

**New York City Department of Transportation
Division of Bridges
Bureau of Specialty Engineering and Construction
Design Build/Emergency Contracts Unit**

REQUEST FOR PROPOSAL

FOR

**DESIGN, CONSTRUCTION AND CONSTRUCTION SUPPORT SERVICES
FOR THE REHABILITATION OF
THE ST. GEORGE STATEN ISLAND FERRY TERMINAL RAMPS
BOROUGH OF STATEN ISLAND
CONTRACT No. HBR1217
P.I.N. 84106SIBR096**

Addendum # 2

November 20, 2007

This Addendum Is Hereby Made Part Of The Contract Documents

NOTE:

Attached please find:

- 1. Revised Tabled of Contents (Page 1R)**
- 2. Revised Section IIIR (Page 5R)**
- 3. Revised Section IVR (Pages 6R, 7R and 8R)**
- 4. Revised Appendix E-R1 (Pages 1R through 5R)**
- 5. Revised Price Proposal Sheet (Book 1, Section 1.02, Pages 62R and 63R1)**
- 6. Section 1.09 – Federal Transit Administration Mandated Requirements (Pages 356-95 through 356-135)**
- 7. Responses to Pre-Proposal Conference Questions Raised to the Agency and Minor Technical Revisions.**
- 8. AutoCAD files with Available Survey Data for North Ramp and Ramp A**
- 9. Acknowledgement Receipt**

THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DIVISION OF BRIDGES

REQUEST FOR PROPOSAL

P.I.N. 84106SIBR096
CONTRACT No. HBR1217

Design, Construction and Construction Support Services
For the Rehabilitation of
The St. George Staten Island Ferry Terminal Ramps
Borough of Staten Island

BIN's: 2270180, 2269770, 2269780, 2269730, 2269740, 2269750, 2269790, 2270170, 2269760

ADDENDUM # 2
November 20, 2007

- REFER TO: REQUEST FOR PROPOSALS, Page 1, TABLE OF CONTENTS.
- REPLACE: **Page 1 in its entirety with Page 1-R**
- REFER TO: REQUEST FOR PROPOSALS, Page 5, Section III – SCOPE OF SERVICES
- REPLACE: **Page 5 in its entirety with Page 5-R**
- REFER TO: REQUEST FOR PROPOSALS, Pages 6, 7 and 8, SECTION IV – FORMAT AND CONTENTS OF THE PROPOSAL.
- REPLACE: **Pages 6, 7 and 8 in their entirety with Page 6-R, 7R and 8R respectively.**
- REFER TO: REQUEST FOR PROPOSALS, Section VII-ATTACHMENTS, APPENDIX E-R, PRICE PROPOSAL SHEET, as amended in Addendum # 1.
- REPLACE: **APPENDIX E-R, PRICE PROPOSAL SHEET in its entirety with APPENDIX E-R1, PRICE PROPOSAL SHEET.**
- REFER TO: Book 1 of the RFP, Pages 62 and 63-R, as amended in Addendum # 1, PRICE PROPOSAL SHEET.
- REPLACE: **Pages 62 and 63R in their entirety with Pages 62R and 63R1 respectively.**

REFER TO:

Book 1 of the REQUEST FOR PROPOSALS

ADD:

Attached Section 1.09 – Federal Transit Administration Mandated Requirements (Pages 356-95 through 356-135) to the end of Book 1, immediately after Section 1.08.

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The intent of the incentive is to reduce the construction duration and its associated costs to Ferry operations, parking lot revenue reduction, MTA-buses and SIRTOA revenue reduction, REI costs, DOT supervision costs as well as the overall inconvenience to the public. Conversely, the Department will also assess a disincentive amount of \$25,000 per day for each consecutive calendar day the contractor fails to substantially complete the job within the duration they specified in their proposal and contract. There is no upper limit to the disincentive amount.

▪ **Liquidated Damages**

The contract will call for liquidated damages of \$3,000 per day for each day that the contractor fails to mobilize at the site past the pre-construction duration, as such duration was identified by the contractor in its proposal and contract. The pre-construction duration is defined as the time frame from the date of Notice to Proceed to the date of site mobilization for the purpose of executing the scope of work. The intent of the liquidated damages is to ensure timely mobilization at the site so that the condition of the ramps is expeditiously addressed.

D. Opportunity for Disadvantaged Business Enterprise

The NYC Department of Transportation's Disadvantaged Business Enterprise (DBE) utilization goal for this procurement is 9%. The successful proposers must show good faith efforts that it attempted to meet the DBE goal.

Proposers shall refer to the Federal Transit Administration's third party requirements attached to the Agreement for DBE resources.

E. Federal Transit Administration Requirements

This procurement is partially funded by the United States Department of Transportation, through the Federal Transit Administration. As such, the successful proposer shall follow the "Federal Transit Administration's Third Party Requirements" **attached to the Agreement as Section 1.09** during the course of the work. All proposers must submit Appendix A, "Buy America Certification", Appendix B, "Disclosure of Lobbying Activity", Appendix C, "Certification of Contractor regarding Debarment, Suspension and other Responsibility matters" and the Disadvantage Business Enterprise office notification form with its Technical Proposal, **which are all included in Section 1.09.**

F. PERFORMANCE AND PAYMENT BOND REQUIREMENTS

The successful proposer shall be required to secure performance and payment bonds in an amount equal to 100% of the value of the work in connection with the resultant contract. The performance and payment bonds shall be secured from a Surety Company authorized to do business in the State of New York. The procurement of the performance and payment bonds is a condition precedent to the execution of the resultant contract.

**Insurance must be maintained during performance and up to final acceptance of the contract work. The types and amounts of insurance required by the City are fully described in the Agreement (Section 1.03, Book 1 of 2 of the RFP) and Schedule A (See Book 1 of 2, Section 1.05.3).*

SECTION IV: FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8 1/2" X 11" paper. 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 individually sealed components as listed in Section IV - B. Proposal Package Contents ("Checklist"), each bound in an 8 1/2" x 11" plastic spiral binding. The cover should be hard cardboard or laminated plastic, the cover should feature the name of the responding firm(s) and the contract name and 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.

