



Joel P. Ettinger  
Executive Director

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

**REQUEST FOR PROPOSALS**

**REGIONAL ORIGIN AND DESTINATIONS SURVEYS**

Contract No.C000792

June 18, 2014

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](mailto:ismet.apdiroglu@dot.ny.gov), and to Al Hasenkopf of NYSDOT Contract Management via: [alfred.hasenkopf@dot.ny.gov](mailto:alfred.hasenkopf@dot.ny.gov)

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

- **August 20, 2014**: Deadline for the submission of proposals on 2:00 PM (Eastern Time)
- **July 2, 2014**: Deadline for questions about the RFP is 4:00 PM (Eastern Time)
- **June 27, 2014**: Pre-proposal webinar 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 webinar** will be held on **June 27, 2014**. Interested participants need to register to receive an invitation. The RFP will be walked through cover to cover, 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/NYSDOT. *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 January 1, 2015 and continue for a period up to 24 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,



Joel Ettinger  
Executive Director,  
NYMTC

Enclosures

**RFP RESPONSE FORM**

**REGIONAL ORIGIN AND DESTINATION SURVEYS, Contract # C000792**

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: **REGIONAL ORIGIN AND DESTINATION SURVEYS**  
Please send to the following two parties (scanned email preferred):  
E-Mail: [ismet.apdiroglu@dot.ny.gov](mailto:ismet.apdiroglu@dot.ny.gov) Copy: [alfred.hasenkopf@dot.ny.gov](mailto:alfred.hasenkopf@dot.ny.gov)  
Regular Mail: NYMTC, NYSDOT Contract Mgt Bureau  
199 Water Street, 22nd Fl 50 Wolf Road, 6th Floor  
New York, NY 10038 Albany, NY 12232  
ATTN: Ismet Apdiroglu, C000792 ATTN: Al Hasenkopf, C000792  
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Fax: (212) 383-7244

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

**REQUEST FOR PROPOSALS**

**REGIONAL ORIGIN AND DESTINATION SURVEYS**  
**CONTRACT No.: C000792**



Request for Proposals Release Date: June 18, 2014  
Proposal Due Date: August 20, 2014

**Proposal Delivery Location:**

**New York Metropolitan Transportation Council**  
**199 Water Street, 22<sup>nd</sup> Floor**  
**New York, NY 10038-3534**  
**Attention: Mr. Iset Apdiroglu, C000792**  
[ismet.apdiroglu@dot.ny.gov](mailto:ismet.apdiroglu@dot.ny.gov)

**Reference copies to:**

**New York State Department of Transportation**  
**Contract Management Bureau, 6th Floor**  
**50 Wolf Road**  
**Albany, NY 12232**  
**Attn: Mr. Al Hasenkopf, C000792**  
[alfred.hasenkopf@dot.ny.gov](mailto:alfred.hasenkopf@dot.ny.gov)

**REQUEST FOR PROPOSALS**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION** (on behalf of the)  
**NEW YORK METROPOLITAN TRANSPORTATION COUNCIL**  
**REGIONAL ORIGIN AND DESTINATIONS SURVEYS**  
**Contract C000792**

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**REQUEST FOR PROPOSALS**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION** (on behalf of the)  
**NEW YORK METROPOLITAN TRANSPORTATION COUNCIL**  
**REGIONAL ORIGIN AND DESTINATION SURVEYS**  
**Contract #C000792**

**1. INTRODUCTION**

**1.1 A. Purpose**

The New York Metropolitan Transportation Council, via its host, the New York State Department of Transportation, is releasing this Non A/E Request for Proposals to seek professional consultant services to design, test and implement Regional Origin and Destination Surveys (RODS).

This solicitation will include an optional pre-proposal webinar to be held on **June 27, 2014** at 10:30 AM. In addition, qualified, responsible proposers will be asked to provide a technical presentation of, or written clarifications, to their proposal at a date and time announced by NYMTC to clarify issues or to provide additional insights into their proposal.

Consultants with proposals subject to contract award may be asked to provide a Best and Final Offer.

**1.2 Background**

***What is the Regional Origin and Destination Surveys (RODS) Project?***

The RODS project encompasses three surveys that will complement other information collected by NYMTC for planned improvements and enhancements to its New York Best Practice Model (NYBPM). The RODS would capture origin/destination as well as socio-economic and demographic information from users of suburban bus systems, New York City East River Bridges and at designated NYBPM external stations. These data would then be used in the calibration and validation of the NYBPM's transit, external-internal, and highway assignment sub-models. The NYBPM once calibrated and validated, is then used by NYMTC to predict future travel demand that includes trip generation, trip distribution, mode split, and twenty-four (24) hour vehicular traffic assignment for metropolitan areas within the NYMTC's twenty-eight (28) county region.

The selected Consultant shall collect and provide travel survey data. They shall not make any modifications to the NYBPM as part of this project.

Under RODS the following surveys will be performed:

1. Suburban Bus O/D Survey (independent systems)
2. New York East Side Major Crossings O/D Survey
3. External Auto/Truck O/D Survey.

The main purpose of these surveys is to obtain trip origin and destination information as well as socio-demographic information from:

- Users of independent suburban bus systems in Putnam, Rockland, Nassau, and Suffolk Counties
- Users of the New York East Side Major non-tolled bridges, which are:
  1. East Side River Bridges – Ed Koch-Queensboro, Williamsburg, Manhattan, & Brooklyn
  2. Harlem River Bridges – Alexander Hamilton & 3<sup>rd</sup> Avenue
- Motorists at designated NYBPM external stations listed below:

Route Name	Functional Classification
Interstate Rt. I-84	Interstate
US Rt. 6/209	Other Principal Arterials

State Rt. 17	Other Principal Arterials
Interstate I-87 Woodbury Toll Plaza	Interstate
Interstate I-87 Harriman Toll Plaza	Interstate
Interstate I-87 Newburgh Toll Plaza	Interstate
State Rt. 32	Major Collector
US Rt. 9W	Minor Arterials
Mid-Hudson Bridge Toll Plaza	Other Principal Arterials
Kingston-Rhinecliff Bridge Toll Plaza	Other Principal Arterials
US Rt. 9	Other Principal Arterials
Taconic State Pkwy	Other Principal Arterials

The study area for the RODS includes the twenty eight counties modeled under the New York Best Practice Model (NYBPM), which include the following counties:

1. New York State: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester;
2. Connecticut: Fairfield, New Haven;
3. New Jersey: Bergen, Passaic, Hudson, Essex, Union, Morris, Somerset, Middlesex, Monmouth, Ocean, Hunterdon, Warren, Mercer and Sussex.

***What is NYMTC?***

NYMTC is a regional council of governments and transportation providers which serves as the MPO for New York City, Long Island, and the lower Hudson Valley. NYMTC provides a collaborative planning forum to address transportation-related issues from a regional perspective and to plan for and make decisions on the use of Federal transportation funds. The Federal government requires metropolitan planning organizations in each urbanized region of the country to maintain a continuing, cooperative, and comprehensive transportation planning process in order to plan for and make decisions on the use of Federal transportation funding.

NYMTC’s region is comprised of New York City and five (5) suburban counties on Long Island and in the lower Hudson Valley. It encompasses an area of 2,440 square miles and a population of roughly 12.2 million, approximately 64 percent of New York State’s population. The region has one of the most extensive transportation networks in the world with 477 route miles of commuter rail, 225 route miles of rail rapid transit, 22,870 centerline miles of roads, streets, and highways, as well as several commercial airports and maritime facilities for passengers and goods.

The member agencies of NYMTC are: NYSDOT, NYCDOT, NYCDCP, MTA, Nassau County, Suffolk County, Putnam County, Rockland County, and Westchester County. NYMTC’s advisory members include the Federal Highway Administration, the Federal Transit Administration, the United States Environmental Protection Agency, the New York State Department of Environmental Conservation, the Port Authority of New York and New Jersey, the North Jersey Transportation Planning Authority, and New Jersey Transit.

NYMTC’s role in the RODS is to provide project management, and, in concert with NYSDOT, to provide contract administration. NYMTC staff will work with its members and interested parties to obtain input at each level of the project. NYMTC, as a regional organization, is in the unique position to work across jurisdictional boundaries and bring various and varying views together to conduct and finalize a successful survey effort.



## 2. PROJECT OBJECTIVES AND CONTRACT OBJECTIVES

### 2.1 Project Objectives

The main objective of this project is to conduct the Regional Origin & Destination Surveys (RODS) for NYMTC to obtain detailed trip origin and destination information as well as socio-demographic information from:

- Users of independent suburban bus systems in Putnam, Rockland, Nassau and Suffolk Counties
- Motorists using the New York City East River major non-tolled bridges (Ed Koch-Queensboro, Williamsburg, Manhattan, Brooklyn)
- Motorists at designated NYBPM external stations.

For NYMTC to use this information will be used to improve the NYBPM in producing accurate transit patronage, reflect observed travel patterns for all market segments, and serve as benchmark for validating travel forecasting model outputs for External-External, External-Internal, Internal-External trips at regional level and/or county level.

The collected survey data from the RODS is an integral part of the data collection for the enhancement of the NYBPM and will also help to better understand regional travel behavior. Ultimately, this project will help in the development of transportation plans that meet the region's future needs.

### 2.2 Contract Objectives

The main contract objective for this solicitation is to select a qualified, responsive and responsible consultant (or team of consultants) via a fair and equitable Best Value Request for Proposal process.

**Contract Term:** Per Article 4 of the RFP's draft contract, the base term of Contract #C000792 will be for up to 36 months, commencing from the contract start date, with two optional 12 months extension (depending upon need, availability of funding and performance). It is anticipated that this will be a lump sum milestone-type contract. The 3-year base term may have longer extensions, depending upon the success of fully implementing the project.

**Level of Effort:** For planning purposes, it is anticipated this contract may require up to the equivalent of eight to ten (8-10) fully loaded staff years of effort to complete over the 3-year base term.

**Complexity:** The level of complexity for this project is moderately complex.

**Payment Method:** Per Article 6 of the RFP's draft contract, it is anticipated that this will be a lump sum milestone-type contract.

**Consultant Arrangements:** The resulting contract, on behalf of NYMTC, shall be between NYSDOT and the selected Prime Consultant. The Prime Consultant shall be responsible for completion of all agreed-upon services. NYSDOT will only contract with one (1) responsive and responsible Prime Consultant, who will be the sole contact with regard to all provisions contained in this RFP and resulting contract #C000792. If the Consultant's selected solution includes subconsultants, the Consultant under contract will be the Prime Consultant who must assume full responsibility for all aspects of the project, including performance and completion of all subconsultant work. All necessary communications will be directed from NYSDOT to the Prime Consultant (Project Manager). The Prime Consultant is responsible for offering qualified

subconsultants with competitive rates/costs. Consultants are encouraged to partner to provide the required services and to meet the contract's 18% DBE participation goal. Proposers must name a lead firm as the Prime Consultant that will serve as the legal contracting entity for the project period. If the proposal includes products or services from any other participating vendors, it is understood that those vendors will serve as subconsultants to the Prime Consultant. Joint ventures are not allowed.

**OTHER CONTRACT OBJECTIVES:**

- Eighteen 18% percent or more DBE subconsultant participation over the life of the contract by the firm being awarded a contract via this RFP
- Fair and equitable treatment of all firms participating in the competitive consultant selection process

**2.3 Definitions of Terms and Acronyms**

**EPA:** US Environmental Protection Agency

**FHWA:** Federal Highway Administration

**FHWA 13 Category Classification System:** It is the standard set by the Federal Highway Administration for classifying vehicles by vehicle class and by average number of axles per vehicle.

**FTA:** Federal Transit Administration

**MPO:** A Metropolitan Planning Organization is a Federally-established association of local agencies established to coordinate transportation planning and development activities within a metropolitan region of a population of 50,000 residents or more.

