

Michael R. Bloomberg  
Mayor

Department of Transportation  
Staten Island Ferry Division

Janette Sadik-Khan  
Commissioner

## REQUEST FOR PROPOSALS

Design, Inspection & Resident Engineering Services  
In Connection With Engineering Service Agreement, Ferry Shore Facilities

CONTRACT NUMBER: 841 ESA – FSHOR  
PIN: 84110SISI534  
E-PIN: 84110M0008

RELEASE DATE OF THE RFP: MARCH 11, 2011

CONTRACT TERM: 1,460 consecutive calendar days starting from the date of the Notice to Proceed with an option to renew for an additional 730 Consecutive Calendar Days under the same terms and conditions at the sole discretion of the City.

### AUTHORIZED AGENCY CONTACT PERSON

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

Ryan Murray  
Office of the Agency Chief Contracting Officer (ACCO)  
New York City Department of Transportation  
55 Water Street – 8th Floor  
New York, New York 10041  
Phone: 212- 839 - 9733  
Fax: 212 – 839 - 4241  
E-Mail: [rmurray2@dot.nyc.gov](mailto:rmurray2@dot.nyc.gov)



March 11, 2011

Re: Request for Proposals for  
Design, Inspection and Resident Engineering Services  
In connection with Engineering Service Agreement (ESA)  
Ferry Shore Facilities  
Contract No. 841 ESA-FSHOR  
PIN 84110SISI534, EPIN 84110M0008

To Whom It May Concern:

I am pleased to invite your organization to submit a proposal for Design, Inspection, and Resident Engineering Services in connection with Engineering Service Agreement (ESA), Ferry Shore Facilities to assist the Staten Island Ferry Division. 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 March 30, 2011 at 1:00 PM, at 55 Water Street, Ground Floor Bid Room, New York, NY 10041. 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 I 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 April 15, 2011 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 Ryan Murray within 48 Hours of receipt of this RFP by Fax: (212) 839-4241.

**All questions concerning this invitation must be faxed to Ryan Murray at (212) 839-4241. If you need to contact him by telephone please call (212) 839-9733.**

Sincerely,

*Ryan Murray*  
Procurement Officer

Enclosure

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

**ATTN: RYAN MURRAY - WITHIN 48 HOURS - FAX: (212) 839-4241**

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

Consultant:		
Address:		
City	State	ZIP
Contact Person:	Phone #	
Fax #	Email	
RFP Contract No: 841 ESA - FSHOR		
RFP PIN & E-PIN: 84110SISI534 & 84110M0008		
RFP Contract Title: Design, Inspection and Resident Engineering Services In Connection With Engineering Service Agreement, Ferry Shores Facilities.		

**OR**

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

Please check **all** the reasons that apply and return this form to Ryan Murray.  
Fax: **(212) 839-4241** Email: [rmurray2@dot.nyc.gov](mailto:rmurray2@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)

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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**SECTION I: TIMETABLE**

**A. Release Date of the Request for Proposals:      **March 11, 2011****

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

Telephone #: 212- 839 - 9733

Fax #: (212) 839-4241

E-Mail Address: [rmurray2@dot.nyc.gov](mailto:rmurray2@dot.nyc.gov)

**B. Pre-Proposal Conference:**

**Date:                    March 30, 2011**

Time:                    1:00 PM

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

Attendance by proposers is optional but recommended by the Agency.

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

**Date:                    April 15, 2011**

Time:                    NO LATER THAN 2:00 PM

Location:              Proposals shall be submitted to NYCDOT Contract Section, located at  
                                  55 Water Street, Ground Floor Bid Room, New York, NY 10041

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

Proposals should be hand-delivered to NYCDOT Contract Section located at 55 Water Street, Ground Floor Bid Room, New York, NY10041

Note: All Projected Timetable dates are Tentative and subject to change.

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

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

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

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

The New York City Department of Transportation is seeking appropriately qualified vendors to provide Design, Inspection and Resident Engineering Services and Related Engineering Services for ferry shore facilities on a task order basis to assist the Department's workforce and to obtain personnel expertise which are not available in the agency.

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

The anticipated contract term for the contract is 1,460 consecutive calendar days starting from the date of the Notice to Proceed, with an option to renew for an additional 730 consecutive calendar days under the same terms and conditions.

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

It is anticipated that the payment structure for the contract which will be awarded from this RFP will be based on a combination of direct technical salary costs times a multiplier, 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.

### **D. Award Procedure**

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 rejected. The Agency's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. The Agency reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Agency deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received without discussions. Therefore, the proposer's initial proposal should contain its best technical and price terms.

Following placement by technical merit, consideration of price will be performed through the negotiation of a fair and reasonable price with the highest technically ranked proposer. In the event that the Agency is not successful in negotiating a fair and reasonable price with the top-ranked proposer, the Agency may conclude such negotiations and enter into price negotiations with the next ranked proposer as deemed necessary.

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

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

The Agency's goals and objectives for the RFP are to acquire quality engineering services and to perform competent and quality resident engineering services, construction support services and design work to insure quality construction and repair, related to all listed DOT and private ferry facilities. The Scope of Services can be found under Section I, "General Requirements" in the Proposed Contractual Agreement (See Section VII, Attachment A).

### **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)

#### **Licensing Requirements**

The prime contractor for this proposal must have, as a business entity, legal authority to render engineering services in New York State as granted by the New York State Education Department. Proposers who do not meet this requirement shall be deemed non-responsive.

#### **Preferred Requirements**

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

(1) The Proposer (i.e., prime consultant) should have a minimum of five years of broad facilities engineering experience relating to port or coastal facilities, including planning, evaluation, total design, condition assessment, and construction supervision of piers, wharves, marine foundations, and marine terminals. This experience must include substantial experience including planning and design of successfully constructed marine fendering systems for marine structures, piers, ferry terminals, or marine terminals generally, handling ships or marine vehicles with a minimum displacement of 2000 tons where the fender systems are designed for intentional contact and relatively frequent use (i.e. bridge fenders will not meet this requirement). The experience cited should include both new construction and repair/rehabilitation projects. The Proposer must have multidisciplinary capabilities, either in-house or through sub-consultants, in order to provide all professional services needed for the work, including but not limited to marine (civil) engineering, geotechnical engineering, structural engineering, hydrology, meteorology, engineering mechanics, naval architecture, and environmental engineering. Work projects cited to meet this experience requirement should preferably be U.S. domestic projects. Planning and design projects cited should be those for which the associated construction was completed and placed in service. Identify the facilities or projects cited including type of facility, its purpose and location, type of project performed (i.e. evaluation, new construction, rehabilitation, expansion, etc.), size and type of vessels served and landing schedule frequency, type and materials of construction, the type of engineering or technical work performed by the Proposer or team member and year completed, the name of the facility's owner, value of construction planned, designed or supervised by the Proposer or team member, and the name and contact information of a person working with the owner who is knowledgeable of the Proposer or team member's performance on the project. The above described information shall be included on Form 1T.

(2) At least one major completed project, within the past ten years, involving new construction, reconstruction or rehabilitation of a port facility or waterfront structure (may include piers, wharfs, bulkheads, relieving platforms, fender systems, buildings built on platforms over water, bridges, or other structures), preferably within the New York/ New Jersey Port District or similar area, with a construction value of \$10,000,000.00 or more that was designed by the Proposer (i.e., prime consultant). The Proposer's design work on the project(s) cited should be comprehensive, and include, as a minimum responsible charge of structural and geotechnical details of the project, as well as project phases during design, up to and including services of the designer during construction. Provide details as in item (2), above. The above described information shall be included on Form 1T.

(3) Demonstrated recent experience and success in estimating and managing physical construction work on port or facility rehabilitation projects, preferably in the New York/ New Jersey Port District or similar area, of \$1,000,000.00 or more in construction value. List all such projects where the physical work was completed in the past ten years and where the Proposer, or a member of the Proposer's Team was in responsible charge of the work at the site on behalf of the project owner. Provide details as in item (2), above. The above described information shall be included on Form 1T.

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

(5) The ability, either in-house or through sub-consulting arrangements to provide all disciplines necessary to complete the work of the proposed contract. The above described information shall be included on Form 3T.

(6) Project office to handle the work of this contract (provide address) to have staff and equipment (i.e., computers, CAD, e-mail and communication equipment) deemed appropriate to handle work of this contract. Provide description of office facility and equipment on Form 3T. Provide names and resumes of staff (including number of years of employment with the firm) permanently assigned to proposed project office who will or may perform work pursuant to this contract: include on Form 2T. (Note that, where warranted for specific tasks, Consultant may supplement the staff of the proposed project office with staff or capabilities from consultant's other locations or via sub-consultants, however it will be expected that Consultant will handle the bulk of the work from the project office named under this item.) (note that the City reserves the right to visit and inspect the proposed project office to verify claimed facility, equipment, and personnel prior to award.) Do not provide information for non-technical employees. Do not provide information for more than 50 employees; if more than 50 employees are involved; provide information for only the first 50 employees, starting with the highest level or most senior.

(7) Provide list of proposed categories of technical work to be done in-house and proposed work to be done by sub-consultants. The above described information shall be included on Form 3T.

(8) Project office to handle the work of this contract located within 75 miles of Columbus Circle, New York City. The above described information shall be included on Form 3T.

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

Each successful proposer shall negotiate an agreement based on and substantially similar to the proposed contractual agreement (See Section VII, Attachment A). Such agreement shall contain the appropriate United States Department of Transportation and New York State Department of Transportation requirements.

In addition, the proposers must submit the "Disclosure of Lobbying Activity" and Certification of Contractor regarding Debarment, Suspension and other Responsibility Matters, attached as Section VII (I) with its technical proposal.

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

The NYC Department of Transportation requires firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of **18 percent (18 %)**. The successful proposer must show good faith efforts that it attempted to meet the DBE goal. The list of certified DBE firms can be obtained from the following Web site: <http://biznet.nysucp.net/>

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

Pursuant to Local Law 34 of 2007, amending the City’s Campaign Finance Law, the City is required to establish a computerized database containing the names of any “person” that has “business dealings with the City” as such terms are defined in the local law. In order for the City to obtain necessary information to establish the required database, **vendors responding to this solicitation must complete the Doing Business Data Form (See Section VII, Attachment G) and return it with this proposal.** The submission of a data form that is not accurate and complete may result in appropriate sanctions.

**NO FURTHER TEXT ON THIS PAGE**

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

**Instructions:** Proposers must provide all information required in the format below. The proposal shall 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 must be paginated.

The RFP package shall consist of four (4) individually sealed components as listed below, each bound in an 8 ½" x 11" plastic spiral binding. The cover should be hard cardboard or laminated plastic, the cover should feature the name of the responding firm(s) and the contract name and numbers. Responses should be typed using 12 point font. Responses on pre-printed forms should be no smaller than 8 point font, and then only when necessary. The response may include a one page bound transmittal letter, which summarizes the respondent's understanding of the project and its ability to successfully accomplish the job. Each section should be tabbed and labeled to correspond with each section listed (i.e. IT, 2T, 3T, 4T, 5T, 6T, 7T, Standard Forms 330, Forms 4T1, 4T2 and 4T3.).

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

### **A. Proposal Format**

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

A Procedural Forms packet has been supplied with this Request for Proposals and must be fully completed. ONLY one (1) original set is to be submitted and included in the proposal package as follows:

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

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

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

A Proposal Forms Packet has been supplied with this Request for Proposals and must be fully completed. ONE (1) original set and FIVE (5) copies are to be submitted and included in the proposal package as follows:

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

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

**3. Component 3:        Cost Proposal**

A Cost Proposal Forms Packet has been supplied with this Request for Proposals and must be fully completed. ONLY one (1) original set is to be submitted and included in the proposal package as follows:

**COST PROPOSAL**

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

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

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

Performance outcome measures and their related financial incentives and/or disincentives are to 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 consultant.

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

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

All components must be individually sealed and labeled (i.e., Component 1, Component 2, 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:

<b>Proposer’s Name</b>	<b>NYC Department of Transportation ACCO Contract Management Unit 55 Water Street, Ground Floor New York, NY 10041</b>
<b>Address</b>	
<b>Contract No.: 841 ESA - FSHOR</b>	
<b>PIN: 84110SISI534 E-PIN: 84110M0008</b>	
<b>DESIGN, INSPECTION &amp; RESIDENT ENGINEERING SERVICES IN CONNECTION WITH ENGINEERING SERVICE AGREEMENT, FERRY SHORE FACILITIES. PROPOSAL SUBMISSION DEADLINE IS APRIL 15, 2011 NO LATER THAN 2:00 PM</b>	

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

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

**CHECKLIST FOR RFP**

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

**1. COMPONENT 1** – Submit ONLY one (1) original set in a separate sealed envelope along with the Technical Proposal

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

**2. COMPONENT 2** – Submit one (1) original and five (5) copies in a separate sealed envelope.

- 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-Phase I and Phase II only
- 5T NYCDOT Current Workload Disclosure
- 6T DBE Participation
- 330 Standard Form
- 330S Special Supplement

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

**COST PROPOSAL**

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

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

- Doing Business Data Form

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

### **A. Evaluation Procedures**

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

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

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

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

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

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

**All unopened price proposals will be returned to the respective proposers, at their request, 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 any discussions. Therefore, the proposer's initial proposal should contain its best technical and price terms.

### **B. Evaluation Criteria**

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

<b>1. Quality &amp; Relevance of Prior Experience with Similar Projects</b>	
- Proposed staff (Resumes)	35%
- Firm in General	20%
<b>2. Quality of Proposal</b>	
- Project Understanding & Approach to providing Engineering Services	30%
- Capacity of the Firm to perform diverse tasks & diversification of staff	5%
- Innovation	5%
<b>3. Staff Availability</b>	
- Staff Availability & Attrition Rate	5%
<b>TOTAL:</b>	<b>100%</b>

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

The 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 the contract shall be subject to the timely completion of contract negotiation between the Agency and the selected proposer.

**D. Exclusion from Participation in Subsequent Solicitation(s)**

This RFP is for Design, Inspection, and Resident Engineering Services in connection with Engineering Service Agreement (ESA), Ferry Shore Facilities. The selected proposer from this RFP shall not be allowed to participate, whether as a consultant or sub-consultant, in response to a subsequent solicitation(s) utilizing the specifications they drafted, except as provided under New York City's Procurement Policy Board Rules

**NO FUTHER TEXT ON THIS PAGE**

## **SECTION VI: GENERAL INFORMATION TO PROPOSERS**

- A. Complaints.** The New York City Comptroller is charged with the audit of contracts in New York City. Any Proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835 New York NY 10007; the telephone number is (212)-669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its investigations Division, 80 Maiden Lane, New York, NY 10038. The telephone number is (212) 825-5959.
- B. Applicable Laws.** This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at 212-788-7820.
- C. General Contract Provisions.** Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A- General Provisions Governing Contract for Consultants, Professional and Technical Services" or if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contract Person.
- D. Contract Award.** Contract award is subject to each of the following applicable conditions and any others that may apply; New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and section 6-108.1 of New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.
- E. Proposer Appeal Rights.** Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.
- F. Multi-Year Contracts.** Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.
- G. Prompt Payment Policy.** Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.
- H. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
- I. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secret and provide any justification of why such materials, upon request, should not be

disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

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

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

**L. Vendex Fees.** Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1 million) (above \$1 million).

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

The Agency has determined that the contract to award through this Request for Proposal (contract No.: 841 ESA – FSHOR, PIN 84110SIS1534, E-PIN 84110M0008) for Design, Inspection, and Resident Engineering Services in Connection with Engineering Service Agreement, Ferry Shore Facilities will not directly result in the displacement of any New York City employee.

