

Michael R. Bloomberg
Mayor

The City of New York
Department of Transportation
Division of Planning and Sustainability

Janette Sadik-Khan
Commissioner

REQUEST FOR PROPOSALS

FOR

ENGINEERING SERVICE AGREEMENT (ESA) FOR TRANSPORTATION PLANNING, TRANSPORTATION ENGINEERING, URBAN DESIGN AND RELATED SERVICES

PIN NUMBERS: 84111MBPS591
84111MBPS592
E-PIN: 84111M0006

RELEASE DATE OF THE RFP: November 16, 2011

ANTICIPATED CONTRACT TERM: 1095 Consecutive Calendar Days from the Date of Written Notice with an option to renew for an additional 1095 CCD under same contract 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:

Ellen Zielinski
Chief of Staff
Division of Planning and Sustainability
55 Water Street, 9th Floor
New York, NY 10041
Telephone: (212) 839-6478
Fax: (212) 839-9892



November 16, 2011

Re: Request for Proposals for
Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering,
Urban Design and Related Services
PIN Numbers: 84111MBPS591 and 84111MBPS592
EPIN: 84111M0006

To Whom It May Concern:

I am pleased to invite your organization to submit a proposal for an Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services to assist the Division of Planning and Sustainability.

Please be advised that a Pre-Proposal Conference has been scheduled for 10:00am on November 30, 2011 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 IV of the RFP, to the **NYC Department of Transportation, ACCO Contract Management Unit, Ground Floor, 55 Water Street, New York, New York 10041 on or before January 9, 2012 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 Ellen Zielinski within 48 Hours of receipt of this RFP by Fax: **(212) 839-9892**.

All questions concerning this invitation must be faxed to Ellen Zielinski at (212) 839-9892 on or before December 1, 2011 by 5pm. If you need to contact by telephone, please call (212) 839-6478.

Thanks,

Ellen Zielinski
Chief of Staff

Enclosure



ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR PROPOSALS

**WE STRONGLY RECOMMEND THAT YOU FAX THIS SHEET TO US TO ENSURE THAT YOU
RECEIVE ALL FUTURE ADDENDA
ATTN.: Ellen Zielinski Fax: 212.839.9892**

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

Consultant:		
Address:		
City	State	ZIP
Contact Person:	Phone #:	Email:
RFP PIN #s 84111MBPS591/84111MBPS592; EPIN 84111M0006		Fax #
RFP Contract Title (Fill in): Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services		

OR

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

Please check **all** the reasons that apply and return this form to Ellen Zielinski
Fax: 212.839.9892. E-Mail Address: ezielinski@dot.nyc.gov

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

Comments: (Please use additional sheets if necessary)

Signature

Title

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SECTION I - TIMETABLE

A. Release Date of the Request for Proposals: **November 16, 2011**

All questions and requests for additional information concerning this RFP should be directed to Ellen Zielinski, Chief of Staff, the Authorized Agency Contact Person at:

Telephone #: (212) 839-6478
Fax#: (212) 839-9892
E-Mail Address: ezielinski@dot.nyc.gov

Proposers should submit questions no later than December 1, 2011 at 5pm since the Agency may be unable to respond to questions received after that date.

B. Pre-Proposal Conference:

Date: November 30, 2011
Time: 10:00am
Location: 55 Water Street, Ground Floor Bid Room
 New York, NY 10041

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

C. Proposal Due Date and Time and Location:

Date: January 9, 2012
Time: No later than 2:00pm
Location: NYCDOT ACCO Contract Management Unit
55 Water Street, Ground Floor
New York, New York 10041

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

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

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

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

SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of the RFP

The Department of Transportation is seeking appropriately qualified vendors to provide transportation planning, transportation engineering, urban design and related services to assist the Department's workforce and to obtain personnel expertise that is not available in the agency. This includes work relating to general transportation planning activities, including but not limited to the collection of traffic data and analysis, traffic simulation and modeling and associated services, development of software systems, and public outreach/public involvement, as well as engineering, design and inspection services Citywide.

B. Anticipated Contract Term

Anticipated Contract Term for Each Contract is 1095 Consecutive Calendar Days starting from the date of the Notice to Proceed with an option to renew for an additional 1095 CCD the same terms and conditions at the sole discretion of the City.

C. Anticipated Payment Structure

It is anticipated that the payment structure for the contract(s) 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. Operation Procedure

The Agency will make two (2) awards as a result of this RFP.

Assignments under these Contracts will be made on alternating basis, except that, if the Department is not able to reach a final agreement with one Consultant after following the procedures set forth in Section VII, Attachment A – "Proposed Contractual Agreement", Subsection III – "Operations Procedures after Agreement is Executed", pages GR-8 through GR-10, of this RFP, or, in the Agency's sole opinion and discretion, the consultant cannot satisfactorily provide the services in a timely manner or is otherwise unable to commence the required services, it may request a proposal from other Consultant and negotiate a final proposal with such other Consultant by following these procedures.

Of the two contracts 84111MBPS591 and 84111MBPS592 that will be awarded from this RFP, the contract 84111MBPS591 will be assigned to the highest technically ranked firm and the contract 84111MBPS592 will be assigned to the second highest technically ranked firm. The first assignment will be given to the contract that will be registered first. If the two (2) awards from this RFP are simultaneously registered then the first assignment (task) will be given to the highest ranked firm (84111MBPS591) and subsequent assignments will be made on an alternating basis between Contract #'s: 84111MBPS591 and 84111MBPS592, as explained above.

In special circumstances, there may be exceptions to the task assignment process delineated above, where Agency's Project Manager issues a request for a project specific proposal to both consultants. The project specific proposals would then be evaluated based upon the technical evaluation criteria set forth in the project specific proposal documents as specified and explained in pages GR-8 through GR-10 of the RFP.

The Agency will issue assignments based on the labor rates submitted by the consultants on their cost proposal. The staffing plan for each assignment shall be agreed upon between the individual consultant and Agency.

SECTION III - SCOPE OF SERVICES

A. Agency Goals and Objectives

The agency's goals and objectives are to have an Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services to assist the Department in its daily workflow and to assist in the development of projects to improve traffic conditions and the urban environment. The scope of services included in this RFP 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 (Section VII, Attachment A).

C. Proposed Contractual Agreement

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

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

D. Opportunity for Disadvantaged Business Enterprise

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

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

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

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

SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL

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

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

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

A. Proposal Format

1. Component 1: Procedural Forms

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

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

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

2. Component 2: Proposal Forms

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

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

3. Component 3: Cost Proposal

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

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

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

Performance Outcome Measures and Financial Incentives and/or Disincentives

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

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

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

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

Proposer's Name	NYC Department of Transportation ACCO Contract Management Unit
Address	55 Water Street, Ground Floor New York, New York 10041
PIN NUMBERS: 84111MBPS591 and 84111MBPS592; EPIN 84111M0006 ENGINEERING SERVICE AGREEMENT (ESA) FOR TRANSPORTATION PLANNING, TRANSPORTATION ENGINEERING, URBAN DESIGN AND RELATED SERVICES	
PROPOSAL SUBMISSION DEADLINE IS January 9, 2012 at 2:00pm	

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

B. Proposal Package Contents (“Checklist”)

CHECKLIST FOR RFP

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

1. **COMPONENT 1: PROCEDURAL FORMS** – Submit one original set in a separate sealed envelope along with the Technical Proposal

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

2 **COMPONENT 2: PROPOSAL FORMS** – Submit one original and six copies in a separate sealed envelope along with the Technical Proposal

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

3. **COMPONENT 3: COST PROPOSAL** – Submit ONLY one (1) original set in a separate sealed envelope with the Technical Proposal package

COST PROPOSAL

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

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

- Doing Business Data Form

SECTION V: PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures

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

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

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

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

The agency shall rank proposers by technical merit and pursuant to the Federal/State Method of Procurement (Brooks Law) the price proposal from the two (2) highest technically ranked firms will be opened and reviewed by the consultant selection committee (CSC) to determine whether it is responsive or non-responsive. Following analysis of the responsive price proposals by the CSC, the two highest technically ranked firms 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 two (2) highest ranked proposers, if such a fee is not successfully negotiated with either of the top ranked proposers, the agency may conclude such negotiations, and enter into negotiations with the next highest technically ranked proposer(s), as necessary.

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

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

B. Evaluation Criteria

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

1. Quality & Relevance of Prior Experience	
- Proposed staff (Resumes)	30%
- Firm in general	25%
2. Quality of Proposal	
- Overall Project Understanding	20%
- Approach	15%
- Innovation	05%
3. Staff Availability	
- Workload - Staff Availability	<u>05%</u>
	100%

C. Basis for Contract Award

A contract will be awarded to the two highest technically ranked responsible proposers whose proposals are 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 two contracts shall be subject to the timely completion of contract negotiations between the Agency and the selected proposers.

D. Exclusion from Participation in Subsequent Solicitation(s)

This RFP is for the Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services.

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.

SECTION VI - GENERAL INFORMATION TO PROPOSERS

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

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

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

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

E. Proposer Appeal Rights. Pursuant to the PPB 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 PPB Rules, it is the City's policy to process contract payments efficiently and expeditiously.

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

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

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

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

L. 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. [IF APPLICABLE] The Agency has determined that the contract(s) to be awarded through this Request for Proposals (PIN: 84111MBPS591 & 84111MBPS592/E-PIN 84111M0006) , for Engineering Service Agreement (ESA) for Transportation Planning, Transportation, Transportation Engineering, Urban Design and Related Services Citywide will not directly result in the displacement of any New York City employee.

