



Joel P. Ettinger
Executive Director

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION (on behalf of the)
NEW YORK METROPOLITAN TRANSPORTATION COUNCIL**

REQUEST FOR PROPOSALS

**MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF
2050 SOCIOECONOMIC AND DEMOGRAPHIC
FORECASTS**

Contract No. C000789

June 6, 2013

To All Concerned:

Enclosed is a copy of the Non-Engineering Request for Proposals (RFP) referenced above. All information necessary for the submission of your proposal is contained in the Best Value solicitation.

Any questions regarding this project or proposal shall be submitted in writing, directed to Ismet Apdiroglu, of the New York Metropolitan Transportation Council (NYMTC) via: ismet.apdiroglu@dot.ny.gov, and to Al Hasenkopf of NYSDOT Contract Management via: alfred.hasenkopf@dot.ny.gov

Please note the following **dates and deadlines**:

- **July 24, 2013**: Deadline for the submission of proposals on 2PM (Eastern Time)
- **July 10, 2013**: Deadline for questions about the RFP is 4:00 PM (Eastern Time)
- **July 2, 2013**: Pre-proposal conference at 10:30 AM

In addition to responding to questions (which are encouraged) to assist firms in preparing proposals in response to this solicitation, a **pre-proposal conference** will be held on July 2, 2013

in NYMTC's Office at 199 Water Street, 22nd Floor at 10:30 AM (see page 36 for details). A general review of the solicitation will occur, and specific questions regarding the solicitation may be asked and answered.

If you are interested in developing a proposal in response to this solicitation, please complete the attached RFP Response Form.

A "Checklist for Proposal Submission" is included to ensure complete and responsive proposals are submitted to NYMTC/NYS DOT. *It also contains instructions for complying with the Procurement Lobbying Law (PLL) so that your proposal may be considered for contract award. NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.*

The New York Metropolitan Transportation Council estimates that work for the successful consultant will commence on February 1, 2014 and continue for a period up to 36 months depending on performance.

The New York State Department of Transportation (NYSDOT) encourages the participation of certified Disadvantaged Business Enterprises (DBEs) in its solicitations. Please see the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: <http://biznet.nysucp.net/>. **For this solicitation, the NYSDOT has set a DBE Participation Goal of 18%. Only certified DBE prime consultants and certified subconsultants listed in the NYSUCP DBE Directory are eligible for credit in this procurement.** Please see the RFP for more information

IRAN DIVESTMENT ACT: As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

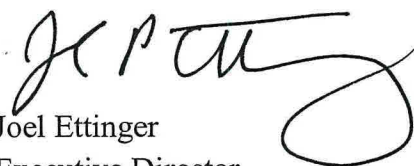
Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

We look forward to the receipt of your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Ettinger', with a large, stylized flourish at the end.

Joel Ettinger
Executive Director,
NYMTC

Enclosures

RFP RESPONSE FORM

RFP RESPONSE FORM: MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 SOCIOECONOMIC AND DEMOGRAPHIC FORECASTS, Contract # C000789

Please review this RFP. Please complete the following information and mail, e-mail or fax to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see **Attachment 2**) before questions or other communications with the Department regarding this solicitation can be initiated.

_____ WE **DO** INTEND TO SUBMIT A PROPOSAL

_____ WE **DO NOT** INTEND TO SUBMIT A PROPOSAL FOR THE FOLLOWING REASONS:

Name and Address of Organization (Include Zip Code):

Signature: _____ Date: _____

Type or Print Name and Title: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

RFP Title: MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 SOCIOECONOMIC AND DEMOGRAPHIC FORECASTS

Please send to the following two parties:

E-Mail: ismet.apdiroglu@dot.ny.gov	Copy: alfred.hasenkopf@dot.ny.gov
Regular Mail: NYMTC, 199 Water Street, 22nd Fl New York, NY 10038 ATTN: Ismet Apdiroglu, C000789	NYSDOT Contract Mgt 50 Wolf Road, 6 th Floor Albany, NY 12232 ATTN: Al Hasenkopf, C000789
Telephone No: 212-383-2414	Fax: 518-457-2875

INFORMATION FOR SELECTED CONSULTANT

MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 SOCIOECONOMIC AND DEMOGRAPHIC FORECASTS

Contract # C000789

Vendor Responsibility

_____ The selected firm shall be required to provide vendor responsibility information through the Office of the State Comptroller website via <http://www.osc.state.ny.us/vendrep/index.htm> before negotiation of a contract. Interested parties are encouraged to become familiar with the state's vendor responsibility requirements before being notified of selection for contract award. *If you are a successful offeror, NYSDOT will not be able to begin negotiations with your firm if this questionnaire is not completed and electronically submitted as required.*

Procurement Lobbying Law (*)

_____ Visit NYSDOT Web site (see below) to read NYSDOT Policy Summation Compliance Procurement Lobbying Law. *Complete and file the two required forms (Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer Disclosure of Prior Non-Responsibility Determinations) included in Attachment 3 as instructed when submitting a proposal. This is mandatory in order to be considered for contract award. Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award.* The two forms are available from Attachment 3: Instructions: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf

Contractor Tax Certification

_____ All vendors selected for contracts must complete and submit two NYS Tax Department forms: Form ST-220-TD (Contractor Certification) and Form ST-220-CA (Contractor Certification to Covered Agency). These forms are available via: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Insurance Requirements of this Project

_____ Please carefully read the terms and conditions of the draft Contract appended as **Attachment 1** of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 11 of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Consultant Employment Disclosure Requirements of this Project

_____ Go to OSC's Web site (<http://www.osc.state.ny.us/agencies/gbull/g-226.htm> or <http://www.osc.state.ny.us/procurement/consultantdisclosure.doc>) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete 'State

Consultant Services – Contractor’s Planned Employment” (**Form A, Attachment 4**) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the “State Consultant Services Contractor’s Annual Employment Report” (**Form B, Attachment 4**) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

_____ It is the Consultant’s responsibility to ensure they propose staff that are eligible to work on the subject Project. Under the attached procedures, before the consultant proposes a former NYSDOT employee, the individual must obtain an opinion from the New York Commission on Public Integrity that approves their participation in the subject Project. For an outline of the procedure that applies to this situation, see **Attachment 5**.

Registration with NYSDOT

_____ Should this solicitation lead to a designation; it is the Consultant’s responsibility to electronically register their firm, including all subconsultants, using the Consultant Selection System web application (CSSWeb). Non-Architectural/Engineering consultant firms are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to, legal firm name, Federal Identification Number (FEIN), ownership type, D/W/MBE status, firm principals and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement. Section VI of this RFP provides more information.

Registration with Statewide Financial System (SFS)

_____ **Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS) - if not already registered.** NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.

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NEW YORK METROPOLITAN TRANSPORTATION COUNCIL

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MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 SOCIOECONOMIC AND DEMOGRAPHIC FORECASTS

CONTRACT No.: C000789



Request for Proposals Release Date: June 6, 2013

Proposal Due Date: July 24, 2013

Proposal Delivery Location:

New York Metropolitan Transportation Council

199 Water Street, 22nd Floor

New York, NY 10038-3534

Attention: Mr. Ismet Apdiroglu, C000789

Email: ismet.apdiroglu@dot.ny.gov

Second Proposal Delivery Location:

NYSDOT Contract Management Bureau

50 Wolf Road, 6th Floor

Albany, New York 12232

Attention: Mr. Al Hasenkopf, C000789

Email: alfred.hasenkopf@dot.ny.gov

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NEW YORK STATE DEPARTMENT OF TRANSPORTATION (on behalf of the)

NEW YORK METROPOLITAN TRANSPORTATION COUNCIL

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I. INTRODUCTION

A. Purpose

The New York State Department of Transportation (NYSDOT), on behalf of the New York Metropolitan Transportation Council (NYMTC), is releasing this Request For Proposals (RFP) to seek proposals from responsive and responsible consultants to assist NYMTC in managing the development of the 31-county regional socioeconomic and demographic (SED) forecasting model, implementation of the program for allocating forecasts of population, households, employment, and labor force in the NYMTC region, and production the agency's Socioeconomic and Demographic long-range forecasts beginning from base year 2012 through the year 2050 at five year intervals (2015, 2020, 2025, 2030, 2035, 2040, 2045 and 2050). The 2050 SED forecasts will be developed by the NYMTC's SED Consultant under C000775. This RFP and resulting contract is not the same as C000775 (Development of Socioeconomic and Demographic Models, 2050 Forecasts and Zonal Allocation Program (SED and ZAP)). The RFP which led to contract #C000775 presents information on the 2050 SED forecasting project and can be found on the following link: http://www.nymtc.org/files/C000775%20SED-ZAP%20RFP_FINAL.pdf

B. Background

The New York Metropolitan Transportation Council (NYMTC), via its host, NYSDOT, is requesting proposals to receive professional Management Services to assist NYMTC with the process of producing and adoption of the 2050 Socioeconomic and Demographic forecasts for the NYMTC 31-county region (being developed and delivered via another consultant contract #C000775 [which has a similar name, please do not confuse the two]). The 2050 SED forecasts project aims to produce regional, sub-regional, county, sub-county, and Transportation Analysis Zone (TAZ) level forecasts of population, employment, labor force, households and additional land use variables that conform to all applicable federal requirements and local needs. Additional services are being requested to assist NYMTC by providing professional support in reaching a regional consensus on the forecasts generated by C000775 through its metropolitan planning process.

Accurate and stable socioeconomic and demographic forecasts are critical requirements for the planning work conducted by NYMTC's members and NYMTC's central staff. The planning work supported by the regional forecasts includes: air quality conformity analyses, the development of capital investment strategies and plans, and the analysis of the benefits and costs of major capital investments. The additional services are required due to NYMTC's nature, given its many members, their planning histories and capacities and the size of the metropolitan area for which forecasts are being developed.

C. What is NYMTC?

NYMTC is the federally mandated MPO for the downstate New York region housed by the State of New York. The NYMTC region includes New York City, Long Island, and the

lower Hudson Valley. It encompasses an area of 2,440 square miles and a population of 11.3 million, approximately 65% of New York State's population. NYMTC consists of voting and advisory members:

Voting Members

Counties of Nassau, Putnam, Rockland, Suffolk and Westchester
Metropolitan Transportation Authority
New York City Department of Planning
New York City Department of Transportation
New York State Department of Transportation

Advisory Members

Federal Highway Administration
Federal Transit Administration
New Jersey Transit
New York State Department of Environmental Conservation
North Jersey Transportation Planning Authority
Port Authority of New York & New Jersey
U.S. Environmental Protection Agency

NYMTC's members and Central Staff conduct comprehensive long-range transportation planning and annually oversee several billion dollars in transportation investments for the most dynamic and complex transportation system in the nation. NYMTC sponsors and conducts studies, assists member-planning agencies, and provides a forum for interagency cooperation and public input into funding decisions.

Forecasting future demographic and socioeconomic conditions is fundamental to planning. NYMTC's forecasts support regional transportation plan development, corridor studies, subregional studies, and demonstrations of air quality conformity – the determination that the RTP and approved Transportation Improvement Program (TIP) projects conform to national air quality goals. Demographic forecasts are a major input to the region's travel demand models, including the NYBPM and the MTA's RTFM. NYMTC's Council and its PFAC Committee shall meet to discuss, review and adopt the 2050 forecasts.