  
\_\_\_\_\_  
Agency Chief Contracting Officer

3/4/11  
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 212/857-16809**

## SECTION VII: ATTACHMENTS

- A) **Proposed Contractual Agreement**
- B) **General Provisions (Appendix A)**
- C) **Procedural Forms Packet**
- D) **Proposal Forms Packet**
- E) **Cost Proposal Forms Packet**
- F) **VENDEX Requirements and Confirmation of VENDEX Compliance**  
*(To be submitted in a separate sealed envelope along with the Technical Proposal)*
- G) **Local Law 34 - Doing Business Data Form and Instructions**
- H) **Federal Transit Administration (FTA) Third Party Requirement**
- I) **FTA & DBE Forms**
- J) **Standard Clauses for New York State Contracts**

# **SECTION VII: ATTACHMENTS**

## **A) PROPOSED CONTRACTUAL AGREEMENT**

**GENERAL REQUIREMENTS OF CONTRACT FOR THE SERVICES OF THE CONSULTANT  
FOR**

**DESIGN, INSPECTION, RESIDENT ENGINEERING SERVICES & CONSULTANT SUPPORT  
SERVICES IN CONNECTION WITH ENGINEERING SERVICE AGREEMENT, FERRY SHORE  
FACILITIES.**

**CONTRACT NOS.: 841 ESA – FSHOR  
PIN: 84110SISI534  
E-PIN: 84110M0008**

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

**REQUIREMENTS OF CONTRACT FOR THE SERVICES OF THE ENGINEER**

**FOR**

**CONTRACT NO.: 841 ESA-FSHOR**

**PIN: 84110SISI534**

**E-PIN: 84110M0008**

**I. GENERAL REQUIREMENTS:**

Through this contract, the Consultant shall be required to provide, on an as needed basis, architectural, engineering and construction related services for various ferry facilities of the Department of Transportation. The ferry facilities consist of ferry terminals and maintenance berthing facilities, together with their associated marine and upland structures, buildings, including facilities for connecting transit modes. Refer to Section XIV for a list of NYCDOT ferry facilities.

The ferry facilities, include, but are not limited to, piers, pontoons, gangways and moveable bridges, ship fendering structures and mooring systems, passenger terminal buildings, soil retaining structures, dredged channels, fueling and bulk oil storage and distribution facilities, maintenance and industrial buildings, elevated traffic structures, rail rapid transit stations and bus terminals, and parking facilities, together with all associated systems, equipment, utilities and ancillary structures. Facilities are located both on platforms over water and upland and are located Citywide.

This agreement provides funding for survey, inspection, design, analysis, planning, shop drawing review, value engineering, construction supervision/inspection, and constructability review activities for aforementioned facilities. During the term of this Engineering Services Agreement (ESA), projects and work assignments may be identified, associated individual scope of services prepared, and agreement reached with the consultant regarding staffing requirements, cost, and schedule. Work will commence immediately upon registration of individual Project Task Agreements.

**PROJECT TASK AGREEMENT PROCESS**

Throughout the term of the Contract, as the need arises for architectural, engineering and construction related services with respect to a specific project or facility, the Commissioner shall enter into a Project Task Agreement with the Consultant. The Consultant shall provide services in accordance with the Project Task agreement as specified therein. Section VI of these Specific Requirements sets forth the Project Task Agreement process, including the items to be specified in each Project Task Agreement. The Consultant shall not perform services pursuant to this Contract until a Project Task Agreement covering the services is in place as specified herein.

**II. ENGINEERING SERVICES FOR THIS CONTRACT MAY CONSIST OF THE FOLLOWING:**

The services required shall be total design services in connection with rehabilitation and/or new construction of facilities, condition inspection services, and resident engineering or other professional services during construction. The services will be obtained from the Consultant, as specified by the Commissioner, on a Project Task Agreement basis.

The services should consist in whole, in part, or in combination, as directed by the Commissioner, of those technical services required for specific projects in the Department of Transportation program. Typical assignments may include the work of one or more of the following technical disciplines, or other disciplines;

- Architecture;
- Civil Engineering (including subspecialties);
- Electrical Engineering (including subspecialties);
- Geotechnical Engineering;
- Structural Engineering;
- Mechanical Engineering (including subspecialties);
- Transportation Planning;
- Urban Planning;
- Naval Architecture and Marine Engineering
- Plan Approval Expediting;
- Life Safety and Security Planning;
- Project Coordination and Management;
- Construction Engineering and Management;
- Structural Inspectors (Including Divers);
- Coastal Engineering;
- Facility Preventive Maintenance Planning;
- Shop Drawing Review;
- Construction Support Services;
- Resident Engineering & Inspection;
- Environmental Engineering (Hazardous Materials, Water and Air Pollution Mitigation);
- Program Management;
- Cost Estimating;
- Industrial/ Occupational Safety Analysis and Design;

Work shall be progressed and designed in accordance with the following references and current standards used in the U.S. maritime and public transportation industries and in accordance with all applicable laws of the United States, New York State, and New York City, whether or not specifically named or listed herein:

Code of Federal Regulations (CFR), Title 33 (Navigation and Navigable Waters)

United States Coast Guard (USCG), Navigation and Vessel Inspection Circulars

Code of Federal Regulations (CFR), Title 29 (Labor)

Code of Federal Regulations (CFR), Title 40 (Protection of the Environment)

The Residential Lead-Based Paint Reduction Act of 1992, Title X

National Fire Protection Association (NFPA), 70, National Electric Code (NEC)

United States Department of Labor, "Safety and Health Regulations for Long shoring"

United States Department of Transportation Federal Transit Administration Procurement Rules

United States Navy Military Sealift Command, Work Item Preparation Guide

New York State Department of Environmental Conservation Regulations

AASHTO Standard Specifications for Highway Bridges

AASHTO Guide for the Development of Bicycle Facilities

AISC Properties of Structural Shapes

ASTM Standard Specifications

New York City Procurement Policy Board Rules

Interfacing Details and Characteristics of Existing Shore Facilities

Staten Island Ferry Safety Management System Manuals

International Safety Management Code

New York City Department of Transportation Staten Island Ferry Standard Operating Procedures

New York City Building Code

The following are sample tasks that may be required to be performed during the course of the contract:

### **SYSTEM AND EQUIPMENT REHABILITATION, RETROFIT, OR CONVERSION DESIGN**

The Consultant shall perform an in-depth field inspection and evaluation in accordance with a Project Task Agreement. The Consultant shall prepare and submit a "Rehabilitation Project Report" summarizing its findings, rehabilitation, retrofit, conversion or replacement alternatives, estimated costs, and recommendation of the preferred course of action.

Upon approval of the Rehabilitation Project Report by the Department and receipt of direction to proceed the Consultant shall prepare a "Rehabilitation Preliminary Plan."

Upon approval of the Rehabilitation Preliminary Plan the Consultant shall prepare detailed rehabilitation plans, specifications and estimates. Work will consist of the preparation and submission of Advance Plans and Final Plans, Specifications, and Estimates. For each of these submissions, the Consultant will make revisions in accordance with Department comments. The finished work product shall be suitable for construction and receipt of competitive bids.

### **PLANNING OR ENGINEERING ASSIGNMENTS**

The Consultant shall perform Planning or Engineering tasks in accordance with the individual scope of services defined by a Project Task Agreement.

### **CONSTRUCTABILITY REVIEWS**

If required by a Project Task Agreement, or for all design services furnished by the Consultant, the Consultant shall review Advance Plans and other available project information and prepare a report that documents constructability issues that could potentially delay or disrupt the completion of the project. The objective of the review is to assure that contract documents are sufficiently detailed so that the project can be bid rationally and built without significant contract changes or delays. When agreed with or requested by the Department, the Consultant shall engage or employ an approved contractor for this task.

### **CONSTRUCTION SUPERVISION, RESIDENT ENGINEERING AND INSPECTION**

In accordance with a Project Task Agreement, the Department may direct the Consultant to function as "the Engineer or Project Manager" in relation to one or more construction, rehabilitation of facilities..

The Consultant agrees to provide, to the satisfaction of the Department, all necessary construction supervision, 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.

The Consultant agrees that it will endeavor to safeguard the Department against defects and deficiencies in the work and that it will use reasonable care and reasonable powers of observation and detection in determining that the work conforms to the Construction or Repair Contract documents.

All Construction Supervision, Resident Engineering and Inspection work performed or furnished by the Consultant shall be under the direction of an appropriately educated and/ or experienced New York State Licensed Professional Engineer employed by the Consultant. However a Professional Engineer employed by the Consultant to supervise construction or repair work need only personally attend field work periodically as the Consultant deems necessary in order for the Consultant to remain in responsible charge of its field supervision and inspection efforts or when and to the extent the Department agrees or directs that it is necessary to have a person in charge at the site for which the authority and capacity to approve deviations from the plans and specifications or make changes in design (i.e., a "Resident Engineer") without referring to the Consultant's project or home office, or for other reasons deemed necessary by the Department.

Except as noted above, the Consultant's person in charge at the site (i.e., termed "Chief Inspector" herein) may be unlicensed with the understanding that the Chief Inspector is working under the direction of a responsible Professional Engineer in the Consultant's home or project office and will otherwise take full charge of the work at the site. Chief Inspectors shall generally meet all of the requirements of an ASCE Grade IV Engineer or higher level Engineer, with the exception of lack of New York Professional Engineer Registration.

All candidates for Resident Engineer or Chief Inspector shall have appropriate education and/ or experience and their credentials shall be submitted by the Consultant and subject to approval of the Department.

### **CONSTRUCTION SUPPORT SERVICES**

In accordance with a Project Task Agreement the Consultant shall provide specialized engineering services, Working (i.e., Equipment Vendor or Shop) Drawing Review Services and Design Services for emergency repairs when and where directed, with a staff commensurate with the level of construction activity until completion and final acceptance of the Construction or Repair Contract work. The Consultant agrees to provide, to the satisfaction of the Department, Working Drawing Review Services as required by the Contract Manager, such that all working drawings conform to the plans, specifications and requirements of the construction, rehabilitation, or repair contract.

The Consultant also agrees to provide to the satisfaction of the Department, all necessary Specialized Engineering Services, such that the resultant design efforts conform to proper engineering practice.

### **VALUE ENGINEERING**

Pursuant to a Project Task Agreement, or in the performance of all Resident Engineering and Inspection Services or Construction Support Services, the Consultant should analyze, review and provide recommendations on all changes in materials, design or proposed work, particularly as they may apply to "Value Engineering" that is proposed by the Contractor.

### **STAFFING AND SERVICES**

In accordance with a Project Task Agreement, the Consultant shall provide a project staffing level as approved by the Department until completion and final acceptance of the Project Task Agreement work.

The Consultant agrees to provide, to the satisfaction of the Department, all necessary professional services, engineering services, out of pocket costs, and overhead as may be required in connection with the actual required scope of services, which includes all inspection, testing, access, incidental work, and the hiring of subconsultants, laboratories, or experts as necessary.

### **SPECIAL PROJECTS**

The Consultant shall provide specified technical services for any Special Projects assigned by the Department. As per directives and guidelines issued by the Department, the Consultant will prepare and submit detailed scope of work for special projects including tasks and man hour estimate for review and approval and as explained further under the following heading:

## **III. TECHNICAL SERVICES**

### **A. Design Services:**

1. Preparation of Design Documents: Design documents shall be prepared, by the Consultant, as agreed upon in the Project Task Agreement, as directed, and as detailed in the New York City Department of Design and Construction "Design Consultant Guide," (DDC-DCG) August, 2003 edition, with modifications as noted in these Specific Requirements;
2. Services During Construction: Services during construction shall be provided, by the Consultant, as agreed upon in the Project Task Agreement, as directed, and as detailed in the DDC-DCG, during the construction phase.
3. Statutory Requirements: All designs shall be prepared under the authority of a New York State Registered Architect or Professional Engineer employed by the Consultant and conform to all relevant

statutory requirements for facilities or systems of the type being worked on unless otherwise directed in writing, and regardless of whether plan review submissions or permit filings will be made to the enforcing regulatory agencies. All plan review submissions and permit applications shall be as required by law: where the Department of Transportation is legally exempt from specific submissions or applications, the Department and the Consultant will decide whether to make submissions or applications on a voluntary basis on a task by task basis.

B. Inspection Services: The Consultant shall provide condition survey and safety inspection services as detailed in a relevant Project Task Agreement for facilities and facility systems or components. This work, as detailed or directed, may be in accordance with industry standards, a regimen developed jointly by the Department and the Consultant, or it may be in accordance with, or pursuant to, statutory requirements for periodic safety or safety related inspections. Inspection services may include specialized probing, testing, or inspection, such as underwater inspection by a P.E. diver, or vehicular bridge biennial inspection.

C. Resident Engineering Services: The Consultant shall provide, for work as described in a Project Task Agreement, all necessary Resident Engineering, Construction Management, and Construction Inspection Services, including testing of materials as may be required in connection with the actual construction of projects. The Consultant may be required to act as “the Engineer” in relation to construction projects when specified by Project Task Agreement. The Resident Engineering performed by the Consultant shall be such that the completed construction conforms to the plans, specifications, and requirements of the construction contracts(s), and to good construction practice. When performing these duties the Consultant shall endeavor to safeguard the Department against deficits and deficiencies in the work and shall use reasonable care and reasonable powers of observation to determine that the work conforms to the contract documents. The Consultant shall insure, unless directed otherwise in writing, that all work conforms to relevant industry standards and appropriate statutory requirements, even in the cases of projects where the relevant regulatory agency lacks jurisdiction over the Department of Transportation or the specific project or structure. Resident Engineering Services, including record keeping, shall be rendered in accordance with the requirements of the Project Task Agreement, and in accordance with the “Construction Standards” of The Port Authority of New York and New Jersey – Engineering Department (2/99 or latest edition) for all structures except bridges, unless otherwise directed. Resident Engineering, Inspection, and construction record keeping practices for bridges shall conform to the latest applicable New York State Department of Transportation or AASHTO Requirements or Standards unless otherwise directed.