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.

In response to this RFP, All Propers should provide information required in STEP I of Proposal Format listed below:

A. Proposal Format

STEP I:.....(APPLICABLE TO ALL PROPOSERS)

TECHNICAL PROPOSAL

(Please refer to Section IV - B - STEP I: Technical Proposal Package Contents ("Checklist"))

- **PROPOSAL COVER LETTER**
The Proposal Cover Letter form (**Attachment A**) transmits the proposer's Proposal Package to the Department. It should be completed, signed and dated by an authorized representative of the proposer.
- **TECHNICAL PROPOSAL**
The technical proposal is a clear, concise narrative that addresses the criteria outlined in **Appendix B**.
- **Form 1**
- **Acknowledgment of Addenda/Step I**
The Acknowledgment of Addenda / Step I form (Appendix C) serves as the proposer's acknowledgment of the receipt of addenda to this RFP which may have been issued by the Department prior to the Technical Proposal Due Date and Time. The proposer should complete this form as instructed on the form.
- **Tax Affirmation (Appendix D)**
- **Form 330 – Standard Form**

STEP II:APPLICABLE ONLY TO SHORT LISTED PROPOSERS
See Step II of the Section V: Evaluation Procedures

Price Proposal

(Please refer to Section IV: B - STEP II Price Proposal Package Contents (“Checklist”))

- **Price Proposal:** The price proposal comprises of Section 1.02 of Book 1 (**APPENDIX E IN THE RFP BOOKLET**)
- **Progress Payment Schedule** – Outlined in **Exhibit C of Book 2, Vol. 2.**
- **Acknowledgment of Addenda** (Appendix F)
- **Performance Outcome Measures and Financial Incentives and/or Disincentives**

List and describe outcome measures of the work to be performed by the proposer under the contract and the related financial incentives and/or disincentives that could potentially be applied to the contract, in whole or in part, as a reliable means for measuring and paying for success, as described in the “Scope of Services” section of the RFP. The Department’s assumptions regarding performance outcome measures and related financial incentives and/or disincentives represent what the Department believes to be the best approach. However, proposers are encouraged to propose measures, incentives and disincentives which they believe will best achieve the Department’s goals and objectives in a cost-effective manner. While the proposer’s proposed performance outcome measures and related financial incentives and/or disincentives will not be scored by the Department’s Evaluation Committee, they may be considered by the Department in awarding the contract and structuring its payments to contractors.

- **Form 6T – DBE Participation Form**

B. Proposal Package Contents (“Checklist”)

STEP I. Technical Proposal Package Contents (“Checklist”)

Proposers should utilize this section as a “checklist” to assure completeness prior to submitting their proposal to the Department.

A sealed inner envelope labeled “Technical Proposal” containing one original set and the stated number (in the parentheses, if any) of duplicate sets of the documents listed below in the following order:

- Proposal Cover Letter Form (**Attachment A**)
- Narrative and any drawings the proposer may deem appropriate in response to the guidelines of **Appendix B** (6 copies).
- Form 1 (6 copies)
- Acknowledgment of Addenda (**Appendix C**)
- Tax Affirmation (**Appendix D**)
- SF330 – Standard Form

A sealed outer envelope, enclosing the sealed inner envelope:

Address all packages, outer envelopes or wrappers as follows:

Proposer's Name	NYCDOT Contract Section
Address	40 Worth Street 8th Floor, Room 824A New York, New York 10013
PIN No. 84106SIBR096	
CONTRACT NO. HBR1217	
DESIGN, CONSTRUCTION AND CONSTRUCTION SUPPORT SERVICES FOR THE REHABILITATION OF THE ST. GEORGE STATEN ISLAND FERRY TERMINAL RAMPS	
BOROUGH OF STATEN ISLAND	
PROPOSAL SUBMISSION DEADLINE IS DECEMBER 19, 2007	
NO LATER THAN 2:00 PM	

STEP II Price Proposal Package Contents (“Checklist”)

The package should be sealed in a manner similar to the Technical Proposal Package and contain the items identified in Appendix E, as follows:

- Price Proposal – Section 1.02, Book 1 of 2 of the RFP (only 1 original)
- Exhibit C – (Book 2 of 2) Progress Payment Schedule (only 1 original)
- Acknowledgement of Addenda (Appendix F)
- 6T – DBE Participation