II. PROJECT OBJECTIVES AND CONTRACT OBJECTIVES

A. Project Objectives

The main objective of NYMTC's project is to engage professional management services to assist NYMTC staff oversee the adoption of forecasts generated by NYMTC's demographic and socioeconomic models for 2050 forecasts and a Zonal Allocation Program (ZAP) to generate the 16 required input variables to NYBPM. This requires the coordination of consultant work as directed under contracts C000775 and C000789.

The development of the 2050 SED forecasts will be more complex than previous set of NYMTC forecasts as three scenarios (low, medium, and high) will be developed for each forecast years. Also, NYMTC's SED Consultant and New York City Department of City Planning (NYCDCP) will be producing employment forecasts for the five New York City counties. The proposed Management Consultant will provide professional support to

reconcile the two sets of employment forecasts and provide recommendations to the Forecasting Working Group.

It is anticipated that the demographic forecasting and model development, including the ZAP, “what if” component, and extensive outreach with regional stakeholders, will be completed within two-and-a half years from its commencement. However, the NYMTC’s SED Consultant under C000775 is required to deliver final demographic and socioeconomic forecasts at the county and TAZ levels by the end of 2014. This means that county population and employment forecasts have to be adopted on or before May 2014.

B. Contract Objectives

1. Term: The term of this contract will be for up to 36 months commencing from the contract start date, with two twelve-month optional term extensions.
2. Complexity: The level of complexity for this project is moderately complex.
3. Payment Method: It is anticipated that this will be a lump sum milestone-type contract.
4. Level of Effort: For planning purposes, it is anticipated this contract may require the equivalent of one to one and half (1.5) fully loaded staff years of effort to complete.
5. Consultant Arrangements: Only one (1) responsive and responsible Prime Consultant (or team of consultants) will be retained through this RFP solicitation. Subconsulting and teaming arrangements are encouraged. Joint ventures are not allowed.
6. Meeting the 18 percent DBE contract goal or by providing documentation of a good faith effort.
7. Out-Year Rate Adjustments: If the contract is extended for the optional years, and considering the normal behavior of the country’s economy and New York State’s economy, the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 1.5%, whichever is lower, will be used as a basis for adjusting hourly rates. In times of less than normal economic behavior, other basis for rate adjustments might be in order. The rate adjustment will be effective on January 1 and calculated using the previous October Index, using Series ID PCU5413--5413-- (Architectural, engineering, and related services). If at any time the above Index Series ID is discontinued or becomes unavailable, the State reserves the right to implement a comparable Index.
8. The 2050 SED management consultant services shall be provided on a per-annum (12 month basis) with an option to extend for another 24 months. The person(s) assigned to resulting Contract #C000789 shall work primarily at NYMTC’s offices. It is anticipated that up to 10 meetings may be held outside of NYMTC’s main office.
9. The SED-ZAP Consultant under Contract #C000775 or subconsultants are precluded from bidding on #C000789 as a result of a conflict of interest based upon NYSDOT Legal opinion. Unsuccessful bidders on #C000775 may bid on #C000789. If the unsuccessful bidder was simultaneously providing services similar to what it would be monitoring under the new contract – in this case, if the unsuccessful bidder on #C000775 was also providing NYMTC similar forecast data and projections under another contract – the unsuccessful bidder may be barred from bidding on the monitoring contract.

C. Minimum RFP Responsiveness Requirements

Any Firm that does not provide **all** of the following **by the RFP deadline** will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of proposals):

1. Complete Part I of the Proposal – Separately bound, with tab dividers. A complete Technical and Management submission, including all required RFP-specified attachments.
2. Complete Part II of the Proposal – Separately bound, with tab dividers. Part II is a complete Cost and Contract submission, including all required RFP-specified attachments.
3. For the purposes of evaluation, each Part I and Part II proposal must be separately submitted. Each Part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is **not** to be included in the Part I submittal. Technical information is **not** to be included in the Part II submittal.
4. Propose at least 18 percent participation by proposed, certified DBE subconsultants else the prime consultant shall provide an acceptable evidence of a good faith effort by completing **Attachment 8** DBE Subconsultant Participation Solicitation Log and submitting a letter of explanation.
5. **Proposals are required to use 11 point font or larger**, except where necessitated for readability of tables or special graphics. Twelve fonts are preferred. **Proposals which are substantively in smaller fonts will be rejected.**

D. Disadvantaged Business Enterprise Participation

While not indicative of a proposer's individual merit (technical excellence, proposer's ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBE) in its solicitations. The level of DBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. Please visit the New York State Unified Certification Program (NYSUCP) DBE Directory for certified Disadvantaged Business Enterprises via: <http://biznet.nysucp.net/>

The New York State Department of Transportation has established a **DBE subconsultant participation contract goal of 18 percent** for this solicitation. While this is subconsulting goal, participation of prime consultants is allowed. The goal relates to the total project cost/total contract budget (wherein direct non-salary expenses attributable to certified DBE participation count). Meaningful participation by a prime consultant or subconsultant **who is certified** as a NYSUCP DBE would be counted toward the DBE participation goal. **DBE services can either be for delegated tasks or for part of the services provided by the prime consultant.** Meaningful participation requires a prime and/or subconsultant **who is certified (at the time of proposal submission)** as a DBE in order to count toward the contract goal. Participation by D/M/WBE prime consultants is encouraged but will not count towards meeting the contract 18% DBE goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

1. Result in a product or service distinguishable from the Prime Consultant's product or service.
2. Be for scope of service elements which can be and are completely performed, supervised and managed by the DBE consultant, and/or

3. Perform significant tasks which can be considered commercially marketable.

Follow the proposal formatting instructions located in RFP Section IV and in Attachments 7 and 8, as applicable. Firms are advised to refer to RFP Section V (Pre-Screening) for the procedure NYSDOT/NYMTC will follow in evaluating a firm's proposed DBE participation. Questions regarding DBE participation are encouraged.

NYSDOT has posted its final draft DBE Program Plan to its website (2010; subject to change). The draft plan provides background information regarding how the Department conducts its Federally-required DBE program, covering such subjects as contract-level goals, good faith efforts by consultants, DBE certifications, etc:

https://www.nysdot.gov/main/business-center/consultants/consultants-repository/2010_dbe_draft_plan.pdf

III. SCOPE OF SERVICES

The scope of the resulting contract will be in accordance with agreed-upon work. Contract #C000789 will engage professional management services to assist NYMTC staff to gain approval of 40 year forecasts through its metropolitan planning process. Initial forecasts are to be developed, through an interactive process, of a new Zonal Allocation Program (ZAP) and Socioeconomic and Demographic (SED) forecasting model(s) for 31-county New York Metropolitan Region under a separate contract (C000775). The SED forecasts are critical inputs to the NYMTC's Best Practice Models and the Regional Transportation Plan, and are used by the member agencies for their transportation studies and project development. The selected Consultant for C000789 shall be required to work with the C000775 consultant and NYCDPC to help facilitate forecast approvals through NYMTC's process.

The New York Metropolitan Region consists of five subregions which include the following counties:

New York City: Bronx, Kings, New York, Queens and Richmond;

Long Island: Nassau and Suffolk;

Mid-Hudson: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester;

Connecticut: Fairfield, Litchfield, and New Haven;

New Jersey: Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren.

This RFP for C000789 contains a suggested scope of services, which may include assistance in project planning for this effort as well as providing guidance on reaching a consensus on regional SED forecasts among NYMTC member agencies.

It is anticipated that the development of the 2050 SED forecasts will be more complex than previous NYMTC forecasts as three scenarios (low, medium, and high) will be developed beginning from the base year 2012 through the year 2050 at five year intervals (2015, 2020, 2025, 2030, 2035, 2040, 2045, 2050). In addition, the NYMTC forecast development effort shall be progressed via the Consultant selected under C000775 to produce the SED forecasts. The C000775 Consultant will produce a region-wide employment forecast for the 31 county region. For variables other than employment, the C000775 Consultant will produce forecasts for only 26 counties in the region, excluding the five counties (boroughs) of New York City. In addition, the New York City Department of City Planning (NYCDPC; a member of NYMTC) will be producing their own forecasts for all variables

for the five counties of New York City. Thus, with two employment forecasts for New York City, one role of the selected C000789 Management Consultant will be to provide support in reconciling the two forecasts and making recommendations to NYMTC's Forecasting Working Group (FWG).

The NYMTC's C000775 SED consultant (SED consultant) and NYCDPCP will work closely with NYMTC throughout the project. Employment forecasts produced by NYCDPCP and the NYMTC's SED consultant will be reconciled through the FWG process, with the assistance of the selected C000789 Management Consultant (selected Consultant). The selected Consultant will be expected to participate in the FWG and project progress meetings.

Duties and Tasks

1. Review the 2050 SED forecasts methodology and approach developed under C000775, and provide comments and recommendations as needed in order to reach a regional consensus on the 2050 set of forecasts.
2. Provide a critical independent professional analysis of the socioeconomic and demographic forecasts for the NYMTC region.
3. Participate in the monthly Steering Committee meetings and project status meetings with NYMTC staff, NYMTC's SED consultant and NYCDPCP.
4. Review and prepare comments on technical memoranda prepared by the SED consultant and NYCDPCP under C000775 as needed.
5. Conduct an independent review of NYCDPCP and NYMTC's SED consultant forecasts, and provide recommendations to the NYMTC's Forecasting Working Group (FWG).
6. Assist NYMTC staff in facilitating regional discussion and providing independent expertise in order to reach a consensus on the 31 counties population and employment forecasts and making recommendations to FWG; prepare meeting agendas, materials, and minutes.
7. Provide support to NYMTC staff in the preparation of reports on the NYMTC 2050 SED forecasts for the public review process.
8. Participate in the public review meetings and prepare written replies to public comments after consultation with and input from NYMTC staff members, as appropriate.
9. Participate in the SED forecasts development meetings with the members, other agencies, and consultants as required.

Deliverables

- a. Comments and recommendations on the 2050 SED forecasts methodology and reconciliation process
- b. Comments on technical memoranda as needed
- c. Written replies to public comments if needed
- d. Draft & Final Agendas and Notes or Minutes for meeting as needed
- e. Monthly Progress Reports
- f. Meeting Presentation Materials as needed

IV. PROPOSAL FORMAT AND CONTENTS

For the purpose of evaluation, each proposal must be submitted in two (2) parts. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Contract

submittal. Offerors must submit Part I and Part II in separate, sealed packages. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished separately, independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is **not** to be included in the Part I Technical & Management submittal, and Technical and Management information is **not** to be included in Part II Cost Proposal submittal, or your proposal may be deemed unresponsive. Offerors must submit Volume I and Volume II in separate sealed packages. Proposals may be submitted in three ring binders, stapled spiral, or cloth-bound. Clearly identify any attachment with the offeror’s name on a cover sheet that is firmly attached to the document. Clearly identify any unattached documents with the offeror’s name on each page of the document. Identify the solicitation name and contract number on every document. Each response section shall be separated by a labeled tab page.

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If an Offeror believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, offerors need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal (see A.4. below).