#### **IV. CLIENT AGENCY TECHNICAL STANDARDS:**

Unless otherwise directed by DOT, the Consultant shall perform all required technical services in accordance with all applicable standards of the agency. The Consultant’s work shall conform in all respects to the practices of the ferry operators and operators of connecting transit modes, and shall conform to the physical requirements of the interfacing ferry vessels, floating equipment, or transit vehicles. The Consultant shall fully familiarize itself with the relevant operating procedures and physical characteristics of existing vessels, operations, or structures that will interface with the work.

Work shall be progressed in accordance with the current construction, architectural, marine, and public transportation industry standards that apply. Work shall be performed in accordance with all applicable architectural, engineering and design standards. Standards shall be specified in each particular Project Task Agreement. However the Department looks to the Consultant, and its specialized expertise, to point out the applicability of relevant, up-to-date standards to its attention when negotiating Project Task Agreements and when undertaking technical work.

V. **HAZMAT SERVICES**: The Consultant shall, either directly, or through its Hazmat Subconsultant (HS), provide investigative and design services in connection with the removal of Hazardous Materials.

## A. General

1. In general, the services provided by the HS shall consist of the items set forth below:
  - a. Conduct a comprehensive survey/ assessment of the Project site;
  - b. Prepare the abatement/ remedial design documents for bidding; and
  - c. Provide periodic services during performance of the abatement or remedial work.
2. The Consultant shall be responsible for coordinating the services provided by the HS, including, without limitation, the items set forth below:
  - a. Incorporate survey and assessment data compiled by the HS into the pre-preliminary report, and
  - b. Incorporate abatement plans and specifications prepared by the HS into final design documents.
3. The HS' work shall be performed in accordance with all current applicable Federal, State, and City regulations. Individuals performing these services shall hold all the necessary current licenses and certifications to perform such services. All individuals participating in the sampling of asbestos containing materials shall hold both NYS DOL Asbestos Inspector and NYC DEP Asbestos Investigator Licenses.

## B. Survey/Assessment Phase

1. The HS shall perform an environmental survey of the Project site to determine the presence and location of Hazardous Materials in the area of the proposed work. Hazardous Materials shall include, without limitation, asbestos containing materials (ACM's), lead based paint (LBP), and other environmentally hazardous materials. The HS shall be responsible for necessary sample collection, including exploratory probes and/ or physical penetrations, and analytical tests to determine the presence and location of Hazardous Materials. Such sample collection and testing shall be done in accessible and inaccessible areas in the vicinity of the proposed work. The HS shall determine whether any Hazardous Materials present in the area of the proposed work may be disturbed, altered, demolished or affected by such work.
2. The HS shall prepare a survey report which shall include the following information:
  - a. A brief description of the services provided;
  - b. An assessment of all Hazardous Materials present in the area of the proposed work;
  - c. An estimate of the cost of the abatement or remedial work;
  - d. Sketches showing the approximate locations where samples were collected;
  - e. An estimate of the quantities and conditions of the Hazardous Materials identified in the survey;
  - f. A summary of all samples, analyses, chain of custody and laboratory certifications;
  - g. Photographs, sketches, drawings, etc. as necessary to document the conditions, and
  - h. Annotated Project plans or annotated sketches indicating areas in the vicinity of the proposed work where Hazardous Materials are present, as well as areas where Hazardous Materials may be impacted by the proposed work.

## C. Design Phase

1. If the Consultant determines that the Hazardous Materials identified in the survey/ assessment phase will be impacted by the Project, or as otherwise directed by DOT, the HS shall prepare the required design documents (drawings and specifications) for (1) the remediation and/ or abatement work, and (2) and temporary re-insulation, weather protection, etc., which may be indicated. The design documents prepared by the HS must be fully developed in a format suitable for bidding. The Consultant shall include and coordinate such documents with the design documents for the Project.
2. The HS shall prepare detailed cost estimates, construction phasing plans, CPM charts, and shall make all required regulatory filings, unless directed otherwise by DOT. These filings

include NYC-DEP ACP-5, -7, -8, -9 & variances, NYS-DOL/DOH variances, NYS-DEC notifications and work plans, and any federal EPA/OSHA/DOT filings or notifications that may be required due to the nature of the Hazardous Materials within the scope of work.

3. If the HS fails to accurately notify the City of Hazardous Materials which are located in the vicinity of the proposed work and which may be disturbed, altered, demolished or affected as part of the Project, and such Hazardous Materials are subsequently disturbed, altered, demolished or affected in any way, the HS shall, at its own cost and expense, prepare separate design documents for the abatement thereof and for any additional work required. In addition, the HS shall be responsible for any damages sustained by the City as a result thereof.

#### D. Services During Construction

1. The HS shall provide services during construction to assure compliance with the plans and specifications and regulatory requirements. Such services will complement and support the full time project monitoring/ air sampling services provided by the Consultant, or by others. Such services may include, without limitation, the following:
  - a. Interpretation/ clarification of bid documents, specifications and/ or the types or locations of Hazardous Materials identified in the survey/ assessment;
  - b. Periodic project oversight by licensed/ certified personnel appropriate to the Hazardous Materials being disturbed or mitigated;
  - c. Periodic sampling, testing & analysis for the purpose of QA/ QC as required by all applicable federal, state, and local requirements;
  - d. Periodic oversight by Senior personnel to ensure compliance with contract specifications;
  - e. Periodic written reports, at the intervals required by DOT, (i.e., weekly, monthly, or at milestones) indicating progress of the work and the conditions at the site;
  - f. Final project closeout reports that document the completion of the work and successful remediation/ abatement of the Hazardous Materials.

## VI. CONSULTANT'S SERVICES

- A. General Description of Services: The Consultant shall provide, to the satisfaction of the Commissioner, all architectural, engineering and construction related services required in accordance with the Project Task Agreement(s) issued as described herein. The services the Consultant may be required to provide shall include, without limitation, the services set forth in these Specific Requirements, in the DDC-DCG, and the "Construction Standards" of The Port Authority of New York and New Jersey. The Consultant shall provide the services through its own employees and/ or through Subconsultants.
- B. Pre-Preliminary Services: The Consultant shall provide pre-preliminary services as set forth in the DDC-DCG.
- C. Design Services: The Consultant shall provide Design Services as directed by the Commissioner. Such Design Services shall be based upon the scope of work approved in writing by the Commissioner and shall be in accordance with the provisions set forth below:
  1. Services Included: The Design Services provided by the Consultant shall include all necessary and customary components and/ or services in connection with the design, including without limitation the following: (1) architectural design; (2) structural design; (3) electrical design; (4) heating, ventilating and air-conditioning (HVAC) and fire protection design; (5) plumbing design; (6) interior design and furniture layout; (7) historic preservation design; (8) landscaping design; (9) programming services; (10) cost estimating services, and (11) coordination of the design. The Consultant shall, through its own employees or its Subconsultant, provide Hazmat Services as set forth herein.
  2. Specific Design Services: The Consultant shall provide the specific Design Services set forth below:

- Preparation of Design Documents: The Consultant shall provide services for the preparation of design documents as set forth in the DDC-DCG, and as set forth herein.
  - Services During Construction: The Consultant shall provide services during construction as set forth in the DDC-DCG, Section VII(A).
3. Design Criteria: All required Design Services shall be in accordance with the following:
    - The scope of work in the approved Project Task Agreement;
    - These Specific Requirements;
    - The Client Agency Design Standards;
    - The DDC-DCG;
    - Existing Conditions at Client Agency sites and relating to Client Agency vessels;
    - All applicable Federal, State, and Local laws, rules, and regulations;
    - Other design criteria as may be agreed upon on a task by task basis.
  4. Separate Design Documents: Where required by law or directed by the Department, the Consultant shall prepare, organize, and fully coordinate design documents to permit the separate bidding and award of construction contracts.
  5. Submission of Design Documents: The Consultant shall submit design documents in accordance with the schedule specified in the Project Task Agreement.
  6. Approval of Design Documents: All required design documents, including cost estimates, are subject to review and written approval by the Commissioner. Final design documents are subject to approval by all regulatory agencies having jurisdiction, possibly including the Department of Buildings, the Art Commission, and the Landmarks Preservation Commission.
  7. Self Certification: Self – Certification may be required by the Commissioner for approval by the Department of Buildings.
  8. Architect or Engineer of Record: All drawings and reports shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect or Engineer of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state, or federal agencies having jurisdiction over the Work.
  9. Certificates of Occupancy: Where requested, the Consultant shall assist the Commissioner in obtaining temporary and permanent certificates of occupancy for the project.
- D. Hazmat Services; The Consultant shall provide investigative and design services in connection with the removal of hazardous materials (“Hazmat Services”), as directed.
- E. Additional Professional Services: The Consultant may be directed by the Commissioner to provide Additional Professional Services for the Project, as set forth below. The Consultant shall provide such Additional Professional Services through its own professional employees or through its Subconsultants.

Additional Professional Services shall be professional services which the Commissioner determines are required for the Project and are in addition to or beyond the necessary and usual services in connection with the Design Services, as set forth in Section VII, C, 1 through 9 of these Detailed Specifications. Additional Professional Services shall include, without limitation, the services set forth below:

1. Services set forth in the DDC-DCG, Section VII (B);
2. Changes to the design documents, as set forth herein;
3. Revisions to the drawings to reflect as-built conditions;
4. Participation in value engineering studies, as set forth in the DDC-DCG, Section VIII(F);
5. Any other professional services, determined by the Department, to be necessary for the project;

Additional Professional Services shall be paid for in the manner specified in Section IX as for all other Consultant furnished services.

Additional Professional Services shall not include required changes to design documents because of defects of design or unworkability of details, or because of any other fault or errors of the Consultant; no additional compensation shall be paid to the Consultant for making such changes.

- F. Reimbursable Services: The Consultant may be directed to provide Reimbursable Services as set forth below. The Consultant shall provide such services if so directed in writing by the Department. The Consultant shall provide such Reimbursable Services through entities approved by the Department, and shall use the method of procurement and form of payment directed. Payment for Reimbursable Services shall be in accordance with Section X, Fees and Payments.

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

1. Conducting exploratory probes and/ or tests to investigate concealed construction;
2. Printing design documents;
3. Laboratory services for controlled inspection;
4. Travel and lodging;
5. Filing fees and related application fees for government agencies;
6. Specialty Subconsultants;
7. Underwater inspection;
8. Inspection launches;
9. Topographic survey;
10. Transit Authority Force Account.
11. Any other services deemed necessary by the Commissioner for the Project.

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

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

- I. Provisions Regarding Changes to the Design Documents:

1. Changes Not Involving Scope:

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

2. Decrease in Scope: The Commissioner shall have the right to reduce the scope of the services of the Consultant hereunder, at any time and for any reason, upon written notice to the Consultant, specifying the nature and extent of such reduction. In such event, the Consultant shall be paid, in accordance with the payment terms set herein, for services already satisfactorily performed prior to receipt of written notification of such reduction in scope, as determined by the Commissioner. Any services performed by the Consultant to revise the design documents as a result of the reduction in scope of the Project shall constitute Additional Professional Services as defined herein.
3. Changes Through Fault of Consultant: In the event that any change is required to the design documents because of defects of design or unworkability of details, or because of any other fault or

errors of the Consultant, no additional compensation shall be paid to the Consultant for making such changes.

- J. Inspection Services: As directed through a relevant Project Task Agreement, the Consultant shall furnish inspection or condition survey services in accordance with applicable statutory requirements, industry standards, or directions from the Department for existing ferry facilities and their systems and equipment, located in water or upland. Such services may include review of existing technical information and exploratory demolition and restoration, test pits, diving, or other necessary activities to gain access, as well as sample collection and destructive or non-destructive testing or performance monitoring, and complete engineering analysis of samples or data collected. The Consultant shall furnish photographs or graphic records, written reports, and drawings as required to adequately present inspection findings. If required, the Consultant shall furnish preliminary scope and order of magnitude estimates, based on conditions found, as necessary to initiate capital projects for remedial work.
- K. Resident Engineering Services: When directed through a Project Task Agreement, the Consultant may be required to function as “The Resident Engineer” or “The Engineer or Architect” in relation to one or more construction contracts, with powers and duties as defined in Articles 31 and 32 of the “City of New York Standard Construction Contract” as issued in relation to New York City Department of Transportation construction contracts, as required by the New York City Building Code, and as specified in the Project Task Agreement or as directed. In addition, the Consultant may be tasked to provide, in association with this service, Construction Management services, including but not limited to, logistics planning, scheduling, negotiation, budgeting, claims settlement, controlled and semi-controlled inspection, cost estimating, and contract change control. Details of Resident Engineering activities will generally be in accordance with the “Construction Standards” of The Port Authority of New York and New Jersey. Construction record keeping and reporting shall be in accordance with an approved format.
- L. Special Projects: The Consultant shall provide architectural or engineering services for any Special Projects assigned by the Commissioner. As per directives and guidelines issued by the City, the Consultant shall prepare and submit a detailed scope of work for special projects including tasks and a staffing plan for review and incorporation into a Project Task Agreement.

## **VII. CONSULTANT’S PERSONNEL**

- A. Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required architectural, engineering and construction related services in accordance with the Project Task Agreement(s) issued by the Commissioner. The Consultant shall provide such services through its own personnel and/ or through its Subconsultants. The Consultant specifically agrees that its employees, agents and Subconsultants shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform.
- B. Staffing Requirements: Any personnel provided by the Consultant and/ or its Subconsultants must satisfy the requirements for the specific title in which he/ she is performing services. The requirements for any given title shall be equal to or greater than those specified in the bid documents for the corresponding hourly rate at which the Consultant proposes to bill for the said person’s services. The Consultant shall provide resumes and other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the requirements per title.
- C. Key Personnel: Key Personnel shall include the following personnel of the Consultant and/ or any of its Subconsultants performing services pursuant to a Project Task Agreement: (1) Principal, (2) Project Manager, (3) any personnel performing services in a title for which the minimum experience requirement is five (5) years or more, excluding the title of senior draftsman.

- D. Staffing Plan: For each proposed Project Task Agreement, the Consultant shall submit a proposed Staffing Plan within five business days of a request by the Department. For each Project Task Agreement, there must be a Staffing Plan approved by the Commissioner; the final staffing plan will be arrived at through mutual agreement between the Commissioner and the Consultant. Such Staffing Plan shall include the information listed below, and shall include only those Key Personnel and titles necessary for the provision of the required services:
1. required titles of Key Personnel;
  2. specific personnel performing services as Key Personnel;
  3. a list of required titles of personnel other than Key Personnel;
  4. annual daily rate for all specified Key Personnel and all other required titles, in accordance with the amounts bid;
  5. total estimated hours for all specified Key Personnel and all other required titles;
  6. total estimated amount for all specified Key Personnel and all other required titles.