(Commissioner) (Agency Chief Contracting Officer)

Date

Message from the NYC Vendor Enrollment Center: *Get on mailing lists for NYC contract opportunities!*

Submit a NYC-FMS Vendor Application - Call 212/857-1680

SECTION VII

ATTACHMENTS

- A) **Proposed Contractual Agreement**

- B) **General Provisions (APPENDIX A)
MacBride Principles Provisions and
Resident Engineering Inspection Instruction Manual**

- C) **Procedural Forms Packet**

- D) **Proposal Forms Packet**

- E) **Cost Proposal Forms Packet**

- F) **Vendex Requirements & Confirmation of Vendex Compliance**

- G) **Local Law 34 – Doing Business Instructions and Data Form
*(To be submitted in a separate sealed envelope along with the Technical Proposal)***

- H) **Standard Clauses for All New York State Contracts
FHWA Requirements
FTA Requirements &
Federal Forms (See Attachments)**

SECTION VII

A) PROPOSED CONTRACTUAL AGREEMENT

**ENGINEERING SERVICE AGREEMENT (ESA) FOR TRANSPORTATION PLANNING,
TRANSPORTATION ENGINEERING, URBAN DESIGN AND RELATED SERVICES**

**PIN: 84111MBPS591 and 84111MBPS592
E-PIN: 84111M0006**

SPECIAL TERMS & CONDITIONS

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

IN CONNECTION WITH AN

SCOPE OF WORK

**Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering,
Urban Design and Related Services**

**PIN: 84111MBPS591 and 84111MBPS592
E-PIN: 84111M0006**

**CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
CONTRACT FOR TRANSPORTATION PLANNING, TRANSPORTATION ENGINEERING,
URBAN DESIGN AND RELATED SERVICES
IN CONNECTION WITH AN
ENGINEERING SERVICE AGREEMENT
CITYWIDE FOR TRANSPORTATION RELATED PLANNING PROJECTS**

PIN No: 84111MBPS591 and 84111MBPS592

I. GENERAL REQUIREMENTS

This agreement provides planning, transportation engineering, data collection, urban design and related services in a variety of functional areas as described below. The Consultant will be expected to assist the agency with the planning and implementation of projects involving street design and operations including transit improvements; freight movement; parking and curb management; public space design and management; urban art installation and urban design; the development of state-of-the-art modeling and data tools for traffic and transportation-related analyses and other such initiatives that build on the goals of PlaNYC and the agency's strategic plan. The agency brings a comprehensive and sustainable approach to the planning, design and operation of New York City's street network. This contract provides the Consultant with an opportunity to be integrally involved in planning and implementing agency projects that demonstrate national leadership in the areas of planning, design, and engineering. NYCDOT expects the consultant to deliver practical and innovative world-class solutions commensurate to the City's transportation and sustainability challenges. The Consultant will be expected to integrate diverse technical, project management, and public engagement skills into engineering and planning deliverables that further the agency's efforts to plan a more attractive, efficient and sustainable transportation system.

During the three-year term of this Engineering Services Agreement, projects and work assignments will be identified, associated individual scope of services prepared, and agreement reached with the project manager regarding staffing requirements, cost, and schedule. Work will commence immediately upon registration of individual task orders.

Work shall be progressed in accordance with the current Procedures and best practices of Highway Design, Inspection & Construction, Traffic Operations, other applicable procedures, standards, and specifications, and also in accordance with City, State and Federal Standards. Work shall be performed in accordance with but not limited to the current requirements specified in the following documents and manuals:

NYC DOT core planning and policy documents:
PlaNYC (NYC's sustainability plan)
Sustainable Streets (DOT's agency strategic plan)
NYCDOT Street Design Manual
NYCDOT Truck Route Map
NYC Bicycle Master Plan
NYC DOT/NYCT BRT Phase 2 Master Plan

NYC DOT Design and Operational documents:
NYCDOT Standard Highway Details of Construction
NYCDOT Highway Design Directives
NYC Bureau of Signals and Traffic Operations Standard Specifications ("Traffic Blue Book")

All NYCDOT – Bureau of Traffic, Signal Specification Drawing
NYCDOT Street Lighting Standards
NYCDOT/NYCT Select Bus Service Design Guidelines
NYCDOT Uniform Land Use Procedure
City Environmental Quality Review Technical Manual
NYC Zoning Code

NYC DOT Administrative and Project Management documents:

NYCDOT Consultant Administration Procedural Bulletins
NYCDOT Requirements for the Preparation of Engineering Drawings and Documents, Section 1A
NYCDOT Requirements for the Microfilming of Engineering Drawings and Documents, Section 2B & 2C
NYCDOT Detailed Instructions for the computerized Indexing of Engineering Drawings and Documents for Microfilming, Section 3
NYC Specifications for Title Examinations and Reports on Street/Railroad Intersections
NYC Specifications for Title Examinations and Reports on Privately-owned Tax Lots

State, federal, and partner agency documents:

NYSDOT Engineering Bulletins & Engineering Instructions
NYSDOT Highway Design Manual, Volumes 1 and 2
NYSDOT Standard Specifications
NYSDOT Steel Construction Manual
NYSDOT Engineering Instructions for Load Ratings
NYSDOT Right of Way Mapping Procedure Manual
NYSDOT Manual of Administrative Procedure (MAP)
NYSDOT Interim Guide to Metric Design
NYSDOT Metric Conversion Guidelines, Structures Division
NYSDOT Policy on Geometrics of Structures
NYSDOT Manual of Uniform Traffic Control Devices (MUTCD)
NYSDOT Standard Specifications for Construction and Materials
NYSDOT Interim Project Development Guidelines
NYSDOT Project Environmental Guidelines
NYSDOT Pavement Evaluation and Rehabilitation Manual
Federal Manual of Uniform Traffic Control Devices
FHWA Americans with Disabilities Act
AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities
AASHTO Guide for the Development of Bicycle Facilities
AASHTO Guide to Metric Conversion
AISC Metric Properties of Structural Shapes
ASTM Standard Specifications
National Electric Code
Electric Code of the City of New York
Resident Engineering & Inspection Manual
NYSDOT Policy on Geometric Design of Highways & Streets
AASHTO Policy on Geometric Design of Highways & Streets
NYSDOT Prestressed Concrete Construction Manual
NYSDOT Standard Sheets (drawings)
Manual of Uniform Record Keeping (MURK)
Shop, Working and Record As-Built Drawings, Manuals, Printed Matter: Preparation, Furnishing
Computerized Indexing and Microfilming

State Environmental Quality Review Act
National Environmental Policy Act
HCM Highway Capacity Manual
ITE Trip Generation Manual and other ITE Manuals
National ITS Architecture – Version 6.0
New York Sub-Regional ITS Architecture

These assignments shall include, but are not limited to, the following project assignments:

A. GENERAL TRANSPORTATION PLANNING

The consultant shall perform tasks in accordance with the individual scope of services defined for the specific project assignment. This may include, but is not limited to the following tasks:

- Development of multimodal and sustainable transportation plans at the neighborhood and corridor scale
- Feasibility studies – all transportation modes;
- Assessment of major network changes
- Transportation systems management/transportation demand management strategies
- Traffic calming assessment and design
- Landscape planning and industrial design capabilities
- Research and testing of new materials for plazas and sidewalks
- Developing and administering field and engineering surveys, conducting analysis of results
- Parking inventory and license plate studies
- GPS data collection, inventory management and GIS integration
- Financial and economic analysis; cost estimates and cost benefit analyses
- Market research and focus group studies
- Development of policies for inclusion in the Department's daily operations
- Transit planning, design and operations; including Bus Rapid Transit and Transit Signal Priority
- CEQR, SEQRA, and NEPA environmental studies;
- Road surveying/geometry
- Funding proposal writing
- Pedestrian and bicycle facility planning and urban design;
- Traffic safety and crash analysis (corridor, intersection, area, etc.)CMAQ project post-implementation evaluation/analysis
- Vehicle Emission Modeling and Testing

B. COLLECTION OF TRAFFIC DATA AND ANALYSIS

The consultant shall perform data collection, reduction and analysis services as needed. This may include but is not limited to the following:

The consultant will assemble and/or collect detailed data on accidents, vehicle and pedestrian and bicyclist volumes and classifications, turning movements, travel times and speed surveys utilizing floating car and GPS methods, traffic flow characteristics, traffic signals, timing and controls, pedestrian desire lines, curb side and parking activity signage, surface transit activity including dwell times and goods movement (e.g., truck loading and unloading activities), bridge vertical clearance measurements using modern electronic equipment, truck weight impact studies using Weigh-In-Motion technology, demographic and land use data, and other information necessary to inventory

existing conditions and usage. In addition, the consultant may be tasked with performing Origin and Destination (O&D) surveys on various scales. The consultant shall be responsible for installation of Automatic Traffic Recording (ATR) machines to collect daily traffic volumes for up to seven days. Accident data for at least three previous years may also be required. All data collected should meet the Institute of Transportation Engineers, FHWA, NYSDOT and NYC CEQR Manual specifications and guidelines, and the DOT's Traffic Collection Management (TCMS) formats for data reduction and submission.

The consultant will utilize various approved methodologies and pertinent evaluation criteria, as may be required in connection with the actual scope of services, including, but not limited to, travel demand forecasting/analyses (trip generation, modal split, traffic assign, ODME estimation etc.), floating car and GPS (loggers) method and radar guns, on-site time laps photography, videotaping and photography, vehicle and pedestrian counts using video capture technology, bus time/delay analysis, value of travel time reliability in cost benefit analysis, census data and other sources that will result in the identification of causes, critical transportation safety problems, and to provide recommendations.

The consultant shall conduct traffic assessments as required. In accordance with NYCDOT standard criteria, identify problem intersections, and analyze roadway, sidewalk, crosswalk and corner reservoir capacity using the Highway Capacity Manual (HCM) methodology approved by DOT. Analysis may also be required to be conducted using Synchro/SimTraffic or other software programs as directed by NYCDOT, and to use innovative measures of effectiveness, such as Person-Delay, as outlined in the CEQR Manual. The consultants will be expected to provide methodologies for pre and post analysis.

The consultant shall analyze current parking (on and off-street) conditions and assess available capacity, utilization and turnover rate. The consultant shall analyze existing truck routes, loading zones, bus routes, stops and the adequacy of space for stopping and layover areas and bus quality of service (using the Transit Capacity and Quality of Service Manual). The consultant shall provide comprehensive parking analysis including assessing and developing revenue-generating opportunities for both on and off street parking facilities and may also assist in technological innovation and improvements in signage and way finding systems related to parking.

The consultant shall analyze goods movements generated by commercial developments within the study area.

If requested, the consultant shall provide technical memoranda detailing data collection and providing analysis for current and projected conditions. The assembled data will be stored within a project Geographical Information System (GIS) database. The consultant will utilize ArcView, ArcInfo or a similar GIS program approved by DOT that will enable the display and analysis of large quantities of numeric data. It should be possible to perform data queries and display the output graphically on a digital base map. The consultant shall use software that is compatible with software currently being used by DOT.

C. STREET AND TRANSPORTATION INVENTORY

The consultant shall perform street and transportation inventory services as needed. This may include but is not limited to the following:

The consultant shall conduct inventories of street and sidewalk geometry, street furniture placement and other amenities, traffic flow directions, parking regulations, traffic controls, queue lengths, parking regulation practice and compliance, collision history, transit ridership, zoning, demographics, land use and other items as required for analyses. The consultant shall prepare documentation

needed for DOT to update orders and drawings related to signs, markings, signals and meters. The consultant shall document past actions and consider planned and proposed future actions taken by DOT and others as requested.