APPENDIX E-R1

PRICE PROPOSAL SHEET

Item No.	Item	Construction	CSS	Design	Dollars in Figures
1	Mobilization Cost (NTE 4%)				
2	Permits, Bonds, Insurances, and Upfront Coordination (NTE 6%)				
3	Engineer's Office / PC / Supplies				
4	Community Outreach				
5	Traffic Study (Richmond Terrace)				
6	Bridge / Site Inspections				
7	Bridge / Site Surveys				
BIN 2270180 (Ramp A)					
8	Maintenance & Protection of Traffic				
9	Demolition / Temporary Shielding				
10	Substructure Rehabilitation				
11	Superstructure Replacement (Including Beams, Deck & Barrier)				
12	Roadway Approach / Plaza Restoration Work				
BIN 2269770 (Ramp B)					
13	Maintenance & Protection of Traffic				
14	Demolition / Temporary Shielding				
15	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
16	Deck Reconstruction (Including Sidewalk, Barrier, Parapet, Shear Studs, Exp. Joints & Fencing)				
17	Cleaning and Painting Existing Steel (Lead Abatement Required)				
18	Structural Steel Repair & Bearing Replacement				
19	Bridge Drainage Work				
20	Bridge (On & Under) Lighting Work				
21	Pigeon Deterrent System				
22	Roadway/Approach Work				
BIN 2269780 (Ramp C)					
23	Maintenance & Protection of Traffic				
24	Demolition / Temporary Shielding				
25	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
26	Deck Reconstruction (Including Sidewalk, Barrier, Parapet, Exp. Joints & Fencing)				
27	Cleaning and Painting Existing Steel (Lead Abatement Required)				
28	Structural Steel Repair & Bearing Replacement				
29	Bridge Drainage Work				
30	Bridge (On & Under) Lighting Work				
31	Roadway/Approach Work				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
BIN 2269730 (Ramp D)					
32	Maintenance & Protection of Traffic				
33	Demolition / Temporary Shielding				
34	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
35	Deck Reconstruction (Including Sidewalk, Exp. Joints & Fencing)				
36	Cleaning and Painting Existing Steel (Lead Abatement Required)				
37	Structural Steel Repair & Bearing Replacement				
38	Bridge Drainage Work				
39	Bridge (On & Under) Lighting Work				
40	Pigeon Deterrent System				
41	Roadway/Approach Work				
BIN 2269740 (Bus Station North)					
42	Maintenance & Protection of Traffic				
43	Demolition / Temporary Shielding				
44	Encasement Repair (Columns and Underside of Terminal Ped. Ramps)				
45	Deck Repair (Over Terminal) Including Waterproofing Membrane				
46	Deck Reconstruction (Including Lt Wt Overlay, Bus Platform Sidewalk, Traffic Dividers, Barrier, Expansion Joints & Fencing)				
47	Cleaning and Painting Existing Steel (Lead Abatement Required)				
48	Structural Steel Repair				
49	Bridge Drainage Work				
50	Bridge (On & Under) Lighting Work				
51	Pigeon Deterrent System				
BIN 2269750 (Bus Station South)					
52	Maintenance & Protection of Traffic				
53	Demolition / Temporary Shielding				
54	Deck Reconstruction (Including Bus Platform Sidewalks, Barrier, Exp. Joints & Fencing)				
55	Bus Canopy Brick Wall Reconstruction w/Steel Grating Infill				
56	Cleaning and Painting Existing Structural & Bus Canopy Steel (Lead Abatement Required)				
57	Structural Steel Repair				
58	Bridge Drainage Work				
59	Bridge (On & Under) Lighting Work				
60	Pigeon Deterrent System				
BIN 2269790 (Old Viaduct)					
61	Maintenance & Protection of Traffic				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
62	Encasement Removal & Temporary Shielding / Assessment & Recommendations for Steel Repairs				
63	Demolition / Temporary Shielding (for Deck Reconstruction)				
64	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
65	Deck Reconstruction (Including Parapet, Sidewalk, N. Fascia Railing & Fencing)				
66	Cleaning and Painting Existing Steel (Lead Abatement Required – Select Areas)				
67	Bearing Replacement				
68	Bridge Drainage Work				
69	Bridge (On & Under) Lighting Work				
70	Pigeon Deterrent System				
71	Roadway/Approach Work				
BIN 2270170 (Pedestrian Breezeway)					
72	Demolition / Temporary Shielding Including Removal of Roof (Asbestos Abatement Required) and Stairs to Ramp B				
73	Concrete Column Base Repair				
74	Deck Reconstruction Including Expansion Joints				
75	Cleaning and Painting Existing Steel (Lead Abatement Required)				
76	Structural Steel Repair / Mod. to S. Fascia Girder (Due to Stair Removal)				
77	Metal Roof Construction				
78	Bridge (On & Under) Lighting Work				
79	Pigeon Deterrent System				
BIN 2269760 (North Ramp)					
80	Maintenance & Protection of Traffic				
81	Reconstruction of SIRTOA Stadium Station Stairs				
82	Clearing Site/Foundation Excavation (Assume excess excavation material is Contaminated, Non-Hazardous, Non-Petroleum Industrial Waste for Hauling and Disposal purposes)				
83	Hauling and Disposal of Contaminated Excess Excavation Material Classified as Non-Hazardous, Petroleum Contaminated Waste (Proposer to Provide Unit Price based on assumed proposal quantity of 100 Tons)				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
84	Hauling and Disposal of Contaminated Excess Excavation / Material Classified as Hazardous Waste (Proposers to provide Unit Price based on assumed proposal quantity of 25 Tons)				
85	Bridge Foundation (Including possible dewatering operations)				
86	Bridge Substructure Incl. Richmond Terrace Abutment Modification				
87	Bridge Superstructure / Deck				
88	Ramp Foundation (Including possible dewatering operations)				
89	Ramp Retaining Walls, Sidewalk, Parapet and Barrier				
90	Ramp Fill and Paving				
91	Bridge / Ramp Drainage				
92	Bridge / Ramp Lighting				
93	Pigeon Deterrent System				
94	Approach Tie-In Work				
95	Restoration of EDC Parking Lot				
96	Demolition of Existing North Ramp (Including Asbestos & Lead Paint Abatement)				
North Municipal Parking Field					
97	Temporary Relocation of Taxi Stand				
98	Clearing Site				
99	Paving and Striping Site				
100	Site Fencing, Drainage and Lighting				
Bus Canopy Package					
101	Bus Canopy (Architectural Work excluding Brick Wall and Cleaning & Painting Bus Canopy Steel)				
102	Bus Canopy (Electrical Work incl. Holding Lights & PA System Upgrade)				
103	Automatic Doors				
104	Vestibule Work				
105	Lifting Hooks				
Site Drainage					
106	Clearing Site / Excavation				
107	Replacement / Modifications to Underground Site Drainage Systems				
108	Replacement / Modification to Existing Outfall Locations				
109	Backfill and Restoration of Site				
Public Utilities					
110	Public Utilities (exclusive of site drainage work)				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
111	Demobilization (Including Site Restoration)				
	Subtotal				
112	Allowance for Architectural Enhancements (Bus Canopies and Pedestrian Bridge)				\$1,000,000.00
113	Allowance for Flag Repairs				\$1,000,000.00
114	Incidental Repairs				\$3,000,000.00
115	Incentive (NYC-1943)				\$5,000,000.00
116	Allowance for NYCT Disruptions ¹				\$500,000.00
	Allowances Subtotal				\$10,500,000.00
	Total				

Note:

1. This item is to reimburse the Company for demonstrated losses incurred as a direct result of NYC Transit ordered disruptions to the Company's otherwise scheduled and approved work operations. This will apply to any entity of NYC Transit including but not limited to SIRTOA and Bus Operations.