**MHSTCC:** NYMTC's Mid-Hudson South Transportation Coordinating Committee

**MTA:** Metropolitan Transportation Authority

**NJTPA:** New Jersey Transportation Planning Authority

**NSTCC:** NYMTC's Nassau/Suffolk Transportation Coordinating Committee

**NYBPM:** New York Best Practice Model

**NYCDOT:** New York City Department of Transportation

**NYCDCP:** New York City Department of City Planning

**NYCTCC:** NYMTC's New York City Transportation Coordinating Committee

**NYMTC:** New York Metropolitan Transportation Council

**NYSDEC:** New York State Department of Environmental Conservation

**NYSDOT:** New York State Department of Transportation

**NYSDOT HDSB:** NYSDOT Highway Data Services Bureau establishes the traffic monitoring standards for all of New York State's short count Traffic Monitoring Activities carried out through contractual agreements for planning and/or project development. These standards are defined in Engineering Instruction 01-001 and they apply to volume, classification, length, and speed counts.

**PANYNJ:** Port Authority of New York & New Jersey

**PFAC:** NYMTC's Program, Finance and Administration Committee

**RODS:** Regional Origin and Destination Surveys

**RFP:** Request for Proposal

**SC:** The Steering Committee is comprised of stakeholders (NYMTC members, neighboring MPOs/DOTs) that represent their interests and are responsible for providing guidance, advice and recommendations to NYMTC on the overall strategic direction of the project.

**TIG:** The Transportation Information Gateway provides standards and guidelines for data collection; helps stakeholders collect, use, access and share data; avoids duplications of data collection efforts; integrates information and provides added value to data collected. The TIG will provide data integration through a Universal Data Standard and Unified Modeling Architecture for all data collected and stored by NYMTC. The TIG project is currently underway.

**TAZ:** The NYBPM Traffic Analysis Zone system is the underlying data structure for the socioeconomic and demographic inputs to the NYBPM zonal files, for its transportation networks and trip tables, and for the framework of reporting model results on a geographic basis. Supporting a fully multi-modal integrated regional modeling system, the NYBPM system of TAZs is common to both the Highway and Transit networks.

## **2.4 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. For the purposes of evaluation, each Technical proposal and each Cost proposal must be separately submitted. Technical and Cost proposals 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 Technical submittal. Technical information is **not** to be included in the Cost submittal. Therefore, your proposal must have the following:
  - a. Complete Technical & Management Proposal – Submit a complete Technical and Management submission which is separately bound with tab dividers, including all required RFP-specified attachments (plus any additional referential material).
  - b. Complete Cost & Contract Proposal – Submit a complete Cost and Contract submission separately bound with tab dividers, including all required RFP-specified attachments (plus any additional referential material).
2. 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.

## **2.5 Disadvantaged Business Enterprise Participation**

See RFP Section 4.

## **2.6 Consultant Requirements**

1. Key Personnel Requirements for RODS: The Consultant shall provide the following key permanent full-time employees:

**CONSULTANT PROJECT MANAGER:** A Project Manager with a minimum of three (3) years experience within the last ten years in project management for transit and highway users origin-destination surveys for the same or similar services and shall have the knowledge to develop and implement the service requirements in this specification. Large metropolitan area survey experience is preferred. Provide additional information should the PM's experience be for similar services.

The Consultant Project Manager shall:

- a. Serve as a primary point of contact for the term of the project.
- b. Be responsible for the day-to-day operation of the service in accordance with the requirements of the project.

**SURVEY SUPERVISOR(S):** Survey Supervisor(s) for each study area with a minimum of three (3) years experience within the last ten years in performing and supervising travel surveys and shall have the knowledge to develop and implement the service requirements in this specification. Large metropolitan area survey experience is preferred. Proposing more than one Supervisor is acceptable.

A Survey Supervisor shall:

- a. Ensure the surveys are set up, conducted properly and courteously, and shut down safely.
- b. Ensure that all person and vehicle counts are conducted properly and all equipment is working properly.
- c. Ensure that radios, CD players, MP3 players or any other similar devices are not used by the Consultant's employees, whether permanent, temporary or subcontractors, when the survey is being conducted.
- d. Ensure that chairs or umbrellas are not used in the survey area by the Consultant's employees, whether permanent, temporary or subcontractors, when the survey is being conducted.

**DATA MANAGER(S):** Data Manager(s) with a minimum of one (1) year experience in verifying, editing, geocoding and validating electronic data using file formatting as described in TASK 6 – Verify, Edit, Process & Geocode the Data. Proposing more than one Supervisor is acceptable.

A Data Manager shall:

- a. Serve as a primary point of contact for data related work for the term of the project.
- b. Be responsible for the day-to-day data work service in accordance with the requirements of the project.

**TEAM EXPERIENCE:** Overall - Experience of Prime and subconsultants will be evaluated based on relevance to this project. Experience of team members working together on similar projects will be evaluated.

## 2. Linguistic Requirements

In order to gain more accurate survey data and to be responsive to Limited English Proficiency directives, Consultant shall make recommendations for other languages in which the survey should be conducted and provide an analysis of why these other languages should be considered. NYMTC will make decisions for the selected consultant to implement any accepted recommendations. Any costs offered shall not be exceeded. Separate costs for implementing each alternate language recommendation should be presented separately in the

project Cost proposal only. Any hours associated with implementing these recommendations ought to be included in Technical Proposal.

### 3. Background Checks

The CONSULTANT shall set in place standards and policies that coincide with and adhere to federal and state laws and regulations regarding background checks.

## **2.7 Personnel Continuity and Replacement**

1. NYMTC recognizes events beyond the control of the Consultant such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of the PM, Survey Supervisor(s), and Data Manager(s) will require that the Consultant propose a replacement. In the event such a replacement is necessary, Consultant agrees that personnel shall not begin work on the project without prior written approval from NYMTC.
2. The Consultant agrees that the Consultant Project Manager, Survey Supervisor(s), and Data Manager(s) assigned to the project shall remain available for the entirety of the project.
3. If NYMTC determines the Consultant Project Manager, Survey Supervisor(s), and/or Data Manager(s) is unable to perform in accordance with the service requirements or to communicate effectively, the Consultant shall immediately remove that person.
4. Proposed replacement personnel shall meet this RFP's minimum key personnel requirements and have experience comparable to the person(s) being replaced. Replacement personnel shall be provided at no additional cost to NYMTC (rates offered are not-to-exceed rates). Résumé(s) and reference(s) will be requested for the proposed replacement(s). NYMTC may reject any replacement if references or past working performance is questionable or unfavorable.
5. NYMTC will be the sole judge of the acceptability of credentials of the proposed replacement personnel.

## **2.8 Consultant Personnel Safety**

The Consultant shall provide all required safety equipment and instruct personnel to observe all safety policies, rules and requirements at all times. Your proposal must include an acceptable consultant personnel safety plan.

## **2.9 Work Hours**

The surveys are to be conducted Monday through Friday during the local area school year, with the exception of school holidays.

## **2.10 Applicable Laws and Standards**

The Consultant shall provide the required, specified service in accordance with all federal, state and local applicable laws, standards and regulations necessary to perform the services in the study area.

## **2.11 General Criteria for Project Products**

All deliverables are to be submitted electronically as draft versions to the NYMTC Project Manager for review and acceptance prior to final submission. All deliverables should be completed in a reproducible format agreed upon with the NYMTC PM. The Consultant shall deliver to NYMTC five copies of the final reports as well as in an electronic format agreed upon

with the NYMTC PM. Desired electronic document formats include Microsoft Office products and Acrobat PDF. Desired electronic Data files formats include SPSS, Microsoft Access. ESRI is the desired format for GIS files. The consultant will save all files in the version of the software that NYMTC currently has.

### 3. SCOPE OF SERVICES

#### 3.1 General

The scope of the contract will be in accordance with agreed-upon work. This contract is to design, pre-test, and to conduct RODS for the NYMTC region and adjacent counties and to produce agreed-upon deliverables. Under RODS the following surveys will be performed: the Suburban Bus O/D Survey (independent systems), the New York East Side Major Crossings O/D Survey and the External Auto/Truck O/D Survey. The main purpose of these surveys is to obtain origin and destination information as well as socio-demographic information from the users of independent suburban bus systems listed below; users of the New York City East side major non-tolled bridges listed below; and motorists at designated NYBPM external stations listed below:

<b>SUBURBAN BUS SYSTEMS</b>
<b>Putnam County Buses</b>
<b>Rockland County Buses</b>
<b>Suffolk County Buses</b>
<b>Nassau County Buses</b>

For these suburban bus systems, the sample size for each system must be sufficient for the results of the origin-destination survey to be accurate to a 95% level of statistical confidence at +/-5% at the county level.

<b>East Side Major Non-Tolled Bridges</b>	
<b>Route Name</b>	<b>Functional Classification</b>
Brooklyn Bridge	Principal Arterial
Manhattan Bridge	Principal Arterial
Ed Koch - Queensboro Bridge	Principal Arterial
Williamsburg Bridge	Principal Arterial
Alexander Hamilton Bridge	Interstate
Third Avenue Bridge	Principal Arterial

<b>Route Name</b>	<b>Functional Classification</b>
Interstate Rt. I-84	Interstate
US Rt. 6/209	Other Principal Arterials
State Rt. 17	Other Principal Arterials
Interstate I-87 Woodbury Toll Plaza	Interstate
Interstate I-87 Harriman Toll Plaza	Interstate
Interstate I-87 Newburgh Toll Plaza	Interstate
State Rt. 32	Major Collector
US Rt. 9W	Minor Arterials
Mid-Hudson Bridge Toll Plaza	Other Principal Arterials
Kingston-Rhinecliff Bridge Toll Plaza	Other Principal Arterials
US Rt. 9	Other Principal Arterials
Taconic State Pkwy	Other Principal Arterials

The study area for the RODS includes the twenty eight counties modeled under the NYBPM:

1. New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester;
2. Connecticut: Fairfield, New Haven;
3. New Jersey: Bergen, Passaic, Hudson, Essex, Union, Morris, Somerset, Middlesex, Monmouth, Ocean, Hunterdon, Warren, Mercer and Sussex.

### **3.2 Tasks**

The project consists of seven (7) tasks listed below:

- TASK 1 – Project Administration & Coordination
- TASK 2 – Data needs assessment
- TASK 3 – Survey Design
- TASK 4 – Pre-Test Survey
- TASK 5 – Main Survey
- TASK 6 – Verify, Edit, Process & Geocode the Data
- TASK 7 – Final Report & Data Files

NYMTC staff will manage and supervise the Consultant to ensure that all survey procedures and protocols are being correctly carried out in an efficient and effective manner, and to ensure overall quality control. The Consultant is urged to be as specific as possible when describing the activities that will be performed to support all requirements and tasks.

