy America provisions:

- All Materials are in compliance with Buy America Provisions
- Not All Materials are in compliance with Buy America Provisions; if so, provide details

Name of Contractor/ Sub-Contractor

Contract Number

Signature of Member Firm or Officer of Corporation

Title

DISCLOSURE OF LOBBYING ACTIVITIES

I _____ hereby certifies on behalf of _____
name and title of company representative name of company

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

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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

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

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

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

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

Signature and Title of Authorized Official

Date

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

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

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

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

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

Signature and Title of Authorized Official

Date

Contractor Note:

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

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS
for
Federal Transit Administration Projects
New York City Department of Transportation

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

Disadvantaged Business Enterprise Utilization Goal ~~20%~~ _____ %

A list of currently certified Disadvantaged Business Enterprises can be obtained by contacting the Unified Certification Program for NYS on the web:
<http://biznet.nysucp.net/>

Disadvantaged Business Enterprise Officer

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

Bidder Designated DBE Officer: _____
Name, Title
Telephone Number: _____
Fax Number: _____
E-Mail Address: _____

RETURN THIS PAGE WITH BID

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

- 1 **"Policy.** It is the policy of USDOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."
- 2 **"DBE Obligation.** The recipient or its contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that

DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT-assisted contracts."

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

SECTION VII

- I) FTA REQUIREMENTS &
STANDARD CLAUSES FOR ALL NEW YORK
STATE CONTRACTS**

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

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

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

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

2. BUY AMERICA (49 U.S.C. 5323 (j) 49 CFR Part 661)

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49CFR661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

Separate requirements for rolling stock are listed in 49 CFR 661. Rolling stock must be assembled in the United States and have a minimum of 60 percent domestic content.

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

3. CARGO PREFERENCE (46 U.S.C. § 55305, 46 CFR Part 381)

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

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

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

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

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

6. CLEAN WATER (33 U.S.C. §§ 1251)

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

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

7. BUS TESTING (49 U.S.C. 5324 (c), 49 CFR Part 665)

The Contractor agrees to comply with 49 USC 5323 and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

8. PRE-AWARD AND POST DELIVERY AUDITS OF ROLLING STOCK REQUIREMENTS (49 CFR Part 663)

The Contractor agrees to comply with 49 U S C 5323 and FTA's implementing regulation 49 CFR Part 663 and to submit the following certifications for pre-award and post delivery audit requirements for all purchases of rolling stock :

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

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

(3) Federal Motor Vehicle Safety Standards (FMVSS): the Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) a manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations. It is acceptable that the Contractor use one certification of FMVSS compliance as long as the certifications cover both audits.

9. LOBBYING (31 USC 1352, 49 CFR Parts 19 and 20)

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

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

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

1. In accordance with 18 CFR 18.36(i), the Contractor agrees to provide NYCDOT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his/her authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where NYCDOT, in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to NYCDOT, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. The Contractor agrees to maintain all books, records, accounts, reports and other related documents required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NYCDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (Reference 49 CFR 18.39 (i)(11)).

5. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition Rolling Stock	Professional Services
I. <u>State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II. <u>Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed non-state Grantee pass thru Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

SAT: Source Acquisition Threshold

11. FEDERAL CHANGES (49 CFR Part 18)

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

12. BONDING

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

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

c. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

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

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

(3) \$2.5 million if the contract price is more than \$5 million.

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

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

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

(b) Payment bonds

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

Performance and Payment Bonding Requirements (Non-Construction)

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

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

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

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

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

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

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

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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

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

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

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

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

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

15. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

(iv) If the Contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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

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

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

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

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

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

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

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

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

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

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

16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

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

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

18. FRAUD OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD (31 U.S.C. 3801 et seq, 49 CFR Part 31, 18 U.S.C. 1001, 49 U.S.C. 5307)

The Contractor acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to the Recipient’s activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 621 through 634 and 29 CFR Part 1625, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** – In accordance with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor shall also agree to comply with all applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws or other laws pertaining to access for individuals with disabilities to the extent applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments that the FTA may issue.