The total of the foregoing price proposal based on the Company's Estimate of Items of Work is (in words):

1.02.3 Contingent Work

Contingent work shall be taken and understood to mean all labor, materials and equipment necessary for the completion of the contract. Such work shall be performed only when ordered in writing by the Engineer.

84	Hauling and Disposal of Contaminated Excess Excavation / Material Classified as Hazardous Waste (Proposers to provide Unit Price based on assumed proposal quantity of 25 Tons)				
85	Bridge Foundation (Including possible dewatering operations)				
86	Bridge Substructure Incl. Richmond Terrace Abutment Modification				
87	Bridge Superstructure / Deck				
88	Ramp Foundation (Including possible dewatering operations)				
89	Ramp Retaining Walls, Sidewalk, Parapet and Barrier				
90	Ramp Fill and Paving				
91	Bridge / Ramp Drainage				
92	Bridge / Ramp Lighting				
93	Pigeon Deterrent System				
94	Approach Tie-In Work				
95	Restoration of EDC Parking Lot				
96	Demolition of Existing North Ramp (Including Asbestos & Lead Paint Abatement)				
North Municipal Parking Field					
97	Temporary Relocation of Taxi Stand				
98	Clearing Site				
99	Paving and Striping Site				
100	Site Fencing, Drainage and Lighting				
Bus Canopy Package					
101	Bus Canopy (Architectural Work excluding Brick Wall and Cleaning & Painting Bus Canopy Steel)				
102	Bus Canopy (Electrical Work incl. Holding Lights & PA System Upgrade)				
103	Automatic Doors				
104	Vestibule Work				
105	Lifting Hooks				
Site Drainage					
106	Clearing Site / Excavation				
107	Replacement / Modifications to Underground Site Drainage Systems				
108	Replacement / Modification to Existing Outfall Locations				
109	Backfill and Restoration of Site				
Public Utilities (exclusive of site drainage work)					
110	Public Utilities (exclusive of site drainage work)				

111	Demobilization (Including Site Restoration)				
	Subtotal				
112	Allowance for Architectural Enhancements (Bus Canopies and Pedestrian Bridge)				\$1,000,000.00
113	Allowance for Flag Repairs				\$1,000,000.00
114	Incidental Repairs				\$3,000,000.00
115	Incentive (NYC-1943)				\$5,000,000.00
116	Allowance for NYCT Disruptions ¹				\$500,000.00
	Allowances Subtotal				\$10,500,000.00
	Total				

Note:

1. This item is to reimburse the Company for demonstrated losses incurred as a direct result of NYC Transit ordered disruptions to the Company's otherwise scheduled and approved work operations. This will apply to any entity of NYC Transit including but not limited to SIRTOA and Bus Operations.

The total of the foregoing price proposal based on the Company's Estimate of Items of Work is (in words):

1.02.4 Contingent Work

Contingent work shall be taken and understood to mean all labor, materials and equipment necessary for the completion of the contract. Such work shall be performed only when ordered in writing by the Engineer.

SECTION 1.09
FEDERAL TRANSIT ADMINISTRATION MANDATED REQUIREMENTS

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Book 1 Section 1.09

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

FEDERAL TRANSIT ADMINISTRATION 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)

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

(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.

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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.

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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
I . <u>State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/ Capital Projects	None unless 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
II . <u>Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to 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:

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a. 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.

b. 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.

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.

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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)

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(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.

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(v)(A) The Contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

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

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for

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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

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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

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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.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

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

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

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

17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

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

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

18. 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.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

(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

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor, within [10] days from the beginning of any delay, notifies NYCDOT in writing of the causes of delay. If in the judgment of NYCDOT, the delay is excusable, the time for completing the work shall be extended. The judgment of NYCDOT shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

20. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) **(49 CFR 29.220(b), 49 CFR 29.940 and 49 CFR 29.945, Executive Orders 12549/12689)**

Executive Orders 12549/12689, as implemented by 49 CFR Part 29, prohibits NYCDOT and sub-grantees from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, NYCDOT is required to submit a certification (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

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

21. PRIVACY ACT (5 U.S.C. 552)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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

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

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

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

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act 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.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

(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 **9%**.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

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 4220.1E](#) 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

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

654. Second, the rules condition the receipt of certain kinds of FTA funding on NYCDOT's compliance with the rules; thus, NYCDOT is not in compliance with the rules unless every entity that performs a safety-sensitive function on NYCDOT's behalf is in compliance with the rules. Third, the rules do not specify how NYCDOT ensures that its Contractors comply with them.

NYCDOT does so depends on several factors, including whether the Contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that NYCDOT has with the Contractor, and the financial resources available to NYCDOT to oversee the Contractor's drug and alcohol testing program. In short, there are a variety of ways that NYCDOT can ensure that it's Contractor and/or contractors comply with the rules.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York, or NYCDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 30th and to submit the Management Information System (MIS) reports before March 15th to the Commissioner of NYCDOT or designee. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor agrees further to [Select a, b, or c] (a) submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt NYCDOT's policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before January 30th, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: (to be determined by NYCDOT, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

**for
Federal Transit Administration Projects**

New York City Department of Transportation

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

Disadvantaged Business Enterprise Utilization Goal 9.0%

A list of currently certified Disadvantaged Business Enterprises - Construction Related Firms can be obtained by contacting any of the following:

MTA - New York City Transit
Office of Business Programs
2 Broadway - 16th Floor
New York, NY 10004
Telephone: (646) 252-1372