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

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

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

## **VIII. CONTRACT SPECIFIC INFORMATION**

- A. Program Unit: NYCDOT Staten Island Ferry & Office of Private Ferries
- B. Boroughs: Citywide
- C. Total Amount: Not to Exceed \$5,600,000.00
- D. Term: Four (4) Years
- E. Renewal: Two (2) Years
- F. Additional Insured: As specified in each Project Task Agreement

## **IX. TASK ORDER PROCEDURE AFTER AGREEMENT IS EXECUTED**

This agreement is the Contractual Agreement, dated xxxxxx (the "Contract") entered into by the Department pursuant to Contract Number 841 ESA - FSHOR (PIN 84110SISI534, E-PIN 84110M0008) to provide the services described in this Contract. Assignments under this contract will be made based upon the process defined below. The maximum of this contract will not exceed \$5,600,000.00. However, there is no guarantee that the Department of Transportation will expend the entire value of this contract. Specifically, the Department of Transportation does not guarantee that the Consultant will receive a specific volume of work, a specific total contract amount, or a specific task order value. All work will be conducted through task orders for specific pieces of work.

Specific work under this contract will be performed on a task order basis consisting of individually negotiated task orders. Each task order will provide a specific scope, budget and schedule of the services required. The exact disciplines required and the amount of work for each discipline, have not been determined. The Consultant must be capable of adding, deleting, or substituting disciplines/ expertise as necessary to meet the needs of specific task orders. There is no guarantee that all disciplines or services will be utilized.

The Consultant will be expected to respond to short notice requests for technical services to resolve urgent task orders and in response to task orders for development review services. The Consultant should be capable of performing urgent task order assignments while working on several other task orders simultaneously. Consultant task orders will be coordinated with on-going work being performed by the Department.

## **A. TASK ORDERS**

1. Issuance of Task Orders by the Project Manager: Throughout the term of the Contract, as the need arises for architectural, engineering and construction related services, the Project Manager shall issue a Task Order to the Consultant. The Project Manager may issue separate and/or supplementary Task Orders to the Consultant for the performance of services for different phases or portions of the individual project. Each Task Order issued hereunder shall specify the items set forth below:
  - (i) A description of the individual project for which services are required
  - (ii) The services to be performed by the Consultant
  - (iii) The method of payment for the performance of services
  - (iv) Any requirements for scheduling and/or phasing of the services
  - (v) Time frame for completion of services
  - (vi) An overall Not to Exceed amount for the services to be performed. Such overall Not to Exceed amount shall be further broken down into various amounts and/or allowances, depending on the required services and the method of payment specified in the Task Order. Such amounts and/or allowances may include the following: (1) Amount for Design Fee (based upon negotiated staffing plan utilizing the consultant's labor rates); and (2) Allowance for reimbursable Services.
2. Supplementary Task Orders: In the event of any changes to the Task Order, the Project Manager shall issue a Supplementary Task Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Task Order issued by the Project Manager.
3. Conflicts: In the event of any conflict between a Task Order issued hereunder and any provision of this Contract, the Contract shall take precedence; except that with respect to the scope of services to be performed, the provisions of the Task Order shall take precedence.
4. No Right to Reject a Task Order: The Consultants shall have no right to reject or decline to perform any Task Order issued under the Contract. Accordingly, any rejection of a Task Order by any Consultant, expressly made or implied by conduct, shall constitute a material breach of this Contract.
5. Task by Others: In all instances, the Project Manager reserves the right not to issue a Task Order to the Consultant and to have the work performed by another Consultant(s) or by City employees if the Project Manager, in his sole opinion, determines that the Consultant may be unable to satisfactorily provide the required services in a timely fashion.

## **B. TASK ORDER PROCESS**

1. (i) The Project Manager will notify the Consultant of the Department's intention to develop a Project Task Order for a specific assignment and will forward the draft scope of services. These will be considered Tasks for this Agreement.
- (ii) For each individual task order, the Project Manager will issue a written or verbal "Task Order Request" to the Consultant. The task request will describe the nature and extent of the project, its scope, preliminary schedule and rough order of magnitude.
- (iii) Within 5 days or the timeframe specified in the "Task Order Request", the Consultant will prepare a scope of work, schedule, and fees as well as identify the key staff assignments and potential subconsultants.
- (iv) If needed, arrangements will be made for a scope meeting to be held in the most appropriate location. The Consultant shall take minutes and submit them to all attendees within one week of such meeting. If needed, the Project Manager shall present the technical aspects of the project to the Consultant. At the close of the meeting, the definitive due date of the second proposal will be established.
- (v) The Consultant will submit the two copies of its first proposal to the Project Manager.
- (vi) The Project Manager shall review the proposal and conduct appropriate negotiations with the Consultant that result in a final proposal, submitted by the Consultant as in B(1) (v) above.
- (vii) After review, the Project Manager will then recommend that the Project Task Agreement be finalized. The agreement will be sent to the Consultant for signature.
- (viii) A copy of the executed task order will be sent to the NYC Office of Management and Budget for Final Approval. Upon such approval, the fully executed task order will be forwarded to all parties.
- (ix) Upon encumbrance of the funds for the project, the Project Manager will notify the Consultant when to proceed with work on the assignment.
- (x) The consultant shall send billings and progress reports to New York City Department of Transportation, Office of Planning and Sustainability. All extra work elements must be negotiated in writing. If warranted, a supplemental task order for additional work will be processed in the same manner as the original assignment.

## **X. FEES AND PAYMENTS**

### **A. FEE**

In full payment for all services to be rendered hereunder, the Department may pay to the Consultant and the Consultant agrees to accept a fee not to exceed \$5,600,000.00. The projected maximum annual value of work ordered under the contract is \$1,400,000.00.

### **B. BASIS**

#### **1. Office Work:**

The payment for the services rendered herein will be made on the basis of total direct technical office salary costs of the Consultant attributable to the contract times a technical office multiplier, plus direct reimbursement for Principals' Time and certain out-of-pocket expenses.

## 2. Field Work:

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

## 3. Hourly Rate Schedule:

Direct technical office and field salary cost rates payable under the contract and technical office and field multipliers shall be as set forth in the Hourly Rate Schedule of the contract(s). The rates stipulated therein shall apply to the Consultant and all Subconsultants, and to all Project Task Agreements awarded under the contract.

## C. DEFINITIONS

### 1. Direct Technical Salary Cost

Direct technical salary cost shall include only engineering, surveying and drafting salaries, exclusive of Principals' Time, and shall be derived from direct individual salaries, not including overtime premium pay, vacation pay, holiday pay, social security, unemployment insurance, worker's compensation, sick pay or other fringe benefits. Any salary increases prior to or during the contract period should be within parameters as established in the Engineer Pay Index of the U.S. Bureau of Labor Statistics-Employment Cost Index for Professional Specialty and Technical Workers-Wages and Salaries.

### 2. Technical Office or Field Multiplier

The technical office or field multiplier shall be applied to the direct technical office or field salary costs of the Consultant and all Subconsultants in connection with the project, and should be considered as including provisions for indirect costs and profit.

### 3. Principals' Time

The words "the Principals" or "the Principals of the firm" are understood to mean those individuals in a firm who possess legal responsibility for its management. They may be owners, corporate officers, associates, partners, etc. With respect to a corporation, a principal is also defined as any person who owns ten (10) percent or more of the voting stock. Principals of the firm shall be compensated for their time when summoned by the Department to provide technical assistance, to the extent that they perform services other than administrative or supervisory services, as follows:

- a) The rate of compensation for Principals' Time as stated herein before, will not exceed One Hundred Dollars (\$100.00) per hour, to be based on actual draw.
- b) The Principals participating in the project should provide the Department 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 Department 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 Department and the NYC Comptroller.

- d) For Principals' time the Department deems directly compensable, the Department will certify that direct participation by the Principals is essential to the effective and economic completion of the project. Principals will only receive direct compensation for technical work performed, and then only at the flat rate of One Hundred Dollars (\$100.00) per hour.
- 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 the Department's Engineering Audit Bureau to avoid duplication of indirect expenses. The adjusted multiplier is calculated by decreasing the Consultant's Multiplier by 10%.
- *The Annual Employment Cost Index Percent increase times the total yearly salary cost of all current employees working on that project for the prior year, becomes a pool of money from which various raises may be granted. The maximum salary increase per person is limited to the Annual Employment Cost Index plus 50% of the Index. Total of individual raises should not exceed the pool money per contract year*

#### 4. Out-of-Pocket Expense.

- a) The cost of acquiring, on a per diem basis, the services of other experts or engineers as may be required for the performance of the Consultant's services are subject to the same audit rules as the prime consultant.
- 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 fares and tolls within the city borders are reimbursable as out-of-pocket costs. However, cost of parking is not reimbursable.
- c) The cost of printing and duplicating for this project by an outside vendor is reimbursable as out-of-pocket costs based on the submitted invoice. However, cost of printing by in-house services is not reimbursable.
- d) The cost of renting any other materials or equipment or acquiring services specifically for, and applicable only to, this project may be submitted for direct payment as out-of-pocket costs. This should not include the purchase of general tools or office supplies whether expendable or reusable.
- e) The costs of the specified registered mailing and/or express mail 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 project specified cellular communications, approved by the Contract Manager, are reimbursable as out-of-pocket costs.
- h) The cost of project specified microfilming services are reimbursable as out-of-pocket costs.

- i) The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs, including the cost of providing digital photographs.
- j) The cost of retaining the services of a qualified contractor, or contractors, to provide for Audiogaging, Non Destructive Testing, Localized Dismantling and Restoration of Structure or Equipment, Electrical or Machinery Testing, Steel Sampling, Underwater Inspection, Specialized Investigation and Testing Services, or means of access for inspection and the like, as required.
- k) Living and travel expenses, approved by the Department, for personnel performing Construction Supervision, Resident Engineering or Inspection Services required under this contract outside of the New York Metropolitan Area.
- l) The cost of business trips, other than 'k', above, approved by the Department and specifically to perform the services required under this contract.
- m) The cost of project specified miscellaneous items approved by the Director of Engineering are reimbursable as out-of-pocket costs.
- n) The cost of project specified professional liability insurance for the consultant and subconsultants.

Note: Expenditures for (k) and (l) above shall be in accordance with the guidelines in New York City Comptroller's Directive No. 6 – Travel, Meals, Lodging and Miscellaneous Agency Expenses, of October 23, 1996. Directive No. 6 is available on the NYC Comptroller's website.

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

5. Not used.

#### 6. Indirect Costs and Overhead

- a. Indirect Costs 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.

#### 7. Overtime Premium

Overtime Premium Compensation shall be those payments over and above straight salary for hours actually worked, which are required either by applicable State and Federal Laws and Regulations or with in accordance with the schedule set up under the Field Survey Union Contract. In no event

however, should the rate of overtime premium compensation exceed the Consultant's normal Company Policy relating to such compensation.

#### 8. Weekend/Night Work Differential

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

#### 9. Performance Evaluation

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

### D. PAYMENTS

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

a. Payment shall be made based on direct technical office\* or field salaries\* of the Consultant and any Subconsultants as established in the Hourly Rate Schedule of the Contract times a technical office or field multiplier of:

\_\_\_ for office work \*\*

\_\_\_ for field work\*\*

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

\* Office and field salary rates and titles were proposed by the Consultant in his/her Cost Proposal, Attachment E, and were subject to negotiation between the Consultant and the Department, prior to establishment of a Contract. Agreed upon initial office and field salary rates and titles, established for the contract(s), are based upon the Cost Proposal and negotiations, and are recorded in the completed Hourly Rate Schedule of the Contract. .

\*\* 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 Comptroller's 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 funds for overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

2. The Consultant shall submit to the Contract Manager, not more than once per calendar month, a certified requisition for each Project Task Agreement for which the Consultant requests

compensation, and six copies, setting forth in detail the items of work and services performed by the Consultant and the amount of partial payment requested. Requisitions, shall be accompanied by statements prepared and certified by the Consultant setting forth the name and title of each of his/her employees and his/her subconsultants' employees who was engaged in the work during such respective month, the number of hours worked each day, the direct salary and the compensation attributable to the time for which the requisition is submitted. All requisitions shall be accompanied by a report on the progress of the work, properly coded and tabulated to indicate the percentage of completion of each phase of the work. All said requisitions and progress reports shall be subject to review and approval of the Department's Contract Manager.

3. The Department will review the said requisition and if, in its judgment, the work and services therein set forth have been performed, the Department will endorse its approval of payment of said requisition and certify that the work and services have been satisfactorily performed by the Consultant.
4. Out-of-Pocket expenses and compensation for Principals' Time approved by the Department will be paid at cost to the Consultant, with no markup for the Consultant's overhead and profit.
5. 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 Department of all records and documents in connection with the contract.
6. 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.
7. The fee and all payments hereunder shall be subject to review and audit by the Department and subject to audit by the NYC Comptroller.
8. 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 only.
9. The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown in the Hourly Rate Schedule of the contract(s).
10. Partial Payments:
  - a. The Consultant shall be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with Section IV of this RFP. The consultant shall submit a breakdown of costs for each specific task provided with request for payment. Payment requests are subject to the approval of the Commissioner, or his/her duly authorized representative.
  - b. The Consultant shall inform the Department and all Sub Contractors and Sub Consultants of the Consultant's schedule for submitting monthly requisitions to the Department, said schedule should be strictly adhered to by the Consultant.
  - c. All Sub Contractor and Sub Consultant requisitions received by the Consultant at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the Consultant does not have other costs to be billed for that period. The Consultant shall inform the Sub Contractor or Sub Consultant of the date the requisition was submitted to the Department and the amount included for the Sub Contractor or Sub Consultant.

- d. 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 Department.
- e. 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 Department and, on Federally aided Projects, by the Federal Transit Administration and the New York State Department of Transportation, or their consultants engaged for performing such audits. Such audit should not be a condition of partial payment.
- f. The Consultant shall not be entitled to any additional compensation as a result of any sum or sums paid to Construction in settlement of claims for additional compensation or of any judgment for damages under contracts awarded for the execution of the plans and specifications of the project. It is agreed, however, that in the event of the necessity of reletting a Construction Contract or Contracts or in the event of any claims being made or any action brought on a Construction or Repair Contract or Contracts, the Consultant shall render the Department any and all assistance required by the Commissioner, at an additional compensation to be agreed upon.

## **XI. TERM**

- A. The total length of this ESA Contract should be **1,460 Consecutive Calendar Days** from notice to proceed
- B. Proposers will be asked to submit proposals for a 4-year contract at a value of \$5,600,000.00. At its sole discretion, the Department has the option to renew this contract one time, for a renewal duration for 730 Consecutive Calendar Days under the same contract terms and conditions.

## **XII. INSURANCE**

- A. Professional Liability Insurance

Professional liability insurance coverage, furnished by the Consultant and Subconsultants will be required by the Department on a case by case basis for all Project Task Agreements deemed to involve the provision of professional services wherein the safeguarding of life, health, or property is involved, as judged by the Department. Such tasks may include, but not be limited to those involving investigation, evaluation, design, supervision of construction, or supervision of repair. The detailed requirements for professional liability insurance coverage will be included in Article 4 of the "General Provisions" of the contract(s), Appendix A of this RFP. The cost to the consultant for professional liability insurance coverage, when required for a particular project task agreement, will be reimbursed by the Department as an out of pocket cost.