D. TRAFFIC ENGINEERING

The consultant shall perform general Traffic Engineering services as needed. This may include but is not limited to the following:

- Preparation of engineering reports. This includes development of maintenance and protection of traffic schemes, constructability analysis and project implementation recommendations. These reports shall include GIS base plans showing existing roadway features and as well as proposed designs. At the request of the agency, this may also entail conducting field survey and providing topography plans. The reports shall document all design criteria and design assumption used. The Consultant shall fully document the justification for any design exceptions that maybe necessary consistent with standard NYCDOT procedures. The Consultant must be familiar with the Departments Warrant analyses and procedures that determine the need for the installation of traffic control devices. These reports may include development of preliminary cross sections, Preliminary Design Investigations (PDI's), development of preliminary Maintenance of Traffic (MOT) concepts and potential staging concepts. The consultant may also be tasked with performing preliminary drainage studies, catch basin relocation, signal and light pole design and plans, pedestrian ramps, bollards, bike racks, landscaping, urban design elements and identifying potential utility conflicts. The product may include full plans and elevations, specifications and cost estimates for construction projects.
- Provide detailed specifications & designs for integrated Intelligent Transportation Systems (ITS) in accordance with Federal/State/City requirements including :
 - Development of integrated operating software programs for ITS and its components
 - Modify/revise/update NYCDOT existing software programs for improved computerized Traffic Operation Systems
 - Development of Engineering Designs and contract specifications for ITS related projects
 - Furnish engineering reports for new ITS projects, and recommending the best product in its category in terms of matching functionality of contracts requirement
 - Evaluation of ITS products by creating a pilot project to demonstrate and confirm the products or system
 - Provide technical services in upgrading NYCDOT ITS related hardware and equipment as well as providing design and specifications for communication networks for ITS projects.
 - Integrate Transit Signal Priority applications into existing and planned signalization and ITS projects.

E: TRAFFIC SIMULATION AND MODELING

The consultant shall conduct traffic simulations utilizing software approved by NYCDOT including but not limited to Vissim, Paramics, Aimsun, TransModeler and TransCAD. The simulation software will be used for but not limited to the following activities: ODME estimation, select link analysis, estimation of existing and future network traffic volumes , calculation of trip/route, diversions, travel times and speeds, modal shifts, queues and delays on each link. The outputs will be used to perform capacity and level-of-service analysis based on the most currently approved Highway Capacity Manual methodology and/or Synchro/Sim Traffic or other software program as requested

by DOT., The models should be able to perform macroscopic, mesoscopic and microscopic simulations. The consultant shall be called upon to generate animated output files, model and optimize coordinated and/or actuated signal operation, and estimate vehicle emissions. The consultant should be able to develop Transit Signal Priority signal timings based on simulation work. The consultant should also be prepared to develop methods to simulate and analyze bus operations and pedestrian conditions within the traffic simulator platform.

The consultant shall, at the request of NYCDOT perform complex Travel Demand Forecasting using the NYMTC macroscopic Best Practice Model (BPM). The model will be used for the development of long range plans as well as, ODME, creation of trip tables, subarea and corridor analysis. The consultant shall be able to add new geographic information, as needed to the database, supplementing additional attributes which may not be included in the highway network data set. The consultant should describe how the simulation tools mentioned above will work with the BPM output data

F. UNIFORM LAND USE REVIEW PROCEDURE/ENVIRONMENTAL QUALITY REVIEW

The consultant shall provide services that are necessary to securing alterations in the City Map, including acquisition of private property, subject to the Uniform Land Use Review Procedure (ULURP).The consultant shall prepare an Environmental Assessment Statement (EAS) or Environmental Impact Statement (EIS) to determine any potential significant environmental impact(s) of the project under the City Environmental Quality Review (CEQR).]The consultant may also be required to perform environmental reviews under the State (SEQRA), and Federal (NEPA) processes.

The consultant shall file complete application materials and shall assist NYCDOT in securing all necessary approvals.

The consultant shall initiate all actions as required by New York City Department of City Planning or other involved City/Public Agencies. The consultant is required to participate in all conferences, meetings, and public hearings to present the necessary engineering background/expertise and shall prepare reports, documentations, drawings or backup material necessary to advance the process/proceedings.

G. SOFTWARE SYSTEMS DEVELOPMENT AND CUSTOMIZATION, AND TECHNICAL TRAINING

The consultant shall develop systems to manage and/or customize AutoCad and other traffic engineering software applications. The consultant shall develop systems for upgrading and reconciling records and work orders, such as:

- creating markings records of traffic signal intersections by drafting an AutoCad overlay of existing plans
- compiling bridge clearance information with an interactive map component
- compiling utility and topographical records and boring samples
- upgrading existing circles to today's standards
- developing a systematic spanning procedure for contract work orders

The consultant shall provide technical training to staff on subjects relating to any aspect of traffic operations and software systems and provide other assistance as necessary.

H. PUBLIC OUTREACH/PUBLIC ENGAGEMENT SERVICES:

Under the direction of the Department, the consultant shall provide public outreach and public communication services and shall clearly be able to integrate public outreach with the decision-making process. Public outreach is an integral component of many of the task orders that will be issued under this contract. The consultant's team will play a key role in identifying goals, building consensus, developing effective outreach processes and reaching outreach goals.

Consultants may be tasked with a wide array of outreach and engagement responsibilities including, but not limited to:

- Preparation of graphic materials for internal and public presentations including renderings, plans, charts, and graphs in most desktop publishing or graphic design formats (i.e. PowerPoint, Illustrator, AutoCAD, ArcGIS). Develop related tools for outreach and public engagement.
- Serving as a partner to NYCDOT in community engagement, attending community meetings, preparing agendas, staffing and facilitating workshops and open houses and performing general public engagement activities.
- Directing the engagement of the public through a wide array of media and communication channels including through the web, newsletters and brochures and verbal communication.
- Providing specialized materials such as translation services, ADA compliant services (i.e. development of Braille Materials) as needed.
- Providing technical expertise and staffing for meeting facilitation and public workshops and meetings.
- Preparation, performance and tabulation of surveys including telephone, mail, intercept and web-based focus groups.
- Developing marketing materials or marketing plans for transportation projects and related studies being conducted by the Department and the City of New York.
- Perform outreach to other agencies to facilitate approvals for the federally funded projects under this contract.
- Preparation of public education plans and feedback programs
- Compilation of meeting notes and the preparation of reports

I. SPECIAL INVESTIGATIONS/STUDIES:

The consultant will perform specialized investigations and/or studies that may be required during the planning, design or construction of various streets projects or required to supplement the work of others. This service may require testing, inspections, reports, alternative design recommendations, associated designs, and may include but not be limited to the following specialized items:

- Financial analyses (toll & revenue studies, cost-benefit analyses, financial feasibility alternative analyses)
- Conceptual planning, design advice and feasibility studies for:
 - Systems and devices to collect a congestion charge and/or enforce traffic laws and regulations on city streets as well as clearly identified congestion pricing zones
 - Field infrastructure, including existing and new structures, on which to mount these systems and devices
 - Back-office and communication s network requirements to carry and process congestion charge data
- Planning, design and feasibility study services that may require civil, structural, electrical and communications engineering
- Congestion analyses and mitigation

- Freight related special studies including truck size and weight studies, truck routes and truck permit data, truck facility planning, urban design and goods movement studies
- Demapping of streets, and associated activities
- Assistance with scoping and writing requests for proposals for preliminary design package for congestion pricing infrastructure
- Drafting services and/or CADD Mapping and 3D simulations
Automotive system engineering and integration of in-vehicle technologies

III. OPERATIONS PROCEDURE AFTER AGREEMENT IS EXECUTED

This agreement is one of two Contractual Agreements, both dated xxxxxx (the "contracts") entered into by the Department pursuant to PIN #84111MBPS591 and 84111MBPS592 to provide the services described in this Contract. Assignments under these contracts will be made based upon the process defined below. The maximum of each of these contracts will not exceed \$7,500,000.00; however there is no guarantee that the Department of Transportation will expend the entire value of these contracts. 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 should 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 planning, engineering and design related services, the Project Manager shall issue a Task Order to the Consultant(s). The Project Manager may issue separate and/or supplementary Task Orders to the Consultants 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 the event there is a need for Transportation Planning, Engineering and Transportation related services, 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, determined 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 one of the two consultants. 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.

2. **Selection Procedure:** The selection of the Consultant to perform services for a project shall be conducted in an alternating basis. One of the two Consultants shall be issued the initial Task Order. Subsequent to such initial Task Order, the next Task Order shall be issued to the Consultant that did not receive the preceding Task Order. This Task Order Process will be followed during the terms of the contracts with the exception of when the Project Manager makes a determination in his/her sole discretion that a particular task or project is of such nature as to require the submission and evaluation of a Project Specific Proposal (defined below) for the scope of work by each of the Consultants, or in situations where the Department is not able to reach a final agreement with one Consultant after following the procedures set forth above, or where in the Agency's sole opinion and discretion, the consultant cannot satisfactorily provide the services in a timely manner or is otherwise unable to commence the services required in the task order, it may request a proposal from the other Consultant and negotiate a final proposal with such other Consultant by following such procedures. The procedure that will be followed in the event that a determination is made by the Project Manager that the particular task or project is of such nature as to require the submission and evaluation of a Project Specific Proposal for the scope of work by each of the Consultants is set forth below. This selection procedure shall be conducted prior to the issuance of the Task Order. Both the City and the Consultant(s) understand that this alternate Task Order Process may result in a Consultant receiving consecutive Task Orders. Accordingly, the Task Order issued directly after the issuance of a Task Order pursuant to this special selection process shall be issued to the Consultant that is not issued the subject Task Order, unless it is determined by the Project Manager that such subsequent Task Order must also follow the special Task Order Process. Each Consultant shall not be entitled to any claims based on the award of any Task Order by the Project Manager.

a. Project Specific Proposals Documents: As the need for services arises, the Project Manager shall issue project specific proposal documents to each Consultant. Such documents shall include the following: (i) information concerning the individual project for services are required, and (ii) a description of the project specific proposal to be submitted by each Consultant.

b. Project Specific Proposals: The Consultants agree to submit project specific proposals in response to the documents specified in the paragraph above. The Consultants shall not be entitled to compensation for costs incurred in connection with the preparation of their project specific proposal.

c. Evaluation: An evaluation committee will review, evaluate and score all project specific proposals, based upon the technical evaluation criteria set forth in the project specific proposal documents. This evaluation and scoring will determine the Consultants' Technical Rating. The Consultant with the highest technical rating will be selected for the individual project. The selected consultant shall then be required to follow the procedures for negotiating the task order delineated above.

IV. **FEES AND PAYMENTS**

A. **FEE**

The maximum fee payable for all services provided and expenses incurred hereunder shall not exceed \$7,500,000.00. Said fee is a maximum amount only and does not represent a commitment or guarantee on the part of the City to pay such amount.

B. BASIS

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

C. DEFINITIONS

1. Direct Technical Salary Cost

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

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

2. Multiplier

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

A technical field multiplier is to be applied to direct technical field salaries in connection with services provided to the agency.

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

3. Principals' Time

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

- a. The rate of compensation for Principals' Time as stated herein before, shall not exceed One Hundred Dollars (\$100.00) per hour, to be based on actual draw.
- b. The Principals participating in the Project shall provide the Commissioner with a demonstration certifying his/her actual draw from the firm on an average weekly basis. Where said rate exceeds Fifty Dollars (\$50.00) per hour, the principal participating in the project shall provide the Commissioner with a notarized statement by a certified public accountant that such rate does not exceed the principals' annual direct compensation, excluding profit, computed on an hourly rate. The amount payable for Principals' Time shall not be included in the technical salary cost base and is not subject to any multiplier.

