



Joel P. Ettinger
Executive Director

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

REQUEST FOR PROPOSALS

**CONSULTANT PLANNING SERVICES FOR NYMTC
Contracts No.: C000785 (through C000789)**

December 29, 2011

To All Potentially Interested Parties:

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 should be directed to Ismet Apdiroglu (iapdiroglu@dot.state.ny.us) of the New York Metropolitan Transportation Council (NYMTC) and to Al Hasenkopf (ahasenkopf@dot.state.ny.us) of NYSDOT Contract Management.

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

- January 18, 2012: Pre-Proposal Conference
- January 20, 2012: Deadline for questions about the RFP is 4:00 PM (Eastern Time)
- January 24, 2012: Date when answers to questions will be released
- February 2, 2012: Deadline for the submission of proposals on 2 PM (Eastern Time)

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

The RFP contains instructions for complying with the Procurement Lobbying Law 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.

To ensure adequate overlap of consultant support for the New York Metropolitan Transportation Council, the RFP schedule estimates that successful consultants will commence responding to mini-bid requests in late Spring/early Summer 2012 with approval expected some time in September.

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, a DBE contract goal of 10 percent has been established. 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.

We look forward to the receipt of your proposal.

Sincerely,

Joel Ettinger
Executive Director,
NYMTC

Enclosures

RFP RESPONSE FORM C000785

RFP RESPONSE FORM: CONSULTANT PLANNING SERVICES FOR NYMTC

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: _____

Please send to:

- * E-Mail: iapdiroglu@dot.state.ny.us Copy: ahasenkopf@dot.state.ny.us
- * Regular Mail:
NEW YORK METROPOLITAN TRANSPORTATION COUNCIL (NYMTC)
199 Water Street, 22nd Floor
New York, NY 10038
ATTN: Ismet Apdiroglu, Contract #C000785
- * Fax: 212-383-2418

INFORMATION FOR SELECTED CONSULTANT

CONSULTANT PLANNING SERVICES FOR NYMTC

Contracts #C000785 to C000789

The following items are presented for your information; to make interested parties aware of contract-related items which selected consultant(s) will be required to comply with.

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 valued at \$100,000 or more (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 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. ***If you are a successful offeror, NYSDOT will not be able to begin negotiations with your firm if this questionnaire is not completed and electronically submitted as required.***

Procurement Lobbying Law (*)

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

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 Web sites:
http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf (Form ST-220-CA)
http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_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** of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 10 (Worker's Compensation And Liability Insurance) of the draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Consultant Employment Disclosure Requirements of this Project

_____ Go to OSC's Web site (<http://www.osc.state.ny.us/agencies/gbull/g-226.htm> or <http://www.osc.state.ny.us/procurement/consultantdisclosure.doc>) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete 'State Consultant Services – Contractor's Planned Employment' (**Form A, Attachment 4**) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the "State Consultant Services Contractor's Annual Employment Report" (**Form B, Attachment 4**) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Consultant Responsibility When Proposing to Use a Former NYSDOT Employee

_____ It is the Consultant's responsibility to ensure they propose staff that is 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 consultant designation; it is the Consultant's responsibility to electronically register their firm using the NYSDOT Consultant Selection System web application (CSSWeb). All subconsultants included in the designation must also be registered with the NYSDOT via CSS Web.

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

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

REQUEST FOR PROPOSALS

**CONSULTANT PLANNING SERVICES FOR NYMTC
CONTRACTs No.: C000785 through C000789**



Request for Proposals Release Date: December 29, 2011
Proposal Due Date: February 2, 2012

Proposal Delivery Location:

**New York Metropolitan Transportation Council
199 Water Street, 22nd Floor
New York, NY 10038-3534
Attention: Mr. Iset Apdiroglu
Email: iapdiroglu@dot.state.ny.us**

Second Delivery Location:

**NYSDOT Contract Management
50 Wolf Road, Suite 1CM
Albany, New York 12232
Attention: Mr. Al Hasenkopf
Email: ahasenkopf@dot.state.ny.us**

REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION (on behalf of the)
NEW YORK METROPOLITAN TRANSPORTATION COUNCIL
CONSULTANT PLANNING SERVICES FOR NYMTC

Table of Contents

I. INTRODUCTION	1
A. Purpose	1
B. Objectives	1
C. Background	2
D. Minimum RFP Responsiveness	2
E. Term/ Level of Effort	3
F. Multiple Award	3
G. Disadvantaged Business Enterprise Participation	3
II. PROJECT INFORMATION	5
A. General	5
B. Project Roles	6
C. Task Mini-Bid Process (Tier II)	9
III. SCOPE OF WORK	13
A. Tasks	13
B. Deliverables	15
IV. PROPOSAL FORMAT AND CONTENTS	15
A. Part I: Technical and Management Submittal	15
B. Part II: Cost and Contract Submittal	18
V. CRITERIA FOR EVALUATION OF PROPOSALS	22
A. General	22
B. Pre-Screening for Proposals – Including DBE Participation	23
C. Technical and Management	25
D. Cost and Contract	25
E. Technical Interviews	25
VI. ADMINISTRATIVE SPECIFICATIONS	26
A. Proposal Submission	26
B. Pre-Proposal Conference	26
C. State’s Rights to Proposals	27
D. Vendor Responsibility	27
E. Registration with NYSDOT	28
F. Contractor Tax Certification	28
G. Inquiries and Information	28
H. Protest Procedure	29
I. Tentative Schedule of Key Events	29
VII. ATTACHMENTS	30
1. Attachment 1 Consultant Information & Certifications	31
2. Attachment 2 Procurement Lobbying Law Compliance	33
3. Attachment 3 Draft Contract, including Appendix A	37
4. Attachment 4 Consultant Employment Disclosure Legislation Forms	67
5. Attachment 5 Proposed Staffing Hourly Rate Table	69
6. Attachment 6 Proposed Consultant Personnel	79
7. Attachment 7 Consultant's Responsibility when Proposing Former NYSDOT Employees	80
8. Attachment 8 DBE Participation Information	81
9. Attachment 9 DBE Participation Solicitation Log (Good Faith Effort Documentation)	82
10. Attachment 10 Supplemental Agreement Assistance with Future RFP Development	86
11. Attachment 11 Hypothetical Scenario	87

REQUEST FOR PROPOSALS

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

CONSULTANT PLANNING SERVICES FOR NYMTC Contracts C000785 (through C000789)

I. INTRODUCTION

A. Purpose

The New York Metropolitan Transportation Council (NYMTC), through resulting contracts held by its host, the New York State Department of Transportation (NYSDOT), seeks to retain at least three but no more than five responsive, responsible and fully qualified Planning Consultants or three Teams of Planning Consultants (the Consultants) under an FHWA-funded, FTA-funded and potentially New York State-funded planning services term-type agreement for Consultant Planning Services.

B. Project and Contract Objectives

To select between three and five responsive, responsible and fully qualified teams of professional planning consultants (via this RFP's Tier I consultant selection method).

To establish a Tier II consultant selection method, wherein the selected Consultants will form a pool from which NYMTC will request professional planning services via task assignment mini-bid requests. The Tier I consultant selection process may produce three or more (up to a maximum of five) selected, responsive and responsible teams of consultants. Tier I consultants shall competitively respond to these requests with a proposed scope of services, a project schedule and proposed labor and other costs (labor based on personnel titles and salary rates proposed in response to this RFP). NYMTC/NYSDOT will conduct an abridged best-value method mini-bid evaluation process. Selected Tier II consultants shall be designated by NYSDOT and their selected task assignments added to their contracts via supplemental agreements.

TASK ASSIGNMENT TYPES: NYMTC anticipates that mini-bid task assignment requests will either be planning studies or specialized staff assistance at NYMTC's offices, with emphasis on the latter.

CONTRACT TERM: The base term of this contract will be for sixty (60) months or five contract years commencing from the contract start date with no contract extensions.