Niagara Frontier Transportation Authority
181 Ellicott Street
Buffalo, New York 14203
Tele: (716) 855-7300

**New York State Department
Of Transportation
Contract Audit Bureau DBE Unit**
50 Wolf Road, 1st Floor South
Albany, New York 12232
Fax: 518-457-1675
Telephone: (518) 457-9679

**Port Authority of NY & NJ
Office of Civil Rights**
2 Broadway, 16th Floor
New York, New York 10004
Tele: 646-252-1378

Or go to the Unified Certification Program for NYS on the web: <http://biznet.nysucp.net/>

Disadvantaged Business Enterprise Officer

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

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

RETURN THIS PAGE WITH BID

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Federal Transit Administration Third Party Contract Requirements

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

A. Disadvantaged Business Enterprise (DBE) Requirements

The successful Proposer will be required to meet a NYCDOT 9.0% Disadvantaged Business Enterprise (DBE) goal; 9.0% of the total value of the FTA funds in the contract should be subcontracted to a DBE firm or firms. To be qualified as a DBE, a firm should agree to abide by the statements from a governmental or quasi-governmental agency that adheres to Federal Regulation 49 CFR Part 26 such as:

MTA - New York City Transit, Office of Business Programs, 2 Broadway- 16th Floor, New York, NY 10004. Telephone (646) 252-1372.

New York State DOT, Office of Equal Opportunity Development & Compliance, 50 Wolf Road, 1st Floor, Albany, New York 12232. Telephone (518) 457-1129.

Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, Tele: (716) 855-7300

Port Authority of NY & NJ, Office of Civil Rights, 2 Broadway, 16th Floor, New York, New York 10004, Tele: 646-252-1378

Or go to the Unified Certification Program for NYS on the web: <http://biznet.nysucp.net/>

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

- 1 "Policy. It is the policy of USDOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."
- 2 "DBE Obligation. The recipient or its contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT-assisted contracts."

Because this is a federally funded project with its own DBE requirement (noted above) no separate NYC M/WBE program condition will apply to this contract. Further information or questions can be directed to:

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

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

REQUIRED CONTRACT PROVISIONS* DBE Program

USDOT-assisted contracts that NYCDOT lets will include, as appropriate, the model contract provisions that are included as Exhibit B and incorporated herein. NYCDOT shall have discretion to modify the provisions for particular contracts as needed. These required contract provisions consist of:

- A. Notice of DBE requirements in the Invitation for Bids
- B. General Conditions
 - 1. DBE Program
 - 2. Prompt Payment to Subcontractors
- C. Special Provisions
 - 1. DBE Participation Goal (where applicable)

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 **contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor)** 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. Prompt Payment to Subcontractors

In accordance with NYCDOT's DBE Program, the Contractor shall pay any Subcontractors approved by NYCDOT for work that has been satisfactorily performed no later than seven (7) days from the date of the Contractor's receipt of progress payments by NYCDOT. Within thirty (30) days of satisfactory completion of all work required of the Subcontractor. Contractor shall release any retainage payments withheld to the Subcontractor.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Exhibit C

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.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Exhibit F

(SAMPLE PRIME CONTRACTOR AWARD LETTER)

Date

Prime Contractor Winner, Inc.
Attn: Mr. Buck Stops Here, President
1111 Bottom Line Street
Anywhere, New York 10000

Re: Contract Name and/or Description

Dear Mr. Here:

Your Company was awarded and recently executed the above listed contract with NYCDOT. Part of the consideration in awarding the contract was the Disadvantaged Business Enterprise (DBE) participation that you listed in the bid/proposal document.

You have listed the following DBE firm(s) and the dollar amounts of their subcontracts:

ABC Electrical Co.	Electrical Contracting	\$xx,xxx
DEF Plumbing	Plumbing Contracting	\$xx,xxx
GHI Roofing	Roofing Contracting	\$xx,xxx
JKL Printing Co.	Printing	\$xx,xxx

The DBE firm(s) listed above represent(s) your commitment to NYCDOT's DBE program and each respective DBE firm.

To ensure the integrity of the DBE program, NYCDOT has developed DBE compliance procedures that should be followed during this contract. NYCDOT's DBE Department and Contract Administrator should be notified in writing prior to any material changes from the above commitments. Also, any changes should be for real and substantial reasons. Frivolous and/or unsubstantiated changes are unacceptable.

Please provide to the DBE Department, within 3 calendar days of execution a copy of your executed subcontract with each DBE firm. A letter of commitment signed by both an authorized representative of your firm and the DBE firm may be submitted instead of signed subcontracts. The letter should verify the subcontract dollar amount, the general work scope, **and affirm the absence of subcontract restrictions or requirements that are unfair, burdensome, outside of normal business practices, unjustly punitive, etc...** There should be a letter for each DBE firm.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Page 2

Also, you **must** attach NYCDOT's **DBE Expenditure Report** (see contract compliance manual) with **each** invoice/payment request that you submit to NYCDOT's Contract Administrator. This report is designed to provide an accounting of monthly and year-to-date payments made to the DBE firm(s) that you have subcontracted with above.

The DBE Expenditure Report reflects the dollars that **will be paid** to each DBE firm from your **submitted invoice/payment request**. Evidence of payments (i.e. copy of canceled checks, copy of check register, etc.) may be periodically requested. NYCDOT **may not** authorize payment unless the DBE Expenditure Report accompanies your invoice/payment request.

Finally, please submit a DBE projected work schedule (i.e. a breakdown by month of expected DBE activity). Updates of the projected work schedule should be submitted as needed over the life of the contract.

Failure to comply may result in breach of contract and it may jeopardize future contracts with NYCDOT.

If you have any questions, please contact the DBE Department at (212) 442-7597.

Thank you for your continued commitment and cooperation.