- c. The Principals participating in the Project shall maintain a daily log of their participation, which shall be available for inspection by the Commissioner and the Comptroller of the City.
- d. The Commissioner shall certify that direct participation by the Principals is essential to the effective and economic completion of the Project.
- e. The total compensation for the Principals' Time shall not exceed thirty-five percent (35%) of the total not to exceed fee as stated herein before.
- f. In the event that a Principal assumes the specific assignment of responsibilities normally allocated to a technical member of the project team, said Principal shall be compensated at a rate corresponding to the technical salary commensurate with that assignment times an adjusted (where appropriate) multiplier, said multiplier to be established by Department's Engineering Audits Office to avoid duplication of indirect expenses. (The adjusted multiplier is calculated by decreasing the consultant multiplier by 10%).
- g. The words "the Principals" or "the Principals of the firm" are understood to mean those individuals in a firm who possess legal responsibility for its management. They may be owners, corporate officers, associates, partners, etc. With respect to a corporation, a principal is further defined as that person who owns ten (10) percent or more of the voting stock.

4. Out-Of-Pocket Expense

Out-of-pocket expenses shall be limited to:

- a. The cost of acquiring, on a per diem basis, the services of other experts or Consultants as may be required for the performance of the Consultant's services are subject to the same audit rules as the prime consultant.
- b. The costs of the use of motor vehicles, owned by the Consultant or employees of the Consultant or leased and maintained by the Consultant and used specifically for and only for the performance of this contract, shall be compensated on a direct mileage basis in accordance with the standards as established for reimbursement allowances for City personnel by the current edition of Directive #6, NYC Comptroller. The cost of MTA Tokens and Tolls within the city borders is reimbursable as out-of-pocket costs. However, cost of parking is not reimbursable.
- c. The cost of printing and duplicating for this project by an outside vendor is reimbursable as out-of-pocket costs based on the submitted invoice. However, cost of printing by in-house services is not reimbursable.
- d. The cost of renting other materials or equipment, or acquiring services specifically for, and applicable only to, this project may be submitted for direct payment as out-of-pocket costs. This shall not include the purchase of general tools or office supplies whether expendable or reusable.
- e. The costs of the specified registered mailing and/or FEDEX type services directed by the Department are reimbursable as out-of-pocket costs. However, routine postage, messenger service, etc. are not reimbursable.
- f. The cost of project related long distance telephone calls are reimbursable as out-of-pocket costs.

- g. The cost of acquiring the services of a licensed surveyor, as may be required, for performing surveying and/or plotting of surveys.
- h. The cost of project specified supply of equipment services for Engineer's Field Office (such as computers and two way radio communication system, see Attachment No.3) are reimbursable as out-of-pocket costs.
- i. The cost of project specified photographic film, developing and printing services are reimbursable as out-of-pocket costs.
- j. The cost of procurement of copies of documents, data sheets, drawings and reports for reference and information.
- k. The costs of project specific miscellaneous items approved by the Deputy Chief Engineer are reimbursable.

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

5. Indirect Costs and Overhead

- a. Indirect Costs shall include costs of a general nature which could be applied to the Consultant's entire operation and which are not readily attributable to any one project. These shall include: fringe benefits, taxes, insurance premiums, postage, office supplies, motor vehicles, equipment, office machine and computer rentals, depreciation on purchased equipment, maintenance and operation costs, recruitment, temporary facilities, consultant fees, overhead (see below) and any such costs as are necessary to conduct the Consultant's operations with the exception of those cost items which are submitted to direct payment as out-of-pocket expenses.
- b. Overhead includes that portion of the Consultant's administrative, clerical and financial costs which are applicable to operations, including, but not limited to: rent, utilities, salary costs of administrative and clerical work (including administrative services of the Principal and Technical Typing), fringe benefits, payroll expenses, taxes, insurance, legal and professional fees, bank service charges, depreciation, office supplies and equipment, maintenance, etc.

6. Overtime Premium

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

7. Weekend/Night Work Differential

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

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

8. Performance Evaluation

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

D. PAYMENTS

- a) During the course of the contract, all payments, including the final payment, shall be paid to the Consultant on a monthly basis as they occur, as follows:
 - 1. Payment shall be based on direct time and labor costs related to technical office or field salaries of the Consultants and all Professional subcontractors in connection with the project, times a technical office or field interim multiplier of:

<u>Consultant Name</u>	<u>Office Interim Multiplier*</u>	<u>Field Interim Multiplier*</u>

* The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, interim overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision in accordance with applicable NYC Comptrollers' Directive on an annual basis when the actual overhead information for the respective year becomes available. Suitable adjustments to the previous payments will be made accordingly upon completion of contract and when multiplier information is available. As needed, the additional fund for the overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

- 2. For approved out-of-pocket costs, including Materials Testing Services, overtime premium pay and allowable time for Principals' services, payments shall be made on the basis of direct reimbursement at cost to the Consultant, with no markup for the Consultant's overhead and profit.
 - b) The Consultant shall submit to the Commissioner, but not more than once per calendar month, a certified voucher, and two copies, setting forth in detail the items of work and services performed by the Consultant and the amount of partial payment requested. Vouchers shall be accompanied by statements prepared and certified by the Consultant setting forth the name and title of each of his/her and his/her subconsultants employees who was engaged in the project during such respective month, the number of hours worked each day, the direct salary and the number of hours worked each day, the direct salary and the compensation attributable to the time for which the voucher is submitted. All vouchers shall be accompanied by a report on the progress of the work properly coded and tabulated to indicate the percentage of completion of each phase of the work. All said vouchers and progress reports shall be subject to review and approval of the Division's designated Project Consultant.
 - c) The Commissioner shall review the said voucher and if, in his/her judgment, the work and services therein set forth have been performed, the Commissioner shall endorse his/her approval of payment of said voucher and certify that the work and services have been satisfactorily performed by the Consultant.
 - d) Out-of-pocket expenses, overtime premium pay and compensation for Principals' Time approved by the Commissioner shall be paid at cost to the Consultant, with no markup for the Consultant's overhead and profit.

- e) The last and final payment to the Consultant shall become due and payable upon the actual completion of the work under this contract and the filing by the Consultant with the Commissioner of all records and documents in connection with the project, including the record ("as built") drawings of the project.
- f) The final voucher shall be accompanied by a statement certifying and scheduling the total direct technical salary costs of the Consultant attributable to the contract.
- g) The fee and all payments hereunder shall be subject to review and audit by the Department of Transportation and subject to a post audit by the Comptroller.
- h) The fee shall not be increased for any reason except as provided herein or where such increase is due to a material change in scope of work.
- i) DOT has made a determination that it will NO LONGER HOLD retainage ON FTA/FHWA FUNDED CONTRACTS.
- j) To provide full coverage for field operations, the required overtime work must be authorized by the Commissioner. The Consultant shall be paid straight Direct Technical Labor (DTL) for additional actual hours worked times the technical field multiplier. The premium portion of the overtime (overtime premium) will be compensated without any multiplier.
- k) The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the average hourly rates as shown on the Labor Cost Proposal Form(s). However, the Consultant may periodically, but not more than once per contract year, request, in writing to the Department, to have these rates adjusted. This adjustment shall be subject to the approval of the agency, and shall be within the parameters as established in the U.S. Bureau of Labor Statistics Employment Cost Index for Professional Specialty and Technical Workers - Wages and Salaries.**

**The Annual Employment Cost Index Percent increase times the total yearly salary cost of all current employees working on that project for the prior year, becomes a pool of money from which various raises may be granted. The maximum salary increase per person is limited to 150% of the Annual Employment Cost Index Percent. Total of individual raises shall not exceed the pool money per contract year.

- l) (Intentionally Omitted)
- m) In addition to any other requirements contained herein, the Consultant is advised that all payments due under this contract are subject to various directives issued by the Office of the Comptroller regarding the auditing of payment to consultants. Such directives are:

Directive No.2 (Guidelines for Audit of Vouchers Submitted Under Cost Reimbursable Contractual Agreements) Directive No.6 (Travel Meals Lodging and Miscellaneous Agency Expense); and Directive No. 7 (Audit of Payment Vouchers Issued Under Contracts for Construction, Equipment and Related Consultant Services).

Said Directive may be obtained from Project Engineer.
- n) All rate increases are subject to the current DOT's rate increase guidelines. Any increase in salary rates shall not affect the final negotiated cost.

1. The annual daily wage rates, exclusive of applicable weekend/night work differential, shall not exceed the rates as shown on Form 4T1. However, the Consultant may periodically, but not more than once per contract year, request, in writing to the Department, to have these rates adjusted. This adjustment shall be subject to the approval of the agency, and shall be within the parameters as established in the U.S. Bureau of Labor Statistics Employment Cost Index for Professional Specialty and Technical Workers-Wages and Salaries.
2. Partial Payments:
 - I) The Consultant shall be paid in monthly progress payments based on actual allowable cost incurred during the period in accordance with Fees and Payments, Section III (A) of the Contract. The consultant shall submit a breakdown of costs for each specific task provided with request for payment. Bills are subject to the approval of the Commissioner, or his duly authorized representative.
 - II) The Consultant shall inform the City and all Sub Contractors and Sub Consultants of the Consultant's schedule for submitting monthly vouchers to the City, said schedule shall be strictly adhered to by the Consultant.
 - III) All Sub Contractor and Sub Consultant Vouchers received by the Consultant at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the Consultant does not have other costs to be billed for that period. The Consultant shall inform the Sub Contractor or Sub Consultant of the date the voucher was submitted to the City and the amount included for the sub Contractor or Sub Consultant.
 - IV) The Consultant is required to make partial payments to all Sub Contractors and Sub Consultants within (10) calendar days of receipt of payment from the City.
 - V) Accounts of the Consultant shall clearly identify the costs of the work performed under this Agreement and shall be subject to periodic and final audit by the City and, on Federally aided Projects, by the Federal Highway Administration. Such audit shall not be a condition of partial payment.
 - VI) DOT has made a determination that it will NO LONGER HOLD retainage ON FTA/FHWA FUNDED CONTRACTS.
3. The Consultant shall not be entitled to any additional compensation as a result of any sum or sums paid to the Construction Contractor(s) in settlement of claims for additional compensation or of any judgment for damages under the construction contract(s). However, in the event it becomes necessary to re-let the construction contract(s), the Consultant shall be compensated for any additional work required as a result of such re-letting as ordered by the Commissioner, under terms to be agreed upon.
- o) The provisions of the original contract shall be followed in case of a company merger or takeover.

E. COST LIMITATIONS

- 1) The total cost of out-of-pocket expenses for the project is not anticipated to exceed \$750,000.00.