Consultant cost claims for Professional Liability Insurance, incurred pursuant to the requirements stipulated herein, shall be subject to audit by the Department. Only the actual cost to the Consultant of furnishing Professional Liability Insurance to cover the work of a Project Task Agreement wherein the Department requests such coverage shall be reimbursable. For Consultants with Professional Liability Insurance already in place at the time a Project Task Agreement requiring such coverage is executed, only the cost of Professional Liability Insurance actually apportionable to such Project Task Agreement will be reimburseable in payment for such Project Task Agreement, and then only when the Department has requested coverage.

- B. Other Insurance

With the exception of Professional Liability Insurance, no separate payment will be made to the Consultant by the Department for furnishing the insurance coverage required under Section 4.3 of

Appendix A for the Consultant or for Subconsultants: the Consultant shall be solely responsible for all costs related to furnishing such insurance, as detailed in Section 4.3.B3h of Appendix A.

### **XIII. USE OF REFERENCED DOCUMENTS**

- A. New York City Department of Design and Construction “Design Consultant Guide,” (DDC-DCG): Unless otherwise specified, wherever the DDC-DCG refers to the “New York City Department of Design and Construction,” or “DDC,” or any bureau or unit thereof, this shall be taken to mean the New York City Department of Transportation unless otherwise directed by the Contract Manager. Wherever the DDC-DCG requires filings for regulatory agency approvals, the Consultant shall confer with the Contract Manager before making such filings.
- B. “Construction Standards” of The Port Authority of New York and New Jersey
- Unless otherwise specified, wherever the “Construction Standards” refer to the The Port Authority or any bureau or unit thereof, this shall be taken to mean the New York City Department of Transportation unless otherwise directed by the Contract Manager. Wherever the “Construction Standards” require filings for regulatory agency approvals, the Consultant shall confer with the Contract Manager before making such filings.
- C. Other Referenced Standards: In the event other standards, published by others, are used in the performance of Contract Work, and similarly require the user to consult with the publishing body or obtain outside approvals, these documents shall be interpreted and handled in a similar manner as described above for the DDC-DCG and the “Construction Standards.”

### **XIV. LIST OF DOT FERRY FACILITIES**

The following is a list of existing and planned ferry shore facilities operated by, under the jurisdiction of, or in association with, the New York City Department of Transportation. Additional ferry shore facilities, for the purpose of this procurement, may be sited anywhere within the City of New York.

#### **Borough of The Bronx:**

- 1) Hart Island Ferry Terminal;
- 2) City Island Ferry Terminal;
- 3) Yankee Stadium Ferry Terminal.

#### **Borough of Brooklyn:**

- 1) Fulton Ferry Landing;
- 2) Brooklyn Army Terminal.

#### **Borough of Manhattan:**

- 1) East 90<sup>th</sup> Street Ferry Terminal;
- 2) East 75<sup>th</sup> Street Ferry Terminal (future);
- 3) East 62<sup>nd</sup> Street Ferry Terminal (future);
- 4) Pier11 (Wall Street) Ferry Terminal;
- 5) Battery Maritime Building (including future ferry landing at Slip 5);
- 6) Whitehall Ferry Terminal;
- 7) West Midtown Intermodal Ferry Terminal

#### **Borough of Staten Island:**

- 1) St. George Ferry Terminal;
- 2) Ferry Maintenance Facility;
- 3) Former Pier 7 Site;
- 4) Former U.S. Navy Homeport.

## **XV. JOINT VENTURE**

Multiple firms may combine to form a Joint Venture to submit a bid on, and perform the work of this pending contract. Joint Ventures shall comply with all the requirements of this solicitation and shall be capable of providing all of the services required by the bid documents.

## **XVI. SPECIAL REQUIREMENTS**

- A. Project office to handle the work of this contract shall be located within 75 miles of Times Square, New York City.
- B. This RFP is for the drafting of specifications for subsequent solicitations. No selected proposer from this RFP nor any subconsultants will be allowed to participate, whether as a contractor or sub-contractor, in response to a subsequent solicitations utilizing the plans or specifications they drafted, except as provided under New York City's Procurement Policy Board Rules.
- C. All personnel proposed to be placed in responsible charge of technical work, including design and supervision of construction, shall be currently Registered Professional Engineers in the State of New York.

## **SECTION VII: ATTACHMENTS**

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

# **NOTICE TO VENDORS**

**Please be advised that in July 2010 the City of New York began using a revised Appendix A (General Provisions Governing Contracts For Consultants, Professional, Technical, Human And Client Services) for use by City agencies. The revised Appendix A contains a significant restructuring and changes to the text of many provisions throughout the document as well as the addition of many new provisions. It is important to review the revised Appendix A before executing your contract.**

**APPENDIX A**

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

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APPENDIX A

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

**ARTICLE 1 - DEFINITIONS**

**Section 1.01 Definitions**

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” shall mean the head of the Department 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.

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

M. “State” shall mean the State of New York.

## **ARTICLE 2 - REPRESENTATIONS AND WARRANTIES**

### **Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. 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 Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

### **Section 2.02 Conflicts of Interest**

A. 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 conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal

interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

**[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]**

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

**Section 2.03 Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

**Section 2.04 VENDEX**

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

**Section 2.05 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.06 Religious Activity**

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123**

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

**Section 2.08 Bankruptcy and Reorganization**

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

**Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency

shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section 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.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

### **Section 3.02 Subcontracting**

A. The Contractor shall not enter into any subcontract for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 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. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers'

Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

**Section 4.02 Employees**

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

**Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

**Section 4.04 Minimum Wage**

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement 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 of this Section shall be deemed a material breach of this Agreement.

**Section 4.05 Non-Discrimination: New York State Labor Law § 220-e**

A. If this Agreement is 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, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement 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, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be 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.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

**Section 4.06 Non-Discrimination: Admin. Code § 6-108**

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. 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.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph 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.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. 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 (\$100) or by imprisonment for not more than thirty (30) Days, or both.

**Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity**

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status 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 discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

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, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and 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;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts 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 the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor 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 One Hundred Thousand Dollars (\$100,000) 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 DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof 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. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

**ARTICLE 5 - RECORDS,  
AUDITS, REPORTS, AND INVESTIGATIONS**

**Section 5.01 Books and Records**

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

**Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

**Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

**Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are

subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

**Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

**Section 5.06 Electronic Records**

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

**Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City 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. 1. 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, or 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, or;

2. If any person refuses 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 a party in interest 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 within the City, then;

C. 1. 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.

2. 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 E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that 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 any 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 Agreement, 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.

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E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that 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 Paragraph D 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 Paragraph (C)(1) 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.

### F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section 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 in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

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

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in

writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST**

### **Section 6.01 Copyrights**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the

Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

### **Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a 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.

**Section 6.03 Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

**Section 6.04 Antitrust**

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 antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

**ARTICLE 7 - INSURANCE**

**Section 7.01 Agreement to Insure**

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

**Section 7.02 Commercial General Liability Insurance**

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Department, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

C. The Contractor shall ensure that each subcontractor adds the City, together with its officials and employees, as an Additional Insured under all Commercial General Liability Insurance policies obtained by a subcontractor covering work performed by such subcontractor under this Agreement with coverage at least as broad as the most recently issued ISO Form CG 20 26.

**Section 7.03 Professional Liability Insurance**

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement 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. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

**Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance**

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

**Section 7.05 Unemployment Insurance**

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

**Section 7.06 Business Automobile Liability Insurance**

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as ISO Form CA0001, ed. 10/01.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

**Section 7.07 General Requirements for Insurance Coverage and Policies**

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

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

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City’s limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

F. All insurance policies required pursuant to Sections 7.02 and 7.03 shall contain the following endorsement: “This policy may not be cancelled, terminated, modified or changed for any reason other than non-payment unless thirty (30) Days prior written notice is sent by the Insurance Company to the Named Insured, the Commissioner [insert Agency], and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. For non-payment, at least ten (10) Days written notice must be provided.”

**Section 7.08 Proof of Insurance**

A. For Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers’ compensation coverage.

1. C-105.2 Certificate of Workers’ Compensation Insurance;

2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

### **Section 7.09 Miscellaneous**

A. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability Insurance carriers for events relating to the Contractor's own employees) no later than twenty (20) Days after such event. Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of

the persons or things injured, damaged, or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

### **Section 8.02 Protection of City Property**

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 Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### **Section 8.03 Indemnification**

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the

provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.04 Infringement Indemnification**

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

**Section 8.06 Actions By or Against Third Parties**

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

**Section 8.07 Withholding of Payments**

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

### **Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

## **ARTICLE 9 - CONTRACT CHANGES**

### **Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

### **Section 9.02 Changes Through Fault of Contractor**

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

## **ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

### **Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.02 Reductions in Federal, State and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the

Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

**Section 10.03 Contractor Default**

- A. The City shall have the right to declare the Contractor in default:
1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;
  2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;
  3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;
  4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
    - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
    - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
    - c. a criminal violation of any state or federal antitrust law;
    - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
    - e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
    - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
  5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or

federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

#### **Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster,

civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

#### **Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;

2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;

4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and

5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

### **Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

## **ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

### **Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

**Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

**ARTICLE 12 - CLAIMS**

**Section 12.01 Choice of Law**

This Agreement shall be deemed to be executed in the City and 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 (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

**Section 12.02 Jurisdiction and Venue**

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any

other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

### **Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. 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, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

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 Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving 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 Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB

may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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 or 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 or 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 Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor 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 Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller’s Office. The Contractor 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 Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH’s offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor 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 Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, 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 this Agreement. 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 Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of 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 PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement 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.

**Section 12.04 Claims and Actions**

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, 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 provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

**Section 12.05 No Claim Against Officers, Agents or Employees**

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

**Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

**Section 12.07 No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement 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 the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

**Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

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

**Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor’s failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

**Section 13.06 Voter Registration**

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of

Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

### **Section 13.07 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 federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., 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, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an 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 forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

### **Section 13.08 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal

entity that holds a ten percent (10%) 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.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

### **Section 13.09 Access to Public Health Insurance Coverage Information**

A. **Participating Agencies.** Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. **Applicability to Certain Contractors.** This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. **Distribution of Public Health Insurance Pamphlet.** In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual

with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

## **ARTICLE 14 - MISCELLANEOUS PROVISIONS**

### **Section 14.01 Conditions Precedent**

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

### **Section 14.02 Merger**

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

Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

**Section 14.03 Headings**

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

**Section 14.04 Notice**

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement 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. Either party may change its notice address 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 below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

**AFFIRMATION**

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 contract except \_\_\_\_\_.

Full name of Proposer or Bidder *[below]*

\_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:**

- A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

- B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

- C - Corporation

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

- \* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer'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 businesses seeking City contracts.

**CERTIFICATION BY BROKER**

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

**CERTIFICATION BY BROKER**

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

\_\_\_\_\_  
[Name of broker (typewritten)]

\_\_\_\_\_  
[Address of broker (typewritten)]

\_\_\_\_\_  
[Signature of authorized officer of broker]

\_\_\_\_\_  
[Name of authorized officer (typewritten)]

\_\_\_\_\_  
[Title of authorized officer (typewritten)]

\_\_\_\_\_  
[Contact Phone Number for Broker (typewritten)]

\_\_\_\_\_  
[Email Address of Broker (typewritten)]

Sworn to before me this

\_\_\_\_ day of \_\_\_\_\_, 201\_

\_\_\_\_\_  
NOTARY PUBLIC

## **SECTION VII: ATTACHMENTS**

### **C) PROCEDURAL FORMS PACKET**

#### **CONTENTS**

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

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

# Form 1P

## PROPOSAL COVER LETTER

**Design, Inspection & Resident Engineering Services  
In Connection With Engineering Service Agreement, Ferry Shore Facilities**

**CONTRACT No. 841 ESA - FSHOR**

**PIN 84110SISI534  
E-PIN 84110M0008**

**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

**Design, Inspection & Resident Engineering Services  
In Connection With Engineering Service Agreement, Ferry Shore Facilities  
CONTRACT No. 841 ESA-FSHOR**

**PIN 84110SISI534  
E-PIN 84110M0008**

**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 4P

## STATEMENT OF UNDERSTANDING

(To Be Filled Out and Submitted by and for each prime Consultant and Subconsultant)

**RFP TITLE: Design, Inspection & Resident Engineering Services  
In Connection With Engineering Service Agreement, Ferry Shore Facilities  
CONTRACT No. 841 ESA-FSHOR**

**PIN 84110SISI534  
E-PIN 84110M0008**

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

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

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Authorized Signature**

\_\_\_\_\_

**Consultant Firm**

\_\_\_\_\_

**Address**

\_\_\_\_\_

**Telephone**

## SECTION VII: ATTACHMENTS

### 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)
6. FORM 6T- DBE PARTICIPATION
7. FORM 330 STANDARD FORM
8. FORM 330S SPECIAL SUPPLEMENT

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

FORM 1T

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

**PROJECT NAME: Design, Inspection & Resident Engineering Services In Connection With Engineering Service Agreement, Ferry Shore Facilities**

**PIN: 84110SISI534**

**E-PIN: 84110M0008**

**CONTRACT NO.: 841-ESA-FSHOR**

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

PROFESSIONAL ENGINEERING/ ARCHITECTURE

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

**DESCRIBE**

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

1) List all current and prior projects completed within the last five (5) years for design, inspection, resident engineering inspection and consultant support 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.**

2) Describe relevant experience in Marine Civil Engineering, Coastal Engineering, and/or Ports & Harbors Civil Engineering work in the last five (5) years. Proposer should consider work with City, State and Federal agencies. Proposer should demonstrate its ability to complete jobs in a timely fashion.