Cordially,

DBE Representative

cc: Every DBE Firm Listed Above
Appropriate Project Manager, NYCDOT
Contracts Administrator, NYCDOT
Purchasing Administrator, NYCDOT
DBE File, NYCDOT
Others as needed

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PLAN

NEW YORK CITY DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION FUNDED CONTRACTS

PIN NO. _____

Name of Prime Contractor					
Name of Project					
Project/Contract No.		Total Bid Amount			
DBE Goal %		Total DBE \$ Amount			
Name of DBE Subcontractor	Address	Contact Person	Scope of Work	Dollar Value of Work (\$)	Percent (%)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
				Total DBE Dollars/%	

The undersigned will enter into formal agreement with the DBE's listed above for work in this schedule conditioned upon the award of a contract by New York City Department of Transportation.

Signature of Contractor Representative

Telephone Number

Date

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

PRIME CONTRACTOR'S DBE PAYMENT SUMMARY REPORT						
CONTRACT NO:	CONTRACTOR:			DBE % COMMITTED:		
CONTRACT DESCRIPTION:						
ORIGINAL AMOUNT OF CONTRACT:				REVISED CONTRACT AMOUNT:		
INVOICE NO:	INVOICE PERIOD:			MONTHS REMAINING ON CONTRACT:		
INVOICE AMOUNT:	AMOUNT DUE TO DBE'S:			PERCENTAGE PAID TO DBE'S THIS INVOICE:		
TOTAL PAID TO DATE:	TOTAL PAID TO DBE'S TO DATE:			PERCENTAGE PAID TO DBE'S TO DATE:		
DBE PAYMENT SUMMARY AND HISTORY						
DBE UTILIZED	BRIEF DESCRIPTION OF WORK PERFORMED	DBE PROJECT COMMITMENT AMOUNT	PAYMENT UNDER THIS INVOICE	% OF INVOICE	TOTAL PAID TO DATE	% OF TOTAL COMMITTED
AUTHORIZED SIGNATURE:		TITLE:			DATE:	
PREPARER SIGNATURE:		TITLE:			DATE:	
PLEASE ATTACH CLARIFICATION, COMMENTS, AND EXPLANATIONS AS NEEDED. FAILURE TO COMPLY WITH THE DBE REQUIREMENTS AND/OR INTENTIONALLY REPORTING FALSE OR MISLEADING INFORMATION MAY RESULT IN ACTION AGAINST THE CONTRACTOR UP TO AND INCLUDING CONTRACT TERMINATION, DEBARMENT AND LEGAL ACTION.						

STANDARD CLAUSES FOR ALL NEW YORK STATE
CONTRACTS

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- 2. Non-Assignment Clause**
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- 16. No Arbitration**
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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept

for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

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

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

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

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

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

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

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

Appendix A

Appendix A

Buy America Certification

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Appendix B

Appendix B

DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Appendix C

Appendix C

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

**THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DIVISION OF BRIDGES**

REQUEST FOR PROPOSAL

**P.I.N. 84106SIBR096
CONTRACT No. HBR1217**

**Design, Construction and Construction Support Services
For the Rehabilitation of
The St. George Staten Island Ferry Terminal Ramps
Borough of Staten Island**

BIN's: 2270180, 2269770, 2269780, 2269730, 2269740, 2269750, 2269790, 2270170, 2269760

**ADDENDUM # 2
November 15, 2007**

Following are answers to the October 23, 2007 Pre-Proposal Conference questions for the above named contract, which were submitted in writing to the agency.

- Q1: Should contractors base their proposals on the estimated quantities provided in the proposal documents?**
- A1: As per NYCDOT's direction at the pre-proposal meeting on Oct. 23, 2007, the Company shall base their estimate of rehabilitated / repair items (e.g. structural steel repairs, concrete repair, re-pointing of masonry, etc.) on the quantities provided in Section 4 of Exhibit E in Book 2 Volume 2. This applies only to rehabilitate/repair items; for all other occasions, the company is responsible for the quantities as such quantities depend on the company's proposed replacement scheme.**
- Q2: Will D.O.T. consider a contingency item to compensate the contractor in the event a late cancellation of a weekend outage that is not caused by the contractor?**
- A2: The item "Allowance for NYCT Disruptions" was added to the contract as part of Addendum No. 1. This item is to reimburse the Company for demonstrated losses incurred as a direct result of NYC Transit ordered disruptions to the Company's otherwise scheduled and approved work operations. This will apply to any entity of NYC Transit including but not limited to SIRTOA and Bus Operations.**
- Q3: Please clarify the contractor's available laydown and storage areas.**
- A3: As per Special Provision No. 59 - STAGING AREA on Page 1756 of Exhibit H in Book 2: Volume 2: "The Company will be permitted to use space under the Bus Station South to site their construction trailers as well as the Engineer's Office. Specific location is to be coordinated with NYCDOT – Passenger Transport Division".**

Storage containers and equipment may be stored adjacent to the construction trailers. Other areas may also be available in the North Municipal Lot. However, no areas other than those specified in the RFP shall be used without written authorization from the entities having jurisdiction over them.

Q4: Please clarify how many parking spaces must be maintained during construction and if alternate spaces are required for employees who currently park on the existing ramps?

A4: **The maintenance of parking spaces during construction as stipulated in the contract documents is as follows:**

As per Section 1 of Exhibit E – Scope of Work on Page 1573 in Book 2 of Volume 2: The milling and re-surfacing of bituminous concrete pavement in the North Municipal Parking Field shall be staged to maintain a minimum of 300 parking spaces at all times.

As per Exhibit F – MPT Stipulations page 1688 in Book 2: Volume 2:

- 3. Temporary relocation of Municipal Parking on Ramp C (BIN 2269780) and in the North and South Parking Fields must be coordinated with NYCDOT Parking Bureau.**
- 4. Temporary relocation of parking on and under Ramp D (BIN 2269730) and under Bus Station North and South (BIN 2269740 and 2260750) must be coordinated with NYCDOT Passenger Transport Division.**

It is understood by all parties involved that the temporary loss of some parking spaces is inevitable during the execution of this work. Except in the case of resurfacing the North Municipal Parking Field, no specific limits have been set as to the total number of spaces that must be maintained at any one time. However Proposers shall consider and will be evaluated on the impact their chosen staging sequence and method of construction will have on the overall availability of parking at the site throughout the execution of this contract.