MULTIPLE AWARDS. Multiple awards shall be made – the objective is to retain at least three and up to a maximum of five fully qualified Consulting Consultants (or three Teams of Consultants). Initial total contract value (or maximum amount payable/MAP) to any one Consultant will be set at \$0 and increased by the total value of each task assignment budget awarded via the competitive Tier II selection process.

PAYMENT METHOD: Task Assignments via mini-bid requests with lump-sum budgets with milestone payment schedules to deliver the services offered in the selected mini-bid response. All consultant labor shall be governed by fully loaded, not-to-exceed, hourly rates per each selected consultant's master contract. Rates shall be proposed only for the first year. Rates for years four through five of the contract may be adjusted per the rule contained in Article 5, Item III of the RFP's draft contract (**Attachment 2**): "The agreed-upon rates for the first contract year of this AGREEMENT may be adjusted for the second, third, fourth and fifth contract years. Rates for the second, third, fourth and fifth contract years may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, subject to current market conditions.").

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

OTHER CONTRACT OBJECTIVES:

- Selection of three to five responsive and responsible teams of consultants.
- 10 percent or more DBE subconsultant participation over the life of the contract by each firm being awarded a contract via this RFP.
- Fair and equitable treatment of all firms participating in the competitive consultant selection process.

C. Background

This project has been established to assist and support NYMTC's professional staff on an as-needed basis with the initiation and/or completion of a variety of Planning, Technical, and Administrative task assignments for NYMTC's Central Staff as well for the Staffs of NYMTC's three Transportation Coordination Committees (Mid-Hudson South TCC, Nassau-Suffolk TCC and New York City TCC), as outlined in NYMTC's Council-approved annual Unified Planning Work Program (UPWP). NYMTC's UPWP is downloadable from NYMTC's website: www.nymtc.org - the specific link is: http://www.nymtc.org/files/UPWP2011-2012/UPWP2011-12_RevisedForAction_%2042111.pdf. Task assignments may also come from NYSDOT.

NYMTC is an association of governments and transportation agencies which serves as the officially designated Metropolitan Planning Organization (MPO) for New York City, Long Island, and the lower Hudson Valley in the downstate New York metropolitan area. This is a solicitation to augment NYMTC staff via three teams of consultant to provide professional consultant planning services to NYMTC, the Downstate New York Metropolitan Planning Organization (MPO) in its 10 county area and beyond (Nassau, Putnam, Rockland, Suffolk and Westchester Counties, and the Five Boroughs of the City of New York).

Federal requirements mandate that NYMTC have and maintain a coordinated planning process that produces several planning products, which serve to frame the region's transportation planning decision making; NYMTC's planning process is also required to ensure the region's continued eligibility to Federal planning and capital funds. NYMTC's major planning products are: 1) a long range Regional Transportation Plan (RTP) that maintains a 20-year planning horizon, 2) a short range (three to five year) Transportation Improvement Program (TIP), 3) requisite air quality conformity analysis and determinations for the RTP and TIP, and 4) an annual Unified Planning Work Program (UPWP). The genesis of all other NYMTC products, including regional forums, public involvement,

meetings, working groups, studies, monitoring, analysis, reports, data gathering and information dissemination efforts can be traced to these mandated products.

D. Minimum RFP Responsiveness Requirements

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

1. Complete Part I of the Proposal – Separately bound, with tab dividers. A complete Technical and Management submission, including all required RFP-specified attachments. This would include the Offeror’s Proposal Traceability to Requirements (similar to an Index, at the end of the Part I).
2. Complete Part II of the Proposal – Separately bound, with tab dividers. Part II is a complete Cost and Contract submission, including all required RFP-specified attachments.
3. For the purposes of evaluation, each Part I and Part II proposal must be separately submitted. Each Part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is **not** to be included in the Part I submittal. Technical information is **not** to be included in the Part II submittal.
4. Propose at least 10 percent participation by proposed, certified DBE subconsultants else the prime consultant shall provide an acceptable evidence of a good faith effort by completing **Attachment 9** DBE Subconsultant Participation Solicitation Log and submitting a letter of explanation.
5. **Proposals are required to use 11 point font or larger**, except where necessitated for readability of tables or special graphics. Twelve fonts are preferred. **Proposals which are substantively in smaller fonts will be rejected. It is requested that proposals be as concise as possible.**