#### **TASK 1 – PROJECT ADMINISTRATION & COORDINATION**

In this task, NYMTC and the CONSULTANT will jointly develop the administrative structure for the survey project. The CONSULTANT shall:

1. Coordinate with all county, local and government agencies all necessary permits to conduct the surveys included under the RODS.
2. Jointly develop the administrative structure of the project with the NYMTC PM.
3. The Consultant shall conduct a **Kickoff Meeting** with NYMTC staff to discuss methods for progress reporting, makeup of the SC, coordination with stakeholders, key elements of the work approach, and major issues involved in the project. The Consultant will be responsible for the preparation of all meeting minutes and the minutes shall be submitted to the NYMTC within one (1) week of the meeting date. A Preliminary Kickoff Meeting Agenda shall include:
  - a. Extensive review of modeling, technical, and survey design goals and data needs
  - b. Sampling guidelines and geographies
  - c. Quality control assurance elements including data collection monitoring, advanced data checking, and independent auditing procedures
  - d. The need and parameters for outreach and awareness efforts
  - e. Make-up of the Steering Committee (SC).
  - f. Draft project schedule including, SC meetings, interim reports and data deliveries
  - g. Major project risks and strategies for remedies and risk management
  - h. Other items brought by the consultant or NYMTC.
4. Submit a detailed RODS Implementation Plan for all project tasks no later than thirty (30) days after the post award meeting. The Consultant shall monitor and update the RODS Implementation Plan throughout the term of the contract, revising as appropriate with prior approval from NYMTC. The RODS Implementation Plan shall include, but is not limited to, the following:

- a. A logical sequence of tasks and deliverables included in each project period.
  - b. A clear definition of each task and deliverable.
  - c. Staff requirements and assignments for each task and deliverable.
  - d. A target completion date for each task and deliverable.
  - e. Descriptions of task and deliverable relationships and dependencies.
5. The Consultant shall submit **monthly progress reports** describing work activities and completed work products for each tasks, along with datasets and status reports during the main survey data collection period. The progress report shall include status of the previous month's work and any other information requested by NYMTC. The Consultant shall submit the progress report five (5) business days before the first biweekly progress meeting of the month is held. Progress reporting shall be coordinated with project invoicing. Once the actual surveys begin, weekly data status summaries shall be presented at biweekly/weekly conference call meetings and/or transmitted via email to the NYMTC Management Team.
  6. The Consultant shall establish teleconferencing access numbers and shall conduct **bi-weekly or weekly (as determine by NYMTC)** teleconferences with the NYMTC Project Manager and his/her designees at a predetermined time and day of the week throughout the length of the project. The Consultant shall coordinate these meetings in advance with NYMTC staff and develop agendas and minutes of the meetings. The Consultant shall submit the minutes of the meetings within one week after the meeting was held.
  7. **Steering Committee (SC):** The Consultant shall hold meetings near the end of each task with NYMTC staff, and the SC, to address findings and preliminary recommendations and to receive concurrence on project direction. The Consultant shall deliver these presentations in coordination with NYMTC. The Consultant shall coordinate these meetings in advance with NYMTC staff, and develop necessary agendas, presentation materials, and background material. These meetings shall be conducted by the consultant in-person and presented by the senior experts from the consultant team approved by NYMTC in advance of the meeting.
  8. The Consultant shall institute and maintain a **Record of Decision Making Management System**, to ensure continuity in the survey process due to staff changes within NYMTC or the Consultant team.
  9. Establish a **Toll Free '1-800' telephone number** to address comments, questions or complaints regarding the survey. The CONSULTANT shall:
    - a. Have trained employees, whether permanent, temporary or subcontractors, experienced in fielding travel survey questions from the public, to answer calls from 7:00 a.m. to 7:00 p.m. on weekdays for the period of the survey.
    - b. Ensure the Consultant employees, whether permanent, temporary or subcontractors, maintain a positive and professional attitude and demeanor at all times when conversing with the public, respecting the caller's concerns and privacy.
    - c. Use a pre-recorded message in English and any additional languages identified and approved by NYMTC under RFP Section 2.6(2: Linguistic Requirements), during weekends and from 7:00 p.m. to 7:00 a.m. on weekdays for the period of the survey. The message shall provide basic details of the survey as well as time periods when the public can call back to speak with an individual.
    - d. Maintain records in the Inquiry Call Log of all calls received. The Inquiry Call Log shall be kept in electronic format and submitted with the Operations Manual unless requested by NYMTC prior to that time. Each call received by the Consultant shall document the



following:

1. Date of the call
  2. Time of call using military time in hours and minutes
  3. Specific details of the nature or purpose of the call
  4. Survey location
  5. Filed complaints against the Consultant or any of its employees regarding the RODS to NYMTC. A copy of the complaint should be submitted to NYMTC within five (5) business days of receipt of the complaint.
10. The Consultant shall develop and implement a **Project Web-based Portal** that will serve as the online center for information exchange among the Consultant, NYMTC staff, SC members and other project participants as designated by NYMTC. The Consultant shall develop the project web portal consistent with NYMTC's general website design and functional requirements, including accessibility requirements. The Consultant shall submit a draft design of the web portal to the NYMTC Project Manager for approval. The web portal will have proper security design so that various levels of project information can be accessed by people with corresponding levels of access rights. The consultant shall organize the project web portal to provide access to all project information, documentation and data files in an easily accessible and user-friendly manner. The consultant shall update all the information contained in the project web portal continuously throughout the life of the project in a timely manner, so that it can be used by the project participants effectively and efficiently. The Consultant shall maintain the project web portal throughout the project life and close it upon completion of the project. Upon closure of the project website the Consultant shall archive all the information in the project web portal and provide it to NYMTC in an agreed upon electronic format(s) that is easily accessible, such as Adobe's Acrobat (i.e. pdf), Microsoft Office (.doc, xls), etc.
11. The Consultant shall develop and implement a **Public Web Site** that will serve as the platform for information exchange with the public and RES participants. The Consultant shall work closely with NYMTC's public information Officer (PIO) and web/graphics design manager to develop the public website consistent with NYMTC's general website design and functional requirements, including accessibility requirements. The Consultant shall develop the public website consistent subtask 1-12 Public Awareness Plan. The Consultant shall submit a draft design of the public website to the NYMTC Project Manager for review and approval. The Consultant shall update all information in a timely manner so that it can be used by the public and other project participants effectively and efficiently. The Consultant shall maintain the public website throughout the project life and close it upon completion of the project. Upon closure of the project website the Consultant shall archive all the information in the website and provide it to NYMTC organized and an electronic format that is easily accessible such as Adobe's Acrobat (i.e. pdf), Microsoft Office (.doc, xls), etc.
12. Develop a **Public Awareness Plan** and informational material for distribution that explains the purpose and scope of the survey and provides contacts in order to get additional information.
13. **RODS Data User's Training:** The Consultant shall develop instructional materials for one full-day training session in the use and maintenance of the project data files, methodology and procedures. The Consultant shall conduct training for NYMTC and other participating agencies at the conclusion of the project after the Final RES Report, Data Files and

Associated Documentation, and Final Executive Briefing on Travel Statistics have been approved by NYMTC.

**Draft and Final User's Manual:** The Consultant shall develop a Draft and Final User's Manual that addresses comments and questions from the training sessions or based upon NYMTC's instructions. The content needs to address the methodological details, which impact the use of the data, cover a broad range of topics, and include the instructions to ensure that the data are being used correctly. The Manual shall also include a section on comparability of the survey data to national data sources. The final User Manual shall incorporate comments and questions from the training sessions or as per NYMTC instructions.

14. **Final Results Presentation:** The Consultant shall prepare a Final Results Presentation, as specified by the NYMTC Project Manager, and present the final results of the project in a PFAC staff meeting and a PFAC public meeting. These meetings shall be conducted by the consultant in-person and presented by the senior experts from the consultant team approved by NYMTC in advance of the meeting.

### **Task 1 Deliverables**

1. Draft & Final Agendas and Notes or Minutes for each meeting
2. Monthly Progress Reports
3. Meeting Presentation Materials
4. Initial RODS Implementation Plan & Periodic Updates
5. Record of Decision Making Management System
6. Draft Design & Final Public Web Portal
7. Draft Design & Final Project Web-site
8. Project Web-site Archive
9. Draft & Final Toll-Free Number Operations Manual & Call Inquiry Log
10. Draft & Final Public Awareness Plan and Documents
11. Draft & Final Users' Manual: Use and maintenance of the RODS data files, procedures

### **TASK 2 -- DATA NEEDS ASSESSMENT**

The purpose of this task is to evaluate the data needs for the RODS to support the NYBPM 2012 Update in conjunction with the 2010-2011 Regional Household Travel Survey and the Regional Establishment Survey. The surveys under the RODS include: the External Auto/Truck O/D Survey, the East River Crossings O/D Survey, and the Suburban Bus O/D Survey (independent systems). While the specific modeling framework of the NYBPM 2012 Update is still at its preliminary stage, the model components that are directly relevant to the RODS include daily activity pattern, mode choice, time of day travel, external travel, commercial and freight models. More specific requirements will result from the NYBPM 2012 Update Exploration Project (currently on-going) – which will identify data needs and available data resources for each module of the NYBPM and Regional Freight Model - and be made available to the Consultant once completed.

This task requires close communication and feedback with NYMTC staff. It is expected that the Consultant team has the expertise in activity-based modeling and related data requirements. The Consultant shall demonstrate clear understanding on the desired analysis functions and model improvements (especially for the above mentioned model components). The Consultant shall investigate other available data collected by NYMTC and other agencies in the region. The Consultant shall take this into consideration and propose a strategy that can incorporate the

existing data to the full extent.

Based on the understanding of the modeling needs, the consultant shall identify the data needs that RODS will support for the NYBPM 2012 Update and develop strategies that will optimally achieve the goals in data collection (and model enhancements). The Consultant shall recommend the most appropriate and cost-effective method to define a sampling plan that maximizes the available resources and meets the project objectives. The consultant will also identify how the privacy of the respondents and the data collected will be maintained.

This task shall serve as the guidance for the remaining tasks in terms of survey design and quality control.

### **Task 2 Deliverables**

1. Draft and Final Agendas and Notes or Minutes for each meeting.
2. Draft and Final Tech Memorandum that indicates the objective to be achieved in this task, documents the approach and process taken, describes the key findings in the research, and summarizes the results of the data needs assessment.
3. Documents that specify how the privacy of the respondents and the data collected will be maintained.
4. Draft and Final Tech Memorandum that recommends quality control and monitoring procedures to ensure that the requirements in data needs are met throughout the course of the survey.

### **TASK 3 – SURVEY DESIGN**

The design of the survey will be based on the results of the data needs assessment performed under Task 2 and on the expertise and methodologies that have been reasonably accepted by the travel survey community. The Consultant is encouraged to be creative in developing a sound analytical approach that achieves the objectives of the project with the resources available. The Main Survey will be based on procedures and experiences that have been thoroughly tested and refined through a full Pre-Test of the proposed survey methodology for each of the surveys included in this contract.

The main purpose of the Suburban Bus O/D Survey is to obtain origin and destination information as well as socio-demographic information from the users of independent suburban bus systems in Putnam, Rockland, Nassau, and Suffolk Counties. Under this survey the Consultant shall develop a survey design based on collecting data using an in-person interview methodology, and with a goal of completing surveys for, at minimum, ten percent (10%) of the average daily ridership on all bus routes (refer to Attachment 10 - Traffic and Ridership Data). However, a larger sample size is strongly preferred.

In addition the number of valid responses should be large enough for a high degree of confidence in the results for each system described in this scope of services. The sample sizes for each market must be sufficient for the results of the survey to be accurate to a 95% level of statistical confidence at +/-5 at county level.

The Consultant shall also collect boarding and alighting data (6:00 AM – 8:00 PM, mid-week, school open), on sampled routes, develop a weighting procedure for expansion of the dataset and an approach for maximizing response of low response travelers. It is important that collection of duplicate boarding and alighting data be avoided. As such, the consultant shall coordinate with the owners/operators of the independent bus systems in Putnam, Rockland, Nassau, and Suffolk Counties, so that boarding and alighting data that may already exist can be incorporated – to the degree possible - into the origin and destination information obtained under the Suburban Bus

## O/D Survey.

For the East River Crossings and the External Auto/Truck O/D surveys is expected that the data collection minimizes the impact to traffic operations at the facilities being surveyed. The Consultant is invited to present alternative and innovative methodology that may or may not involve questionnaires, roadside interviews, license plate gathering technology, and/or roadway cameras to satisfy these surveys objectives. A combination of different methods may be needed in order to develop a robust data set. The Consultant shall include a cost estimate with their recommended data collection methodology.