Proposers should assume that they will not be responsible for furnishing alternate spaces for employees currently parking on the existing ramps.

Q5: Are there any work restrictions, or outage restrictions during baseball games at the nearby stadium?

A5: **As per paragraph 1.2.1.f in Section 1 of Exhibit G – Railroad Requirements on Page 1693 in Book 2, Volume 2:**

“Work will not be permitted on SIRTOA’s Right-of-Way during Staten Island Yankee home games. Except in limited circumstances work may be permitted in specific areas at the direction of the SIRTOA.”

To further clarify, work / outage restrictions go into effect from 2 hours before a game until 2 hours after a game.

In addition, no work that will have a direct impact on the game and/or the ability to access safely the stadium can be performed during these hours. Work that has no such impact can proceed as planned.

- Q6: Please clarify which tracks can be taken out of service during normal working hours M-F?
- A6: **The Company may request a single track outage of any track at St. George within the hours stipulated in Exhibit G – Railroad Requirements in Book 2: Volume 2 assuming there is no conflict with other scheduled work.**
- Q7: Please clarify if Force Account support is required for work above the temporary shielding after the shielding is installed?
- A7: **Provided shielding is impenetrable and located outside the clearance limits and worker / equipment access to the shielding is not via SIRTOA ROW then flaggers will not be required. However, track outages and flaggers will be required when picking equipment and/or material above tracks (e.g. lifting beams in and out, removing large portions of slabs, etc).**
- Q8: Please clarify that flagger services are for 8-hr working shifts that start and end at the project site.
- A8: **As per Paragraph 1.2.8.4.1.a in Section 1 of Exhibit G – Railroad Requirements on Page 1701 in Book 2: Volume 2:**
- “One flagging occasion is the use of one flagger for any eight hour period or portion thereof and includes time for a flagger to travel to and from flagger’s crew quarters.”**
- In the case of this project, the flagger’s crew quarters are located at St. George; so technically flaggers would be available at the site for a full 8 hour work shift. However the Company’s work will be limited to the Allowable Hours of Work described in Paragraph 1.2.4 in Section 1 of Exhibit G – Railroad Requirements on Page 1695 of Book 2: Volume 2 which limits weekday work to a 6 hour shift (9am to 3pm) and weeknight work to a 7 hour shift (9pm to 4am).**
- Q9: In the event of a late cancellation by the contractor of a weekend outage, please clarify what constitutes the “additional costs of re-scheduling”?
- A9: **As per NYCDOT’s clarification at the Pre-Proposal Meeting on October 23, 2007, the “additional cost to re-schedule” a previously cancelled outage refers to just the cost of the newly scheduled services. Should the Contractor cancel any Authority supplied services with less than the required notice stipulated in Exhibit G, then the Contractor will be charged the cost of the original cancelled service plus the cost of the newly scheduled service through a payment deduction.**
- Q10: The Stage 1 technical proposal requires the Contractor to submit Form 6T DBE Participation form. This form requires the Contractor to identify the DBE firms that are being proposed, including the percentage of the contract value that they account for. It is our intent to comply with the DBE requirements for this project. But during the technical stage, there is insufficient information available to price this project. Additionally, there is no information to provide subcontractors and vendors in order for them to determine if they are interested in quoting this project, and the value of their participation in comparison to the total value of the project. Since subcontractors and vendors will not commit to pricing this project at this time, please clarify how the Contractor can fill out this form, and be responsive to the Step 1 technical proposal.
- A10: **See revised Section IV (pages 6R, 7R and 8R) attached to this addendum # 2.**
- Q11: With regard to compliance with DBE plan subcontracting goals, please confirm whether or not the \$10.5 million in allowance items included in the contract shall be deducted from the total contract price when

calculating the DBE subcontracting percentages and determining compliance with the project DBE goals.

A11: The allowances set forth by the Agency on page 63R-1 (attached) shall not be considered in the total for computing subcontracting percentages.

Q12: Please clarify the requirement of the contractor having to have completed a bridge project of \$50 million or more. Is this requirement based on a \$50 million bridge or a \$50 million project with multiple bridges and roadwork?

A12: A bridge project with a value of \$50 million or more may consist of a single bridge structure or several bridge structures, including their appurtenances and including roadwork. You may also include all private utility work that was necessary to complete such bridge project even if the private utility work was executed under a separate contract with the utility firm as mandated by Schedule U. This requirement is not a pass or fail criterion but an indication of the contractor's experience and ability to execute projects of similar magnitude and complexity.

Q13: Please advise DOT's anticipated dates for the following milestones:

- a. Notification to proposer of their inclusion on the "short-list"
- b. Oral presentation to the Evaluation Committee
- c. Due date for STEP II Price Proposal
- d. Start date for contract negotiations
- e. Contract award
- f. Notice to Proceed

A13: The following timeframes are tentative as they depend on many factors that may be unforeseeable:

- a. Notification to proposers of their inclusion on the "short-list": Between mid January 2008 and first week of February 2008.**
- b. Oral presentation to the Evaluation Committee: Between end of January 2008 and mid February 2008.**
- c. Due date for STEP II Price Proposal: Between mid February 2008 and first week of March 2008.**
- d. Start date for contract negotiations: Between end of February 2008 to mid March 2008.**
- e. Contract award: Between mid August 2008 to mid September 2008. Contract registration is anticipated about a month after contract award.**
- f. Notice-to-Proceed: Within a week from registration date.**

Q14: The Request for Proposal states that Ramp A does not need to be designed for Seismic and states that Ramp B shall be considered an "Other" structure for seismic. What seismic classification should be considered in the Proposal for the seven (7) remaining structures?