* The cost limitations for these out-of-pocket expenses are budgetary estimates only and have been established to cover work which may reasonable expected on this project. The actual extent and cost of this work shall be determined during the Consultant's operations in connection with the project, and may or may not exceed the limitations as stated herein. In the event that the cost of required work exceeds the stated cost limitation for this work, the Consultant shall, upon concurrence of the Department and of the Office of Management and Budget, make written request for an increase in funds in accordance with standard change-order procedures and in conformance with Section 9.01 of Appendix A.

F. OVERTIME

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

- a) Personnel other Than Surveyors

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

Overtime Compensation Schedule:

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

- b) Surveyors

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

G. PARTIAL PAYMENTS

The Consultant shall be paid in monthly progress payments based on actual allowable costs incurred during the period in accordance with Section IV of this Agreement. The Consultant shall submit a breakdown of costs for each specific task provided with request for payment. Bills are subject to the approval of the Department.

- a) The Consultant shall inform the City and all Sub-Contractors and Sub-Consultants of the Consultant's schedule for submitting monthly vouchers to the City. Said schedule shall be strictly adhered to by the Consultant.
 - b) All Sub-Contractor and Sub-Consultant vouchers received by the Consultant at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the Consultant does not have other costs to be billed for that period. The Consultant shall inform the Sub-Contractor or Sub-Consultant of the date the voucher was submitted to the City and the amount included for the Sub-Contractor or Sub-Consultant.
 - c) The Consultant is required to make partial payments to all Sub-Contractors or Sub-Consultants within ten (10) calendar days of receipt of payment from the City.
- H.** The total maximum length of this Engineering Service Agreement Contract shall be 1095 consecutive calendar days from notice to proceed.

This Department in its sole discretion has the option to renew this contract at the same terms and conditions, and not to exceed price, for an additional 3 years. The multiplier is subject to adjustment at the renewal time.

SECTION VIIB

GENERAL PROVISIONS (APPENDIX A)

**MACBRIDE PRINCIPLES PROVISIONS
FOR NEW YORK CITY CONTACTORS**

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 and members of their immediate families 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 and members of their immediate families 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 and members of their immediate families 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 an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. 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.

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, 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.

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 the most recently issued ISO Form CA0001.

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.

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.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner [insert Agency name and appropriate address], and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and 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; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. 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. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

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.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

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 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. In the event the Contractor fails to provide a defense of the City of a claim upon demand, the Contractor shall reimburse the City for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officers and employees with a defense or reimbursement for attorney's fees.

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.

Section 13.10 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), 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: Administration for Children's Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

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

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

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

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

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

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

PART A

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

PART B

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

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) establish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement, and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

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

(NO FURTHER TEXT ON THIS PAGE)

SECTION VII

C)

PROCEDURAL FORMS PACKET

CONTENTS

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

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

FORM 1P

PROPOSAL COVER LETTER

**ENGINEERING SERVICE AGREEMENT (ESA) FOR
TRANSPORTATION PLANNING, TRANSPORTATION ENGINEERING, URBAN DESIGN AND
RELATED SERVICES**

**PIN: 84111MBPS591& 84111MBPS592
E-PIN: 84111M0006**

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

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

Proposer's Authorized Representative:

Name: _____

Title: _____

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

Signature: _____ **Date:** _____

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

Yes **No**

FORM - 2P

ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: _____

PIN: _____

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

Part I

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

Addendum # 1, Dated: _____

Addendum # 2, Dated _____

Addendum # 3, Dated _____

Addendum # 4, Dated _____

Addendum # 5, Dated _____

Addendum # 6, Dated _____

Addendum # 7, Dated _____

Addendum # 8, Dated _____

Addendum # 9, Dated _____

Addendum #10, Dated _____

Part II Acknowledgement of No Receipt

_____ No Addendum was received in connection with this RFP

Part III

Proposer's Name: _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

FORM - 3P

AFFIRMATION FORM

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

except_____.

Full Name of Proposer or Bidder

Address

City

State

Zip Code

Check below and include appropriate number:

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

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

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

If a corporation, place seal here:

by Signature _____

Print Name _____

Title _____

Must be signed by an officer or duly authorized representative.

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

FORM 1T

QUALITY & RELEVANCE OF PRIOR EXPERIENCE (FIRM IN GENERAL)

PIN: 84111MBPS591 & PROJECT NAME: Engineering Service Agreement (ESA) for
84111MBPS592 **Transportation Planning, Transportation**
E-PIN: 84111M0006 **Engineering, Urban Design and Related**
Services

CONTRACT NO.: _____ CONSULTANT: _____

PROFESSIONAL ENGINEERING/
ARCHITECTURAL SERVICES

OTHER/ _____

DESCRIBE

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

- 1) Proposer will include relevant experience in Transportation Planning, Transportation Engineering, Urban Design and related work in the last five (5) years. Proposer should consider work with City, State, and Federal agencies and demonstrated ability to complete these jobs in a timely fashion.
- 2) List all current and prior projects completed within the last five (5) years for Design and Other Related Services. Specifically identify whether any of those projects involved a scope similar to the referenced contract. For each project, provide the following information:

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

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

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

Average attrition rate for past 3 calendar years:

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

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

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

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

FORM 2T

PROPOSED STAFF (RESUMES)/EXPERIENCE

**PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006**

**PROJECT NAME: Engineering Service Agreement (ESA)
for Transportation Planning,
Transportation Engineering, Urban
Design and Related Services**

CONTRACT NO.: _____

CONSULTANT: _____

PROPOSED STAFF:

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

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

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

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

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

FORM 3T

OVERALL PROJECT UNDERSTANDING AND APPROACH

**PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006**

**PROJECT NAME: Engineering Service Agreement (ESA)
for Transportation Planning,
Transportation Engineering, Urban
Design and Related Services**

PRIME CONSULTANT: _____ CONTRACT NO.: _____

CONSULTANT ON THIS FORM: _____

OVERALL APPROACH TO PROJECT:

- 1. Describe your overall approach and understanding to providing Transportation Planning, Transportation Engineering, Urban Design and Related Services. Provide enough detail to permit NYCDOT to assess the extent of the proposer's understanding of potential problems and proposed solutions within the field.**
- 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

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____
CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/
ARCHITECTURAL SERVICES OTHER/_____

**(COLUMN 1)
JOB TITLES/
ASCE/NICETGRADE**

- 1. PRINCIPAL

- 2. WORKING PRINCIPAL

- 3. PROJECT DIRECTOR

- 4. PROJECT ENGINEER

- 5. SENIOR ENGINEER, I

- 6. SENIOR ENGINEER II

- 7. ENGINEER I

- 8. ENGINEER II

- 9. ASSISTANT ENGINEER

- 10. CIVIL ENGINEER

- 11. CADD Operator, I

- 12. CADD Operator, II

- 13. TASK LEADER, I

- 14. TASK LEADER, II

- 15. INSPECTOR, I

- 16. TECHNICIAN I

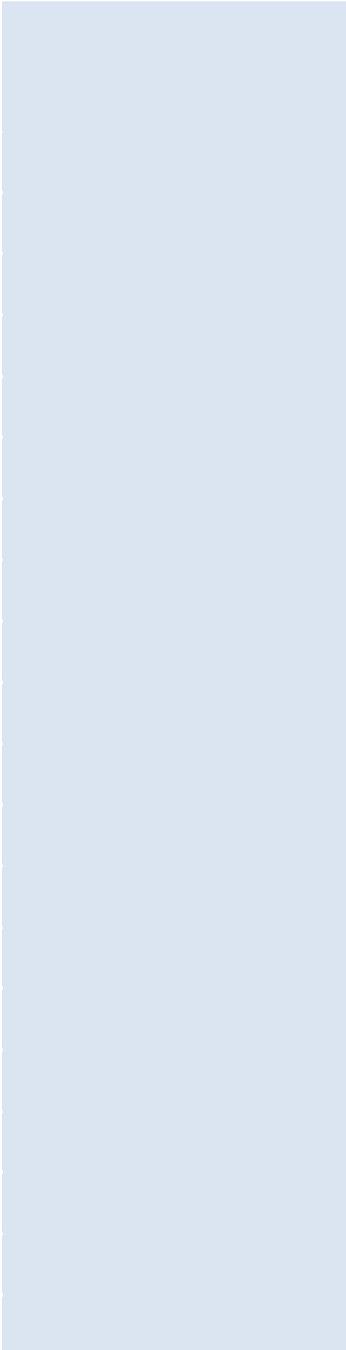
- 17. TECHNICIAN II

- 18. TECHNICAL TYPIST

- 19. CITY PLANNER, I

- 20. CITY PLANNER, II

- 21. CITY PLANNER, III



- 1. No salary rate information should be included on this form.
- 2. This form must be completed for the prime and each of the proposed sub-consultants (use additional pages, if necessary)

FORM 4T – JOB TITLES

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

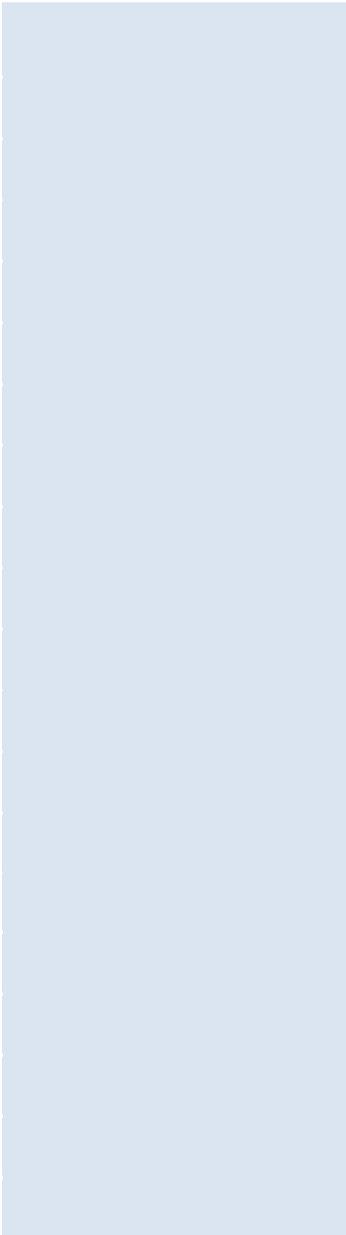
PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/
ARCHITECTURAL SERVICES OTHER/_____

(COLUMN 1) JOB TITLES/ ASCE/NICET GRADE
22. PROJECT PLANNER
23. SAFETY PLANNER
24. ENVIRONMENTAL PLANNER
25. TRAFFIC/TRANS. ENGINEER I
26. TRAFFIC/TRANS. ENGINEER II
27. TRAFFIC/TRANS. ENGINEER III
28. DATA MANAGER
29. SYSTEMS ANALYST
30. COMMUNITY OUTREACH SPECIALIST
31. TECHNICAL WRITER
32. COMMUNITY OUTREACH SPECIALIST
33. TECHNICAL WRITER
34. COMMUNITY OUTREACH SPECIALIST
35. TECHNICAL WRITER
36. GRAPHICS SPECIALIST
37. SECRETARY/OFFICE MANAGER, I
38. SECRETARY/OFFICE MANAGER, II
39. SECRETARY/OFFICE MANAGER, III
40. TEAM LEADER