E. Disadvantaged Business Enterprise Participation

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

The New York State Department of Transportation has established a **DBE participation goal of 10 percent** for this solicitation. The goal relates to total contract value over the maximum five year contract term. Meaningful participation by subconsultants **who are certified** as a NYSUCP DBE (and posted onto Biznet) count toward the DBE participation goal established for this contract. Meaningful participation is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant’s product or service,

- Be for scope of service elements which can be and are completely performed, supervised and managed by the DBE consultant, and/or
- Perform significant tasks which can be considered commercially marketable.

Only Biznet certified DBEs are acceptable. Pending DBEs are not to be offered. Participation by prime consultants who are certified as DBEs do not count toward the contract goal established under this solicitation.

II. PROJECT INFORMATION

A. General

The top three Consultants (or teams of Consultants) which emerge from the Tier I selection process will compete for task assignments under a Tier II selection process (described below). Both Tier I and Tier II processes will use Best Value consultant selection methods.

Selected Tier I Consultants will be required to: 1) supply functions or resources to initiate and/or complete discrete tasks, and 2) provide consulting services to assist and support NYMTC's Professional Staff on an as-assigned basis with the initiation and/or completion of UPWP tasks; both shall support a variety of NYMTC Planning, Technical, and Administrative tasks, in addition to supporting the Executive Director's Office.

Each Consultant must be ready and willing to work at NYMTC's pace and time schedule, both with regards to responding to task assignment mini-bid requests as well as commence and carry on awarded task assignments. Each Consultant shall compete for task assignment work; these tasks shall be consistent with those tasks listed within the RFP's Scope of Services, and called for herein for the Consultants to carry out, as well as those authorized in future NYMTC Unified Planning Work Programs (UPWP). No guarantee of work assignments can be made; the need for assigning these tasks is based upon NYMTC's projected, financially-constrained workload in the approved, annual UPWP. NYSDOT and NYMTC make no guarantee that agreements will be awarded or that all of the funds will be spent to the maximum amounts. The results of the assigned tasks may be used individually, to augment NYMTC staff work, or as part of a larger current or future NYMTC study or Regional Transportation Plan (RTP) related effort. Separately-funded work may also be assigned from the New York State Department of Transportation.

Over the five year term, NYMTC will issue specific task assignments requesting mini-bids (technical and cost) from the selected Consultants using an abridged best value mini-bid evaluation process (Tier II). A short evaluation by a Technical Evaluation Committee of NYMTC staff and members will be performed to evaluate Part A Technical Mini-Bid Submissions based upon a Best Value process for lump sum milestone payment tasks, using a combination of technical quality and proposed cost. Should any selected consultant decide not to bid, a reason for not bidding must be provided in writing. Receipt of all issued task assignment requests must be acknowledged in writing.

Specific Tier II scopes of services will be consistent with of the RFP's Scope of Services and other tasks mentioned in this Request for Proposals, or in future NYMTC UPWPs. Each awarded Tier II scope of service will be negotiated with the selected Tier II Consultant for each task assignment. The level of detail and the expected deliverables for each assigned task will vary based upon the individual task approved in NYMTC's UPWP, as approved by NYMTC's management and as managed by each assigned NYMTC Task Manager. For all

tasks, adequate analysis and summary of findings will be expected so information can be readily incorporated into current and future NYMTC activities, studies, processes and plans. For all tasks and assigned consultant personnel, Consultants must provide requisite professional, expert services and task assignment management with not-to-exceed rates from the master agreement. Consultants are being sought to provide full, capable teams of personnel to complete an entire task; it is also anticipated that Consultants will be required to provide individual personnel to assist NYMTC staff to complete a variety of UPWP-defined work. Selected Tier II Consultants must attend a scope meeting within five business days from NYSDOT's consultant designation of task assignment award (unless otherwise specified), with work on the task to commence within ten business days from the scope meeting held regarding the assigned individual task.