Your proposal should follow the format listed below:

A. Part I: Technical and Management Submittal

Please be as concise as possible. A complete and responsive Part I submittal shall contain the following items:

Part I - Technical and Management Submittal Checklist	
<input type="checkbox"/>	Nine (9) Printed and Bound Copies of Part I (Send 6 copies to NYMTC; send 3 reference copies to NYSDOT Contract Mgt) plus a ‘soft’ copy of Part I on CD/DVD in MS Word compatible format to both NYMTC and NYSDOT.
<input type="checkbox"/>	Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the word “C000789”
<input type="checkbox"/>	Name of person(s) who prepared proposal
<input type="checkbox"/>	Contact person(s), email addresses and telephone numbers
<input type="checkbox"/>	Signed Cover Letter on official business letterhead
<input type="checkbox"/>	Table of Contents identifying each major section and initial-page numbers
<input type="checkbox"/>	Executive Summary of proposed approach, focusing on delivery of services while under contract
<input type="checkbox"/>	Narrative Discussion
<input type="checkbox"/>	Detailed Approach, Scope of Services and Schedule

<input type="checkbox"/>	Complete and submit Attachment 6 Company Experience and References
<input type="checkbox"/>	Complete and submit Attachment 7 Management Staffing Plan, Resumes, Project Experience and References
<input type="checkbox"/>	Submit a DBE Management Plan

Note: Cost information is **not** to be included in the Part I submittal, and Technical and Management information is **not** to be included in Part II submittal.

A complete Part I Technical and Management proposal shall contain the following:

1. A Cover Letter featuring:
 - a. The signature of an official authorized to bind the offeror to all of its provisions.
 - b. A statement that the offered named key personnel will be provided once NYMTC/NYS DOT issues a notice to proceed. NYMTC and NYSDOT do not allow unapproved substitutes.

Note: NYSDOT no longer allows exceptions to the RFP’s draft contract’s Terms and Conditions – firms are encouraged to ask questions prior to proposal submission.

2. A Title Page indicating the name, address and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal.

OFFICIAL TITLE: MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 FORECASTS (Contract #C000789).

3. A Table of Contents. Use labeled tabs to separate each section of your Part I and Part II proposals
4. An Executive Summary
Provide a brief description of the proposed approach and work effort. Confidential and proprietary information should also be identified and addressed in this section.
5. A Narrative Description
Provide a detailed discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYMTC’s/NYS DOT’s project and contract objectives and familiarity with applicable laws, rules, procedures, processes, etc. Discuss all assumptions made during the preparation of Part I and Part II submissions. Demonstrate a sound management plan to ensure all subconsultant’s compliance with all project requirements and contract provisions, including a DBE management plan to ensure the contract’s DBE goal is met over the life of the contract.
6. Approach, Scope of Services and Schedule
Describe the detailed approach for performing the work and accomplishing project objectives. Provide a detailed scope of services which describes by task what will be done. Provide additional supporting documentation supporting how each of the RFP’s

specifications and requirements are addresses (provide previous examples, etc.). A general scope of services is outlined under RFP Section III. You may base your proposed scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYMTC/NYSDOT wants to allow maximum flexibility for the ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of the project, using the proposal evaluation criteria in RFP Section V. Fully explain and justify your approach, especially if significant departures from the general scope are recommended. Include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions. Provide a DBE participation plan, to ensure the DBE goal is managed and delivered over the life of the contract.

7. Organization and Staffing

Provide an organizational chart for the project showing the names of the project manager and all proposed key personnel. Depict all subconsultants and external role players and stakeholders. Include resumes for all proposed key personnel (including any subconsultants). Include an estimate of total effort hours contributed by each of the key personnel to each task and an estimate of total effort hours for each task. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements.

8. Experience

NYMTC and NYSDOT requires substantial experience and expertise, and offerors must demonstrate that experience through past and present project attestations and successfully reachable, verifiable references. The qualifications and current/prior experience of the proposer are of great importance to NYMTC and NYSDOT. Direct, relevant, prior experience in software and model development, data base management, and GIS are highly desirable; present such experience with projects of similar scale and scope as the one proposed in this RFP. Provide a list of projects currently in progress and those completed within the last seven years which are relevant to this effort. Indicate proposed key personnel who are, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients.

The offeror's proposed project team shall include key personnel with a minimum of 3 years experience with project management and demographics.

Provide three, reachable references for each proposed key personnel. Provide two, reachable references for each firm. NYMTC/NYSDOT reserve the right to request information from any source so named to verify all offered experience and work history, as well as request additional references. NYMTC/NYSDOT also reserves the right to request additional references and/or contact relevant references not named in a consultant's proposal.

B. Part II: Cost and Contract Submittal

The Part II cost proposal response requirements are listed below. Please be sure that these instructions are followed to ensure that your proposal is considered responsive to be eligible for contract award:

Part II - Cost and Contract Submittal Checklist	
<input type="checkbox"/>	Three (3) Printed and bound hard copies of Part II (send 1 copy to NYMTC; 2 copies to NYSDOT Contract Mgt) plus Part II on CD/DVD, in MS Excel compatible format, one for NYMTC and one for NYSDOT
<input type="checkbox"/>	Securely sealed and clearly labeled with “C000789”
<input type="checkbox"/>	Required Cost information (complete and submit Attachment 5 , Cost Proposal)
<input type="checkbox"/>	Name, title, address, email, and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation
<input type="checkbox"/>	Complete and submit Attachment 1 , (sign both Sections II and III)
<input type="checkbox"/>	Complete and submit the Attachment 2 Procurement Lobbying Law Compliance Forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) <u>and</u> Offeror Disclosure of Prior Non-Responsibility Determinations). <ul style="list-style-type: none"> • These two forms are required with a firm’s RFP Response. • These forms are also available at: https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions • Note: <i>Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award</i>
<input type="checkbox"/>	Complete and submit Attachment 7 , DBE Participation Information
<input type="checkbox"/>	Complete and submit (if applicable) Attachment 8 , DBE Subconsultant Participation Solicitation Log AND Letter of Explanation of Non or Partial DBE Goal Attainment
<input type="checkbox"/>	Complete and submit all future RFP Modification Acknowledgement Forms as instructed

Part II of the proposal consists of two sections, (1) a Cost Proposal, which sets forth the total proposed lump sum cost (with rates and hours by task) for performing the work in the scope of services and (2) the Contract Section, which specifies the proposer’s acceptance of the Terms and Conditions contained in the draft Contract enclosed as **Attachment 3**, as well as house other administrative paperwork. Separate each Part II section with labeled tab pages. No Part I information shall be included in your Part II submission.

Each Cost and Contract Proposal should contain the following elements:

Contract Cost Section:

1. Salaries Section

A salary schedule will list descriptive job titles for all proposed key Consultant personnel and staff to be assigned to this project, the proposed hours and dollars by

task, and each consultant's personnel's fully-loaded hourly rate (see **Attachment 5**) for each year of the contract's base term. If additional titles are used but are not assigned, they should be listed and rates proposed. The schedule should be prepared to distinguish anticipated assignment by project section/task. Present all subconsultants information on separate salary schedules.

2. Direct Non-Salary Costs

Estimates of all direct non-salary costs are required. Present a schedule of all direct non-salary (out-of-pocket) expenses by task number expected to be incurred in the performance of the project. To the degree possible, reference expenses by task. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. No Consultant commuting costs shall be reimbursed via expensed work (assumed to be part of a firm's overhead). Only directed travel is eligible for reasonable reimbursement. Subconsultant costs (if any) should be separately shown in the schedule. On separate sheets, explain each item with all factors leading to the derivations of the cost. The latest state and nationwide reimbursement rates are available at the following Web site: <http://www.gsa.gov/>

3. Budget Summary

Present a final schedule which summarizes all proposed direct labor and direct non-salary costs by task and by Project for the entire base term of the contract. Payments are expected to be by milestone schedule.

4. Method of Payment (Milestone Payment Schedule)

Based on the total proposed lump sum cost, provide a milestone payment schedule which sets forth a proposed percentage/dollar amounts of the lump sum for each key deliverable for which payment would be requested. Partial deliverables, where appropriate, are allowed.

The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a NYS FIN 421 payment request forms. Requests for milestone and final payments shall be made by the designated consultant on the basis of NYS FIN 421 payment request forms prepared and submitted by the consultant contractor together with the deliverable item for which the payment request is being made.

Contract Proposal Section

5. Acceptance of RFP Draft Contract's Terms and Conditions

The Consultant shall specifically state its acceptance of all Terms and Conditions of the draft Agreement contained in **Attachment 3** of this Request for Proposals. Offerors should complete and submit the "Consultant Information and Certifications Form," included as **Attachment 1** to this RFP, to indicate their **acceptance of all** of the terms and conditions contained in the draft Agreement. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and will lead to the proposal being deemed non-responsive and subsequently dismissed.

Interested firms encouraged to ask questions regarding the draft contract's provisions prior to proposal submission.

6. DBE Participation

In Part II of your firm's proposal, provide a completed **Attachment 7 DBE Participation Information**. Show the percentage of effort (as measured in total dollars [labor plus DNSC]) offered by the prime consultant and each subconsultant, including DBEs (please mention if any firm is also a certified MBE/WME). Provide the full, legal names of all certified DBE consultants (prime and/or subconsultant). If available, provide a copy of the firm's DBE letter from a NYS UCP certifying partner with your Part II proposal. To count towards meeting the 18% DBE contract goal, an offered DBE must be currently certified and listed in the NYSUCP DBE Directory (<http://biznet.nysucp.net/>). Proposing DBE certified in another state and not in New York State is not acceptable unless the firm has been certified by a NYS DBE certifying partner.

For firms whose total offered DBE subconsultant participation is less than the established contract goal of 18 percent, the firm must also complete and submit **Attachment 8: DBE Subconsultant Solicitation Log**. **Additionally, if the firm does not meet the specified goal**, the firm must include in its submission a **DBE Goal Attainment Explanation Letter** explaining why the firm was unable to meet the DBE goal (in full or if partially), which serves to substantiate the firm's good faith effort. Submission of **DBE Goal Attainment Explanation Letter** shall be required for proposals with either partial goal attainment or no goal attainment at all. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors:

1. The potential firm's method of accomplishing the work
2. The subcontracting opportunities associated with the proposed approach and scope of services
3. The availability of certified firms for the work to be performed by either a prime consultant or via subcontract

Prime consultants certified as a DBE are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that the prime consultant offer DBE subconsultant services to meet the contract goal and/or provide evidence of a good faith effort by completing **Attachment 8 DBE Subconsultant Participation Solicitation Log**. **Unacceptable good faith efforts may lead to proposal dismissal.**

The above forms and letter must be included in Part II: Cost and Contract submission. Firms are advised to refer to Section V.B for the procedure the Department will follow in evaluating a firm's proposed DBE participation.

Offerors are encouraged to ask questions regarding this aspect of the solicitation.

7. RFP Modification Acknowledgement Forms (if any)

Included with any and all future Modifications to this RFP will be Acknowledgement forms. All respondents must have an authorized representative of the firm or organization acknowledge receipt and acceptance of each of the Modifications by including a signed copy of this/these form(s) with the Part II Cost and Contract Submission.

8. Consultant Identification Number & SFS Vendor ID Number

Each consultant must reference its Consultant Identification Number (CIN) in its Part II proposal. If an consultant does not have a CIN and is selected for contract award, it will be required to obtain one through the following NYSDOT web site prior to negotiation of the contract:

<https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions>

Each consultant must reference its SFS Vendor Identification Number in its Part II proposal. If an consultant does not have an SFS number and is selected for contract award, it will be required to obtain one through NYSDOT sponsorship.