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 1<sup>st</sup> of last year \_\_\_\_\_ . (a)

Number of technical employees who left firm during last calendar year \_\_\_\_\_ . (b)

Total number of technical employees as of August 1<sup>st</sup> of previous cal. year \_\_\_\_\_ . ©

Number of technical employees who left firm during previous calendar year \_\_\_\_\_ . (d)

Total number of technical employees as of August 1<sup>st</sup> of 2<sup>nd</sup> previous cal. Year \_\_\_\_\_ . (e)

Number of technical employees who left firm during 2<sup>nd</sup> previous calendar year \_\_\_\_\_ . (f)

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

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

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

**FORM 2T**

**PROPOSED STAFF (RESUMES)/EXPERIENCE**

PROJECT NAME: Design, Inspection & Resident Engineering Services In Connection With Engineering Service Agreement, Ferry Shore Facilities

PIN: 84110SISI534

E-PIN: 84110M0008

CONTRACT NO.: 841-ESA-FSHOR

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

**PROPOSED STAFF:**

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

**Specifically identify any current or prior key personnel experience with City, State and /or Federal projects.**

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

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

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

**FORM 3T**

**OVERALL PROJECT UNDERSTANDING AND APPROACH**

**PROJECT NAME:** DESIGN, INSPECTION AND RESIDENT ENGINEERING  
SERVICES IN CONNECTION WITH ENGINEERING  
SERVICE AGREEMENT, FERRY SHORE FACILITIES

**PIN: 84110SIS1534**  
**E-PIN: 84110M0008**

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

**CONTRACT NO.:** 841 – ESA-FSHOR

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

**OVERALL APPROACH TO PROJECT:**

**(Staffing Sheet)**

1. Describe your overall approach and understanding to providing design, inspection, resident engineering services and consultant support services for this project. This discussion should clearly demonstrate your understanding of this project. Provide enough detail to permit NYCDOT to assess the extent of the proposer's understanding of design, inspection, resident engineering services and consultant support services 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 PROPOSED

**PROJECT NAME:** DESIGN, INSPECTION AND RESIDENT ENGINEERING SERVICES IN CONNECTION WITH ENGINEERING SERVICE AGREEMENT, FERRY SHORE FACILITIES

**PIN:** 84110SISI534  
**E-PIN:** 84110M0008

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

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

- PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
- OTHER/ \_\_\_\_\_

**JOB TITLE**  
**ASCE/ NICET**  
**GRADE**

1. PROJECT DIRECTOR (A-IX)	33. PARTY CHIEF
2. PROJECT DIRECTOR (A-VIII)	34. INSTRUMENT PERSON
3. PROJECT DIRECTOR (A-VII)	35. ROD MAN
4. PROJECT MANAGER (A-VIII)	36. MECHANICAL SPECIALIST (A-VI)
5. PROJECT MANAGER (A-VII)	37. MECHANICAL ENGR. (A-II)
6. PROJECT MANAGER (A-VI)	38. ELECTRICAL SPECIALIST(A-VII)
7. PROJECT ENGINEER (A-VII)	39. ELECTRICAL ENGINEER(A-III)
8. PROJECT ENGINEER (A-VI)	40. LANDSCAPE ARCHITECT
9. SR. ENGINEER (A-VI)	41.. ARBORIST
10. SR. ENGINEER (A-V)	42. INDUSTRIAL HYGENIST,CIH, CSP
11. SR. ENGINEER (A-IV)	43. RESIDENT ENGINEER (A-VII)
12. ENGINEER (A-III)	44. RESIDENT ENGINEER (A-VI)
13. OFFICE ENGINEER (A-IV)	45. RESIDENT ENGINEER (A-V)
14. OFFICE ENGINEER (A-III)	46. ASS'T RESIDENT ENGINEER (A-V)
15. OFFICE ENGINEER (A-II)	47. ASS'T RESIDENT ENGINEER (A-IV)
16. DRAFTER (N-III)	48. ASS'T RESIDENT ENGINEER (A-III)
17. DRAFTER TECHNICIAN (N-II)	49. SOFTWARE DEVELOPER
18. CHIEF INSPECTOR (N-IV)	50. DIVER (MARINE)
19. SR INSPECTOR (N-III)	51. DIVER TENDER (MARINE)
20. INSPECTOR (N-II)	52. ENVIRONMENTAL ENGINEER (A-V)
21. INSPECTOR (N-I)	53. ENVIRONMENTAL ENGINEER (A-IV)
22. MOVABLE BRIDGE EXPERT (A-VII)	54. ENVIRONMENTAL ENGINEER (A-III)
23. PUBLIC OUTREACH MANAGER	55. ENVIRONMENTAL ENGINEER (A-II)
24. PUBLIC OUTREACH COORDINATOR	56. ENVIRONMENTAL ENGINEER (A-I)
25. HISTORIC ANALYST	57. WIND EXPERT
26. ENVIRONMENTAL INSPECTOR	
27. ARCHITECTURAL INSPECTOR (RA)	
28. GEOTECHNICAL EXPERT (A-VII)	
29. ARCHITECT (RA)	
30. CPM SCHEDULER (A-VI)	
31. SENIOR ESTIMATOR	
32. CHIEF SURVEYOR	

1. Job titles proposed should be the same as those proposed on the Labor Cost Proposal forms 4T1
2. No salary information should be included on this form.
3. This form must be completed for the prime and each of the proposed sub-consultants  
(Make duplicates of this form and use as necessary)

**FORM 5T**

(Page 1 of 2)

**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: 84110SISI534

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

E-PIN: 84110M0008

CONTRACT NO.: 841- ESA - FSHOR

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

**PROJECT NAME: Design, Inspection & Resident Engineering Services In Connection With Engineering Service Agreement, Ferry Shore Facilities**

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

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

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

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

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

Total Personnel \_\_\_\_\_

**I. Remaining NYC-DOT work of proposed office(s) (from back of sheet) with:**

All NYC-DOT \$ \_\_\_\_\_

**II. Expected billings for next 18 months:**

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

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

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

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

**III. Certified Disadvantaged Business Enterprise (DBE) firm(s) for Federal Aid Projects or for Non-Federal air**

**Projects proposed for use on this project:**

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

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

\_\_\_\_\_ % \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ % \_\_\_\_\_ \$ \_\_\_\_\_

**CERTIFICATION**

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

DATE	SIGNATURE (OFFICER OR PARTNER)
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**FORM 5T**  
(Page 2 of 2)  
**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)
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Design Division (includes Highway Design, Bridge Design and Construction Support Services)				

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

Construction Division (includes only Resident Engineering Inspection)				

**Total Firmwide REI Workload \$ \_\_\_\_\_ Assigned Office(s) REI Workload \$ \_\_\_\_\_**

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

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

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

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

Use the following as a ratings guide:

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

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

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

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

If R is greater than or equal to 100%, a rating of 0 may be appropriate.

If R is equal to 75 %, a rating of 5 may be appropriate.

If R is less than or equal to 25%, a rating of 10 may be appropriate.

**FORM 6T**

**DBE PARTICIPATION**

**PROJECT NAME:** ENGINEERING SERVICE AGREEMENT FOR DESIGN, INSPECTION & RESIDENT  
ENGINEERING SERVICES IN CONNECTION WITH FERRY SHORE FACILITIES

**CONTRACT No.:** 841 ESA – FSHOR

**PIN:** 84110SISI534  
**E-PIN:** 84110M0008

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

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.

Participation by DBE Consultants:  is being proposed

Attach the following:

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

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

**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.

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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

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**Part II - General Qualifications**

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

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

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

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

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

5. Ownership.

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

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

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

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

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

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

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

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

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

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

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List of Disciplines (Function Codes)

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

List of Experience Categories (Profile Codes)

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 &amp; Relocation</i> )	F04	Fisheries; Fish ladders
C03	Charting: Nautical and Aeronautical	F05	Forensic Engineering
C04	Chemical Processing & Storage	F06	Forestry & Forest products
C05	Child Care/Development Facilities	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C06	Churches; Chapels	G02	Gas Systems (Propane; Natural, Etc.)
C07	Coastal Engineering	G03	Geodetic Surveying: Ground and Airborne
C08	Codes; Standards; Ordinances	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C09	Cold Storage; Refrigeration and Fast Freeze	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C10	Commercial Building ( <i>low rise</i> ); Shopping Centers	G06	Graphic Design
C11	Community Facilities	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C12	Communications Systems; TV; Microwave	H02	Hazardous Materials Handling and Storage
C13	Computer Facilities; Computer Service	H03	Hazardous, Toxic, Radioactive Waste Remediation
C14	Conservation and Resource Management	H04	Heating; Ventilating; Air Conditioning
C15	Construction Management	H05	Health Systems Planning
C16	Construction Surveying	H06	Highrise; Air-Rights-Type Buildings
C17	Corrosion Control; Cathodic Protection; Electrolysis	H07	Highways; Streets; Airfield Paving; Parking Lots
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H08	Historical Preservation
C19	Cryogenic Facilities	H09	Hospital & Medical Facilities
D01	Dams ( <i>Concrete; Arch</i> )	H10	Hotels; Motels
D02	Dams ( <i>Earth; Rock</i> ); Dikes; Levees	H11	Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )
D03	Desalination ( <i>Process &amp; Facilities</i> )	H12	Hydraulics & Pneumatics
D04	Design-Build - Preparation of Requests for Proposals	H13	Hydrographic Surveying
D05	Digital Elevation and Terrain Model Development		
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

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List of Experience Categories (Profile Codes)

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

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List of Experience Categories (Profile Codes)

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<b>Code</b>	<b>Description</b>
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community 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 <i>(City and State)</i>		
2. PUBLIC NOTICE DATE	3. SOLICITATION OR PROJECT NUMBER	

### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE		
5. NAME OF FIRM		
6. TELEPHONE NUMBER	7. FAX NUMBER	8. E-MAIL ADDRESS

### C. PROPOSED TEAM

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

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

### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*

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

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

**19. RELEVANT PROJECTS**

<b>a.</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	
<b>b.</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	
<b>c.</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	
<b>d.</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	
<b>e.</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	

<b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b> <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>	<b>20. EXAMPLE PROJECT KEY NUMBER</b>
---	---------------------------------------

<b>21. TITLE AND LOCATION (City and State)</b>	<b>22. YEAR COMPLETED</b>	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(if applicable)</i>

**23. PROJECT OWNER'S INFORMATION**

<b>a. PROJECT OWNER</b>	<b>b. POINT OF CONTACT NAME</b>	<b>c. POINT OF CONTACT TELEPHONE NUMBER</b>
-------------------------	---------------------------------	---

**24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT (Include scope, size, and cost)**

**25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT**

a.	(1) FIRM NAME	(2) FIRM LOCATION (City and State)	(3) ROLE
b.	(1) FIRM NAME	(2) FIRM LOCATION (City and State)	(3) ROLE
c.	(1) FIRM NAME	(2) FIRM LOCATION (City and State)	(3) ROLE
d.	(1) FIRM NAME	(2) FIRM LOCATION (City and State)	(3) ROLE
e.	(1) FIRM NAME	(2) FIRM LOCATION (City and State)	(3) ROLE
f.	(1) FIRM NAME	(2) FIRM LOCATION (City and State)	(3) ROLE



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**H. ADDITIONAL INFORMATION**

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

---

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

31. SIGNATURE

32. DATE

33. NAME AND TITLE



**FORM 330S SPECIAL SUPPLEMENT**

**FOR USE IN PREPARING PROPOSALS FOR  
ENGINEERING SERVICE AGREEMENT DESIGN, INSPECTION & RESIDENT  
ENGINEERING SERVICES IN CONNECTION WITH FERRY SHORE FACILITIES**

**Contract No: 841 ESA - FSHOR**

**PIN: 84110SISI534**

**EPIN: 84110M0008**

Where appropriate in the completion of Standard Form 330, proposers shall use the following supplementary disciplines (Function Codes), which supplement the List of Disciplines (Function Codes) provided on Page 5 of the Instructions for Standard Form 330.

**Code**

**Discipline**

63 Naval Architect

64 Marine (mechanical – ship propulsion) Engineer

## SECTION VII: ATTACHMENTS

### 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:** Design, Inspection, and Resident Engineering in connection with Engineering Service Agreement, Ferry Shore Facilities

**PIN:** 84110SISI534  
**EPIN:** 84110M0008

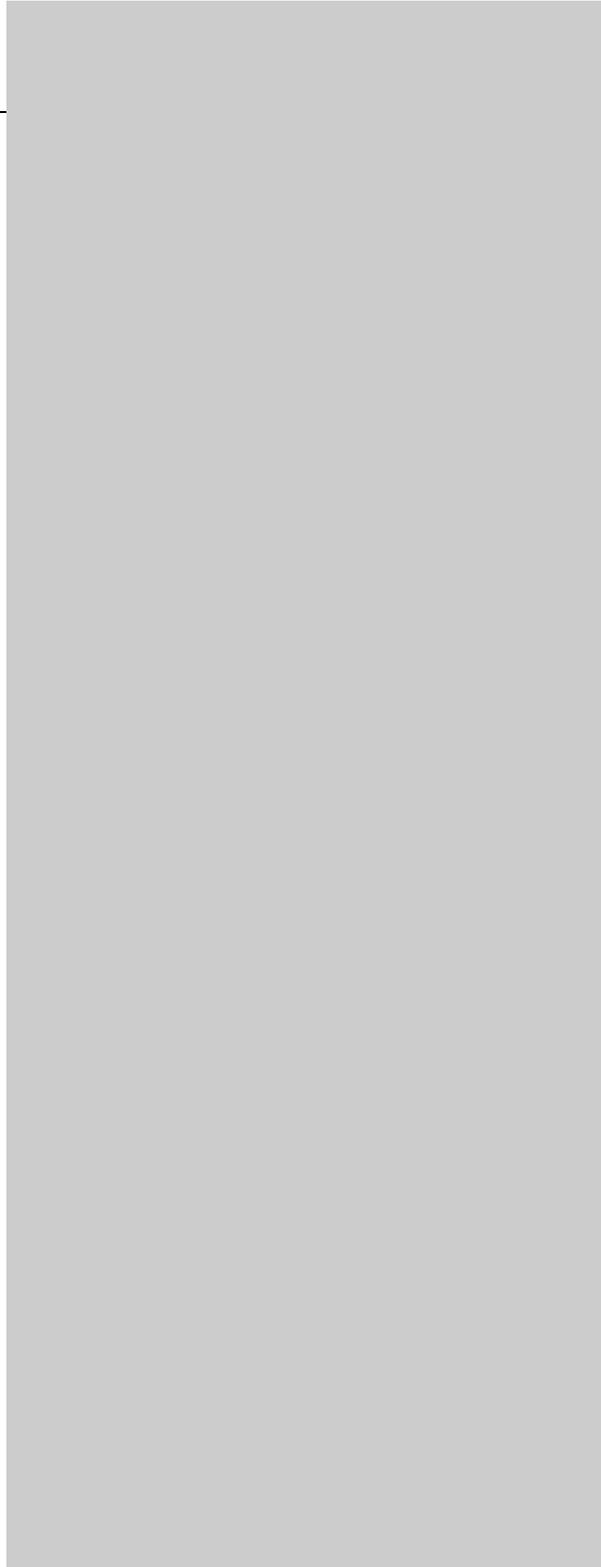
**PRIME CONSULTANT:** \_\_\_\_\_

**CONTRACT NO.:** 841 ESA- FSHOR

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


PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES  
OTHER/\_\_\_\_\_

	<u>(COLUMN 1)</u> <u>JOB TITLE</u> <u>ASCE/ NICET</u> <u>GRADE</u>		<u>(COLUMN 2)</u> <u>AVERAGE</u> <u>HOURLY RATE</u> <u>(FY 2011)</u>
1.	PROJECT DIRECTOR (A-IX)		\$
2.	PROJECT DIRECTOR (A-VIII)		\$
3.	PROJECT DIRECTOR (A-VII)		\$
4.	PROJECT MANAGER (A-VIII)		\$
5.	PROJECT MANAGER (A-VII)		\$
6.	PROJECT MANAGER (A-VI)		\$
7.	PROJECT ENGINEER (A-VII)		\$
8.	PROJECT ENGINEER (A-VI)		\$
9.	SR. ENGINEER (A-VI)		\$
10.	SR. ENGINEER (A-V)		\$
11.	SR. ENGINEER (A-IV)		\$
12.	ENGINEER (A-III)		\$
13.	OFFICE ENGINEER (A-IV)		\$
14.	OFFICE ENGINEER (A-III)		\$
15.	OFFICE ENGINEER (A-II)		\$
16.	DRAFTER (N-III)		\$
17.	DRAFTER TECHNICIAN (N-II)		\$
18.	CHIEF INSPECTOR (N-IV)		\$
19.	SR INSPECTOR (N-III)		\$
20.	INSPECTOR (N-II)		\$
21.	INSPECTOR (N-I)		\$
22.	MOVABLE BRIDGE EXPERT (A-VII)		\$
23.	PUBLIC OUTREACH MANAGER		\$
24.	PUBLIC OUTREACH COORDINATOR		\$
25.	HISTORIC ANALYST		\$
26.	ENVIRONMENTAL INSPECTOR		\$
27.	ARCHITECTURAL INSPECTOR (RA)		\$
28.	GEOTECHNICAL EXPERT (A-VII)		\$
29.	ARCHITECT (RA)		\$
30.	CPM SCHEDULER (A-VI)		\$
31.	SENIOR ESTIMATOR		\$
32.	CHIEF SURVEYOR		\$
33.	PARTY CHIEF		\$
34.	INSTRUMENT PERSON		\$
35.	ROD MAN		\$
36.	MECHANICAL SPECIALIST (A-VI)		\$
37.	MECHANICAL ENGR. (A-II)		\$
38.	ELECTRICAL SPECIALIST(A-VII)		\$