For each of the surveys under RODS the Consultant shall:

1. Develop the sampling plan.
2. Specify the minimum survey sample size.
3. Describe the data sources to be used in developing the sampling plan.
4. Ensure all permits, authorizations, traffic laws, and protection of traffic maintenance and safety requirements are obtained and met from the transit and facility owners/operators.
5. Develop a weighting procedure that will compensate for response bias and sampling error in the data and will expand the sample to support the modeling enhancements for the 2012 NYBPM Update identified under TASK 2. The weighting scheme for the survey should be related to how the survey design and the sampling plan are devised.
6. Conduct two (2) full-day training and orientation sessions prior to beginning survey work. Sessions will be mandatory for all Consultant employees assigned to the RODS survey and involved in the use and maintenance of the project procedures, whether permanent, temporary or subcontractors. NYMTC and other agency staff may choose to attend as well and arrangements to accommodate them will be made by the Consultant.
7. Develop a Field Staff Instruction and Procedures Manual for use in training and to assist the Field Staff. Topics covered in this manual shall include, but not be limited to the following:
  - a. Consultant Requirements (RFP Section 2.6)
  - b. Consultant Personnel Safety RFP Section 2.6)

Training will cover the proposed survey methodology in detail. Throughout the training program, the need to collect complete and accurate data must be stressed. The training program shall consist of but not be limited to:

1. A description of the survey goals and objectives.
2. An emphasis on procedures for maintaining safety and security during all survey activities and at all survey sites.
3. A review of proper survey etiquette and required dress and grooming requirements for Field Staff, who are representatives of the Consultant and the sponsoring agencies.
4. A review of recruitment, site visit, and survey procedures, as well as questionnaires and other materials with which the Field Staff must work.
5. A practice session during which trainees conduct mock interviews with Survey Supervisor(s) and each other.
6. A follow-up training after the Pre-Test to familiarize Field Staff with problems encountered and proper procedures for addressing and/or avoiding such issues during the Main Survey.

### **Task 3 Deliverables**

1. Draft & Final Technical Memorandum on RODS Design
2. Draft & Final Technical Memorandum on RODS Sampling Plan

3. Draft & Final Technical Memorandum on Weighting Procedures
4. Draft & Final Field Staff Instructions & Procedures Manual

#### **TASK 4 – PRE-TEST SURVEY**

After approval of the survey procedures and materials by NYMTC, the Consultant shall conduct a Pre-Test of each of the surveys included in RODS. The Pre-Test Survey methodology shall be identical to the Main Survey methodology outlined in Task 3. It shall be used as a practice survey to test survey procedures, survey instruments, data collection techniques, data processing, geocoding and survey methodology prior to performing the Main Survey. The sample for the Pre-Test must be of a sufficient size to validate the survey instruments. The Consultant shall design a survey instrument in English, Spanish and other languages (as recommended by Consultant and approved by NYMTC).

Any irregularities or problems uncovered during the Pre-Test shall be corrected and all relevant procedures modified.

The Consultant, in consultation with NYMTC staff, using both quantitative analysis and qualitative assessments, shall evaluate and report the results of the Pre-Test. The Consultant shall review the results of the Pre-Test with NYMTC staff and recommend any final revisions to the survey methods, materials, and procedures for the Main Survey. After NYMTC's approval of any of these recommended revisions, the CONSULTANT shall make the agreed-upon changes to the survey methods, materials, and procedures.

The survey shall consist of the following data collection efforts:

1. For the bus O/D survey the Consultant shall also collect boarding and alighting data on sampled routes that will be used for the weighting and expansion of the dataset. At a minimum, the following data items shall be collected:
  - Household size
  - Household income
  - Number of autos available in household
  - Number of workers in household
  - Household Life Cycle (retired, children, etc)
  - Age of respondent
  - Trip purpose
  - Information on complete transit trip
    - First boarding stop and last egress stop
    - List of all routes planned to use on trip
    - Number of routes/transfers to complete trip
    - For walk access/egress – Walk distance to transit
    - For drive access – Park and Ride lot location
  - Fare payment method
  - Origin address/landmark/cross streets and type of place
  - Destination address/landmark/cross streets and type of place
  - How often this trip is made
  - Time of Day
  - Auto availability for this trip
  - Driver's License

2. For the East River Crossings and the External Auto/Truck O/D surveys the Consultant shall collect 24-hour ATR counts at all survey sites that will be used in the expansion of the survey results. For the ATR counts, the Consultant shall follow the NYSDOT Highway Data Services Bureau (HDSB) standards. At a minimum, the following data items shall be collected from 6:00 AM – 8:00 PM , mid-week, and school open:
  - Household size
  - Household income
  - Number of autos available in the household
  - Number of workers in household
  - Household Life Cycle (retired, children, etc)
  - Age of respondent
  - Trip purpose
  - Origin and destination addresses or intersections
  - Arrival and departure times of the trip
  - Frequency of the trip making
  - Travel routes used to enter and leave study area
  - Number of passengers in the vehicle at the time of the trip

#### **Task 4 Deliverables**

- a. Weekly Progress Reports on the Progress of the Pre-Test Data Collection for each of the surveys under the RODS
- b. Delivery of Interim and Final Pre-Test Data Files, GIS Data files, and Associated Documentation
- c. User's Guide & Data Dictionary for the Pre-Test Dataset
- d. Draft & Final Technical Memorandum on the Pre-Test Assessment and Recommendations
- e. Draft & Final Technical Memorandum Documenting the Final Revisions to the Pre-Test Methods, Materials, and Procedures to be implemented in the Main Survey

#### **TASK 5 – MAIN SURVEY**

Under this task the Consultant shall: (1) conduct the main survey for each of the surveys included in the RODS using the survey methods, materials, and procedures revised after the Pre-Test Survey; (2) check, edit, geocode, and validate person, vehicle, and trip/activity data collected. The survey target allocations will be revisited based on the results of the Pre-Test.

#### **Task 5 Deliverables**

- a. Weekly Progress Reports on the Progress of the Data Collection
- b. Interim Main Survey Data Files, GIS Data files, and Associated Documentation

#### **TASK 6 – VERIFY, EDIT, PROCESS & GEOCODE THE DATA**

Activities performed/completed during Task 5 should follow the guidelines in Task 6, stated as follows:

1. Apply the final weighting procedure that was developed and approved in Task 3 – Survey Design.
2. Process the survey data into specified data files in a prescribed format approved by NYMTC. Addresses, trip origins and trip destinations collected in the surveys shall be geocoded to the

Universal Transverse Mercator Zone 18N (UTM 18) coordinate system, by TAZ and census block and tract.

3. The consultant shall geocode at least 95% of the trip origins and destinations to the appropriate TAZ and census block and tract, and at least 90% of the trip origins and destinations in the Universal Transverse Mercator Zone 18N (UTM 18) coordinate system. The following coding procedures shall be used:
  - a. Locations within the study area that cannot be geocoded shall be coded 666.666666 for the longitude and latitude and 6666 for the state zone.
  - b. Addresses, intersections, or specific place names collected in the survey that fall within the study areas and cannot be geocoded shall be coded 888.888888 for the longitude and latitude and 8888 for the zone.
  - c. Locations that are outside the study area shall be coded 999.999999 for the longitude and latitude and 9999 for the zone.
4. Process and check the data to identify any problems or errors including, but not limited to, records with missing or incomplete information or illogical data. Data files should not contain incorrect data entries. An incorrect data entry refers to a value or character in a specified field that is not valid in terms of the range or type of values or characters that may be inputted.
5. The Consultant shall be solely responsible for any costs associated with correcting errors found in the data.

#### **Task 6 Deliverables**

1. Draft and Final Technical Memorandum on Results of Data Verification, Editing, Processing & Geocoding

#### **TASK 7 – FINAL REPORT & DATA FILES**

The Consultant shall incorporate corrections and comments from NYMTC and the SC on all Final Deliverables. The Consultant shall be responsible for submitting all survey documentation and deliverables in appropriate formats and within the specified time frames.

The CONSULTANT shall:

1. Maintain confidentiality of the data collected.
2. Deliver the final data set and associated deliverables within 90 days of the completion of data collection.
3. Provide NYMTC with a draft and final report documenting:
  - a. A separate, stand-alone executive summary report, highlighting RODS results for key travel and socioeconomic characteristics at the county level for the study area.
  - b. Survey methods, interview outcomes, response rates, and notable events or factors that affected the survey
  - c. Basic survey results, including key travel behavior variables, by county of residence
  - d. An assessment of survey data item reliability and applicability for model development
  - e. A user's guide to survey data files, including guidance for use in further analysis and research.
  - f. Summary (or base) tables that will be provided to make the data user-friendly. A range

of 20-30 of such tables shall be provided for each of the surveys included in the RODS. The exact number and specific tables will be determined in consultation with NYMTC.

4. Coordinate with NYMTC’s TIG project to identify the appropriate publication venues and formats of the survey results. Survey results are to be published and made available in formats acceptable to the various levels of users, including the public.
5. Prepare draft and final RODS Project Report, User’s Guide & Data Dictionary and data files for publishing in formats acceptable to the various levels of users, including the public.

**Task 7 Deliverables**

- a. Final Dataset with Corrective and Expansion Weighting Factors, Data Files, GIS Data, and Associated Documentation
- b. Final User’s Guide & Data Dictionary
- c. Draft & Final RODS Report

**4. PROPOSAL FORMAT AND CONTENTS**

**4.1 General**

For the purpose of evaluation and to be considered for contract award, each proposal must be submitted in two (2) parts: a separate Technical and Management submittal and a separate Cost and Contract submittal. Offerors must Technical and Cost proposals in separate, sealed packages and must be complete in itself in order that the evaluation of both submittals 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 Technical & Management submittal, and Technical and Management information is **not** to be included in Cost Proposal submittal, or your proposal may be deemed unresponsive. 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. Please be as concise as possible. A complete and responsive Technical & Management proposal submittal shall follow the formatting listed in the table below.

**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 4.2. below).

**4.2 Technical Proposal Submission**

<b>Technical and Management Proposal Submittal Checklist</b>	
<input type="checkbox"/>	Ten (10) Printed and Bound Copies (Send 7 copies to NYMTC; send 3 reference copies to NYSDOT Contract Mgt) plus a ‘soft’ copy on CD/DVD or thumbdrive 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 "C000792"
<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"/>	The offeror's proposal shall include experience profiles/ resumes for all proposed key personnel (including any sub-consultants).
<input type="checkbox"/>	Provide 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 Technical submittal, and Technical and Management information is **not** to be included in Cost submittal.

A complete Technical and Management proposal shall contain the following:

1. A Cover Letter: Featuring the signature of an official authorized to bind the offeror to all of its provisions, and 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: **REGIONAL ORIGIN AND DESTINATION SURVEYS (Contract C000792).**
3. A Table of Contents. Use labeled tabs to separate each section of your Technical and Cost 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 Technical and Cost submissions. Demonstrate a sound management plan to ensure all subconsultants' 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 3. 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/NYS DOT 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 5. 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 project management; 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.

Provide three, reachable references for each proposed key personnel. Provide two, reachable references for each firm. NYMTC/NYS DOT 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/NYS DOT also reserves the right to request additional references and/or contact relevant references not named in a consultant's proposal.