9. Procurement Lobbying Law

All proposers should visit the “Business Center” Web page on NYSDOT’s Web site to read the NYSDOT Policy Summation for the Procurement Lobbying Law of 2005. The web page is located at: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

Filing the two required forms (Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) and Offerer Disclosure of Prior Non-Responsibility Determinations) is mandatory for all consultants in order to be considered for contract award. Hard copies of the two required forms are included with this RFP (see **Attachment 2**). *NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.*

Use Contract Number C000789 wherever requested in the forms. Please call or e-mail the person identified as the contact in the Administrative Specifications section (VI.G) of this RFP if you have any questions regarding how to complete this required form.

Per the Procurement/Lobbying Law of 2005, any person who wishes to contact NYSDOT regarding this project during the restricted period (i.e. from advertisement through designation), may only contact the person noted in the cover letter to this solicitation.

V. CRITERIA FOR EVALUATION OF PROPOSALS

A. General

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness requirements (reference RFP Section II). Proposals which meet all RFP minimum responsiveness requirements shall be considered further; proposals which do not may be deemed non-responsive. Any proposal deemed to be non-responsive shall be removed from further consideration and the submitting firm notified.

Proposals which pass pre-screening shall then be evaluated by NYMTC and NYSDOT using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than cost considerations; however, cost is a significant factor in the evaluation of proposals. Technical and cost proposals will be evaluated and point scored based on the information provided by consultants via the instructions under RFP Section IV in accordance with the pre-established criteria listed below.

Up to 60 points are available for a written technical proposal; up to 10 additional points are available for the technical interview; up to 30 points are available for the most competitive cost proposals.

Technical proposal evaluation will be accomplished by a representative Technical Evaluation Committee comprised, as appropriate, of subject matter experts from technical, program and management backgrounds. Committee members will evaluate each proposal's response to each RFP's specification and requirement individually, documenting their findings and assigning numerical point scores (using a zero-to-ten point scale). The Committee shall then meet as a group to discuss their findings and scores, and make adjustments based on group discussions. Evaluators will be allowed to revise scores on the basis of the committee discussions, with reason(s) for score changes documented. NYSDOT and NYMTC shall then **short list the field** of proposals based on initial best value. Firms which make the shortlist shall become eligible to attend the technical interview.

Technical interviews are required to complete the technical evaluation of proposals. There are up to 60 points available for the initial evaluation of written technical proposals and there are up to 10 points available for the in-person technical interview and presentation. Cost proposal evaluation results (up to 30 points) shall be considered with initial raw technical score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined short-list of firms (determined to be mathematically susceptible for contract award). NYSDOT/NYMTC will short-list the field of proposals, identifying those proposals subject to contract award (any proposal within 10 points of the top initial best value ranked proposal plus any 'cluster' of proposal surrounding the cut-off line). NYSDOT will publish the short list of firms on its website under this solicitation. Technical interviews are required to complete the technical evaluation of proposals and will be held at NYMTC's offices at a date and time to be determined. During technical proposal evaluation, all cost proposals will be evaluated and scored. Shortlisted firms shall be invited to attend technical interviews, demonstrate their proposed solution and respond to further clarification questions.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their proposal through written clarifications and/or technical interviews. If written clarifications are required to complete the initial technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this additional information. Further, firms susceptible to contract award shall be invited to attend technical interviews, to complete the technical evaluation of proposals.

Up to a total of sixty points are eligible for Technical proposals. Sixty points shall be awarded to the written technical proposal which receives the highest initial raw technical score, after group discussion and possible initial clarifications. For those firms qualifying for Technical Interviews, up to a total of ten additional points are eligible.

Technical Interviews will be held at NYMTC's offices located in 199 Water Street, 22nd Floor, New York, at a date and time to be determined by NYMTC (all qualifying firms will be notified).

NYMTC/NYSDOT reserves the right to ask clarifying questions regarding each cost proposal (Part II) and DBE participation as well. Furthermore, the Department reserves the right to request best and final offers from firms that are determined to be susceptible for tentative contract award.

A tentative contract award shall be made to the offeror whose proposal receives the highest total final best value score after considering all technical and cost evaluation factors.

Note: In the event two or more proposals are found to be “substantially equivalent”, the Department reserves the right to award the contract under the terms of State Finance Law Section 163 (10)(a).

At the conclusion of the evaluation process, an announcement of NYSDOT’s designation(s) will be posted on the NYSDOT Web site listed below. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Further, it is expressly understood that this Request for Proposals does not commit NYSDOT to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials.

<https://www.nysdot.gov/main/business-center/consultants/non-architectural-engineering/active-solicitations>

B. Pre-Screening of Proposals - Including DBE Participation

NYMTC/NYSDOT will conduct a pre-screening of each proposal received prior to the proposal due date to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. It is the sole responsibility of each proposer to assure that its proposal is received on time. Proposals which fail to meet the response deadline will not be opened nor considered further. RFP specifications include that it is NYMTC/NYSDOT’s sole discretionary determination as to whether a proposal is complete (reference “Minimum RFP Responsiveness” Section II, Part C). Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section will be deemed non-responsive by NYMTC/NYSDOT and will not be considered further.

As part of the pre-screening process, the proposed DBE participation percentages offered for NYSUCP certified prime consultants and/or NYSUCP certified subconsultants will be reviewed (**Attachment 7 DBE Participation Information**). To count towards the Department’s DBE participation goal, each firm must be currently listed in the NYSUCP Directory. If the proposed DBE participation is less than the established 18 percent goal (or where a prime consultants certified as a DBE proposes to meet the Department’s DBE participation goal via their meaningful participation), the firm’s evidence of a Good Faith Effort (**Attachment 8 DBE Subconsultant Participation Solicitation Log**) to achieve the goal will be reviewed, along with the firm’s letter of explanation (**DBE Goal Attainment Explanation Letter**) as to why it was unable to meet the goal. During the review process, which will include verification of a firm’s Good Faith Effort evidence, if it is determined by the Department that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive. Offerors whose proposals are deemed non-responsive will be notified, in writing, of their elimination. A firm’s good faith efforts to secure participation by DBEs may be susceptible to FHWA’s ‘administrative reconsideration’ process.

C. Technical and Management

The Technical and Management proposal will be evaluated and point scored, and will represent 60% of the total available best value score. The major evaluation criteria are listed in descending order of importance. Sub-criteria within major evaluation factors are also in descending order of importance. Please be concise.

1. Experience (up to 25 points)
 - Quality, extent and relevance of experience, education and training of key personnel.
 - Quality, extent and relevance of current and prior experience of the firm.
2. Approach, Scope of Services and Schedule (up to 12 points)
 - Quality and acceptability of approach and scope of services for accomplishing project objectives; initiative and creativity of proposer.
 - Completeness and reasonableness of schedule. The schedule shall be prepared in a font that is reasonably legible. Please avoid print smaller than an 8 point font. You may assume an estimated start date 10 days after execution of the contract.
3. Quality of Proposal (up to 12 points)
 - Degree to which proposal reflects understanding and comprehension of project scope and objectives.
 - Quality of proposer's resources relative to the needs of the project.
4. Organization and Staffing (up to 11 points)
 - Quality of project organization; reasonableness of staff/task allocations for each task and total effort
 - Quality of plan for phasing key personnel into project
 - Extent and quality of interaction with key participants
 - Quality of DBE Management Plan

D. Cost and Contract (up to 30 points)

The cost portion of the Cost and Contract proposal will be evaluated and point scored and will represent 30% of the total best value score for a proposal. The calculation of a cost score will be determined by comparing the proposed total lump sum cost for each proposer. The proposer with the lowest proposed total lump sum cost will receive a perfected cost score of 30. Higher priced cost proposals will receive proportionally lower cost scores.

E. Technical Interviews (up to 10 points)

The Technical Interview portion (only available for shortlisted firms mathematically subject to contract award) of the Technical and Management proposal will be evaluated and point scored and will account for a separate block of up to 10 points of the total best value score for a proposal. Technical Interviews will be held for firms offering proposals which are deemed to be susceptible to contract award after completion of initial best value considerations (short-listed: those proposals subject to contract award are any proposals within 10 points of the top initial best value ranked proposal plus any

'cluster' of proposal surrounding the 10-point cut-off line). Proposals with scores which make them mathematically subject to contract award will make the short-list. Firms offering proposals which make the shortlist shall be invited to attend Technical Interviews. NYSDOT will officially publish the shortlist of firms mathematically susceptible to contract award on its website.

The Technical Interviews will be evaluated and point scored (on a zero-to-ten scale) to measure the degree to which a consultant's performance addresses the following three technical evaluation factors.

1. Ability of the presenting consultant team to address and answer the Technical Evaluation Committee's clarifying questions. (Up to 4 Points)
2. Additional insights into technical aspects of the firm's proposal. (Up to 4 Points)
3. Consultant's team chemistry, the team's coordination and reporting approach. (Up to 2 Points)

Technical Evaluation Committee members may change their initial written technical proposal scores based on consideration of additional clarifying information provided during the Technical Interview. Should this lead to a new firm becoming eligible for the shortlist, this new firm shall go through the Technical Interview process.

Up to **10 points** of a best value score are available from the Technical Interview; these 10 points will be separately perfected then added to the final written technical proposal score to generate a firm's technical proposal best value score. Upon conclusion of the consultant's technical presentation, the technical presentation score will be separately perfected, with the highest scoring technical presentation score receiving a perfect 10 points and all others receiving proportionately lower technical presentation scores. Perfected presentation and written proposal scores shall be added together to generate a total Part I technical proposal score. Cost scores shall be added to the total technical proposal score to generate a list of firms in rank best value order, with the highest best value score being eligible for contract award.

F. Best and Final Offer (Optional) and Proposal Withdrawal/Dismissal

NYSDOT reserves the right to request best and final offers from firms that are determined to be susceptible for contract award. Best and final offers may be requested after Technical Interviews have been concluded. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals while considering any best and final offer information. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm either withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring.

G. Consultant Selection Recommendation

Each consultant's final Best Value score will be calculated by adding its total perfected technical proposal score (written and interview) and its perfected cost score. NYSDOT will then rank consultants in descending order of final Best Value score. The results of the proposal evaluation process shall be documented by NYSDOT Contract Management. This report along with a consultant selection recommendation shall be forwarded to NYSDOT Executive Management for approval. The designation will be publically announced on NYSDOT's website.

A tentative contract award shall be made to the consultant whose proposal receives the highest total final Best Value score after considering all technical and cost evaluation factors. Note: In the event two or more proposals are found to be “substantially equivalent”, NYSDOT reserves the right to award the contract under the terms of State Finance Law Section 163 (10)(a). Any ‘ties’ shall be decided by the substantially equivalent rule contained in the approved evaluation process document.

A team of NYSDOT subject matter experts will negotiate the resulting contract with the selected consultant, with NYSDOT Contract Management and Legal facilitation. The final contract is subject to approval by the Attorney General and the Office of the State Comptroller and is not binding until such approval is received.

At the conclusion of the evaluation period, an announcement of NYSDOT’s designation(s) will be posted the ‘Consulting Services’ listing on the NYSDOT’s Web site via: <https://www.dot.ny.gov/business>. All consultants will be notified in writing regarding the results from the solicitation, pending completion of the evaluation process. All non-designated firms will be offered an opportunity to attend a debriefing.