## FORM 4T1- LABOR COST PROPOSAL

**PROJECT NAME:** Design, Inspection, and Resident Engineering in connection with Engineering Service Agreement, Ferry Shore Facilities

**PIN:** 84110SISI534  
**EPIN:** 84110M0008

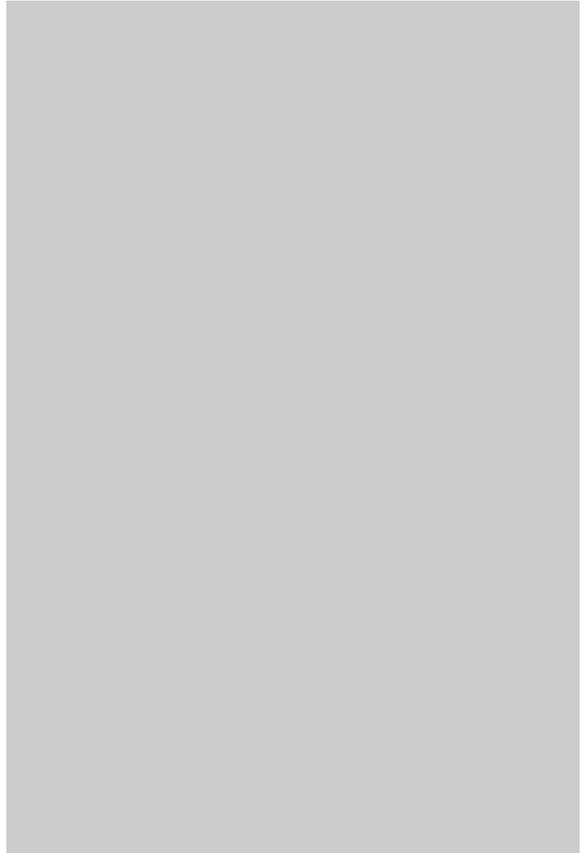
**PRIME CONSULTANT:** \_\_\_\_\_

**CONTRACT NO.:** 841 ESA-FSHOR

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


PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES  
OTHER/\_\_\_\_\_

	<u>(COLUMN 1)</u> <u>JOB TITLE</u> <u>ASCE/ NICET</u> <u>GRADE</u>	<u>(COLUMN 2)</u> <u>AVERAGE</u> <u>HOURLY RATE</u> <u>(FY 2011)</u>
39.	ELECTRICAL ENGINEER(A-III)	\$
40.	LANDSCAPE ARCHITECT	\$
41.	ARBORIST	\$
42.	INDUSTRIAL HYGENIST,CIH, CSP	\$
43.	RESIDENT ENGINEER (A-VII)	\$
44.	RESIDENT ENGINEER (A-VI)	\$
45.	RESIDENT ENGINEER (A-V)	\$
46.	ASS'T RESIDENT ENGINEER (A-V)	\$
47.	ASS'T RESIDENT ENGINEER (A-IV)	\$
48.	ASS'T RESIDENT ENGINEER (A-III)	\$
49.	SOFTWARE DEVELOPER	\$
50.	DIVER (MARINE)	\$
51.	DIVER TENDER (MARINE)	\$
52.	ENVIRONMENTAL ENGINEER (A-V)	\$
53.	ENVIRONMENTAL ENGINEER (A-IV)	\$
54.	ENVIRONMENTAL ENGINEER (A-III)	\$
55.	ENVIRONMENTAL ENGINEER (A-II)	\$
56.	ENVIRONMENTAL ENGINEER (A-I)	\$
57.	WIND EXPERT	\$



**INTERIM OVERHEAD FACTOR** \_\_\_\_\_ Field / \_\_\_\_\_ Office **(A)**

**PROFIT FACTOR** \_\_\_\_\_ **(B)**

**INTERIM MULTIPLIER** **(1+A)X(1+B)** \_\_\_\_\_ Field / \_\_\_\_\_ Office **(M)**

**MAXIMUM ESCALATION FACTOR =** **1.04(D)**

**INSTRUCTIONS:**

1. Each consultant of the project team is to submit a separate "Labor Cost Proposal Form".
2. **For Column (2)**, use actual average salary rates for firm for each job title at regional offices. Attach a listing of current average rates for all titles/grades/levels as approved by NYCDOT (if available) or NYSDOT for regional offices. A regional office is defined as one located within a 75 mile radius of Columbus Circle (NYC).
3. The maximum escalation factor "D" indicated in the shaded area shall not be changed.
4. Total Multiplier (M) shall be rounded off to three (3) decimal figures.
5. 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 Comptroller's 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 funds for 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:** Design, Inspection, and Resident Engineering in connection with Engineering Service Agreement, Ferry Shore Facilities

**PIN:** 84110SISI534  
**EPIN:** 84110M0008

**PRIME CONSULTANT:** \_\_\_\_\_ **CONTRACT NO.:** 841 ESA-FSHOR

<u>(COLUMN 1)</u> <u>CONSULTANT</u>	<u>(COLUMN 2)</u> <u>DIRECT</u> <u>NON-SALARY</u> <u>COST</u>
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. _____	\$ _____
6. _____	\$ _____
7. _____	\$ _____
8. _____	\$ _____
9. _____	\$ _____
<b>TOTALS</b>	<b>\$300,000.00</b>
_____	_____
_____	_____



**INSTRUCTIONS:**

1. The Total Direct Non-Salary Cost shown in the shaded area below Column2 is an out of pocket expense budgeted amount allowed to all proposers and must not be changed.
2. 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 2.

# FORM 4T3 - PERFORMANCE OUTCOME MEASURES AND RELATED FINANCIAL INCENTIVES AND/OR DISINCENTIVES

**PROJECT NAME:** Design, Inspection, and Resident Engineering in connection with Engineering Service Agreement, Ferry Shore Facilities

**PIN:** 84110SIS1534  
**EPIN:** 84110M0008

**PRIME CONSULTANT:** \_\_\_\_\_ **CONTRACT NO.:** 841 ESA-FSHOR

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: ATTACHMENTS**

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

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

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

**Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.**

**ATTACHMENT 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, 9<sup>th</sup> Floor, New York, New York 10007.

**Date of Submission:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**(Signature of Partner or corporate officer)**

**Print Name:** \_\_\_\_\_

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

**By:** \_\_\_\_\_  
**(Signature of Partner or corporate officer)**

**Print Name:** \_\_\_\_\_

## SECTION VII: ATTACHMENTS

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



## Doing Business Data Form – Contract Proposers

A Doing Business Data Form is to be completed by any vendor that submits a proposal for this contract (see Q&A sheet for more information). Please type or print in black ink, sign the last page, and return the complete Data Form, in a separate envelope, to the contracting agency along with your proposal. **The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.**

This Data Form requires information to be provided on your principal officers, owners and senior managers. The name, employer, and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. This Data Form is separate from the City's VENDEX requirements.

### General Instructions for Sections 2, 3, and 4:

**Title:** The actual office title held by the officer, owner, or manager.

**Employer (if not vendor):** If the individual is not employed by the vendor, list his/her employer's name.

### Certification:

Fill out the certification box on the last page completely, and return the completed Data Form, in a separate envelope, to the contracting agency along with your proposal. If you have questions, please contact the Doing Business Accountability Project at 212-788-8104 or [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov). Thank you for your cooperation.

**NOTE:** Under the Federal Privacy Act the furnishing of Social Security Numbers is voluntary. Failure to provide an SSN will not result in any vendor's disqualification. SSNs will not be disclosed to the public. SSNs will be used to: identify a vendor's officers, owners and managers; assist the City in enforcement of Local Law 34 by ensuring that it is applied only to those individuals intended to be covered; and provide the City a means of identifying individuals whose names are not required to be listed in the *Doing Business Database*.

### Section 1: Vendor Information

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

Vendor EIN: \_\_\_\_\_

Vendor Filing Status (select one):

- New Vendor/Full Data Form. *Fill out the entire form.*
- Change from previous Data Form dated \_\_\_\_\_. *Fill out only those sections that have changed, and indicate the name of the person(s) who no longer hold positions with the vendor.*
- No Change from previous Data Form dated \_\_\_\_\_. *Skip to the bottom of the last page.*

Vendor Type:  Corporation (any type)     Partnership (any type)     Sole Proprietor  
 Other (specify): \_\_\_\_\_

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

Vendor Main Phone #: \_\_\_\_\_ Vendor is a Non-Profit:  Yes     No

Vendor Main E-mail: \_\_\_\_\_

**Section 2: Principal Officers**

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

**Chief Executive Officer (CEO)** This position does not exist

The highest ranking officer or manager, such as the CEO, President or Executive Director; or, if those positions do not exist, the Chairperson of the Board.

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

 This person replaced CEO: \_\_\_\_\_ On date: \_\_\_\_\_**Chief Financial Officer (CFO)** This position does not exist

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

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

 This person replaced CFO: \_\_\_\_\_ On date: \_\_\_\_\_**Chief Operating Officer (COO)** This position does not exist

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

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

Office Title: \_\_\_\_\_ SSN: \_\_\_\_\_

Employer (if not vendor): \_\_\_\_\_

Birth date: \_\_\_\_\_ Home phone #: \_\_\_\_\_

Home address: \_\_\_\_\_

 This person replaced COO: \_\_\_\_\_ On date: \_\_\_\_\_

**Section 3: Principal Owners**

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

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

- The entity is not-for-profit
- There are no individual owners
- No owner holds 10% or more shares in the entity
- Other (explain): \_\_\_\_\_

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

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Employer (if not vendor): \_\_\_\_\_  
 Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_  
 Home address: \_\_\_\_\_  
 Home phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Employer (if not vendor): \_\_\_\_\_  
 Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_  
 Home address: \_\_\_\_\_  
 Home phone #: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_  
 Employer (if not vendor): \_\_\_\_\_  
 Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_  
 Home address: \_\_\_\_\_  
 Home phone #: \_\_\_\_\_

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

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_  
 Name: \_\_\_\_\_ Removal date: \_\_\_\_\_  
 Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

**To list more Principal Owners, please attach additional pages.**

**Section 4: Senior Contract Managers**

Please fill in the required identification information for all senior managers who oversee any of the vendor's contracts with the City. Senior managers include anyone who, either by title or duties, has substantial discretion over the solicitation, letting, or administration of any contract with the City. You must list at least one Senior Manager or your Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the vendor is filing a Change Data Form, list any individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Contract Managers:**

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Employer (if not vendor): \_\_\_\_\_

Office Title: \_\_\_\_\_ Birth date: \_\_\_\_\_

Home address: \_\_\_\_\_

Home phone #: \_\_\_\_\_

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

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal date: \_\_\_\_\_

**To list more Senior Contract Managers, please attach additional pages.**

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

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

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

Vendor name: \_\_\_\_\_

Title: \_\_\_\_\_ Work phone #: \_\_\_\_\_

**DOING BUSINESS ACCOUNTABILITY PROJECT  
CONTRACT, FRANCHISE AND CONCESSION PROPOSERS  
FALL 07 – SPRING 08**

**Q & A: The *Doing Business Data Form* and the *Doing Business Database***

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

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

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

The contract, franchise or concession for which you are proposing is considered a business dealing with the City under LL 34. Most types of contracts, franchises and concessions valued at more than \$5,000 are considered business dealings. Exceptions include transactions awarded on an emergency basis or by non-qualified competitive sealed bid. Later in 2008, the types of transactions considered business dealings will be expanded to include grants, economic development agreements, pension fund investments and real property and land use transactions with the City.

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

Vendors that hold contracts for goods or services, or franchises or concessions, valued at more than \$100,000, or contracts for construction valued at more than \$500,000, are considered to be doing business with the City for the purposes of this law and will be included in the *Doing Business Database*. As noted above, later in 2008 other types of transactions will also result in vendor inclusion in the database.

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

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

- **Principal officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the Data Form instructions for examples of titles that apply.
- **Owners** are individuals who own or control 10% or more of the vendor. This includes stockholders, partners and anyone else with an ownership or controlling interest in the vendor.
- **Senior managers** include anyone who, either by job title or actual duties, has substantial discretion over the solicitation, letting or administration of any contract, franchise or concession with the City. If the vendor holds any City contracts, franchises or concessions, you must list at least one Senior Manager, or your Data Form will be considered incomplete. Later in 2008, senior managers responsible for the additional types of transactions indicated above will also be included in the *Doing Business Database*.

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

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

**What happens if I don't submit a complete and accurate Data Form?**

Vendors are required to supply information of this type upon request of the City. The submission of a Data Form that is not accurate and complete may result in appropriate sanctions.

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

Campaign contributions will continue to be public information, as they have been in the past. Similarly, the names of vendors' top officers and owners, which have previously been made public through the VENDEX database, will continue to be public, as will the additional names (senior managers) now required by this Data Form. Each person's employer and title will be made public. However, no sensitive personal identifying information will be made available to the public, and home address and phone number information will not be used for communication purposes.