**Proposers are requested to provide a completed Offeror's Proposal Traceability to Requirements chart or matrix, cross-referencing the requirement in the RFP and their proposal to help evaluate the above requirements. A sample, uncompleted matrix format is provided in Attachment \_\_ but proposers may prepare their own version, provided it cross-references all key parts of their proposal and the RFP.**

#### **4.3 Cost and Contract Submittal**

<b>Cost and Contract Proposal Submittal Checklist</b>	
<input type="checkbox"/>	Three (3) Printed and Bound Copies (Send 1 copy to NYMTC; send 2 reference copies to NYSDOT Contract Mgt) plus a ‘soft’ copy on CD/DVD or thumbdrive 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 “C000792”
<input type="checkbox"/>	Name of person(s) who prepared proposal. 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"/>	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"/>	Complete and submit all future <b>RFP Modification Acknowledgement Forms</b> as instructed
<input type="checkbox"/>	Complete and submit <b>Attachment 1, (sign both Sections II and III)</b>
<input type="checkbox"/>	Complete and submit the <b>Attachment 2</b> 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"> <li>• These two forms are required with a firm’s RFP Response.</li> <li>• These forms are also available at: <a href="https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions">https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions</a></li> </ul> <p><b><u>Note: Failure to submit the completed PLL forms with your proposal will result in elimination from consideration for contract award</u></b></p>
<input type="checkbox"/>	Required Cost information (complete and submit <b>Attachment 5</b> , Cost Proposal)
<input type="checkbox"/>	Complete and submit <b>Attachment 7</b> , DBE Participation Information
<input type="checkbox"/>	Complete and submit (if applicable) <b>Attachment 8</b> , DBE Subconsultant Participation Solicitation Log AND Letter of Explanation of Non or Partial DBE Goal Attainment
<input type="checkbox"/>	Complete <b>Attachment 12</b> Non-Collusion Bidding Certification

The Cost & Contract 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 Cost proposal section with labeled tab pages. No Technical information shall be included in your Cost submission. Each Cost and Contract Proposal should contain the following elements:

#### **4.3.1 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.

#### **4.3.2 Contract Proposal Section**

1. **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.
2. **Consultant Information and Certifications:** Complete and submit **Attachment 1**.
3. **Non Collusion Bidding Certificate:** Complete and submit **Attachment 12**.
4. **DBE Participation:** The Cost Proposal shall include a completed **Attachment 7 DBE Participation Information Form**. Provide the full legal names of all certified DBE consultants (prime and/or subconsultant).

While not indicative of a proposer's individual merit (technical excellence, ability, experience, etc.), NYSDOT encourages the participation of certified Disadvantaged Business Enterprises (DBE) in its federally-funded solicitations. The level of DBE participation will be relevant to the process of selecting proposals that will best achieve the overall goals of NYSDOT. Please visit the New York State **Unified Certification Program (NYSUCP)**

**DBE Directory** for certified Disadvantaged Business Enterprises via: <http://biznet.nysucp.net/>. Further, NYSDOT has posted its final draft DBE Program Plan to its website (subject to change). The draft plan provides background information regarding how NYSDOT conducts its Federally required DBE program, covering such subjects as contract-level goals, good-faith efforts by consultants, and DBE certifications, and is available via: [https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/2010\\_dbe\\_draft\\_plan.pdf](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/2010_dbe_draft_plan.pdf).

NYSDOT has established a **DBE participation goal of Eighteen (18%) percent** for this solicitation. The goal relates to the total contract dollar amount (total cost/total project budget).

A subconsultant **who is certified (at the time of proposal submission)** as an NYSUCP DBE must provide meaningful participation (commercial useful function) in the execution of NYS FREIGHT PLAN services in order to count toward the DBE subconsultant participation contract goal. Participation by DBE prime Consultants is encouraged but will not count toward meeting the 18% contract goal (will count towards meeting NYSDOT's corporate DBE goal). Meaningful participation is defined as providing commercially useful functions or services, either as delegated tasks or as a part of the services being provided by the prime. These services should result in significant tasks that can be considered commercially marketable.

Firms that offer a proposal under this solicitation may meet or exceed the 18% DBE contract goal. To count toward C031232's 18% DBE contract goal, any offered DBE firm must be currently NYSUCP DBE Directory certified. Out-of-state DBEs are not automatically acceptable and must be acceptable to NYSDOT before proposal submittal (successfully go through New York State's DBE certification process). Do not propose a DBE which is pending certification at the time of proposal submission.

If the proposal does not meet the **18% percent DBE participation contract goal**, the firm must provide acceptable evidence of a good-faith effort by completing **Attachment 8 DBE Subconsultant Participation Solicitation Log**. **Additionally, if the firm does not meet the 18% DBE contract 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 in part), which serves to substantiate the firm's good-faith effort. The letter should include sufficient justification as to why the goal was not met or was met only partially. It should also, at a minimum, address the following factors: the potential firm's method of accomplishing the work; the reason(s) why part of the prime Consultant's work cannot be provided by a DBE; the subcontracting opportunities associated with the proposed approach and scope of services; and the availability of certified firms for the work to be performed either by a Prime Consultant or via subcontract. Prime consulting firms are reminded that DBE participation can be via delegation of discrete commercial useful functions and via provision of part of the work being provided by the Prime Consultant.

Additionally, any Prime Consultant certified as a DBE who submits a proposal is not relieved from seeking participation of certified DBEs for sub-contractible services in this solicitation (failure to acceptably comply with the RFP's DBE requirements could lead to proposal dismissal). In these situations, it is a proposal requirement that unless DBE outreach efforts by the Prime result in proposed DBE subconsultants, the Prime Consultant must provide acceptable evidence of a good-faith effort by completing **Attachment 8 DBE Subconsultant Participation Solicitation Log** to be deemed responsive.

Firms are advised to refer to RFP Section 5 for the procedure NYSDOT will follow in evaluating a firm's proposed DBE participation. During the review process, which will include examination of the adequacy and the robustness of a firm's Good Faith Effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable Good Faith Effort, then the proposal may be deemed non-responsive and may be removed from further consideration. NYSDOT reserves the right to ask clarification questions on a firm's DBE proposal. DBEs certified out of New York State are not automatically eligible for consideration (required to go through New York State's DBE certification process). NYSDOT may apply FHWA's 'administrative reconsideration' process, depending upon circumstances. Pending DBEs (at the time of proposal submission) are not allowed.

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

5. 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 Cost and Contract Submission.
6. Consultant Identification Number & SFS Vendor ID Number: Each consultant must reference its Consultant Identification Number (CIN) in its Cost proposal. If a 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 Cost proposal. If a consultant does not have an SFS number and is selected for contract award, it will be required to obtain one through NYSDOT sponsorship.

7. 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 C000792 wherever requested in the forms. Please call or e-mail the person identified as the contact in the Administrative Specifications (RFP Section 6.3) 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.

## 5. CRITERIA FOR EVALUATION OF PROPOSALS

### 5.1 Pre-Screening of Proposals

It is NYMTC's and NYSDOT's sole discretionary determination as to whether a proposal is complete. Proposals which do not meet the Minimum RFP Responsiveness requirements may be deemed incomplete and non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration. Proposals which meet all RFP minimum responsiveness requirements shall be considered further. Any proposal deemed to be non-responsive shall be removed from further consideration and the submitting firm notified.

**Proposal Due Date.** All proposals must be delivered to NYMTC's 199 Water Street Manhattan's office and to NYSDOT Contract Management's in hard copy by 2:00 PM on **August 20, 2014**. Any proposals received after that time/date shall be kept but shall not be evaluated.

**Proposal Opening, Log-in and Certification.** Proposals received on or prior to the due date and time will be opened, inventoried for completeness, certified, and logged-in (per criteria listed in the tables listed in RFP Section 5). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT in the most timely manner possible.

**Minimum Proposal Requirements.** Per RFP Section 4, any proposal which does not include all of the following by the RFP deadline may be determined to be non-responsive. Any proposals deemed non-responsive shall be removed from further consideration (prior to the technical evaluation of proposals):

1. Complete Technical and Management proposal submission.
2. Complete Cost and Contract proposal submission.
3. A proposal which either meets/exceeds the 18% DBE contract goal for C000792 or offers acceptable Good Faith Effort documentation and Letter of Explanation.
4. Acknowledged receipt of any RFP Modifications.

**DBE Goal Attainment/GFE Acceptance Review.** The proposed DBE participation percentages offered for NYSUCP certified subconsultants will be reviewed (RFP **Attachment 7**). Each offered DBE must be currently listed in the NYSUCP Directory to count towards the Department's 18% DBE participation goal. If the proposed DBE participation is less than the established 18 percent goal, the firm's evidence of a Good Faith Effort (RFP **Attachment 8**) to achieve the goal will be reviewed along with the firm's letter of explanation as to why it was unable to meet the goal. If a proposer submits a proposal which meets or exceeds the 18% DBE goal, then the certification registration status of all offered DBE subconsultants will be verified by Contract Management, and if certified, the proposed DBE goal accepted.

Proposers with non-certified DBEs will receive a clarification response and be given one opportunity to clarify their proposal (per USDOT/FHWA's Administrative reconsideration' process). Offered clarifications will be considered by Contract Management. Offerors with non-certified DBEs will receive a clarification request to submit a good faith effort log. Offerors with acceptable DBE subconsultant participation goal attainment plans will receive a recommendation to have their full proposals proceed further in the evaluation process.

If a proposer submits a proposal which does not meet the 18% DBE goal for C000792, then the submitted good faith log will be reviewed for acceptability and verification of the robustness of effort. Blank, missing, incomplete or otherwise unacceptable good faith efforts may be deemed non-responsive and have their proposal removed from further consideration. Such proposers will

be contacted to request clarification of their submitted good faith effort log. Offered clarifications will be considered by the NYMTC/NYSDOT Contract Management. Offerors with acceptable good faith effort logs will have their full proposals proceed further in the proposal evaluation process.

## **5.2 Evaluation Category Weight Distribution**

Proposals which pass pre-screening shall then be evaluated by NYMTC and NYSDOT using a Best Value Method based upon a 100 total point scale. The Technical and Management portion will be point scored and will represent 70 points of the total Best Value score for the proposal (up to 60 points for written technical proposal review; up to 10 points for technical interview). The cost portion of the Cost and Contract portion will be point scored and will represent 30 points of the total Best Value score for the proposal. A more detailed breakdown of the RFP's proposal evaluation factors and weights follows.

## **5.3 Technical & Management Proposal Evaluation (Up to 70 Points)**

### **5.3.1 General**

Technical evaluation of proposals will be accomplished by the members of the Technical Evaluation Committee (TEC) comprised, as appropriate, of technical, program and management subject matter experts. An evaluator package shall be prepared and submitted to members of the TEC; this package shall contain evaluator instructions and evaluation instruments, and shall become part of the procurement record. The TEC shall be briefed on the proposal evaluation process prior to distribution of proposals.

Members of the Committee will evaluate and score each proposal individually (may ask initial clarification questions). Each evaluator shall measure the degree of responsiveness of each proposal's responses to the specifications and requirements contained in the RFP against the RFP's evaluation factors (RFP Section 5), looking for quality, reasonableness and professionalism. The quality of a firm's approach shall be evaluated as an integral part of each functional and non-functional requirement response (as applicable). Members of the TEC shall document their responsiveness findings (using the scoring instrument provided in Eval-Pak; separate document, which is part of the proposal evaluation process), and record a whole number numerical score (using the zero-to-ten scoring instrument with grade definitions). The TEC shall convene as a group to discuss the proposals, firm by firm, factor by factor. Evaluators will be allowed to revise scores on the basis of the committee discussions. Reasons for score changes will be documented on the TEC member's scoresheet as well as electronically by Contract Management. Clarification questions may be formulated during group discussion, and forwarded to firms for responding (either for further TEC group discussion or for technical interviews). Clarification responses shall be forwarded to the TEC for additional consideration. Scoring of written proposals shall remain open until after conclusion of evaluating and scoring the Technical Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier scores/findings based upon the additional clarification information garnered from the Technical Interviews.