It is expressly understood that this Request for Proposals does not commit NYSDOT to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, NYSDOT shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to NYSDOT is approved and executed by the vendor and all necessary State officials

H. Protest Procedure

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/misrep_protest.pdf. The protest procedure addresses USDOT’s DBE Administrative Reconsideration per 49 CFR Part 26.53(d).

VI. ADMINISTRATIVE SPECIFICATIONS

A. Proposal Submission

1. The proposal shall be signed by an official authorized to bind the offeror.
2. Proposers shall submit Nine (9) Copies of Part I (Send six (6) copies to NYMTC in sealed packages; send three (3) reference copies to NYSDOT Contract Management in sealed packages) and shall submit Three (3) Copies of Part II (Send one copy to NYMTC in sealed packages; send two reference copies to NYSDOT Contract Management in sealed packages).
3. Your sealed proposal must be received by NYMTC by 2:00 PM on **July 24, 2013**. The proposal must be addressed to:
**NEW YORK METROPOLITAN TRANSPORTATION COUNCIL
(NYMTC)
199 Water Street, 22nd Floor
New York, NY 10038
ATTENTION: MR. ISMET APDIROGLU, C000789**

Reference copies to:

**New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232
Attn: Mr. Al Hasenkopf, Contract C000789**

B. Pre-Proposal Conference

To assist firms in preparing proposals in response to this solicitation, a pre-proposal conference will be held on **July 2, 2013** in NYMTC's Office at 199 Water Street, 22nd Fl., New York, NY at 10:30 AM. A general review of the solicitation will occur and specific questions regarding the solicitation may be answered. Interested firms are encouraged to attend.

If you plan to attend, please provide the names of attendees to the NYMTC receptionist at (212) 383-7200 or Ismet Apdiroglu, NYMTC, (212) 383-2414 by noon on June 28, 2013. Each proposer is requested to send no more than (5) representatives to the conference. An opportunity will be afforded for questions and answers during the conference. However, to assist us in preparing for the meeting, we wish to receive any questions you may have, in writing, by the close of business on June 28, 2013.

C. State's Rights to Proposals

All proposals, upon submission to NYMTC/NYS DOT shall become its property for use as deemed appropriate. By submitting a proposal, the offeror covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. NYMTC/NYS DOT has the following prerogatives with regard to proposals submitted:

1. to accept or reject any or all proposals;
2. to correct any arithmetic errors in any or all proposals;
3. to change the proposal's due date upon appropriate notification to interested firms;
4. to eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
5. to adopt any or all of a successful offeror's proposal;
6. to negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
7. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
8. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
9. To eliminate any requirement that is found to be unmet by all offerors;
10. To make inquiries, by means it may choose, into the offeror's background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
11. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;

12. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;
13. If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and
14. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.
15. The right to re-score technical and cost proposals should a firm either withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring.
16. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other State agency in New York. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other State agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

D. Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All selected offerors of contracts valued at \$100,000 or more will be required to provide vendor responsibility information through the DOT Web site before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. You should make yourself familiar with this form by visiting the following Web site: <https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>

E. Registration with NYSDOT

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb). All consultant firms entering into Non-Architectural/Non-Engineering agreements are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to: legal firm name; Federal Identification Number (FEIN); ownership type; DBE, MBE and/or WBE status; firm principals; and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement.

Consultant Firm Registration instructions are available at:
https://www.nysdot.gov/main/business-center/consultants/consultants-repository/instructions_cssweb_firm.rtf

or via:

https://www.nysdot.gov/main/business-center/consultants/consultants-repository/instructions_cssweb_firm.pdf

Consultant Firm Registration begins at: <https://www.nysdot.gov/main/business-center/consultants/css-web>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb Administrator by email at css@dot.ny.gov or by telephone at 518-457-2600.

F. Contractor Tax Certification

Per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit Forms ST-220-TD and ST-220-CA (Contractor Certifications) prior to negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites:

http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

G. Inquiries and Information

All questions concerning this solicitation must be directed *only* to Mr. Ismet Apdiroglu, (212) 383-2414 or by e-mail at ismet.apdiroglu@dot.ny.gov. Copy to alfred.hasenkopf@dot.ny.gov. The last date to submit questions for this solicitation is: July 10, 2013. All inquiries should be addressed to:

NEW YORK METROPOLITAN TRANSPORTATION COUNCIL (NYMTC)
199 Water Street, 22nd Floor
New York, NY 10038
ATTENTION: ISMET APDIROGLU

The fax number is (212) 383-2418.

E-mail: ismet.apdiroglu@dot.ny.gov COPY TO: alfred.hasenkopf@dot.ny.gov

Responses to all questions of a substantive nature, as well as copies of the questions, will be given to all Consultants being solicited.

H. Protest Procedure

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via: https://www.nysdot.gov/main/business-center/consultants/consultants-repository/misrep_protest.pdf. The protest procedure addresses FHWA's DBE Administrative Reconsideration per 49 CFR Part 26.53(d).

I. Tentative Schedule of Key Events

NYMTC/NYS DOT will attempt to adhere to the following schedule with regard to this solicitation:

RFP Release Date:	June 6, 2013
Written Questions for Pre-Proposal Conference and names of proposed attendees, due:	June 10, 2013
Pre-Proposal Conference:	July 2, 2013
Question Submittal Deadline:	July 10, 2013
Proposals Due:	July 24, 2013
Technical Interviews – Tentative	Mid-September 2013
Proposal Evaluation:	Mid - October
Recommendation & Designation:	1 to 2 months
Contract Negotiations:	One Month
Contract Award:	6 to 8 weeks after completion of contract negotiations

VII. ATTACHMENTS

Attachment 1 Consultant Information And Certifications

Attachment 2 Procurement Lobbying Law Compliance

Attachment 3 Draft Contract, including Appendix A

Attachment 4 Consultant Employment Disclosure Legislation Form

Attachment 5 Sample Budget Schedule (Cost Submission)

Attachment 6 Consultant's Responsibility when Proposing Former NYSDOT Employees

Attachment 7 DBE Participation Information

Attachment 8 DBE Subconsultant Participation Solicitation Log (Good Faith Effort Documentation)

Attachment 1

Consultant Information And Certifications

CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBER: C000789

PROJECT TITLE: MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 FORECASTS

I. CONSULTANT INFORMATION

FIRM NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____

ZIP CODE: _____ - _____

TELEPHONE : (____) ____ - _____ FAX: (____) ____ - _____

E-MAIL ADDRESS: _____

CONTACT PERSON: _____

Consultant's Federal Identification Number (FEIN): _____

Consultant's Consultant Identification Number (CIN): _____

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offeror and also who may be contacted during the period of proposal evaluation:

Preparer's Name/Title: _____

Address: _____

Telephone : (____) ____ - _____ FAX : (____) ____ - _____

Other Authorized Individual(s):

Name/Title: _____

Address: _____

Telephone : (____) ____ - _____ FAX: (____) ____ - _____

II. PROPOSER CERTIFICATIONS

By signing below, I, _____, authorized individual
(Name)

of _____ make the following certifications
(Firm)

regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day (or more) period from the date of submission.
- The firm has read and will follow the procedure outlined in **Attachment 6** if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility forms to NYSDOT within 10 days of notification of designation both electronically and in hard copy per the NYSDOT Web site. (<https://www.nysdot.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions>)
- ST-220: If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- The firm is in compliance with the requirements of the Omnibus Procurement Act as described in the draft Contract attached to this RFP.

Signature: _____

III. ACCEPTANCE OF CONTRACT

By signing below, I, _____, authorized individual
(Name)

of _____ hereby **certify that I have read and accept**
(Firm)

all Terms and Conditions contained in the draft Contract, including Appendix A, which is included as **Attachment 3** correspond accordingly to this Request for Proposals.

Signature: _____

(Name of Acceptor)

Attachment 2

Procurement Lobbying Law Compliance

1. Required Forms: The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant's proposal.

- a) **“Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)”**
- b) **“Offerer Disclosure of Prior Non-Responsibility Determinations”.**

2. NYSDOT Guidelines and Procedures

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through the Office of Contract Management (*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to “NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES” – see the Consultant’s page at NYSDOT’s “Doing Business With DOT” web site: <https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>

3. Summary of the policy and prohibitions regarding permissible contacts

a) Contacts prior to designation:

Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

- The Contract Management Designation Contract Analyst
- The Contract Management Designation Analyst Supervisor
- The Contract Management Civil Rights Unit Supervisor
- The Contract Management Assistant Directors
- The Contract Management Director
- The NYMTC Contract Liaison
- The NYMTC Contract Liaison’s Assistant

These are some communications exempted from this restriction:

- Participation in a pre-proposal conference.
- Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible

contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offerer.

b) Contacts after designation

NYSDOT identifies its primary negotiation contacts. The designated contacts include:

- The Contract Management Designation Contract Analyst
- The Contract Management Designation Analyst Supervisor
- The Contract Management Civil Rights Unit Supervisor
- The Contract Management Assistant Directors
- The Contract Management Director
- The Consultant Management Bureau consultant job manager
- The NYMTC Contract Liaison
- The NYMTC Contract Liaison's Assistant

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

c) Information Required from Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

- Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

d) Applicability to an executed contract:

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:

<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Faq.htm> (Advisory Council FAQs)

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

<http://www.nylobby.state.ny.us/lobbying.html> (New York State Lobbying Act)

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

or contact:

Mr. Al Hasenkopf
NYSDOT Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: alfred.hasenkopf@dot.ny.gov

Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)
Contract #C000789

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Contract #C000789

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____ C000789 _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

(Please circle): No Yes

If yes, please answer the next three questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered **yes** to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Name: _____

Title: _____



Joel P. Ettinger
Executive Director

Attachment 3

DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F. A. NO.: _____

P.I.N.: PTCS12D11

COMPTROLLER'S CONTRACT NO. C000789

PROJECT: MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 FORECASTS

This Agreement made this ___ day of _____, 20__ pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as "STATE") whose office is at 50 Wolf Road, in the County of Albany, State of New York 12232 and

(hereinafter referred to as "CONSULTANT")

WITNESSETH:

WHEREAS, the STATE desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE 1. PERFORMANCE OF WORK.

The CONSULTANT shall perform all of the work described in SCHEDULE A and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and

provisions of this CONTRACT. The CONSULTANT shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in SCHEDULE A. The CONSULTANT shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this AGREEMENT. It is understood and agreed that _____ shall serve as the CONSULTANT's Project Manager and as such shall have the responsibility for the overall supervision and conduct of the work on behalf of the CONSULTANT and that the persons described in SCHEDULE A shall serve in the capacities described therein. Any change of key project personnel by the CONSULTANT shall be subject to the prior written approval of the STATE. The STATE reserves the option to extend the terms and conditions of this CONTRACT to any other state agency in New York subject to the approval of all necessary state officials.

The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the STATE.

ARTICLE 2. DOCUMENTS FORMING THE CONTRACT.

The contract documents shall be deemed to include this AGREEMENT (with Exhibit A); the provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX A-1, APPENDIX B, APPENDIX B-1, and APPENDIX C; SCHEDULE A (including any EXHIBITS); SCHEDULE B (including any EXHIBITS); the STATE's Request for Proposals (RFP; dated: _____), incorporated herein by reference; and the CONSULTANT's Proposal (dated; _____), incorporated herein by reference.

ARTICLE 3. INSPECTION.