(d) Limited English Proficiency (LEP) - Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. Section 2000d-1 note, and USDOT/FTA , “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005. Contractors will comply, based on in receipt of Federal funding through NYCDOT and assisting NYCDOT in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations in accordance to FTA Circular 4702.1.

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

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

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

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

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

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

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

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

24. STATE AND LOCAL LAW DISCLAIMER

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

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

In accordance to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The NYCDOT's overall goal for DBE participation is 18%. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

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

Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26. Award of this contract is conditioned on submission of the following:

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

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

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

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

26. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

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

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

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

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

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

Appendix A

Buy America Certification

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

SECTION VII

J) FHWA/FTA Forms

INSTRUCTIONS

- * Prime Contractor must complete this form.
- * A Subcontractor Profile Form must be completed for EACH Subcontractor that will perform work or supply material on the contract. Make additional copies of this form as needed.
- * Please indicate if the form is the Initial, Revised or Final submission.

* Contract Info:

Unit/ Division: Specify unit or division letting this contract. i.e. Bridges/ Traffic/ Ferries, etc.

Contract No.: Enter New York City Contract No. as appropriate.(Example: BRC100)

Registration No.: If known, enter the Registration No. assigned to this contract.

Procurement Id No. (PIN): Enter New York City PIN No. as appropriate. (Example: 84109MBSA000)

Contract Value: Enter the Total Agreed Amount of the Proposed Contract Agreement between the Prime Contractor and the Agency for this project.

Over All Minority Goal: Enter minority percentage goal required for this contract.

MWBE / DBE: Enter minority requirement on this contract.

Contract Description: Enter project description

* Prime Info:

Name: Enter the legal name of the Prime's firm.

Address: Enter current business address.

Phone: Enter current business phone number or a number where business representatives can be located.

Fax: Enter business fax number.

EIN No.: Enter legal Employer Identification Number (EIN) number.

E-mail: Enter e-mail address, if any.

* Subcontractor Info:

. Describe Contract type as one of the following: **Construction, Professional Services, or Standard Services**

. Describe utilization as one of the following: **Subcontractor, Trucking, or Material Supplier.**

. **Registered Apprenticeship Program:** Prime Contractor must indicate if Subcontractor has a Registered Apprenticeship Program. A Subcontractor in the Construction field with a contract exceeding 1M must have a Registered Apprenticeship Program in place. Subcontractors must get a letter from the Union indicating that they are signatory contractors to their unions for the trades that they intend to use on this project and that they have a Registered Apprenticeship Program with NYSDOL.

. **Licenses:** Prime Contractor must indicate whether or not a License is required for work of Subcontractor. If so, document that the Subcontractor has all **Required Licenses**. Please attached License Certificate.

Subcontract Value: Enter the Total Agreed Amount of the Proposed Contract Agreement between the Prime Contractor and the Subcontractor for this project.

Start Date: Enter estimated date in which subcontractor work will begin.

End Date: Enter estimated date in which subcontractor work will be completed.

Name: Enter the legal name of the Subcontractor's firm.

Address: Enter current business address.

Phone: Enter current business phone number or a number where business representatives can be located.

Fax: Enter business fax number.

EIN No.: Enter legal Employer Identification Number (EIN) number.

E-mail: enter e-mail address, if any.

Certified As: Indicate what type of Minority Certification and Ethnic Group Designation the Subcontractor has, if any.

* Ethnicity requirements apply **only** to **minority** subcontractors, subconsultants, material suppliers and trucking firms for reporting purposes to the NYC Small Business Services, Mayors Office of Contract Services and the Federal-Aid Construction Programs Contract Compliance Monitoring and Reporting.

Subcontract Description: Describe work to be perform by Subcontractor/ Subconsultant.

* Prime Contractor Certification:

Enter Name, Title, Signature, and Date of the Company Official completing this form.