1. No salary rate information should be included on this form.
2. This form must be completed for the prime and each of the proposed sub-consultants (use additional pages, if necessary)

FORM 4T – JOB TITLES

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

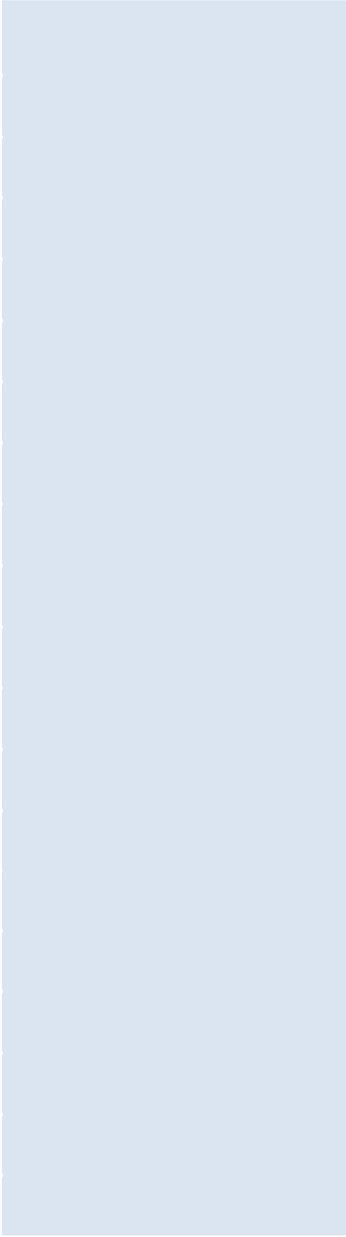
PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____

CONSULTANT ON THIS FORM: _____

PROFESSIONAL ENGINEERING/
ARCHITECTURAL SERVICES OTHER/ _____

(COLUMN 1) JOB TITLES/ ASCE/NICETGRADE
41. PROJECT MANAGER
42. TECHNICAL EXPERT
43. TRANSPORTATION PLANNER
44. SENIOR TRANSPORTATION PLANNER
45. SURVEYOR
46. ARCHITECT
47. LANDSCAPE ARCHITECT
48. SENIOR TRAVEL DEMAND/TRANSPORTATION MODELER
49. TRAVEL DEMAND/TRANSPORTATION MODELER
50. SIMULATION ANALYST
51. BUSINESS ANALYST
52. DATA MANAGER
53. CONSTRUCTION/HIGHWAY INSPECTOR
54. DATA REDUCTION



- 1. No salary rate information should be included on this form.
- 2. This form must be completed for the prime and each of the proposed sub-consultants (use additional pages, if necessary)

FORM 5T NYCDOT CURRENT WORKLOAD DISCLOSURE

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

PIN: 84111MBPS591 and 84111MBPS592 _____ FIRM NAME: _____
 CONTRACT NO.: _____ CONTACT PERSON: _____
 PROJECT NAME: _____ PHONE NUMBER _____
 BIN: _____ ADDRESS OF OFFICE(S) TO PERFORM WORK _____
 DATE OF RFP: _____
 IS YOUR FIRM A: DBE? (YES/NO) _____

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

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

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

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

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

CERTIFICATION

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

DATE

SIGNATURE (OFFICER OR PARTNER)

FORM 5T

Remaining work with NYCDOT (within Department)

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

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

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

Total Firmwide Design Workload \$ _____

Assigned Office(s) Miscellaneous Workload \$ _____

Construction Division (includes only Resident Engineering Inspection)				

Total Firmwide REI Workload \$ _____

Assigned Office(s) REI Workload \$ _____

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

Total Firmwide Miscellaneous Workload \$ _____

Assigned Office(s) Miscellaneous Workload \$ _____

Total Firmwide Overall Workload with NYC-DOT \$ _____

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

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

Use the following as a ratings guide:

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

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

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

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

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

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

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

FORM 6T

DBE PARTICIPATION

PROJECT NAME:

PIN NO.:

CONTRACT NO.:

CONSULTANT: _____

The NYC Department of Transportation requires firms to meet New York State's Disadvantaged Business Enterprise (DBE) utilization goal of **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 I and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

PURPOSE

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

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

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

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

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

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

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

INDIVIDUAL AGENCY INSTRUCTIONS

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

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

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

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

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

Firm: Defined in FAR 36.102.

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

SPECIFIC INSTRUCTIONS

Part I - Contract-Specific Qualifications

Section A. Contract Information.

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

Section B. Architect-Engineer Point of Contact.

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

Section C. Proposed Team.

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

Section D. Organizational Chart of Proposed Team.

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

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

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

12. Name. Self-explanatory.

13. Role in This Contract. Self-explanatory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section G. Key Personnel Participation in Example Projects.

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

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

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

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

Section H. Additional Information.

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

Section I. Authorized Representative.

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

33. Name and Title. Self-explanatory.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

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

29. EXAMPLE PROJECTS KEY

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

Part II - General Qualifications

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

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

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

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

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

5. Ownership.

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

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

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

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

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

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

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

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

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

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

List of Disciplines (Function Codes)

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

List of Experience Categories (Profile Codes)

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

List of Experience Categories (Profile Codes)

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

List of Experience Categories (Profile Codes)

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

ARCHITECT - ENGINEER QUALIFICATIONS

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

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

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

C. PROPOSED TEAM

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

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

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

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

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

23. PROJECT OWNER'S INFORMATION

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

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

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

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

H. ADDITIONAL INFORMATION

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

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

31. SIGNATURE

32. DATE

33. NAME AND TITLE

SECTION VII

E) COST PROPOSAL FORMS PACKET

CONTENTS

COST PROPOSAL

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

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

FORM 4T1 – LABOR COST PROPOSAL

PROJECT NAME: Engineering Service Agreement (ESA) for
Transportation Planning, Transportation Engineering,
Urban Design and Related Services

PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006

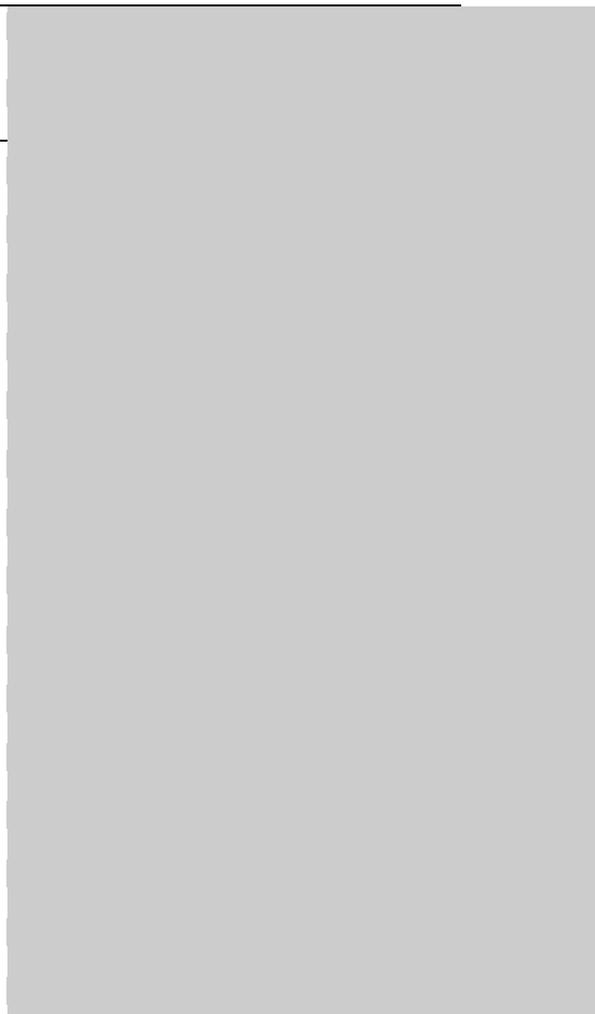
PRIME CONSULTANT: _____

CONTRACT NO.: _____

CONSULTANT ON THIS FORM: _____

- PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
 OTHER/ _____

<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>
<u>JOB TITLE ASCE/ NICET GRADE</u>	<u>AVERAGE HOURLY RATE (FY 2010)</u>
1. PRINCIPAL	\$
2. WORKING PRINCIPAL	\$
3. PROJECT DIRECTOR	\$
4. PROJECT ENGINEER	\$
5. SENIOR ENGINEER, I	\$
6. SENIOR ENGINEER II	\$
7. ENGINEER I	\$
8. ENGINEER II	\$
9. ASSISTANT ENGINEER	\$
10. CIVIL ENGINEER	\$
11. CADD Operator, I	\$
12. CADD Operator, II	\$
13. TASK LEADER, I	\$
14. TASK LEADER, II	\$
15. INSPECTOR, I	\$



INSTRUCTIONS:

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

FORM 4T1 – LABOR COST PROPOSAL

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____

CONTRACT NO.: _____

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 HOURLY</u> <u>RATE (FY 2010)</u>	
-----------------------------------------------------------------------------	---------------------------------------------------------------------	--

- 16. TECHNICIAN 1
- 17. TECHNICIAN II
- 18. TECHNICAL TYPIST
- 19. CITY PLANNER, I
- 20. CITY PLANNER, II
- 21. CITY PLANNER, III
- 22. PROJECT PLANNER
- 23. SAFETY PLANNER
- 24. ENVIRONMENTAL PLANNER
- 25. TRAFFIC/TRANS. ENGINEER I
- 26. TRAFFIC/TRANS. ENGINEER II
- 27. TRAFFIC/TRANS. ENGINEER III
- 28. DATA MANAGER

1. INSTRUCTIONS:
2. Each consultant of the project team is to submit a separate "Labor Cost Proposal Form". For each job title, the hours proposed by each firm of the project team in Column (3) MUST SUM to the total hours provided in Column (2).
3. For Column (4), use actual average salary rates for firm for each job title at regional offices. Attach a listing of current average rates for all titles/grades/levels as approved by NYSDOT for regional offices (if available). A regional office is defined as one located within a 75 mile radius of Columbus Circle (NYC).
4. The labor costs to be included in Column (5) are obtained by multiplying the hours in Column (3) by the average hourly rate in Column (4).
5. The maximum escalation factor "D" indicated in the shaded area shall not be changed.
6. Interim Multiplier (M) shall be rounded off to three (3) decimal figures. Total Labor Cost (C) and Column 4 & Column 5 entries shall be rounded off to two (2) decimal places.
7. The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, interim overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision in accordance with applicable NYC Comptrollers' Directive on an annual basis when the actual overhead information for the respective year becomes available. Suitable adjustments to the previous payments will be made accordingly upon completion of contract and when multiplier information is available. As needed, the additional fund for the overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