Collectively, NYMTC and NYSDOT will hold the procurement record for all Tier II mini-bid solicitations.

ATTENDING MEETINGS. Each Consultant shall send appropriate representative(s) to attend and participate in meetings at the request of the Task Manager or with his/her prior approval. The Task Manager shall notify the Consultant of any special meeting requirements, such as preparing for presentations, doing presentations, etc. These may be informative planning meetings with any public agency, member agencies of NYMTC, members of the public, private individual or group, or other parties interested in participating in NYMTC's metropolitan transportation planning process. The Consultant will be responsible for producing clear and comprehensive minutes of attended meetings; the Consultant shall submit such minutes to the Task Manager within ten calendar days from the date of the meeting.

MONTHLY PROGRESS REPORTS. Each Consultant shall prepare and submit to the appropriate Task Manager a monthly progress report on the specific task or tasks for the preceding calendar month within 21 calendar days of the end of such month. The Consultant shall prepare and submit to the Consultant Manager a monthly progress report on all the tasks underway during the preceding calendar month within 21 calendar days of the end of such month.

CONSULTANT FILES. Each Consultant shall establish and maintain a set of Contract files, one set for this Contract overall, and others organized by assigned task. The Consultant must make these files available to NYMTC and NYSDOT upon written request from NYMTC. The files shall contain handwritten notes, calculation sheets, records of outside contracts, collected data, and any other pertinent information relative to the implementation of this Contract. This is in addition to accounting books and records, including time sheets, payroll registers, ledgers and other records documenting costs associated with this Contract. NYMTC/NYSDOT has the right to ask for and inspect the Contract files anytime during the term of this Contract and three years after termination of this Contract.

NON-DISCLOSURE FORMS. Proposers should be aware that all staff assigned to these tasks shall be required to sign appropriate confidentiality non-disclosure forms. Consultants shall be barred from bidding on projects if their staff becomes privy to confidential information regarding a new solicitation.

B. Project Roles

1. NYMTC Consultant Manager

NYMTC shall designate a Consultant Manager for this project to administer the overall Term Agreement. The Consultant Manager will receive, review and decide on applicability of work requests from NYMTC Task Managers for specific tasks to be completed under this Term Agreement. The Consultant Manager, in consultation with the relevant Task Managers, will prioritize tasks, budgets and schedules subject to the Executive Director's approval. The Consultant Manager, working in concert with NYSDOT Contract Management, will have oversight and performance evaluation responsibilities for the content of the resulting master agreement and will coordinate work on the specific tasks with the Task Managers, and with NYMTC management, as required. The Consultant Manager has the responsibility of making sure that communications are facilitated between the Consultants, Task Managers, himself and NYMTC management, ensuring that all relevant parties are copied on all assignments and correspondence, as appropriate.

The Consultant Manager will be responsible for satisfactorily addressing any and all issues that arise between the Task Manager and the Consultant. The Consultant Manager shall review all billings submitted by the Consultant in consultation with the Task Managers, as appropriate, based upon the negotiated Task budget, and the work completed and approved. The Consultant Manager shall keep track of the funds allocated to this Contract. The Consultant, however, should not consider this individual as a staff resource and the ultimate responsibility for obtaining necessary information and completing the tasks is the responsibility of the Consultant.