As the TEC evaluates and scores each technical and management proposal, the resulting raw average written technical score by firm are kept by each TEC member (on their respective scoresheets) as well as by Contract Management on an electronic composite best value spreadsheet. Contract Management may initially list firms in alphabetic order and later on by initial and final best value rank order.



### **5.3.2 Technical and Management Written Proposal Evaluation (up to 60 Points)**

The Technical and Management proposal will be evaluated and point scored, and will represent 60% of the total available best value score. Per the RFP, the technical proposal evaluation criteria are listed below and these evaluation factors shall be used by the TEC to measure the degree of responsiveness of technical proposals. Each factor's respective weight is identified in parenthesis. The major evaluation categories are divided into subcategories with lesser-weighted factors defined.

1. Experience (up to 25 points)
  - a. Quality, extent and relevance of experience, education and training of key personnel.
  - b. Quality, extent and relevance of current and prior experience of the firm.
2. Approach, Scope of Services and Schedule (up to 12 points)
  - a. Quality and acceptability of approach and scope of services for accomplishing project objectives; initiative and creativity of proposer.
  - b. 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 contract award.
3. Quality of Proposal (up to 12 points)
  - a. Degree to which proposal reflects understanding and comprehension of project scope and objectives.
  - b. Quality of proposer's resources relative to the needs of the project.
4. Organization and Staffing (up to 11 points)
  - a. Quality of project organization; reasonableness of staff/task allocations for each task and total effort
  - b. Quality of plan for phasing key personnel into project
  - c. Extent and quality of interaction with key participants

### **5.3.3 Reference Checks**

Reference checks (to verify offered experience) may be required to complete the evaluation of technical proposals. In cases where TEC members are unfamiliar with a firm's work or NYMTC/NYSDOT does not have prior consultant performance documentation, the TEC may request verification of a firm's offered references. Subject references may be contacted by NYMTC/NYSDOT using a standard reference check questionnaire, adjusting that per the RFP and any particulars based on a firm's response. Reference check feedback will be forwarded to the TEC for their considerations during the after-group discussion phase. The TEC may meet to consider reference check information. Evaluators will be allowed to revise their technical scores based on consideration of this additional information and their follow-up discussions. Changes to scores and their reasons shall be recorded on written scoresheets as well in electronic form.

### **5.3.4 Written Technical Proposal Clarifications**

NYMTC/NYSDOT reserves the right to seek written clarifications from firms submitting proposals in order to assure a full understanding of their responsiveness to the solicitation's technical requirements. If written clarifications, based upon proposal review, are requested by the Technical Evaluation Committee, a firm which is the target of the clarifications may be asked to provide written clarifications at any time during the proposal evaluation process. Evaluators will be allowed to revise their technical scores based on receipt and consideration of this additional clarifying information and follow-up TEC discussions. Reasons for any score changes

shall be documented.

#### **5.4 Cost Proposal Evaluation (Up to 30 Points)**

Cost proposals shall be reviewed, evaluated and scored for all proposals once they have cleared meeting the RFP's minimum response requirements checks. Cost proposals shall be point scored with up to 30 best value points available. Initial cost scores shall be developed and used to identify initial Best Value scores. Cost proposal clarification questions may be asked at this time.

The cost proposal with the lowest total fixed cost (total lump sum cost) to deliver your proposed RODS services to NYMTC shall receive a perfected cost score of 30 points. Proposals with higher total fixed cost shall receive proportionately lower cost proposal scores.

Cost scores (which are relative to the field of consultants competing for contract award) are subject to change depending upon whether or not cost proposal clarifications responses (or Best and Final Offer responses or proposal withdrawals or pass/fail dismissals) lead to proposed cost changes. Cost scoring results shall be used to determine which proposals are to be shortlisted/which firms are susceptible to contract award (a best value determination). A final cost score shall be calculated once all cost proposal evaluation has been completed.

#### **5.5 Initial Best Value Determination**

Perfected cost scoring results will be added to the initial, average raw technical scores, generating an initial best value score by firm. Firms shall be ranked in initial best value score order (highest to lowest).

Should any firm withdraw their proposal during the proposal evaluation process, NYSDOT will remove that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information).

#### **5.6 Proposal Shortlisting**

The shortlisting rule for this solicitation shall be: Any proposal within 10 points of the top initial Best Value ranked proposal (plus any 'cluster' of initial best value proposal scores surrounding the cut-off line). Cost evaluation results shall be considered along with the initial raw after-group discussion written technical proposal score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined shortlisting of firms (determined to be mathematically susceptible for contract award).

Firms submitting proposals which do not make the shortlist shall not be included in the remaining best value evaluation process steps (not included in subsequent proposal scoring process). Such a firm's proposal shall be classified as 'Did Not Finish' in the procurement record.

#### **5.7 Technical Interview Evaluation (up to 10 points)**

The Technical Interview portion (only available for firms mathematically subject to contract award; ie, shortlisted) of the Technical and Management proposal will be technically evaluated and point scored for firms which have made the RFP's short-list after completion of initial Best Value considerations. Technical Interview evaluation shall account for a separate block of up to 10 points of the total best value score for a proposal.

Short-listed firms shall receive a Technical Interview invitation package, which shall include

instructions, RFP requirements which NYMTC/NYS DOT is seeking further clarifications (without changing your original proposal), and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend Technical Interviews shall present a brief overview of key personnel present, make brief opening presentation (limited to 10 minutes), and respond to TEC member questions.

TEC members will evaluate Technical Interviews using the RFP's evaluation criteria and weights listed below. A separate score sheet shall be used to record TEC Technical Interview findings and scores. TEC members shall score the technical interview independently first, then meet as a group to discuss their findings and scores. Members of the TEC may revise their technical interview scores as a result of group discussions. Reasons for score changes shall be recorded on the applicable TEC member's hardcopy scoresheet as well as in NYMTC's/NYS DOT's electronic composite scoresheet. Once scoring of each Technical Interview has concluded, TEC members shall sign/date and surrender their scoresheets to NYMTC/NYS DOT.

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)

### **5.8 Final Written Technical Proposal Evaluation (Re-Scoring)**

Scoring of written technical proposals shall remain open until after conclusion of evaluating and scoring the Technical Interviews. Members of the TEC shall be given the opportunity to revise (re-score) their earlier scores/findings based upon the additional clarification information garnered from the Technical Interviews. TEC members shall revisit their original hardcopy scoresheets and should any after-Technical Interview changes be in order, may revise their after-group discussion, written technical proposal scores as a result of further group discussions. Reasons for any and all score changes shall be recorded on the applicable TEC member's hardcopy scoresheet as well as in NYMTC's/NYS DOT's electronic composite scoresheet. Once the re-scoring of written technical proposals has concluded, TEC members shall sign/date and surrender their scoresheets to NYMTC/NYS DOT.

### **5.9 Best & Final Offer (BAFO; Optional) & Proposal Withdrawal**

NYMTC/NYS DOT reserve the right to request Best and Final Offers from firms which make the shortlist. Any Best and Final Offer request may ask additional further clarifying technical and/or cost proposal questions of firms to further clarify their submitted proposals. A cost only BAFO may be requested. Should NYMTC/NYS DOT opt to request BAFOs, all shortlisted firms will receive a BAFO request. Responding firms will be allowed to submit a Best and Final Offer (technical and/or cost); firms may opt to not submit a BAFO. Evaluators will be allowed to revise their technical scores for the written proposal based on their consideration of any new or changed Technical proposal information contained in any Best and Final Offer (will re-sign/re-date the applicable hardcopy scoresheets). If changes to a firm's Technical Proposal lead to corresponding, necessary revisions to their Cost Proposal (or should a firm opt to clarify their cost proposal) or should NYMTC/NYS DOT opt to request cost-only BAFOs, NYMTC/NYS DOT shall make the necessary, appropriate adjustments to that firm's cost

proposal evaluation.

Should any firm withdraw their proposal after a possible BAFO request, NYMTC/NYS DOT will remove that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information).

### **5.10 Final Best Value Evaluation**

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, and possible Best and Final Offers), NYMTC/NYS DOT will perfect (curve) the written technical proposal scores so that the highest-rated, average raw written technical proposal score gets changed and assigned a perfect score of **60** points for this solicitation with the other technical scores adjusted proportionately upward. NYMTC/NYS DOT will also perfect (curve) the Technical Interview scores so that the highest-rated, average raw Technical Interview score gets changed and assigned a perfect score of **10** points for this solicitation with the other Technical Interview scores adjusted proportionately upward. Cost proposals have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule. Perfected cost scoring results will be added to the perfected written technical proposal score plus the perfected Technical Interview score to generate a tentative final best value score. Firms shall be ranked in Final Best Value score order (highest to lowest).

*Tie-Breaking Rule:* Should any of the tentative final Best Value Scores of one or more proposals competing for the contract award lie within one and one-half points of each other, then State Finance Law Section 163(10)(a) shall be used to settle any ties.,

Once all possible score ties have cleared, NYMTC/NYS DOT will determine the Final Best Value Score, where after the proposal with the highest Final Best Value score shall be recommended to NYMTC's and NYSDOT's Executive Management for contract award for contract #C000792.

### **5.11 Consultant Selection Recommendation & Tentative Contract Award**

A consultant selection and designation memo shall be prepared and forwarded to the applicable NYMTC and NYSDOT Executive Manager(s) with an accompanying proposal evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award of C000792 to NYMTC and NYSDOT Executive Management. The Executive Managers will be asked to concur with the final conclusion of the proposal evaluation process - a recommendation for the tentative contract awards and designate the top-Best Value rated consultant based upon the above results.

Should negotiations with the top-ranked Best Value Consultant fail to produce agreed-upon contracts, then NYMTC and NYSDOT Executive Management will designate and award contract #C000792 to the next highest-ranked Best Value Consultant. NYMTC/NYS DOT will then enter into negotiations with the second-highest rated Consultant. This process may repeat itself until acceptable contracts are consummated. The consultant designation becomes final after the NYS Office of the State Comptroller approves Contract #C000792.

The designation shall be publically posted. Once the public has been notified of the solicitation's results, negotiations with the selected Consultant can commence. The final contract is subject to approval by NYMTC/NYS DOT, the Attorney General, and the Office of the State Comptroller, and is not binding until such approval is received.

At the conclusion of the proposal evaluation process, an announcement of NYSDOT's designation(s) will be posted the 'Consulting Services' listing on NYSDOT's website via: <https://www.dot.ny.gov/business>. NYMTC may also post an announcement to its website ([www.nymtc.org](http://www.nymtc.org)). All proposers will be notified in writing regarding the results from the solicitation. All non-designated firms will be offered an opportunity to request a debriefing.

It is expressly understood that this RFP does not commit NYMTC/NYSDOT to award a contract, to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, NYMTC/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.

### **5.12 Protest Procedure**

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](https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/misrep_protest.pdf). The protest procedure addresses the FHWA's DBE Administrative Reconsideration per 49 CFR Part 26.53(d).

## **6. ADMINISTRATIVE SPECIFICATIONS**

### **6.1 Proposal Submission**

1. The proposal shall be signed by an official authorized to bind the offeror.
2. Proposers shall submit Ten (10) Technical proposal hardcopies (Send seven (7) copies to NYMTC in sealed packages; send three (3) reference copies to NYSDOT Contract Management in sealed packages) and shall submit Three (3) Cost Proposal hardcopies (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 **August 20, 2014**. 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, C000792**

**You also must submit reference copies to:  
New York State Department of Transportation  
Contract Management Bureau  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, NY 12232  
Attn: Mr. Al Hasenkopf, Contract C000792**

### **6.2 Pre-Proposal Webinar**

NYMTC and NYSDOT will hold a RODS Pre-Proposal Webinar, where remote participation is optional yet recommended. Interested firms are encouraged to attend. The agenda shall be going over the RFP and its attachments in detail, highlighting what's important. Questions can be submitted in advance as well as electronically via the webinar. The Pre-Proposal Webinar shall be held on June 27, 2014 at 10:30 AM (scheduled to end at 12:30 PM or later). If you plan

to attend and to register, please provide the names and e-mail addresses of attendees via e-mail to [ismet.apdiroglu@dot.ny.gov](mailto:ismet.apdiroglu@dot.ny.gov) and [alfred.hasenkopf@dot.ny.gov](mailto:alfred.hasenkopf@dot.ny.gov).