FORM 4T1 – LABOR COST PROPOSAL

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

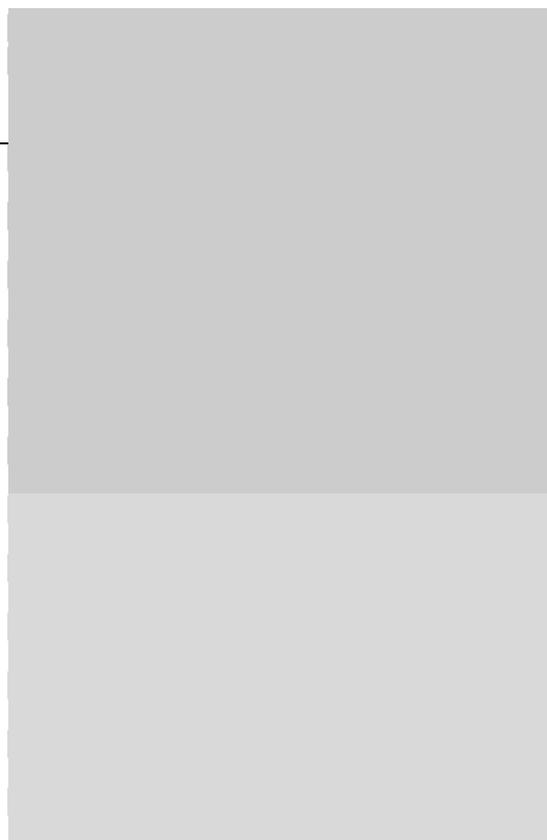
PIN: 84111MBPS591 & 84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____

CONTRACT NO.: _____

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

<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>
<u>JOB TITLE</u> <u>ASCE/ NICET</u> <u>GRADE</u>	<u>AVERAGE HOURLY RATE</u> <u>(FY 2010)</u>
29. SYSTEMS ANALYST	\$
30. COMMUNITY OUTREACH SPECIALIST	\$
31. TECHNICAL WRITER	\$
32. COMMUNITY OUTREACH SPECIALIST	\$
33. TECHNICAL WRITER	\$
34. COMMUNITY OUTREACH SPECIALIST	\$
35. TECHNICAL WRITER	\$
36. GRAPHICS SPECIALIST	\$
37. SECRETARY/OFFICE MANAGER, I	\$
38. SECRETARY/OFFICE MANAGER, II	\$
39. SECRETARY/OFFICE MANAGER, III	\$
40. TEAM LEADER	\$



INTERIM OVERHEAD FACTOR: _____

(A)

PROFIT FACTOR: _____

(B)

INTERIM MULTIPLIER (*): _____

(M) = (1+A) x (1+B)

MAXIMUM ESCALATION FACTOR: 1.06

INSTRUCTIONS:

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

FORM 4T1 – LABOR COST PROPOSAL

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

PIN: 84111MBPS591 & 84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____

CONTRACT NO.: _____

CONSULTANT ON THIS FORM: _____

- PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
 OTHER/_____

<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>
<u>JOB TITLE</u> <u>ASCE/ NICET</u> <u>GRADE</u>	<u>AVERAGE HOURLY RATE</u> <u>(FY 2010)</u>
41. PROJECT MANAGER	\$
42. TECHNICAL EXPERT	\$
43. TRANSPORTATION PLANNER	\$
44. SENIOR TRANSPORTATION PLANNER	\$
45. SURVEYOR	\$
46. ARCHITECT	\$
47. LANDSCAPE ARCHITECT	\$
48. SENIOR TRAVEL DEMAND/TRANSPORTATION MODELER	\$
49. TRAVEL DEMAND/TRANSPORTATION MODELER	\$



INTERIM OVERHEAD FACTOR: _____

(A)

PROFIT FACTOR: _____

(B)

INTERIM MULTIPLIER (*): _____

(M) = (1+A) x (1+B)

MAXIMUM ESCALATION FACTOR: 1.06

INSTRUCTIONS:

7. Each consultant of the project team is to submit a separate "Labor Cost Proposal Form". For each job title, the hours proposed by each firm of the project team in Column (3) MUST SUM to the total hours provided in Column (2).
8. For Column (4), use actual average salary rates for firm for each job title at regional offices. Attach a listing of current average rates for all titles/grades/levels as approved by NYSDOT for regional offices (if available). A regional office is defined as one located within a 75 mile radius of Columbus Circle (NYC).
9. The labor costs to be included in Column (5) are obtained by multiplying the hours in Column (3) by the average hourly rate in Column (4).
10. The maximum escalation factor "D" indicated in the shaded area shall not be changed.
11. Interim Multiplier (M) shall be rounded off to three (3) decimal figures. Total Labor Cost (C) and Column 4 & Column 5 entries shall be rounded off to two (2) decimal places.
12. The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, interim overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision in accordance with applicable NYC Comptrollers' Directive on an annual basis when the actual overhead information for the respective year becomes available. Suitable adjustments to the previous payments will be made accordingly upon completion of contract and when multiplier information is available. As needed, the additional fund for the overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

FORM 4T1 – LABOR COST PROPOSAL

PROJECT NAME: Engineering Service Agreement (ESA) for Transportation Planning, Transportation Engineering, Urban Design and Related Services

PIN: 84111MBPS591 & 84111MBPS592
E-PIN: 84111M0006

PRIME CONSULTANT: _____

CONTRACT NO.: _____

CONSULTANT ON THIS FORM: _____

- PROFESSIONAL ENGINEERING/ARCHITECTURAL SERVICES
 OTHER/_____

<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>
<u>JOB TITLE</u> <u>ASCE/ NICET</u> <u>GRADE</u>	<u>AVERAGE HOURLY RATE</u> <u>(FY 2010)</u>
50. SIMULATION ANALYST	\$
51. BUSINESS ANALYST	\$
52. DATA MANAGER	
53. CONSTRUCTION/HIGHWAY INSPECTOR	
54. DATA REDUCTION	



INTERIM OVERHEAD FACTOR: _____

(A)

PROFIT FACTOR: _____

(B)

INTERIM MULTIPLIER (*): _____

(M) = (1+A) x (1+B)

MAXIMUM ESCALATION FACTOR: 1.06

INSTRUCTIONS:

13. Each consultant of the project team is to submit a separate "Labor Cost Proposal Form". For each job title, the hours proposed by each firm of the project team in Column (3) **MUST SUM** to the total hours provided in Column (2).
14. For Column (4), use actual average salary rates for firm for each job title at regional offices. Attach a listing of current average rates for all titles/grades/levels as approved by NYSDOT for regional offices (if available). A regional office is defined as one located within a 75 mile radius of Columbus Circle (NYC).
15. The labor costs to be included in Column (5) are obtained by multiplying the hours in Column (3) by the average hourly rate in Column (4).
16. The maximum escalation factor "D" indicated in the shaded area shall not be changed.
17. Interim Multiplier (M) shall be rounded off to three (3) decimal figures. Total Labor Cost (C) and Column 4 & Column 5 entries shall be rounded off to two (2) decimal places.
18. The agency will consider the proposed interim multiplier for establishing Total Contract Fee (including DTL, interim overhead & Maximum Profit of 10%). The interim multiplier will be based on currently available information on Consultant Company's overhead and profit. This multiplier is subject to audit and revision in accordance with applicable NYC Comptrollers' Directive on an annual basis when the actual overhead information for the respective year becomes available. Suitable adjustments to the previous payments will be made accordingly upon completion of contract and when multiplier information is available. As needed, the additional fund for the overhead and profit will be added via Change Order by the Agency at the discretion of the Agency.

FORM 4T2 – COST PROPOSAL SUMMARY

**PROJECT
NAME:**

**Engineering Service Agreement (ESA) for
Transportation Planning, Transportation
Engineering, Urban Design and Related Services**

**PIN: 84111MBPS591 &
84111MBPS592
E-PIN: 84111M0006**

PRIME CONSULTANT: _____ CONTRACT NO.:

<u>(COLUMN 1)</u>	<u>(COLUMN 2)</u>
<u>CONSULTANT</u>	<u>DIRECT NON-SALARY COST</u>
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. _____	\$ _____
6. _____	\$ _____
7. _____	\$ _____
8. _____	\$ _____
9. _____	\$ _____
TOTALS	\$500,000
_____	_____
_____	_____



INSTRUCTIONS:

1. The Total Direct Non-Salary Cost shown in the shaded area below Column 4 is an out of pocket expense budgeted amount allowed to all proposers and must not be changed.
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 4.

FORM 4T3

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

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

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

- F) **VENDEX REQUIREMENT &
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 F). A form for this confirmation is set forth in the RFP.

The proposer is advised that Vendex Questionnaires and procedures have changed. See www.nyc.gov/vendex to download the new VENDEX Questionnaires and a Vendor's Guide to VENDEX or contact NYCDOT's Vendor Responsibility Unit at (212) 839-9428.

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

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

ATTACHMENT F

CONFIRMATION OF VENDEX COMPLIANCE

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

Name of Proposer: _____

Proposer's Address: _____

Proposer's Telephone Number: _____

Proposer's Fax Number: _____

Date of Proposal Submission: _____

Project ID: _____

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

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

Date of Submission: _____

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

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

By: _____
(Signature of Partner or corporate officer)

Print Name: _____

SECTION VII

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



Doing Business Data Form

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

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

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

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

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: Yes No

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

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

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

Section 2: Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

 This person replaced former CEO: _____ on date: _____**Chief Financial Officer (CFO) or equivalent officer** This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

 This person replaced former CFO: _____ on date: _____**Chief Operating Officer (COO) or equivalent officer** This position does not exist

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

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

 This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

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

There are no owners listed because (select one):

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

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

First Name: _____ MI: _____ Last: _____
 Office Title: _____
 Employer (if not employed by entity): _____
 Birth Date (mm/dd/yy): _____ Home Phone #: _____
 Home Address: _____

First Name: _____ MI: _____ Last: _____
 Office Title: _____
 Employer (if not employed by entity): _____
 Birth Date (mm/dd/yy): _____ Home Phone #: _____
 Home Address: _____

First Name: _____ MI: _____ Last: _____
 Office Title: _____
 Employer (if not employed by entity): _____
 Birth Date (mm/dd/yy): _____ Home Phone #: _____
 Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____
 Name: _____ Removal Date: _____
 Name: _____ Removal Date: _____

Section 4: Senior Managers

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

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

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

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

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

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

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

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



DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM

What is the purpose of this *Data Form*?

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

Why have I received this *Data Form*?

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION VII

- H) FHWA REQUIREMENTS (See Attachment)**
- FTA THIRD PARTY REQUIREMENTS (See Attachment)**
- FEDERAL FORMS (See Attachment)**

APPENDIX A

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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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 \$50,000 (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. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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 and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 Department of Economic Development's Division

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.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any

governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884

<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if

their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate

the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

FHWA BOILER PLATE
US DOT REQUIREMENTS

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all

related subcontracts of \$10,000 or more.)

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

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

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

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

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

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

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

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

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

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

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

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

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

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

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

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

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

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

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

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA

each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

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

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

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

b. Trainees:

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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

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

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

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

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

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

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a subcontractor, assignee, or agent of the prime contractor.