The duly authorized representatives of the STATE, and on Federally aided projects, representatives of the Federal Highway Administration, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees to complete all the work of this Agreement as required by this Contract during the **36** month period from _____. Additionally, this AGREEMENT may be extended for up to two one-year period based on need and performance as determined by the STATE and approved by the Office of the State Comptroller.

ARTICLE 5. MAXIMUM AMOUNT PAYABLE.

Item I The STATE shall pay to the CONSULTANT and the CONSULTANT agrees to accept as full compensation for its services under this Agreement, a price of _____ per the milestone payment schedule in SCHEDULE B unless there is a substantial change in the scope, complexity or character of the work to be performed.

Item II The CONSULTANT specifically agrees that the AGREEMENT shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose. In no event, however, will monies be deleted from this Agreement except pursuant to ARTICLE 15 hereof, entitled Termination.

ARTICLE 6. MILESTONE PAYMENTS.

The CONSULTANT shall be paid in milestone progress payments based on a payment schedule established by the Project Director and the CONSULTANT pursuant to SCHEDULE B.

The STATE will make payments to the CONSULTANT in accordance with Section 179(f) of the State Finance Law. Payments are subject to the approval of the STATE's Project Director, _____ or their successor as identified by the STATE. Payments shall not be withheld unreasonably.

The CONSULTANT shall maintain and update once each month, if changes have taken place or are anticipated, the Project Schedule contained in SCHEDULE A hereto.

The CONSULTANT will not include any provisions in their subcontracts that would circumvent the intent of 49 CFR 26.29 to require the CONSULTANT to make partial payments to subcontractors and subconsultants within ten (10) days after receipt of payment from the STATE.

Items purchased under this PROJECT shall become the property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE.

ARTICLE 7. CONTRACT PAYMENT.

The CONSULTANT shall provide complete and accurate billing invoices to the STATE in order to receive payment. Billing invoices submitted to the STATE must contain all information and supporting documentation required by the Contract, the STATE and the State Comptroller. Payment for invoices submitted by the CONSULTANT shall only be rendered electronically unless payment by paper check is expressly authorized by the New York State Department of Transportation Commissioner (hereinafter referred to as "COMMISSIONER"), in the COMMISSIONER'S sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONSULTANT shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. CONSULTANT acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

ARTICLE 8. FINAL PAYMENT.

a) Section 179 of the State Finance Law requires the STATE to make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted. The STATE in accordance with the provisions of the State Finance Law has determined that the STATE will require a 60 calendar day audit period for final payments at which time the 30 calendar day interest-free period will commence. The CONSULTANT is required to make final payment to all Sub Contractors and Sub Consultants within ten (10) calendar days of receipt of final payment from the STATE.

The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the STATE from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Agreement or for any part thereof except as otherwise provided in ARTICLE 8 (b).

b) The CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and make such materials available at its office at all reasonable times during the period of this Agreement and for the period of time specified in Clause No. 10, "Records" of APPENDIX A, for inspection by the STATE, Federal Highway Administration, or any authorized representatives of the Federal Government and copies thereof shall be furnished if requested.

ARTICLE 9. EXTRA WORK.

a) If the CONSULTANT believes that any work is or may be beyond the scope of the Agreement (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing, of this fact prior to beginning any of the work. The notification shall include all information required by the Department. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work

undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approvals have been obtained from necessary State officials and, if required, from the Federal Highway Administration.

b) In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the STATE all assistance required by the STATE. Work which the CONSULTANT is obligated to perform in accordance with Article 9 hereof shall be performed without cost to the STATE. Compensation for other work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this AGREEMENT for the additional services above described, the STATE's directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 10. CONSULTANT LIABILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the consultant inspecting engineer or inspector working for the State relative to the project from suits, claims, actions, damages and costs involving personal injury and property damage arising from the CONSULTANT's work under the contract during its prosecution and until the final acceptance thereof. The State may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The CONSULTANT's obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the CONSULTANT, SubCONSULTANT or the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or any consultants working for the State.

The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, any municipality in which the work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or any consultants working for the State, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway or structure and appurtenances and appliances thereof including moving, demolition and excavating connected therewith.

ARTICLE 11. INSURANCE.

The CONSULTANT shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it

or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of A minus or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §27.0 *et seq.*; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect.

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONSULTANT are specified in subsection “B,” below. Insurance shall apply separately on a per-job or per-project basis.
- 2. Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an **occurrence** basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.
- 3. Certificates of Insurance/Notices.** CONSULTANT shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference NYSDOT Contract Number C000789. Certificates shall be mailed to the:

**Contract Management Bureau
New York State Department of Transportation
50 Wolf Rd, 6th Floor
Albany, NY 12232**

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon thirty (30) days’ prior written notice to the Department by Certified Mail, return receipt requested at the stated address. In addition, if required by the Department, the CONSULTANT shall deliver to the Department within Forty-Five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

- a. Be in the form provided by the Department (C218 or successor) unless the Department specifically approves a different form. The ACORD forms of Certificate of Insurance are not acceptable.
- b. Be signed by an authorized representative of the insurance carrier or producer and be acknowledged before a notary public.
- c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
- d. Specify the Additional Insureds and Named Insureds as required herein.
- e. Refer to this Contract by number on the face of the certificate, and
- f. Expressly reference the inclusion of all required endorsements.

- g. If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:
- (1) Direct the CONSULTANT to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
 - (2) May withhold further contract payments in accordance with Article 8, or
 - (3) Treat such failure as a breach or default of the contract.
4. **Additional Insureds.** All insurance policies required, by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** with respect to any claim arising from the CONSULTANT's Work under this contract or as a result of the CONSULTANT's activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form (or forms) that provides equivalent coverage.
5. **Primary Coverage.** All insurance policies, excepting workers' compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available to the Department for any claim arising from the CONSULTANT's Work under this contract, or as a result of the CONSULTANT's activities.
6. **Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees.** To the extent that any of CONSULTANT's policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
7. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in subdivision (A)(3) above.
8. **Self-Insured Retention/Deductibles.** Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, CONSULTANT-administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT's deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of "A minus" or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured

retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.

9. **Waiver of Indemnities.** The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

B. Insurance Requirements. The types of insurance and minimum policy limits shall be as follows:

1. **Workers' Compensation and Disability Insurance.** As required by State Finance Law §142, CONSULTANT shall maintain in force workers' compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of CONSULTANT's employees. CONSULTANT shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.
2. **Commercial General Liability Insurance.** CONSULTANT shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of CONSULTANT. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
 - (1) Coverage for liability contractually assumed by the CONSULTANT.
 - (2) All insurance policies required by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to "**the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work,**" using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
3. **Commercial Automobile Insurance including liability and required coverage for New York.** In the event that automobiles are used in connection with CONSULTANT's business or operations with the Department, CONSULTANT shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of CONSULTANT's automobiles (including owned, hired and non-owned vehicles) on and around the project. This should be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000.00 each accident.
4. **Consultant's Risks.** The CONSULTANT shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or

loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

- 5. Professional Liability/ Errors and Omissions.** The CONSULTANT shall maintain at their own expense or shall require to be maintained, such insurance as is customary to compensate Department for any claims or losses that occur because of CONSULTANT's errors, omissions malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than \$250,000 subject to approval by Department, such approval not to be unreasonably withheld, except that it is also agreed that Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on an ISO claims made basis (or a policy form providing equivalent coverage) in an amount of no less than \$5,000,000.00 per claim and not less than \$5,000,000.00 in the aggregate.

ARTICLE 12. INTERCHANGE OF DATA.

All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 13. DISPOSITION OF DATA.

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material.

ARTICLE 14. DAMAGES AND DELAYS.

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 8 of this AGREEMENT.

ARTICLE 15. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this AGREEMENT shall be treated as an executory contract under 11 USC S365 of the Bankruptcy Laws or successor statute, and be subject to assumption or rejection by the debtor within the time permitted by law.

The CONSULTANT must immediately send written notice to Contract Management of the New York State Department of Transportation at its main office in Albany and send all relevant pleading of the voluntary or involuntary filing of a Bankruptcy proceeding by the CONSULTANT, its subsidiary, its principals and officers or a related entity whether or not the CONSULTANT believes that any debt is owed to the State by final audit or otherwise.

The determination of any rights under this AGREEMENT shall be adjudicated in a State or Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, New York.

The CONSULTANT agrees that the automatic stay under 11 USC S362 or a successor statute shall be deemed inapplicable or that this agreement shall constitute consent to the lifting of the stay with respect to the State's performance of or completion of any audit pursuant to the terms of this AGREEMENT.

ARTICLE 16. TERMINATION.

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

(a) If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the percentage of work satisfactorily completed by the CONSULTANT, as determined by the STATE, times the Lump Sum amount.

(b) If the termination is brought about as a result of unsatisfactory performance on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the STATE.

(c) The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the AGREEMENT.

ARTICLE 17. DEATH OR DISABILITY OF THE CONSULTANT.

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of them, who shall be obligated to perform the services required under this AGREEMENT, and the STATE shall make all payments due to them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within (60) days to the STATE or its duly authorized representative. In case of the failure of the CONSULTANT'S successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the STATE for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 18. CODE OF ETHICS.

The CONSULTANT specifically agrees that this AGREEMENT may be canceled or terminated if any work under this AGREEMENT is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for State officers and employees.

The CONSULTANT shall not engage, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this AGREEMENT in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

ARTICLE 19. INDEPENDENT CONTRACTOR.

The CONSULTANT, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the STATE by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES.

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to annul this AGREEMENT without liability, or, in its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 21. TRANSFER OF AGREEMENT.

The CONSULTANT specifically agrees, as required by the State Finance Law, Section 138, that they are prohibited by law from assigning, transferring, conveying, subletting or otherwise disposing of the AGREEMENT or of their right, title or interest therein, or their power to execute such AGREEMENT, to any other person, company or corporation, without the previous consent in writing of the STATE.

If this provision of the law be violated, the STATE shall revoke and annul the Agreement and the STATE shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet or otherwise dispose of the Agreement, and such transferee shall forfeit and lose all moneys therefore assigned under said Agreement, except so much as may be required to pay his employees.

ARTICLE 22. PROPRIETARY RIGHTS.

The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable, paid-up license to reproduce, publish, make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.

ARTICLE 23. SUBCONTRACTORS/SUBCONSULTANTS.

All subcontractors and subconsultants performing work on this project shall be bound by the same required contract provisions as the prime CONSULTANT. All agreements between the prime CONSULTANT and a subcontractor or subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the State.

ARTICLE 24. ORDER OF PRECEDENCE.

In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A;

2. The additional provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, APPENDIX B, APPENDIX B-1, and APPENDIX C;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibit B;
4. SCHEDULE A (including any Exhibits);
5. SCHEDULE B (including any Exhibits);
6. The STATE's Request for Proposals (dated: [REDACTED]); and
7. The CONSULTANT's Proposal (dated: [REDACTED]).

ARTICLE 25. CERTIFICATION REQUIRED BY 49CFR, PART 29.

The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

- 1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- 2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- 3) does not have a proposed debarment pending; and
- 4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS: - None.

ARTICLE 26. CERTIFICATION FOR FEDERAL-AID CONTRACTS.

The prospective participant certifies, by signing this Agreement 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 any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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 this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

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

ARTICLE 27. RESPONSIBILITY OF THE CONSULTANT.

(a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this AGREEMENT. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.