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

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

**I have already completed a Doing Business Data Form. Do I have to submit another one?**

Yes. A vendor is required to submit a Doing Business Data Form each time it proposes for, or enters, a transaction considered business dealings with the City. However, the Form has both a No Change option, which only requires a vendor to report its EIN and sign the last page, and a Change option, which allows a vendor to only fill in applicable information that has changed since the previous completion of the Doing Business Data Form.

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

Any person who believes that s/he should not be listed may apply for removal from the database by contacting the Doing Business Accountability Project of the Mayor's Office of Contract Services. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the vendor. Vendors may also contact the DBA Project to add or remove such individuals. Removal and update forms will be available on-line at [nyc.gov/mocs](http://nyc.gov/mocs), or by contacting the Doing Business Accountability Project at 212-788-8104.

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

- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.
- **Contract and Concession holders:** generally for the term of the contract or concession, plus one year.
- **Franchise holders:** from the commencement or renewal of the franchise, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.

For information on other types of transactions, contact the Doing Business Accountability Project at 212-788-8104.

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

Please contact the NYC Campaign Finance Board for information on contribution limits, at [www.nyccfb.info](http://www.nyccfb.info), or 212-306-7100.

**The Data Form is to be returned, in a separate envelope, to the contracting agency along with your proposal.**

If you have any questions about the Data Form please contact the Doing Business Accountability Project at 212-788-8104 or [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov).

## **SECTION VII: ATTACHMENTS**

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

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

February 2011

**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 301-10.131 through 301-10.143, which provide that the New York City Department of Transportation, (NYCDOT) and its contractors when using Federal funds 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 49 CFR661.7 and include microprocessors, computers, microcomputers, software, or other such devices which are used solely for the purpose of processing data and small purchases (currently less than \$100,000).

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. CHARTER BUS REQUIREMENTS (49 U.S.C. 5323(d) 49 CFR Part 604)**

**Charter Service Operations** - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

**4. SCHOOL BUS REQUIREMENTS (49 U.S.C. 5323(F) 49 CFR Part 605)**

**School Bus Operations** - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

## **5. 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.

## **6. 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.

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

The Contractor agrees to comply with mandatory energy standards and policies of the State energy conservation plan under the Energy Policy and Conservation Act, as amended.

## **8. 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.

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

The Contractor agrees to comply with 49 USC 5318 (e) 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.

**10. 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.

**11. 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 federal award covered. 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.

**12. ACCESS TO RECORDS AND REPORTS (49 CFR 5325, 49 CFR 18.36(i), 49 CFR 633.17)**

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

1. In accordance with 49 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 in 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 of Rolling Stock	Professional Services
<u>I. 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 <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II. Non State Grantee</u>						
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes <sup>3</sup>		Yes	Yes	Yes	Yes

Sources of Authority:

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

<sup>2</sup> 49 CFR 633.17

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

SAT: Source Acquisition Threshold

### **13. 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 Agreements (<http://www.fta.dot.gov/documents/17-Master.pdf>) 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.

### **14. 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 is 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 is 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 is 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).~~

### **15. 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.

### **16. 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.

### **17. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS 40 U.S.C. 3141, et seq. and 18 U.S.C. 874, 29 CFR 5.5 (a)**

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.

## **18. 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.

## **19. 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.

## **20. 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 its actions in connection with the Project. Upon execution of the Grant Agreement or Cooperative Agreement for the Project, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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.

## **21. 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 to 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.

## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)** **(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.

### **23. 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.

### **24. 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.

## **25. 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. 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 of 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.

## **26. PATENT AND RIGHTS IN DATA (37 CFR Part 401 49 CFR Parts 18 and 19 A.)**

**A. Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS 49 U.S.C. § 5310, § 5311, and § 5333; 29 CFR Part 215**

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

**28. 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.

**29. 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 8%. The FTA DBE goal for architectural, engineering services and construction contracts is 11%. The DBE goal is 2% for marine contracts.~~ Additionally, the DBE program dictates payment terms and conditions applicable to all subcontractors regardless of whether they are DBE firms or not. NYCDOT will no longer hold retainage on FTA funded contracts.

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 will 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;
6. If the contract goal is not met, evidence of good faith efforts should be provided by NYCDOT. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance;
7. 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; and
8. 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.

### **30. 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.

### **31. 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.

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

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

The Contractor agrees further to [Select a, b, or c] (a) submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt NYCDOT's policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval to NYCDOT, 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).

### **32. INTELLIGENT TRANSPORTATION SYSTEM (ITS)**

Intelligent transportation system property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue.

### **33. AMERICANS WITH DISABILITIES ACT (ADA) FOR ROLLING STOCK**

Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. NYCDOT advise third party contractors operating public transportation services to review the requirements for public entities in this context.

## SECTION VII: ATTACHMENTS

- I) FTA & DBE FORMS

**Appendix A**

**BUY AMERICA CERTIFICATION**

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Appendix A1

DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_ Date

**Appendix A2**

**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

**Appendix A3**

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

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

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

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

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

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

\_\_\_\_\_  
Date

**Contractor Note:**

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

## **Appendix B**

### **REQUIRED CONTRACT PROVISIONS**

#### **DBE Program**

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

1. Notice of DBE Contract Requirements in the Invitation for Bids and/or Request For Proposals
2. General Conditions
  - a. Assurances
  - b. DBE Policy
  - c. DBE Obligation
  - d. Prompt Payment to Subcontractors
  - e. Legal and Contract Remedies
  - f. Contractor Reporting Requirements
  - g. Retainage Policy

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

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

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

The successful Proposer/Bidder will be required to meet a NYCDOT Disadvantaged Business Enterprise (DBE) goal. ~~For Engineering Services and Construction a goal of 11% is currently in effect, for Marine work a DBE goal of 2% goal is in effect.~~ The goal is based on the total value of the contract, which should be subcontracted to a DBE firm or firms. To be qualified as a DBE, a firm should be certified in the NYSUCP, in accordance with Federal Regulation 49 CFR Part 26. Application for certification can be obtained at:

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

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

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

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

Disadvantaged Business Enterprise (DBE) Certification

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

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

## **General Conditions**

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

### **a. Assurances – Section 26.13**

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

*The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT- assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT- assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.).*

Each **prime contractor signed with a subcontractor and/or each subcontractor signed to a contractor** must include the following assurance:

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

### **b. Policy**

It is the policy of USDOT that DBEs as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."

### **c. Obligation**

The recipient or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT assisted contracts.

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

New York City Department of Transportation  
ACCO Office of Contract and Compliance  
55 Water Street  
8<sup>th</sup> Floor  
New York, New York 10041

Attn: Charles Bartolotta, DBE Contract Compliance Officer

#### **d. Prompt Payment to Subcontractors**

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

#### **e. Legal and Contract Remedies**

The DBE Compliance Unit shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments, and other appropriate monitoring, as further described in this Program Plan. The DBE Representative shall ensure that DBE participation is counted toward contract goals and the overall annual goal in accordance with the Regulations. In accordance with 49 CFR Part 26, prime contractors may not terminate sub-contractors for convenience. When DBE contractors are terminated, prime contractors will be required to substitute DBE sub-contractors in order to meet its DBE commitment.

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

#### **f. Contractor Reporting Requirements**

All sub-recipients of FTA funds are required to utilize the NYCDOT DBE Program Plan and comply with USDOT regulations 49 CFR Part 26.

Sub-recipients, contractors and subcontractors are subject to contract compliance reviews to ensure that DBE requirements are being met. They are expected to cooperate with the NYCDOT DBE Representative during desk audits and / or on-site reviews. NYCDOT has a Field Representative responsible for project over site to ensure that contract work is being performed by designated DBE sub-contractors and that the NYCDOT Project Accountant tracks payments to ensure that project goals, when applicable, are followed. The Compliance Officer, and Field Representative also reports work and payment progress to the Project Accountant who then tracks DBE utilization with the DBE Representative. The DBE Compliance Officer and DBE Representative ensure that sub-contractor DBE participation is credited to overall goals after the DBE has received payments.

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

**g. Retainage**

DOT has made a determination that it will NO LONGER HOLD retainage ON FTA FUNDED CONTRACTS.

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

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

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

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

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

## Appendix C

### **DETERMINING GOOD FAITH EFFORTS**

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

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

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

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

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

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

**Appendix D**

**PROMPT PAYMENT AFFIDAVIT**

**(SAMPLE PRIME CONTRACTOR PROMPT PAYMENT AFFIDAVIT)**

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

Re: Payment Request No. \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

Appendix E

**SAMPLE PRIME CONTRACTOR AWARD LETTER**

Date

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

Re: Contract Name and/or Description

Dear Mr. John Doe:

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

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

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

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

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

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

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

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

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

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

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

If you have any questions you may contact NYCDOT's Contract Compliance Unit at (212) 839-9411 or email us at [accomail@dot.nyc.gov](mailto:accomail@dot.nyc.gov).

Thank you for your continued commitment and cooperation.

Cordially,

DBE Administrator

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

**Appendix F**

**MINORITY OWNED FINANCIAL INSTITUTIONS**

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

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

CONTRACT #:  
CONTRACTOR:

DATE:

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

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

*REMARKS:*

CONTRACTOR'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

PRINT NAME \_\_\_\_\_ TITLE \_\_\_\_\_

**NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION  
PRIME CONTRACTOR REPORT OF PAYMENTS TO DBE'S**

<b>FINAL REPORT</b> YES <input type="checkbox"/> NO <input type="checkbox"/>	<b>CONTRACT NUMBER</b>	<b>COUNTY</b>	<b>REPORT DATE</b>
---	------------------------	---------------	--------------------

<b>CONTRACTOR</b> NAME _____ ADDRESS _____ _____ PHONE _____ FED. ID No. _____	<b>SUBCONTRACTOR</b> NAME _____ ADDRESS _____ _____ PHONE _____ FED. ID No. _____
---	--

<b>TOTAL PAYMENTS DUE: \$</b> _____ <b>* FINAL RETAINAGE OR</b> <b>OTHER WITHHOLDING: \$</b> _____  <b>TOTAL PAYMENTS \$</b> _____
--

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

**CERTIFICATION AND NOTARIZATION**

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.

<b>Contractor's Signature</b> _____ <b>Title:</b> _____  <b>Sworn before me this</b> _____ <b>Day of</b> _____, 20 _____	<b>Subcontractor's Signature</b> _____ <b>Title:</b> _____  <b>Sworn before me this</b> _____ <b>Day of</b> _____, 20 _____
---	--

<b>Notary Public</b> _____	<b>Notary Public</b> _____
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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.

REVERSE

NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION  
**PRIME CONTRACTOR REPORT OF PAYMENTS TO DBE'S**

**New York City 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 AAP21, 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 AAP21, 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 AAP21 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 CITY  
DEPARTMENT OF TRANSPORTATION  
DBE UTILIZATION WORKSHEET**

CONTRACT No.	COUNTY	F. A. PROJECT No.	PAGE No. OF	DATE SUBMITTED
--------------	--------	-------------------	----------------	----------------

<b>CONTRACTOR</b>	<b>SUBCONTRACTOR</b>
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.

<b>EST. BEGINNING DATE</b> (Mo & Yr) ____/____	<b>EST. COMPLETION DATE</b> (Mo & Yr) ____/____
---	--

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

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

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

Contractor's Signature		Date		Subcontractor's Signature		Date	
ITEM No.	NAME	< 100 %	BID AMOUNT		AGREED AMOUNT \$	% to CNT	
			\$ SPECIALTY	\$ NON-SPECIALTY			
1							
2							
3							
4							
5							
6							
7							
<b>TOTALS:</b>			\$	\$	\$		

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.

<b>APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY:</b>	<b>DATE APPROVED</b> ____/____/____
--	--

AAPHC 89 (3/08)

New York City Department of Transportation DBE General Provisions requires that prior to contract award , Prime Contractors must obtain written consent of the Department to a utilization plan that identifies certified disadvantaged owned business enterprises that have committed to perform work on a proposed contract. Authority for approval of utilization has been delegated to the 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.

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

<b>CONTRACT No.</b>	<b>COUNTY</b>	<b>F. A. PROJECT No.</b>	<b>PAGE No.</b> ____ OF ____	<b>DATE SUBMITTED</b>
---------------------	---------------	--------------------------	---------------------------------	-----------------------

<b>CONTRACTOR</b>		<b>SUBCONTRACTOR</b>		
<b>NAME</b> _____		<b>NAME</b> _____		
<b>ADDRESS</b> _____		<b>ADDRESS</b> _____		
<b>PHONE</b> _____		<b>PHONE</b> _____		
<b>FED. ID No.</b> _____		<b>FED. ID No.</b> _____		

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.

<b>EST. BEGINNING DATE</b> (Mo & Yr) ____ / ____	<b>EST. COMPLETION DATE</b> (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 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.

<b>Contractor' Signature</b> _____	<b>Date</b> _____	<b>Subcontractor's Signature</b> _____	<b>Date</b> _____
------------------------------------	-------------------	--	-------------------

**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					
Total all PREV Bid Amounts & D/M/WBE Agreed Amounts:							
Total all NEW Bid Amounts & D/M/WBE Agreed Amounts:							
<b>NET TOTAL AMENDMENTS:</b>				<b>\$</b>	<b>\$</b>	<b>\$</b>	

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.

<b>APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY:</b> _____	<b>DATE APPROVED</b> / /
--	-----------------------------

**INSTRUCTIONS FOR COMPLETING FORM AAPHC 89-1  
DBE UTILIZATION WORKSHEET AMENDMENT**

New York City Department of Transportation DBE Provisions requires that prior to contract award; Prime Contractors must obtain written consent of the Department to a utilization plan that identifies certified disadvantaged owned business enterprises that have committed to perform work on a proposed contract. Authority for approval of utilization has been delegated to the 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 OCC as attachments to a revised Utilization Plan, form AAP 19.

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

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

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

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

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

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

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

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

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



**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: 18%**

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

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

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

**New York State Department  
Of Transportation  
Contract Audit Bureau DBE Unit**  
50 Wolf Road, 1<sup>st</sup> Floor South  
Albany, New York 12232  
Fax: 518-457-1675  
Telephone: (518) 457-9679

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

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

**Disadvantaged Business Enterprise Officer**

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

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

**RETURN THIS PAGE WITH BID**

## Federal Transit Administration Third Party Contract Requirements

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

A. Disadvantaged Business Enterprise (DBE) Requirements

To be qualified as a DBE, a firm should agree to abide by the statements from a governmental or quasi-governmental agency that adheres to Federal Regulation 49 CFR Part 26 such as:

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

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

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

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

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

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

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

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

New York City Department of Transportation  
ACCO, Office of Contract Compliance  
55 Water Street, 8<sup>th</sup> Floor, Room 825  
New York, NY 10041  
Telephone: (212) 839-9411  
Facsimile: (212) 839-4237  
Attention: Charles Bartolotta, DBE Representative

## **SECTION VII: ATTACHMENTS**

J) **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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## STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York

State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

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

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

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

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

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

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

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

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

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

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

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

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