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

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

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

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

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,

quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

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

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

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

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

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

transaction for cause of default.

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

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

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

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

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

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

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

c. Are not presently 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 1b of this certification; and

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

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

2. Instructions for Certification - Lower Tier Covered Transactions:

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

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

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

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

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

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

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

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

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

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

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

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

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

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**UNITED STATES DEPARTMENT OF
TRANSPORTATION CONTRACTING
REQUIREMENTS**

ATTACHMENT B

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

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

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

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

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

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

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

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

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

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

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

6. CLEAN WATER (33 U.S.C. §§ 1251)

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

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

7. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

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

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

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

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

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

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

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

1. In accordance with 18 CFR 18.36(i), the Contractor agrees to provide NYCDOT, the Federal Highway Administration ("FHWA") Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees to provide the FHWA Administrator or his/her authorized representatives access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where NYCDOT, in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to NYCDOT, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NYCDOT, the FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (Reference 49 CFR 18.39 (i)(11).

10. FEDERAL CHANGES (49 CFR Part 18)

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

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

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

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

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

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

13. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

14. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. NATIONAL ENVIRONMENTAL POLICY ACT ("NEPA") REQUIREMENTS

This contract is subject to NEPA. The Contractor shall be permitted to proceed with preliminary design upon registration of the contract. The contractor shall also be allowed to proceed with final **design** and construction for any projects, or portions thereof, for which the NEPA process has been completed, and may be permitted to perform any design and engineering to be undertaken for the purposes of defining the project alternatives and completing the NEPA alternatives analysis and review process; complying with other related environmental laws and **regulations**; supporting agency coordination, public involvement, permit applications, or development of mitigation plans; or developing the **design** of the preferred alternative to a higher level of detail when the lead agencies agree that it is warranted in accordance with 23 U.S.C. 139(f)(4)(D). Under no circumstances shall the Contractor proceed with final design activities and physical construction prior to the completion of the NEPA process, and until NYCDOT gives notice to proceed thereafter. Violation of this provision shall be considered a material breach of the contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. CLEAN WATER (33 U.S.C. §§ 1251)

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

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

7. BUS TESTING (49 U.S.C. 5323(c), 49 CFR Part 665)

The Contractor agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a

major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

8. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

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

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

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

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

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

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

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

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

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

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

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

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I.State Grantees</u> a. Contracts below SAT (\$100,000)	None	Those imposed state pass Thru to Contractor	None	None	None	None
b. Contracts above \$100,000/ Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/ 5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II . Non State Grantees</u> a. Contracts below SAT (\$100,000)	Yes ³	Those imposed non-state Grantee pass thru Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

SAT: Source Acquisition Threshold

11. FEDERAL CHANGES (49 CFR Part 18)

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

12. BONDING

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

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

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

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

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

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

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

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

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

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

~~Performance and Payment Bonding Requirements (Construction)~~

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

~~(a) Performance bonds~~

~~1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the NYCDOT determines that a lesser amount would be adequate for the protection of NYCDOT.~~

~~2. The NYCDOT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NYCDOT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.~~

~~(b) Payment bonds~~

~~1. The penal amount of the payment bonds shall equal:~~

~~(i) Fifty percent of the contract price if the contract price is not more than \$1 million.~~

~~(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or~~

~~(iii) Two and one half million if the contract price is more than \$5 million.~~

~~2. If the original contract price is \$5 million or less, (NYCDOT) may require additional protection as required by subparagraph 1 if the contract price is increased.~~

~~Performance and Payment Bonding Requirements (Non-Construction)~~

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

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

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

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

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

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

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

~~1. The penal amount of payment bonds shall equal:~~

- ~~(i) Fifty percent of the contract price if the contract price is not more than \$1 million;~~
- ~~(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or~~
- ~~(iii) Two and one half million if the contract price is increased.~~

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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

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

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

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

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

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

15. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the

project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(v)(A) The Contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - NYCDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the NYCDOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the NYCDOT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately

and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all Subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

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

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

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage

determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

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

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

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

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

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

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

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

19. TERMINATION (49 U.S.C. Part 18, FTA Circular 4220.1E)

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

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

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

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

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

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

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

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

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

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor, within [10] days from the beginning of any delay, notifies NYCDOT in writing of the causes of delay. If in the judgment of NYCDOT, the delay is excusable, the time for completing the work shall be extended. The judgment of NYCDOT shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

All contractors must ensure that they are not listed in the Excluded Parties List and must ensure that their sub-contractors are not listed in the EPS. The EPS can be found at <https://www.epls.gov/>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for

damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury 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.

24. STATE AND LOCAL LAW DISCLAIMER

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

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

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

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

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

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

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

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

d. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the NYCDOT. In addition, the Contractor may not hold retainage from its Subcontractors. The Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The Contractor is required to return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the NYCDOT and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.

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

26. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in [FTA Circular 4220.1F](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of NYCDOT's requests which would cause NYCDOT to be in violation of the FTA terms and conditions.

27. DRUG AND ALCOHOL TESTING (49 U.S.C. § 5331, 49 CFR Parts 653 and 654)

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require that NYCDOT ensures that any entity performing a safety-sensitive function on NYCDOT's behalf (usually Contractor and/or Contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on NYCDOT's compliance with the rules; thus, NYCDOT is not in compliance with the rules unless every entity that performs a safety-sensitive function on NYCDOT's behalf is in compliance with the rules. Third, the rules do not specify how NYCDOT ensures that its Contractors comply with them.

NYCDOT does so depends on several factors, including whether the Contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that NYCDOT has with the Contractor, and the financial resources available to NYCDOT to oversee the Contractor's drug and alcohol testing program. In short, there are a variety of ways that NYCDOT can ensure that its Contractor and/or contractors comply with the rules.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York, or NYCDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 30th and to submit the Management Information System (MIS) reports before March 15th to the Commissioner of NYCDOT or designee. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor agrees further to [Select a, b, or c] (a) submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt NYCDOT's policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before January 30th, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: (to be determined by NYCDOT, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

28. 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.

29. 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.

30. 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.

REQUIRED CONTRACT PROVISIONS

DBE Program

FTA assisted contracts that NYCDOT lets will include, as appropriate, the model contract provisions that are included as Appendix B and incorporated herein. NYCDOT shall have discretion to modify the provisions for particular contracts as needed. These required contract provisions consist of:

- 1. Notice of DBE Contract Requirements in the Invitation for Bids**
- 2. General Conditions**
 - a. Assurances**
 - b. DBE Policy**
 - c. DBE Obligation**
 - d. Prompt Payment to Subcontractors**
 - e. Legal and Contract remedies**
 - f. Contractor Reporting Requirements**
 - g. Retainage Policy**

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

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

Disadvantaged Business Enterprise (DBE) Requirements

The successful Proposer/ Bidder will be required to meet a NYCDOT Disadvantaged Business Enterprise (DBE) goal. For Engineering Services and Construction a goal of 15% is currently in effect, for Non-Transit Vehicle Manufactured (TVM) purchases a DBE goal of 4% is currently in effect, for Marine work a DBE goal of 2% goal is in effect. the total value of the contract should be subcontracted to a DBE firm or firms. To be qualified as a DBE, a firm should be certified in the 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- 16th Floor, New York, NY 10004. Telephone (646) 252-1378.

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

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

Niagara Frontier Transportation Authority

181 Ellicott Street

Buffalo, New York 14203

Telephone: (716)855-7300

Disadvantaged Business Enterprise (DBE) Certification

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

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

2. General Conditions

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

a. Assurances – Section 26.13

*Each **financial assistance agreement** signed with a NYCDOT operation administration (of a primary recipient) must include the following assurance:*

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT- assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT- assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. seq.).

*Each **prime contractor signed with a subcontractor and/or each subcontractor signed to a contractor** must include the following assurance:*

The contractor, sub -recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT- assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

B. POLICY

It is the policy of USDOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."

C. OBLIGATION

The recipient or its contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all contractors

shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT assisted contracts.

Because this is a federally funded project with its own DBE requirement no separate NYC M/WBE program condition will apply to this contract. Further information or questions can be directed to:

New York City Department of Transportation
ACCO Office of Contract and Compliance
55 Water Street – 8th Floor, Room 825
New York, NY 10013
Telephone 212-839-9411

Attn: Charles Bartolotta, DBE Contract Compliance Officer

D. PROMPT PAYMENT TO SUB-CONTRACTORS

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

E. LEGAL AND CONTRACT REMEDIES

The DBE Compliance Unit shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments, and other appropriate monitoring, as further described in this Program Plan. The DBE Representative shall ensure that DBE participation is counted toward contract goals and the overall annual goal in accordance with the Regulations. In accordance with 49 CFR Part 26, prime contractors may not terminate sub-contractors for convenience. When DBE contractors are terminated, prime contractors will be required to substitute DBE sub-contractors in order to meet its DBE commitment.

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

F. CONTRACTOR REPORTING REQUIREMENTS

All sub-recipients of FTA funds are required to utilize the NYCDOT DBE Program Plan and comply with USDOT regulations 49 CFR Part 26.

Sub-recipients, contractors and subcontractors are subject to contract compliance reviews to ensure that DBE requirements are being met. They are expected to cooperate with the NYCDOT DBE Representative during desk audits and / or on-site reviews. NYCDOT has a Field Representative responsible for project over site to ensure that contract work is being performed by designated DBE sub-contractors and that the NYCDOT Project Accountant tracks payments to ensure that project goals, when applicable, are followed. The Compliance Officer, and Field Representative also reports work and payment progress to the Project Accountant who then tracks DBE utilization with the DBE Representative. The DBE Compliance Officer and DBE Representative ensure that sub-contractor DBE participation is credited to overall goals after the DBE has received payments.

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

G. RETAINAGE

DOT has made a determination that it will NO LONGER HOLD retainage ON FTA FUNDED CONTRACTS.

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

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

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

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

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

Determining Good Faith Efforts

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

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

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

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

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

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

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

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

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

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

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

Signature and Title of Authorized Official

Date

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

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

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

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

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

Signature and Title of Authorized Official

Date

Contractor Note:

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

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

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

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

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

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

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

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

Contractor's Signature _____	Date _____	Subcontractor's Signature _____	Date _____
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	ITEM No.	NAME	< 100 %	BID AMOUNT		AGREED AMOUNT \$	% to CNT
				\$ SPECIALTY	\$ NON-SPECIALTY		
1							
2							
3							
4							
5							
6							
7							
8							
TOTALS:\$				\$	\$	\$	

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

APPROVED FOR OFFICE OF EQUAL OPPORTUNITY DEVELOPMENT AND COMPLIANCE BY: _____	DATE APPROVED ____/____/____
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NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
DBE UTILIZATION WORKSHEET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOTALS: Enter the sum of all Bid Amounts and DBE Agreed Amounts, if any.

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