A14: As per Section 4.1.6 of Exhibit B - Technical Specification in Book 2; Volume 2, the North Ramp shall be considered an "Other" structure and be designed in accordance with the current NYCDOT Seismic Design Guidelines.

The other seven (7) remaining structures (this does not include Ramp A) do not require seismic retrofitting as part of their rehabilitation scope.

Q15: Ramp A and the North Ramp will be reconstructed to meet current seismic provisions as specified in the Request for Proposal. What seismic analysis and what extent of seismic retrofit measures will be required in the Proposal for the seven (7) remaining structures?

A15: The only retrofit measure to be considered for Ramp A is to ensure that adequate bridge seat width is provided. No seismic retrofit measures are required for the remaining seven (7) rehabilitated structures.

Q16: There doesn't appear to be specific requirements in the RFP documents for rating the existing steel structures for remaining fatigue life. Given that there are many Category E fatigue details throughout the steel framing system, there likely will be some retrofit required if steel fatigue vulnerability checks are performed. The Inspection Reports provided in the RFP documents do not contain evidence that fatigue defects were found, although they do mention that Category E details are present. Also, the tables of suggested repairs shown on the preliminary drawings do not suggest any fatigue retrofits. What is an acceptable level of fatigue investigation and retrofit for the existing structures that are to remain?

A16: Given that the seven (7) vehicular structures do not routinely carry heavy truck loads and there has been no evidence of fatigue cracking during previous inspections, it is not anticipated that retrofitting of fatigue details will be necessary. However, Proposers shall perform a fatigue analysis of all Category E and E' details on Ramp Structure B (BIN 2269770) and Bus Station South (BIN 2269750) as part of the Bridge / Site Inspection Task. The findings of these analyses, along with any retrofit recommendations and associated construction costs, should be presented in the Inspection Findings Report.

If at that time it is determined that fatigue retrofitting is warranted, the cost of final design, construction support services and construction of approved retrofit details will be paid for under the Incidental Repair item of this Design/Build Contract.

The cost of performing these analyses shall be included in Item No. 6 – Bridge / Site Inspections on the Price Proposal Sheet in Appendix E of the Request for Proposal Booklet and Section 1.02 of Book 1.

Q17: In Section 832 of "Specification for Lead Paint Removal – Worker/Environmental Protection and Waste Handling" on p. 37 of 55 (p. 1979), paragraph 3.05 A.1, it states that the Contractor and NYCDOT are co-generators of the hazardous waste. Please revise the specification to state that only the NYCDOT is the generator of hazardous waste. If the contract language is not changed we can not submit a proposal for this project.

A17: The language is standard NYCDOT contract language and can not be changed.

Q18: Price Proposal Sheets included in Addendum No. 1 contain two Items numbered 95 and two items numbered 96. Will this sheet be revised in a future Addendum to remove duplicate item numbers?

A18: The item numbers have been corrected as part of Addendum No. 2. See revised Appendix E – Price Proposal Sheets (pages 6R, 7R and 8R) attached to this addendum # 2.

Q19: To adequately prepare our technical and price proposals, we request the Department extend the technical proposal due date to no earlier than January 17, 2008, and the price proposal due date to no earlier than February 14, 2008.

A19: The Agency is not extending the technical proposal due at this time. The exact price proposal due date is not known at this time and will be announced after a list of shortlisted firms is established.

Q20: Refer to section 4.1.6 of the technical requirements, page 1534, seismic forces. Par. 1 indicates Ramp A does not require the designer to include provisions for seismic forces however minimum beam support lengths are required. Par. 2 specifies the seismic criteria for the North Ramp.

Are seismic design requirements for Ramp B, C, D or the Bus Ramps specified? If not, can we assume that seismic analysis is not required for Ramp B, C, D, and the Bus Ramps?

A20: See A14, A15 and A16 above.

Q21: Refer to the technical specifications, page 1536, which require the use of grade 36 steel. Can we substitute Grade 50 and 70 steel, and delete the requirement for grade 36 steel?

A21: AASHTO M270 Grade 50 may be used for new steel members. However, AASHTO M270 Grade HPS70W is considered unsuitable due to the project site's proximity to a marine environment.

Q22: Do the specifications require the designer to perform load ratings for any substructure elements? If not, please confirm that none are required, or provide a specification for performing load ratings.

A22: Load ratings are not required for substructure elements.

Q23: To assist the design process, please provide copies of all existing electronic survey data (AutoCAD files), or direct us to the location where this information is available.

A23: AutoCAD files with available survey data for the North ramp and Ramp A will be included in Addendum No. 2.

Q24: To assist the proposal process, please provide copies of any existing power point presentations illustrating the work of this project, or direct us to the location where this information is available.

A24: All information contained in the PowerPoint presented at the pre-proposal conference is already included in the RFP. Therefore, no copies will be distributed.

Q25: To assist the proposal process, please provide a list and detailed description of the type and format of any design drawings that are to be submitted with the technical proposal?

A25: Proposers are to submit, at a minimum and as part of their proposals, plan elevation, cross section and MPT staging drawings. Proposers may also submit other drawings that they deem pertinent to convey the specifics of their proposals.

**THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DIVISION OF BRIDGES**

**N.Y.C. P.I.N. 84106SIBR096
CONTRACT No. HBR1217**

REQUEST FOR PROPOSAL

FOR

**DESIGN, CONSTRUCTION AND CONSTRUCTION SUPPORT SERVICES
FOR THE REHABILITATION OF
THE ST. GEORGE STATEN ISLAND FERRY TERMINAL RAMPS
BOROUGH OF STATEN ISLAND**

TOGETHER WITH ALL WORK INCIDENTAL THERETO

I, _____
(NAME AND TITLE)

a duly authorized representative of
(NAME OF PROPOSERS)

acknowledge receipt of Addendum No. 2 dated November 20, 2007 for the Contract No. HBR1217 for which
Technical Proposals will be received by 2:00 PM on December 19, 2007.