(b) Neither the STATE's review, approval or acceptance or, nor payment for, the services required under this AGREEMENT shall be construed to operate as a waiver of any rights under this AGREEMENT or of any cause action arising out of the performance of this AGREEMENT, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE caused by the CONSULTANT's negligent performance or breach of contract of any of the services furnished under this AGREEMENT.

(c) The rights and remedies of the STATE provided for under this AGREEMENT are in addition to any other rights and remedies provided by law.

(d) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder; and as such, each acts both as principal and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this agreement shall be jointly and severally liable to third parties, including but not limited to the STATE, for the acts or omissions of the CONSULTANT or any other entity, partner or joint venturer hereunder.

(e) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

ARTICLE 28. SECURITY AND CONFIDENTIALITY OF INFORMATION.

Information received as part of this AGREEMENT shall be considered Confidential Information. The CONSULTANT warrants that it will take the appropriate steps as to its personnel, agents, officers and any SUBCONTRACTOR/ SUBCONSULTANTS regarding the obligations arising under this clause to insure such confidentiality. The CONSULTANT shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration or destruction. The CONSULTANT may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this AGREEMENT. However, the CONSULTANT shall in no circumstance, communicate with the public or news media without prior authorization from the State designee. Neither shall the CONSULTANT disclose information deemed confidential by the State nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this AGREEMENT.

The CONSULTANT shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section §889-aa and State Technology Law §208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, CONSULTANT shall be liable for the costs associated with such breach if caused by CONSULTANT's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the CONSULTANT's agents, officers, employees or SUBCONSULTANTS.

ARTICLE 29. VENDOR RESPONSIBILITY.

The Department of Transportation has undertaken an affirmative review of the proposed CONSULTANT's responsibility in accordance with the applicable standards outlined in Comptroller's Bulletin No. G-221, and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B, Exhibit B) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect. The CONSULTANT shall provide information regarding all employees providing service under this contract, whether employed by the CONSULTANT or any subconsultant or subcontractor. Form B will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st to March 31st). Annual employment reports should be submitted to the following three agencies. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, N. Y. 12236
Attn: Consultant Reporting

NYS Department of Civil Service
Alfred E. Smith Building
Albany, N. Y. 12239
Attn: Chapter 10 Counsel's Office

NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or pdf file via email to: timothy.ameche@dot.ny.gov or his successor.

ARTICLE 31. NOTICES.

Item 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.








Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Department of Transportation:

Contact Person's Name: William A. Howe, Contract #C000789
Title: Director
Address: NYSDOT Contract Management Bur., 6th Fl, 50 Wolf Rd., Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2874
E-Mail Address: bill.howe@dot.ny.gov

And to:

The New York Metropolitan Transportation Council
199 Water Street, 22nd Fl
New York, NY 10038
ATTN: Mr. Ismet Apdiroglu, Admin. Group, Contract #C000789

Consultant's Name: 
Contact Person's Name: 
Title: 
Address: 
Telephone Number: 
Facsimile Number: 
E-Mail Address: 

Item 2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

Item 3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 32. TITLE VI ASSURANCE.

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be

performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a.) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 33. IRAN DIVESTMENT ACT.

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor is advised that once the list is posted on the OGS website, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to the solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification, NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which

is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

ARTICLE 34. SEVERABILITY.

General Responsibility. The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Suspension or Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

Termination (for Non-Responsibility). Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant's expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

IN WITNESS WHEREOF, this **Contract No. C000789** has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

In addition to the acceptance of this Agreement, the Department also certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

RECOMMENDED BY THE PEOPLE OF THE STATE OF NEW YORK

New York

Metropolitan Transportation Council Date

NYSDOT CONTRACT MANAGEMENT DATE

By: _____
DEPARTMENT OF TRANSPORTATION DATE

Consultant Certifications: I certify that all the information with respect to the "Vendor Responsibility Questionnaire" submitted by (FIRM NAME) on the _____ day of _____, 20____ pursuant to the requirements set forth in OSC Bulletin G-221 is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

I certify that all information provided to the STATE with respect to the requirements contained in State Finance Laws Sections 139j & 139k is complete, true and accurate.

By _____ Date: _____
FIRM

MANAGEMENT SUPPORT FOR NYMTC ADOPTION OF 2050 SOCIOECONOMIC AND DEMOGRAPHIC FORECASTS

APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI
STATE COMPTROLLER

By _____
Date _____

Acknowledgement for Contract #C000789

For contracts signed in New York State

State of New York)

County of) ss.:

On the _____ day of _____ in the year 20__, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

My Commission Expires: _____

For contracts signed **outside** New York State

State of)

County of) ss.:

On the _____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in _____ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

NOTARY PUBLIC

(Signature and office of individual taking acknowledgement.)

My Commission Expires: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3- a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data

processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

Updated December 2012

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

(March 2013)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: www.dot.ny.gov/plafap). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: www.fhwa.dot.gov/programadmin/contracts/1273.htm).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions 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.
3. **DISADVANTAGED BUSINESS ENTERPRISES**. In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the

Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, 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 USDOT 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.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](#)²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

² www.cfda.gov/

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

- 20.215 Highway Training and Education**
- 20.219 Recreational Trails Program**
- 20.XXX Highway Planning and Construction - Highways for LIFE;**
- 20.XXX Surface Transportation Research and Development;**
- 20.500 Federal Transit-Capital Investment Grants**
- 20.505 Federal Transit-Metropolitan Planning Grants**
- 20.507 Federal Transit-Formula Grants**
- 20.509 Formula Grants for Other Than Urbanized Areas**
- 20.600 State and Community Highway Safety**
- 23.003 Appalachian Development Highway System**
- 23.008 Appalachian Local Access Roads**

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract

clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

APPENDIX B-1

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

Energy Conservation – Applicability – All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall 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.

Access to Records and Reports– Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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 the municipal corporation, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

Federal Changes – Applicability – All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the municipal corporation and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$150,000.

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

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

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

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance

under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

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

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

If it is later determined by the municipal corporation that 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 contractor, the municipal corporation, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

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

If contractor fails to remedy to the municipal corporation's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the municipal corporation setting forth the nature of said breach or default, the municipal corporation 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 the municipal corporation 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 the municipal corporation elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the municipal corporation shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the municipal corporation, by written notice, may terminate this contract, in whole or in part, when it is in the municipal corporation's interest. If the contract is terminated, the municipal corporation shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If 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, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the municipal corporation goods, contractor shall, as directed by the municipal corporation, protect and preserve the goods until surrendered to the municipal corporation or its agent. Contractor and the municipal corporation shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the municipal corporation 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. Contractor and its sureties shall be liable for any damage to the municipal corporation resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the municipal corporation in completing the work.

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

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

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

i. Termination for Convenience or Default (Architect & Engineering) the municipal corporation may terminate this contract in whole or in part, for the municipal corporation's convenience or because of contractor's failure to fulfill contract obligations. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the municipal corporation all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the municipal corporation's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the municipal corporation may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the municipal corporation.

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

j. Termination for Convenience or Default (Cost-Type Contracts) the municipal corporation may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for

convenience of the municipal corporation or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the municipal corporation, or property supplied to contractor by the municipal corporation. If termination is for default, the municipal corporation may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the municipal corporation's convenience, 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, the municipal corporation determines that 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 contractor, the municipal corporation, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the municipal corporation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the municipal corporation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

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.

Civil Rights Requirements– Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other 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 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall 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, contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

(3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

Breaches and Dispute Resolution – Applicability – All contracts over \$150,000. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the municipal corporation's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the municipal corporation's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation's CEO shall be binding upon contractor and contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the municipal corporation, 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 ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the municipal corporation and 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 residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder 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 the municipal corporation 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 thereunder, except as may be specifically agreed in writing.

Patent and Rights Data – Applicability – Research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contracts Involving Experimental, Developmental, Or Research Work.

A. Rights in Data - these following requirements apply to each contract involving experimental, developmental or research work: (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party. 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA. (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government. (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent. (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work. (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (4) The

Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. 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 municipal corporation's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. 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 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 the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, 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.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. e. 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 municipal corporation. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the municipal corporation and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify the municipal corporation 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 the municipal corporation.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All

USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the municipal corporation to be in violation of FTA terms and conditions.

Full and Open Competition – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General’s list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General’s list of ineligible contractors for federally financed or assisted construction, the municipal corporation shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the municipal corporation’s Procurement Guidelines, available upon request from the municipal corporation.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the municipal corporation to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as 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.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and

FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

Environmental Protections – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Federal Single Audit Requirements For State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Order 45, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY The CONSULTANT, their sub-consultant and/or sub-contractor or any person acting on behalf of the CONSULTANT or sub-consultant and/or sub-contractor will accept as their operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, national origin, age, disability or marital status, and to promote the full realization of equal employment opportunity through a positive continuing program. "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, or during consideration for employment, without regard to their race, religion, sex, or color, national origin, age, disability or marital status. Such non-discriminatory action shall include, but not be limited to: employment, job assignment, 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, pre-apprenticeship, and/or on-the-job training."

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer and a Minority Business Enterprise officer (hereinafter referred to as the EEO Officer and M.B.E. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.

(3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

(1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

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

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

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

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

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

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

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

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

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

9. AFFIRMATIVE ACTION IN SUBCONTRACTING (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).

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

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

(5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such

records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in this Agreement.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement

by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Dated December 2012

**EXHIBIT A
CDL FORM B
Consultant Employment Disclosure Legislation Forms**

OSC Use Only:
Reporting Code:
Category Code:
Date Contract Approved:

FORM A

<p>State Consultant Services – Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term</p>

State Agency Name: NYSDOT	Agency Code: 3900283
Contractor Name:	Contract Number: C000789
Contract Start Date: / /	Contract End Date: / /

O*Net Employment Category & ONET Employment Category Name	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

Page of

(Use additional pages, if necessary)

Attachment 5

Part II Cost Proposal Instructions

Part II of your proposal consists of a Cost Proposal which sets forth the lump sum total cost for performing all of the work in your proposed technical scope of services. Your Cost Proposal shall contain the following elements:

1. **Proposed Staffing/Fully Loaded Rate Schedule.** Present a schedule which will include a descriptive job title for each employee assigned to this project, his/her current and projected hourly salary rate (regular time), and the consultant's fee, for each year of the contract (for the base three-year term of the contract). If additional titles are used but are not assigned, they must be listed. Offerors must present one Rate Schedule per firm in its team (prime consultant plus any sub-consultants that are being proposed), making multiple copies of the exhibit, as needed. Fully loaded hourly rates for all sub-consultants must also be included.
2. **A Staffing Table by Task Without Rates/Costs.** Present a schedule which shall list all descriptive job titles for the staff to be assigned to this project and to which tasks they are assigned to, depicting the proposed number of hours to accomplish each task. No rate or cost information is to be presented in this schedule. The schedule shall be prepared to distinguish anticipated assignment by project section/task. A sample without rate schedule is included in the RFP for illustration purposes. **THIS SCHEDULE MUST BE INCLUDED IN YOUR PART I TECHNICAL SUBMISSION – DO NOT INCLUDE THIS SCHEDULE IN YOUR PART II COST SUBMISSION.**
3. **A Staffing Table by Task With Rates/Costs.** Present a schedule which shall list all descriptive job titles for the staff to be assigned to this project and to which tasks they are assigned to, depicting the proposed number of hours, their corresponding fully-loaded rates, and the resulting labor costs to accomplish each task. The schedule shall be prepared to distinguish anticipated assignment by project section/task. A fictitious example with rate schedule is included in the RFP for illustration purposes.
4. **Direct Non-Salary Costs.** Present a direct non-salary cost schedule shall list by task number the items of direct non-salary costs (out-of-pocket expenses) expected to be incurred in the performance of the project. It's ideal to relate these costs by their corresponding tasks, as applicable. A fictitious example of a direct non-salary cost schedule is included in the RFP for illustration purposes. Travel, meals and lodging reimbursements shall be limited to the prevailing maximum rates established by the NY State Comptroller. The latest state and nationwide maximum reimbursement rates are available at the following Web site: <http://www.gsa.gov/>.