The webinar will be recorded (and this recording will be made available to those who were not able to attend – available upon request via Managed File Transfer e-mail). Answers provided at the webinar shall be recorded; answers to some questions may have to be deferred. Answers to all substantive questions shall be publically posted onto NYMTC’s and NYSDOT’s websites under this solicitation, and all parties notified via announcement. E-mail notices shall be sent to the e-mail addresses of all parties who officially register their interest in participating in the RODS C000792 RFP webinar. Only written answers posted on NYMTC’s and NYSDOT’s website will be official. Questions that address possible conflicting information in this RFP will be resolved via formal Modification to this RFP and publically posted on NYSDOT’s/NYS DOT’s websites, with all firms expressing interest being notified via e-mail.

### **6.3 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](mailto:ismet.apdiroglu@dot.ny.gov). Copy to [alfred.hasenkopf@dot.ny.gov](mailto:alfred.hasenkopf@dot.ny.gov). The last date to submit questions for this solicitation is: December 18, 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) 383-7244.  
E-mail: [ismet.apdiroglu@dot.ny.gov](mailto:ismet.apdiroglu@dot.ny.gov) COPY TO: [alfred.hasenkopf@dot.ny.gov](mailto: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.

### **6.4 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 18, 2014
Written Questions for Pre-Proposal Webinar and names of proposed attendees, due:	June 26, 2014
Pre-Proposal Webinar:	June 27, 2014
Question Submittal Deadline:	July 2, 2014
Proposals Due:	August 20, 2014
Technical Interviews – Tentative	Late October 2014
Proposal Evaluation:	1 month
Recommendation & Designation:	1 to 2 Months
Contract Negotiations:	One Month
Contract Execution	6 to 8 Weeks

### **6.5 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.

## **6.6 Information for Selected Consultant**

The following items are presented for proposer information, to make interested parties aware of contract-related items to which selected Consultant(s) need to pay attention.

**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 Prime Consultants with NYSDOT contracts (as well as all subconsultants with contract contributions greater than \$100,000) will be required to provide vendor responsibility information through the

Office of the State Comptroller (OSC) website, via <http://www.osc.state.ny.us/vendrep/index.htm>, before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. The date your firm certifies your OSC vendor responsibility filing will appear on the contract signature page.

**Contractor Tax Certification:** All vendors selected for contracts in excess of \$100,000 for the sale of goods or services 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) during negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following websites:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](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](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 3** to this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in **Attachment 3, Article 11**. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived. Proof of Workers' Compensation and Disability Benefits Insurance are required before the amendment can be approved. The following are acceptable proofs:

**1. Workers' Compensation Coverage:**

- Form C-105.2 Certificate of Workers' Compensation Insurance issued by private insurance carriers
- Form U-26.3 Certificate of Workers' Compensation Insurance issued by the State Insurance Fund
- Form SI-12 Certificate of Workers' Compensation Self-Insurance
- Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self Insurance

**2. Disability Benefits Coverage:**

- Form DB-120.1 Certificate of Disability Benefits Insurance
- Form DB-155 Certificate of Disability Benefits Self-Insurance

**3. WC/DB Exemption:**

- CE-200 Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage For more information see GFO Chapter XI Section 18G

**Please Note:**

- The name and FEIN of the contracting entity must match the name and FEIN identified on the proof of coverage or exemption.
- An ACORD form is not an acceptable proof of workers' compensation coverage or disability benefits insurance.
- In the instance of exemption, please be advised that the WCB does not verify Attestations for Exemption. As the State contracting entity, you must verify the acceptability of the entity's reason for exemption and communicate that reason to the OSC auditor requesting proof of compliance; please verify and provide a copy of the signed and dated exemption certificate.
- To assist you and your vendor to resolve this matter, the following links to information regarding acceptable proofs of coverage are provided:

Workers' Compensation:

<http://www.wcb.ny.gov/content/onlineforms/obtainC105.jsp>



Disability Benefits: <http://www.wcb.ny.gov/content/onlineforms/obtainDB120-1.jsp>

Exemption:

[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

- Please find a link to the attached WCB publication Prove it to Move it Program 2010, which outlines current guidelines for WCB compliance: <http://www.wcb.ny.gov/content/main/Employers/ProveItToMoveIt.pdf>
- Questions regarding coverage requirements may be directed to the WCB compliance division, Walter Peretti, 518-402-8330, [walter.peretti@wcb.ny.gov](mailto:walter.peretti@wcb.ny.gov).

#### **4. Other NYSDOT Insurance:**

The Agreement requires the Consultant to PROCURE AND MAINTAIN UNTIL FINAL ACCEPTANCE OF THE WORK in the amount specified in Article 11. Only Certificate of Insurance Form C218m is accepted by the Department. The C218m form to be completed by your broker is downloadable via: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions> (scroll down to Insurance Requirements and Forms).

**Consultant Employment Disclosure Requirements of this Project:** The Consultant selected for this solicitation shall be required to complete ‘State Consultant Services – Contractor’s Planned Employment’ (Attachment 4, Consultant Employment Disclosure Legislation Form A) 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” (Attachment 4, Consultant Employment Disclosure Legislation Form 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 15 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 that they propose staff 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 State Ethics Commission that approves their participation in the subject project. For an outline of the procedure that applies to this situation, see Attachment 6.

**Registration with NYSDOT:** Should this solicitation lead to a designation, it is the Consultant team’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 OSC for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement. Section 6 of this RFP provides more information.

**Registration with Statewide Financial System (SFS):** Should this solicitation lead to a designation, the Prime Consultant will be required to register electronically with New York State’s SFS. If a firm is 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, usable for all NYS-related transactions. 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 but is instructed to enter its SFS number in **Attachment 2**. However, an SFS vendor number is specific to the legal name of a firm. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity with which NYSDOT is doing business

## **7. 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 9 Deliverables Schedule

Attachment 10 Traffic and Ridership Data

Attachment 11 Sample Requirements Traceability Matrix

Attachment 12 Non-Collusion Bidding Certification

**Attachment 1**  
**Consultant Information And Certifications**  
**CONSULTANT INFORMATION AND CERTIFICATIONS**  
(Please submit this with your Cost Proposal)

**CONTRACT NUMBER: C000792**  
**PROJECT TITLE: REGIONAL ORIGIN AND DESTINATION SURVEYS RFP**

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**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.dot.ny.gov/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](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](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.dot.ny.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 webinar or 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.ny.gov/aboutOgs/regulations/SFL\\_139j-k/permissibleContacts.pdf](http://www.ogs.ny.gov/aboutOgs/regulations/SFL_139j-k/permissibleContacts.pdf)

[http://www.jCOPE.ny.gov/about/laws\\_regulations.html](http://www.jCOPE.ny.gov/about/laws_regulations.html)

<http://www.jCOPE.ny.gov/law/lob/lobbying2.html> (New York State Lobbying Act)

[http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

or contact:

Mr. Al Hasenkopf  
NYSDOT Contract Management Bureau  
50 Wolf Road, 6<sup>th</sup> Floor  
Albany, New York 12232  
E-mail: [alfred.hasenkopf@dot.ny.gov](mailto: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 #C000792**

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 #C000792

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: \_\_\_\_\_ C000792 \_\_\_\_\_

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: \_\_\_\_\_



**Attachment 3**

**DRAFT CONTRACT**

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

F. A. NO.: \_\_\_\_\_

P.I.N.: PTCS.12.D15

**COMPTROLLER'S CONTRACT NO. C000792**

**PROJECT: REGIONAL ORIGIN AND DESTINATION SURVEYS RFP**

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; 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, APPENDIX C and EXHIBIT A (RFP Attachment 4); 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, NAME HERE 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](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto: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 C000792. 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.

#### **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 A;
4. SCHEDULE A (including any Exhibits);
5. SCHEDULE B (including any Exhibits);
6. The STATE's Request for Proposals (dated:       ); and
7. The CONSULTANT's Proposal (dated:       ).

#### **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 'Guide to Financial Operations', and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

a). 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.

b). 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.

c). 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.

## **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 A [RFP 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. 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](mailto: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 #C000792

**Title:** Director

**Address:** NYSDOT Contract Management Bur., 6<sup>th</sup> 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](mailto: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 #C000792

Tel: 212-383-2414 Fax: 212-383-7244

E-Mail Address: [ismet.apdiroglu@dot.ny.gov](mailto:ismet.apdiroglu@dot.ny.gov)

**Consultant's Name:** [REDACTED]  
**Contact Person's Name:** [REDACTED]  
**Title:** [REDACTED]  
**Address:** [REDACTED]  
**Telephone Number:** [REDACTED]  
**Facsimile Number:** [REDACTED]  
**E-Mail Address:** [REDACTED]

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.

**IN WITNESS WHEREOF**, this **Contract No. C000792** 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

\_\_\_\_\_  
York Metropolitan Transportation Council Date \_\_\_\_\_ New

\_\_\_\_\_  
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’s ‘Guide to Financial Operations’ 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 NAME

REGIONAL ORIGIN AND DESTINATIONS SURVEYS

**APPROVALS**

ATTORNEY GENERAL

THOMAS P. DINAPOLI  
STATE COMPTROLLER

By \_\_\_\_\_

Date \_\_\_\_\_

**Acknowledgement for Contract #C000792**

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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) 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 Section 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](mailto: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  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law Section 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law Section

165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension 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.

Updated February 2014



## 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 subcontractor 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

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](http://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](http://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 agency<sup>1</sup> 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](#)<sup>2</sup>), 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**

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:**

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

### **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.

<sup>1</sup> 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.

<sup>2</sup> [www.cfda.gov/](http://www.cfda.gov/)

(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.

**Updated March 2013**

## APPENDIX B-1

### U.S. GOVERNMENT REQUIRED CLAUSES

**Fly America Requirements – Applicability** – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Buy America Requirements – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock** (valued at more than \$100,000).

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the municipal corporation with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Charter Bus Requirements – Applicability – Operational Service Contracts.** These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

**School Bus Requirements – Applicability – Operational Service Contracts.** These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Pursuant to 69 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities.

**Cargo Preference - Use of US-Flag Vessels – Applicability** – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

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

**Seismic Safety – Applicability – Construction of new buildings or additions to existing buildings.** These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

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 \$100,000.

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 \$100,000 financed in whole or in part with FTA assistance.

Bus Testing – Applicability – Rolling Stock/Turnkey.

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following: 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the municipal corporation prior to the municipal corporation's final acceptance of the first vehicle. 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public. 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the municipal corporation prior to the municipal corporation's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey.

Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications: (1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. (2) Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications. (3) Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000.

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 \$100,000 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 \$100,000.
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.

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

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

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

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

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

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

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

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

**Bid Bond Requirements (Construction)**

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

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

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

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

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

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

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

(a) Performance bonds

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

(b) Payment bonds

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

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

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

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

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

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

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

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

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

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Clean Air – Applicability – All contracts over \$100,000

(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 \$100,000 financed in whole or in part with FTA assistance.

**Recycled Products – Applicability –** All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

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

**Davis-Bacon and Copeland Anti-Kickback Acts – Applicability –**Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The municipal corporation shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the municipal corporation for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work

they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$100,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is

employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

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

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

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 \$100,000

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 compete 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 or 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 \$100,000

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 New York 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 - This 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.

Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

(1) Contractor shall comply with applicable transit employee protective requirements as follows:

(a) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.]

(2) Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

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 New York State goal is available by contacting the Department. 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 DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as 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.

**Drug & Alcohol Abuse and Testing – Applicability – Operational service contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)**

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq. b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable.

#### Other Federal Requirements

**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 agency, the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. General Accounting Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Rd, Albany, NY 12232.

#### **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 Statewide/Metropolitan Transportation Planning (Section 5304) is 20.505. 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.

**Updated July 2013**

## 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.

**Updated December 2012**

# Attachment 4

## CONSULTANT EMPLOYMENT DISCLOSURE LEGISLATION FORMS A and B

<b>OSC Use Only:</b> Reporting Code: Category Code: Date Contract Approved:
--

**FORM A**

<b>State Consultant Services – Contractor’s Planned Employment                      From Contract Start Date Through The End Of The Contract Term</b>			
State Agency Name:      NYSDOT		Agency Code:              3900283	
Contractor Name:		Contract Number:        C000792	
Contract Start Date:		Contract End Date:	
ONET Employment Category Code 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: Preparer's Signature: _____ Title: _____ Phone #: _____ Date Prepared: _____
--

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

**Attachment 4 FORM B**

**State Consultant Services - Contractor's Annual Employment Report**  
**Report Period: April 1, to March 31,**

Contracting State Agency Name: NYSDOT Agency Code: 3900283  
 Contract Number: C000792  
 Contract Term: to  
 Contractor Name:  
 Contractor Address:  
 Description of Services Being Provided: Regional Origin & Destination Surveys Services for NYMTC

- Scope of Contract (Choose one that best fits):**
- |   |   |   |  |
|---|---|---|--|
| <input type="checkbox"/> Analysis               | <input type="checkbox"/> Evaluation           | <input type="checkbox"/> Research                       | <input type="checkbox"/> Training        |
| <input type="checkbox"/> Data Processing        | <input type="checkbox"/> Computer Programming | <input checked="" type="checkbox"/> Other IT Consulting | <input type="checkbox"/> Engineering     |
| <input type="checkbox"/> Architect Services     | <input type="checkbox"/> Surveying            | <input type="checkbox"/> Environmental Services         | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Mental Health Services | <input type="checkbox"/> Accounting           | <input type="checkbox"/> Auditing                       |  |
| <input type="checkbox"/> Paralegal              | <input type="checkbox"/> Legal                | <input type="checkbox"/> Other Consulting               |  |

Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page			
Grand Total			

Name of person who prepared this report:  
 Preparer's Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 Date Prepared: \_\_\_\_\_

(Use additional pages if necessary.)



## Attachment 5

### Cost Proposal Instructions

Your Cost Proposal shall set 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 TECHNICAL SUBMISSION – DO NOT INCLUDE THIS SCHEDULE IN YOUR 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).

## Attachment 5

(Fictitious Example)

**Proposed Staffing/Fully Loaded Rate Schedule (by Title) Contract C000792**

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								

**Attachment 5**  
**(Fictitious Example)**

TASK ASSIGNMENT JOB TITLE <sup>1</sup>	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
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
<b>TOTAL</b>	<b>284</b>	<b>161</b>	<b>229</b>	<b>224</b>	<b>307</b>	<b>306</b>	<b>185</b>	<b>1696</b>

<sup>1</sup>: 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) C000792**

**Consultant Name: \_\_\_\_\_**

TASK ASSIGNMENT JOB TITLE <sup>1</sup>	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
<b>TOTAL</b>	<b>284</b>	<b>161</b>	<b>229</b>	<b>224</b>	<b>307</b>	<b>306</b>	<b>185</b>	<b>1696</b>		<b>\$52,467</b>

<sup>1</sup>: Suggested Titles: Not representative of titles to be proposed.

**ATTACHMENT 5**

**Direct Non-Salary Costs Schedule C000792**

**(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 #C000792, 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 Cost proposal.

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

**Attachment 8**

**DBE Subconsultant Participation Solicitation Log  
(Good Faith Effort Documentation)**

CONTRACT NO. __C000792_____		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).

**Attachment 8**  
**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.

## Attachment 9

### Deliverables Schedule

The CONSULTANT shall schedule deliverables as they relate to each task according to the contract period (two years).

<b>DELIVERABLE SCHEDULE</b>
<p><u>Task 1. Project Administration &amp; Coordination</u></p> <ul style="list-style-type: none"><li>(a) Draft &amp; Final Agendas and Notes or Minutes for each meeting</li><li>(b) Monthly Progress Reports</li><li>(c) Meeting Presentation Materials</li><li>(d) Initial RODS Implementation Plan &amp; Periodic Updates</li><li>(e) Record of Decision Making Management System</li><li>(f) Draft Design &amp; Final Public Web-site</li><li>(g) Draft Design &amp; Final Project Web-site</li><li>(h) Project Web-site Archive</li><li>(i) Draft &amp; Final Toll-Free Number Operations Manual &amp; Call Inquiry Log</li><li>(j) Draft &amp; Final Public Awareness Plan and Documents</li><li>(k) Draft &amp; Final Users' Manual: Use and maintenance of the RODS data files, procedures</li></ul>
<p><u>Task 2. Data Needs Assessment</u></p> <ul style="list-style-type: none"><li>(a) Draft and Final Agendas and Notes or Minutes for each meeting</li><li>(b) Draft and Final Tech Memorandum that indicates the objective to be achieved in this task, documents the approach and process taken, describes the key findings in the research, and summarizes the results of the data needs assessment</li><li>(c) Draft and Final Tech Memorandum that recommends quality control and monitoring procedures to ensure that the requirements in data needs are met throughout the course of the survey</li></ul>
<p><u>Task 3. Survey Design</u></p> <ul style="list-style-type: none"><li>(a) Draft &amp; Final Technical Memorandum on RODS Design</li><li>(b) Draft &amp; Final Technical Memorandum on the Selection of the RODS Sample Frame &amp; Development of the Sampling Plan</li><li>(c) Draft &amp; Final Technical Memorandum Weighting Procedures Scheme</li><li>(d) Draft &amp; Final Field Staff Instruction &amp; Procedures Manual</li></ul>
<p><u>Task 4. Pre-Test Survey</u></p> <ul style="list-style-type: none"><li>(a) Weekly Progress Reports on the Progress of the Pre-Test Data Collection for each of the surveys under the RODS</li><li>(b) Delivery of Interim Data Files, Final Pre-Test Data Files, GIS Data, and Associated Documentation</li><li>(c) User's Guide &amp; Data Dictionary for the Pre-Test Dataset</li><li>(d) Draft &amp; Final Technical Memorandum on the Pre-Test Assessment and Recommendations</li><li>(e) Draft &amp; Final Technical Memorandum Documenting the Final Revisions to the Pre-Test Methods, Materials, and Procedures to be implemented in the Main Survey</li></ul>
<p><u>Task 5. Main Survey</u></p> <ul style="list-style-type: none"><li>(a) Weekly Progress Reports on the Progress of the Data Collection</li><li>(b) Interim Main Survey Data Files, GIS Data, and Associated Documentation</li></ul>

Task 6. Verify, Edit, Process & Geocode

- (a) Draft and Final Technical Memorandum on results of Data Verification, Editing, Processing & Geocoding

Task 7. Final Report & Data Files

- (a) Final Dataset with Corrective and Expansion Weighting Factors, Data Files, GIS Data, and Associated Documentation
- (b) Final User's Guide & Data Dictionary
- (c) Draft & Final RODS Report
- (d) GIS Web Application & User's Manual

**Attachment 10**

**Traffic and Ridership Data**

<b><u>East Side Major Non-Tolled Bridges</u></b>		
<b>Vehicle River Crossings</b>	<b>Agency</b>	<b>Average Weekday Traffic 4<sup>th</sup> Quarter 2011.</b>
<b>Ed Koch Queensboro Bridge</b>	<b>NYC DOT</b>	<b>183,400</b>
<b>Williamsburg Bridge</b>	<b>NYC DOT</b>	<b>103,590</b>
<b>Manhattan Bridge</b>	<b>NYC DOT</b>	<b>85,400</b>
<b>Brooklyn Bridge</b>	<b>NYC DOT</b>	<b>105,800</b>
<b>Alexander Hamilton Bridge</b>	<b>NYC DOT</b>	<b>182,170</b>
<b>Third Avenue Bridge</b>	<b>NYC DOT</b>	<b>59,600</b>
<i>From NYMTC Travel Patterns 4<sup>th</sup> Quarter 2011 (Source NYCDOT)</i>		

<b>SUBURBAN BUS</b>		
<b>Suburban Bus System</b>		<b>Average Weekday Ridership 4<sup>th</sup> Quarter 2011</b>
<b>Putnam County Buses (6)</b>		<b>470</b>
<b>Rockland County Buses (7), (9)</b>		<b>21,730</b>
<b>Suffolk County Buses (6), (8)</b>		<b>23,470</b>
<b>Total Suburb Buses</b>		<b>45,670</b>

Notes: From NYMTC Travel Patterns 4<sup>th</sup> Quarter 2011 (Sources: Port Authority of New York & New Jersey, Metropolitan Transportation Authority, New Jersey Transit Corp, NYS Department of Transportation and other counties bus operators.)

(6) Monthly average ridership data include weekends.

(7) Local and Express buses

(8) Suffolk County includes local and pass-through buses,  
HART - Huntington Area Rapid Transit

(5) Hudson Bergen Light Rail System

(9): Orange-Westchester Link (through buses) ridership in Rockland County include both private and County buses

## Attachment 11

### Sample Requirements Traceability Matrix

Proposers are requested to provide a completed Offeror’s Proposal Traceability to Requirements chart or matrix, cross-referencing the requirement in the RFP and their proposal to help evaluate the above requirements. A sample, uncompleted matrix format is provided below. Proposers may prepare their own version, provided it cross-references all key parts of their proposal and the RFP.

SAMPLE Proposal Traceability to Requirements chart				
Evaluation	Requirement	Offeror's Proposal		
Criteria #		Section/ Appendix #	Page #	Paragraph #
<i>Staffing:</i>				
1. a.	Key personnel experience and qualifications. Key personnel include:			
	Project Manager			
	Technical Specialists			
	Model Developers			
	Transportation Planners			
1. b.	Firm Experience			
	Subconsultants Experience			
2. a.	Approach and Scope of services			
	Task 1			
	Task 2			

ATTACHMENT 12

**NON-COLLUSIVE BIDDING CERTIFICATION**  
**REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

SECTION 139-D, Statement of Non-Collusion in bids to the State:

**BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:**

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.



**NON-COLLUSIVE BIDDING CERTIFICATION**  
**REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

**IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:**

**NAMES OF PARTNERS OR PRINCIPALS      LEGAL RESIDENCE**

_____	_____
_____	_____
_____	_____
_____	_____

**IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:**

**NAME      LEGAL RESIDENCE**

**President:**

**Secretary:**

**Treasurer:**

**President:**

**Secretary:**

**Treasurer:**

**NON-COLLUSIVE BIDDING CERTIFICATION**  
**REQUIRED BY SECTION 139-D OF THE STATE FINANCE LAW**

**Identifying Data**

Potential Contractor: \_\_\_\_\_

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

Street

\_\_\_\_\_

City, Town, etc.

Telephone: \_\_\_\_\_ Title \_\_\_\_\_

**If applicable, Responsible Corporate Officer**

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

Signature: \_\_\_\_\_

Joint or combined bids by companies or firms must be certified on behalf of each participant.

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Address: \_\_\_\_\_  
Street

Address: \_\_\_\_\_  
Street

\_\_\_\_\_  
City State

\_\_\_\_\_  
City State