* Submit Completed Form To:

NYC-DOT/ Contract Compliance Unit
55 Water Street - Rm: 825
New York, NY 10041-0004
Attn: Charles Bartolotta
cbartolotta@dot.nyc.gov

**New York City Department of Transportation
SUBCONTRACTOR/ CONSULTANT PROFILE FORM**

Initial Revised Final

CONTRACT INFO

PRIME INFO

Unit/ Division: _____
 Contract No.: _____
 Contract Reg. No.: _____
 Procurement Id No. (PIN): _____
 Contract Value: _____
 Over All Minority Goal: _____ % MWBE _____ % DBE

Name: _____
 Address: _____
 Phone: _____
 Fax: _____
 EIN No.: _____
 E-Mail: _____

Contract Description:

SUBCONTRACTOR INFO

Construction Professional Services Standard Services
 Subcontractor Material Supplier Trucking Services
 Has a Registered Apprenticeship Program Y* N Has Required Licenses Y* N
 *If Yes, Please attach supporting documentation *If Yes, Please attach License Certificate

Subcontract Value: _____ Start Date: _____ End Date: _____

Name: _____
 Address: _____
 Phone: _____
 Fax: _____
 EIN No.: _____
 E-Mail: _____

Certified As **Check Appropriate Box**

	Y	N		Y	N
MBE	<input type="checkbox"/>	<input type="checkbox"/>	*Black	<input type="checkbox"/>	<input type="checkbox"/>
WBE	<input type="checkbox"/>	<input type="checkbox"/>	*Hispanic	<input type="checkbox"/>	<input type="checkbox"/>
LBE	<input type="checkbox"/>	<input type="checkbox"/>	*Asian/Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/>
DBE	<input type="checkbox"/>	<input type="checkbox"/>	*Native American Indian	<input type="checkbox"/>	<input type="checkbox"/>
Non-Profit	<input type="checkbox"/>	<input type="checkbox"/>	*Alaskan Native	<input type="checkbox"/>	<input type="checkbox"/>
*Asian Pacific American	<input type="checkbox"/>	<input type="checkbox"/>	*Subcont. Asian American	<input type="checkbox"/>	<input type="checkbox"/>

Subcontract Description:

Prime Contractor Certification

I hereby affirm that the information supplied is true and correct.

Print Name: _____ Title: _____
 Signature: _____ Date: _____

**Submit Completed Form To: NYC-DOT/ Contract Compliance Unit/ 55 Water Street - Rm: 825, New York, NY 10041-0004
 Attn: Charles Bartolotta/ cbartolotta@dot.nyc.gov**

Agency - CCU Preliminary Review

Completed By: _____ Date: _____
 1. Apprenticeship 2. Licenses

Agency - VRU Preliminary Review

Completed By: _____ Date: _____
 3. Vendex 4. Employment 5. References

Final Agency Approval - Deputy Chief Contracting Officer

Signature: _____ Date: _____ Approved Not Approved

* VRU DO NOT FORWARD SUPPLIERS/ TRUCKING PROFILE FORMS TO CMU.

FMS - Contract Management Unit

Signature: _____ Date: _____

**DESIGNATION OF AFFIRMATIVE ACTION REPRESENTATIVES
BY CONTRACTORS/SUBCONTRACTORS**

In accordance with Equal Employment Opportunity (EEO) and Disadvantaged/Minority/Women's Business Enterprise (D/M/WBE) Utilization participation requirements of the New York State Department of Transportation contract identified below, the following information shall be furnished by the contractor and all subcontractors prior to approval to work.

1. **Contract No.** _____ 2. **County** _____

3. **Contractor:** or **Subcontractor:**

Name _____

Address _____

City/State/Zip _____

4. **Equal Employment Opportunity Officer:**

Name _____

Title _____

Address _____

City/State/Zip _____

Telephone (____) _____

5. **Contract Site Equal Employment Opportunity Representative:**

Name _____

Title _____

Address _____

City/State/Zip _____

Telephone (____) _____

6. **Disadvantaged/ Minority/Women's Business Enterprise (D/M/WBE) Officer:**

Name _____

Title _____

Address _____

City/State/Zip _____

Telephone (____) _____

7. **Designation Submission:** Initial Revised

This form shall accompany D/W/MBE pre-award submittals AAPHC 89 to the Contract Compliance Unit.

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOTALS: Enter the sum of all Bid Amounts and DBE Agreed Amounts, if any.