Subconsultant costs (if any) shall be shown in the schedule. On separate sheets, explain each item with all factors leading to the derivations of the costs attributable to subconsultants.

5. **Milestone Payment Schedule (Summary).** Present a final milestone payment schedule, which will summarize the direct labor; direct non-salary applied overhead costs, other direct non-personal costs and project-related fees for the Project in accordance with the technical schedule of service delivery. This RFP does not present a sample milestone payment schedule. Based on the lump sum costs and milestone payment schedule offered, present a proposed percentage of the lump sum for each key deliverable for which payment would be requested. It is suggested that, were commensurate with

the proposed scope of services, that the offered milestone payment schedule be sub-divided to consider a firm's cash flow requirements (especially for longer duration tasks or to divide deliverables into draft and final).



Joel P. Ettinger
Executive Director

**Attachment 5
(Fictitious Example)
Proposed Staffing/Fully Loaded Rate Schedule (by Title) Contract C000789**

Consultant Name: _____

TITLE	NAME	% of Labor	(a) YEAR ONE DIRECT LABOR	(b) OVER HEAD (__%)	(c) FEE (__%) Not to exceed 10%	(a)+(b)+(c) YEAR ONE BILLING RATE	YEAR TWO BILLING RATE	YEAR THREE BILLING RATE
Project Manager								
Transportation Analyst								
Technical Analyst								
Administrative Analyst								
Administrative Assistant								
Public Involvement Specialist								
Economist								
Demographer								
Statistician								

Specialty Planner								
IT Specialist								
Transportation Modeler								
GIS Specialist								

TASK ASSIGNMENT JOB TITLE ¹	TASK 1.0	TASK 2.0	TASK 3.0	TASK 4.0	TASK 5.0	TASK 6.0	TASK 7.00	TOTAL HOURS
Consultant Project Mgr	6	3	4	2	2	1	0	18
Consultant Task Manager	12	30	40	20	15	20	20	298
Transportation Planner II	98	30	40	25	25	40	40	157
Transportation Analyst III	62	30	40	22	100	40	30	324
Technical Analyst I	20	30	40	20	25	25	25	185
Administrative Analyst II	81	33	45	75	120	160	50	564
Administrative Assistant	0	0	0	0	0	0	0	0
PI Specialist	5	5	20	60	20	20	20	150
Economist	0	0	0	0	0	0	0	0
Demographer	0	0	0	0	0	0	0	0
Statistician	0	0	0	0	0	0	0	0
Specialty Planner	0	0	0	0	0	0	0	0
IT Specialist	0	0	0	0	0	0	0	0
Transportation Modeler	0	0	0	0	0	0	0	0
GIS Specialist	0	0	0	0	0	0	0	0
TOTAL	284	161	229	224	307	306	185	1696

¹: Suggested Titles: Not representative of titles to be proposed.

**Attachment 5
(Fictitious Example)**

Staffing Table by Task With Rates/Costs Schedule

TASK ASSIGNMENT STAFFING (With Rates) C000789

Consultant Name: _____

TASK ASSIGNMENT JOB TITLE ¹	TASK 1.0	TASK 2.0	TASK 3.0	TASK 4.0	TASK 5.0	TASK 6.0	TASK 7.00	TOTAL HOURS	HOURLY RATE	DIRECT TECHNICAL LABOR
Project Director	6	3	4	2	2	1	0	18	55.00	\$990
Project Mgr	12	30	40	20	15	20	20	298	45.00	\$13,410
Transportation Planner II	98	30	40	25	25	40	40	157	34.00	\$5,338
Transportation Analyst III	62	30	40	22	100	40	30	324	34.00	\$11,016
Technical Analyst I	20	30	40	20	25	25	25	185	25.00	\$4,625
Administrative Analyst II	81	33	45	75	120	160	50	564	25.00	\$14,088
Administrative Assistant	0	0	0	0	0	0	0	0	0.00	\$0
PI Specialist	5	5	20	60	20	20	20	150	20.00	\$3,000
Economist	0	0	0	0	0	0	0	0	0.00	\$0
Demographer	0	0	0	0	0	0	0	0	0.00	\$0
Statistician	0	0	0	0	0	0	0	0	0.00	\$0
Specialty Planner	0	0	0	0	0	0	0	0	0.00	\$0
IT Specialist	0	0	0	0	0	0	0	0	0.00	\$0
Transportation Modeler	0	0	0	0	0	0	0	0	0.00	\$0
GIS Specialist	0	0	0	0	0	0	0	0	0.00	\$0
	0	0	0	0	0	0	0	0	0.00	\$0
TOTAL	284	161	229	224	307	306	185	1696		\$52,467

¹: Suggested Titles: Not representative of titles to be proposed.

ATTACHMENT 5

Direct Non-Salary Costs Schedule C000789

(Fictitious Example)

FIRM NAME: _____

SUMMARY ESTIMATED BUDGET

John Doe Consultants

Study for Study's Sake

Item IA. Direct Technical Salaries (estimated) (Overtime not reimbursable) \$52,467

Item II. Direct Non-Salary Cost (estimated) \$3,500

Item III. Overhead (estimated @ ____%) \$78,701

Item IV Fixed Fee (No Great Then 10%) \$13,374

(Sub-Consultant cost) \$51,932

Total Estimated Cost \$199,974

=====

Estimated Budget is provided for information purposes only, for future contracting purposes on Lump Sum Contracts.

Attachment 6

Consultant's Responsibility When Proposing Former NYSDOT Employees

It is the consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

Procedure

- Before the consultant proposes an individual, the individual must obtain an opinion from the New York State Ethics Commission that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

Attachment 7

DBE Participation Information

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm’s full legal name, checking if they are a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm’s percentage of the **total budget** (or total contract cost) for the contract. Please keep in mind that only NYSUCP certified DBEs are eligible to count toward attainment of this federally-funded procurement with a DBE participation goal.

Further, participation by a certified DBE prime consultant DOES NOT count towards attainment of the contract’s 18% DBE participation goal.

If the total budget for all proposed, certified participating DBEs is less than the 18% DBE Participation Goal set for contract #C000789, then the proposing prime firm is required to fill out and submit the **DBE Participation Solicitation Log (Attachment 8)**, and the **DBE Goal Attainment Explanation Letter**. Further, prime consultants certified as a DBE are still required to either meet the Department’s DBE subconsultant participation goal via their meaningful participation, or are required to fill out and submit the **DBE Subconsultant Participation Solicitation Log (Attachment 8)** unless their outreach efforts results in proposed DBE subconsultant.

Please provide a copy of the firm’s DBE letter from a NYSUCP certifying partner with your Part II proposal.

Firm Legal Name	NYSUCP Certified DBE		% of Total Budget
	DBE	None	
A. Prime Consultant			
B. Sub-Consultants			
Total			100%

Attachment 8

DBE Subconsultant Participation Solicitation Log (Good Faith Effort Documentation)

CONTRACT NO. __C000789__		DBE PARTICIPATION GOAL: 18%		PAGE NUMBER ___ OF ___	
PRIME FIRM NAME/ADDRESS/ZIP CODE		CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE)	
				E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S)

**INSTRUCTIONS FOR COMPLETING Attachment 8
DBE Subconsultant Participation Solicitation Log
(Good Faith Effort Documentation)**

To be deemed responsive to this solicitation, Consultants whose proposed DBE participation does not meet the established Disadvantaged Business Enterprises (DBE) participation goal must document and report their efforts to solicit participation by certified DBE in this Non-Architecture/Non-Engineering contract. The **DBE Participation Solicitation Log** is used for this purpose.

PLEASE NOTE: **Only participation by NYSUCP certified DBE prime consultants as well as NYSUCP certified DBE subconsultants may count toward goal attainment.**

Guidance concerning Good Faith Efforts in meeting DBE participation goals in Federally-funded contracts is located at the end of this section.

The log is to be filled out and submitted with the proposing firm's Cost and Contract Proposal. In order for a proposal to be determined as responsive when the DBE participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a **DBE Participation Solicitation Log**, along with a **DBE Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort.

***** DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION. ***
IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE PROGRAM.
PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE
PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS**

CONTRACT NO: Enter NY State DOT contract number (Example: C012345).

DBE PARTICIPATION GOAL: Enter applicable DBE participation goal percentage as stated in the proposal.

PAGE NO.: Enter 1 of 1; or 1 of 2 and 2 of 2; etc. Use additional forms as needed.

PRIME NAME/ADDRESS/ZIP CODE: Enter name of the Prime Consultant, its address and zip code.

CONTACT PERSON: Enter the name of the person *your* firm has designated as the authorized contact person for this solicitation.

CONTACT PERSON TELEPHONE AND E-MAIL: Enter area code, phone number and e-mail address for the person *your* firm has designated as the authorized contact person for this solicitation.

DBE CONSULTANTS SOLICITED:

SOLICITED COMPANY NAME AND CONTACT PERSON: Enter name of solicited firm

and name of the individual associated with the firm to whom the solicitation inquiry was sent.

TELEPHONE (With Area Code): Enter TELEPHONE number of the solicited firm.

FEDERAL EMPLOYER ID #: Enter the Federal Employer Identification Number of the solicited firm.

WORK TYPE(S) BEING SOLICITED: Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. (NOTE: Work type codes are provided for every certified firm listed in the DBE Registry (see RFP cover letter).

TYPES AND DATES OF CONTACT: Enter dates on which your firm contacted the solicited firm, either by mail (date solicitation sent), telephone (including date and time of call) or other person-to-person contacts. Identify the type of contact by prefacing each date with ‘M’ if a mail contact; ‘T’ if a telephone call; and ‘D’ if a direct meeting with the firm.

CONTACT RESULT(S): Enter the code(s) which indicates the result(s) of your solicitation.

***** USE ADDITIONAL PAGES AS NEEDED *****

A description of the codes to use is as follows:

CODE DESCRIPTION:

- 1 This firm is unavailable to participate in the contract for the reason(s) stated on the DBE Solicitation Response. (Attach explanation to the Log.)
- 2 This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.
- 3 The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the DBE participation solicitation inquiry. (NOTE: Indicate In the Types and Dates of Contact column the dates and times at which follow-up was attempted.)
- 4 This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left).

Guidance Concerning Good Faith Efforts In Meeting DBE Participation Goals In Federally-Funded Contracts

The following is a list of types of actions that demonstrate good faith efforts in obtaining DBE participation for federally-funded contracts. This list is not exclusive or exhaustive. The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- ♣ Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – <http://biznt.nysucp.net>) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- ♣ Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- ♣ Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- ♣ Negotiating in good faith with interested DBEs – it is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- ♣ A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a DBEs is not in itself sufficient reason for failure to meet the contract DBE goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.
- ♣ Do not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal.

- ♣ Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.