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

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

CONTRACT No.	COUNTY	F. A. PROJECT No.	PAGE No. OF	DATE SUBMITTED
---------------------	---------------	--------------------------	------------------------	-----------------------

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

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

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

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

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

Contractor's Signature _____	Date _____	Subcontractor's Signature _____	Date _____
-------------------------------------	-------------------	--	-------------------

	ITEM No.	NAME	< 100 %	BID AMOUNT		AGREED AMOUNT \$	% to CNT
				\$ SPECIALTY	\$ NON-SPECIALTY		
1							
2							
3							
4							
5							
6							
7							
8							
9							
TOTALS: \$				\$	\$	\$	

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

APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY: _____	DATE APPROVED ____ / ____ / ____
--	--

**INSTRUCTIONS FOR COMPLETING FORM AAPHC 89-1
DBE UTILIZATION WORKSHEET AMENDMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY:	DATE APPROVED / /
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AAP 21b (6/09)
REVERSE

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
PRIME CONTRACTOR REPORT OF PAYMENTS TO DBE'S

New York State Department of Transportation DBE General Provisions requires Prime Contractors to report payments made to Disadvantaged Business Enterprises (DBEs) that are utilized on construction contracts. Prime Contractor Report of Payments to DBE's, Form AAP21b, is required when the DBE subcontractor has completed their work or when requested by the Department. Failure by the Prime Contractor to submit this report to the Department's Project Engineer-In-Charge in accordance with the above may result in the withholding of payments.

Prepare a signed copy of AAP21b, obtain the cosignature of the subcontractor and notarization and submit the form to the Project Engineer-In-Charge.

FINAL REPORT: Check YES or NO, as appropriate, to indicate whether this AAP21b covers the month of final work performed by the Subcontractor.

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

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

REPORT DATE: Enter date (Month/Day/Year) to which payment amounts refer.

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

TOTAL PAYMENTS DUE: Enter total of payments due to Subcontractor.

RETAINAGE OR OTHER WITHHOLDING: Enter amount (if any) due Subcontractor that is included in retainage not yet paid to the Prime Contractor, and/or other amounts (if any) paid to the Prime Contractor but not yet paid to the Subcontractor.

TOTAL PAYMENTS: Total value of Payments to Date, amount shown will be Total Payments Due less Retainage or Other withholding.

STATEMENT OF EXCEPTIONS: Prime Contractor will enter item number(s) of any work under dispute or the subject of exceptions or withholdings; and a brief description of the circumstances leading to the dispute or exception.

SIGNATURE: Authorized representatives of both the Prime Contractor and Subcontractor sign and date.

NOTARIZATION: The signatures must be notarized by a duly registered Notary Public.

**NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
PRIME CONTRACTOR REPORT OF PAYMENTS TO DBE'S**

FINAL REPORT YES <input type="checkbox"/> NO <input type="checkbox"/>	CONTRACT NUMBER _____	COUNTY _____	REPORT DATE _____
CONTRACTOR NAME _____ ADDRESS _____ _____ PHONE _____ FED. ID No. _____		SUBCONTRACTOR NAME _____ ADDRESS _____ _____ PHONE _____ FED. ID No. _____	
TOTAL PAYMENTS DUE: \$ _____ * FINAL RETAINAGE OR OTHER WITHHOLDING: \$ _____ TOTAL PAYMENTS \$ _____			
* STATEMENT OF EXCEPTIONS (See Instructions)			
<p style="text-align: center;">CERTIFICATION AND NOTARIZATION</p> <p>I certify that the total payments above reflect the value of the work as stated on the original AAP 19, "Schedule of Utilization" or the most recently amended "Schedule of Utilization" and that the work was performed solely by the Subcontractor named above, through employees of the Subcontractor who were under direct supervision of employees of the Subcontractor; that payments have been made by the Contractor and received by the Subcontractor as specified above; that there were no rebates, refunds or offsets applied to any payments unless the same is noted above; and that it is known to me to be true of my own knowledge.</p>			
_____ Contractor's Signature Title: _____		_____ Subcontractor's Signature Title: _____	
Sworn before me this _____ Day of _____, 20 _____		Sworn before me this _____ Day of _____, 20 _____	
_____ Notary Public		_____ Notary Public	
If this affidavit is verified by an oath administered by a Notary Public in a foreign country other than Canada, it must be accompanied by certificate authenticating the authority of the Notary who administered the oath.			