2. Consultant Project Manager

Each Consultant shall designate a qualified Consultant Project Manager for this Contract. These persons shall serve as the primary contact with NYMTC and NYSDOT through the NYMTC Consultant Manager. The Consultant Project Manager is responsible for the performance of all tasks assignments awarded to and agreed by the Consultant, as well as all contractual matters. The Consultant Project Manager shall designate a Task Administrator for each awarded task assignment. The Consultant Project Manager shall make all required submittals and receive all transmittals from NYMTC/NYSDOT. NYMTC/NYSDOT may require a copy of the candidate's qualifications, or an interview with the candidate, or both, at its option. NYMTC/NYSDOT may, at any time, and with reasonable and demonstrated cause, require replacement of the Consultant Project Manager. The Consultant may replace its Consultant Project Manager at any time subject to the provisions of this paragraph and the consultant personnel substitution provision of the master agreement.

3. NYMTC Task Managers

NYMTC will designate a Task Manager for each requested task assignment. This person shall serve as the primary contact with the selected Tier II Consultant for the purposes of initiating, carrying on and completing each assigned task. The NYMTC Task Manager shall be responsible for negotiating each task to be assigned to the designated Tier II Consultant. Where possible, the Task Manager will develop an independent staffing estimate prior to mini-bid advertisement for each assignment to be used on negotiations with the Consultant. The Task Managers shall submit their tasks to the Consultant Manager; the Consultant Manager will process each requested task assignment through the Tier II best value mini-bid consultant selection process. The Task Manager will have responsibility for specific direction of the task and schedule, verifying satisfactory completion of the task and keeping the Consultant Manager adequately informed of task

status, including delays and difficulties (footnote: the Consultant shall not be held responsible for delays not attributable to the Consultant). The NYMTC Task Manager shall be responsible for reviewing and accepting all specified deliverables and approving invoices submitted under their task. The Task Manager will keep track of the funds sub-allocated from the Contract to his/her task. Each Task Manager shall determine the form and scope of monthly task progress reports and meetings during specific task assignment negotiations. The Task Manager shall review and distribute meeting minutes to all meeting participants, either as paper hardcopy or as documents attached to email. A copy of meeting minutes shall be sent to the Consultant Manager and NYSDOT Contact Management for all meetings to assist with coordination responsibilities on the Contract. The Task Manager shall review, rate and report on the performance of Tier II consultants while under task assignments using NYSDOT PERF system. Consultants shall be given an opportunity to meet with NYMTC staff to review and comment on performance evaluation reports. Performance evaluation reports may be considered in future task assignment competitions. The Consultant, however, should not consider these individuals (Task Managers) as a staff resource; the Consultant will be ultimately responsible for obtaining necessary the information and for the full completion of all assigned tasks. The Consultant will be also be responsible for managing all Consultant resources assigned to accomplish each task order. In the event that a project requires unanticipated specialized skills or expertise not available from any of the selected Consultants, the Consultants shall research the cost of acquiring the services of a subconsultant or employee with those skills and provide a proposal based upon that additional cost.

4. Consultant Task Administrator

For each task assignment awarded and agreed to, the Consultant shall designate a qualified Consultant Task Administrator. This person shall serve as the primary contact with the NYMTC Task Manager to execute and deliver the assigned task order. The Consultant Task Administrator is responsible for the performance of all consultant-directed work components and elements under each task assignment awarded to the Consultant.

5. Project Locations

This contract has been designated primarily for the Planning Area covered by NYMTC: the New York City Metropolitan Area. The NYMTC Metropolitan Planning Area includes Putnam, Nassau, Rockland, Suffolk, and Westchester counties and the five boroughs of the City of New York. In addition, given the nature of transportation planning in the downstate area, there may be a need for possible coordination with neighboring MPOs in Connecticut and New Jersey.

NYMTC Central Staff are located in lower Manhattan in New York City; MHSTCC staff are located in Poughkeepsie; NSTCC staff are located in Hauppauge, Long Island and NYCTCC staff are located in Long Island City, New York City. In addition, it is anticipated that task assignment request may also come from NYSDOT, wherein the assigned work may be primarily located at the Department's Main Offices located in Albany or in one of its 11 Regional offices located in Albany, Utica, Syracuse, Rochester, Buffalo, Watertown, Poughkeepsie, Binghamton, Hauppauge and New York City (Long Island City).

6. Task Assignments

For NYMTC-issued requests, all task assignments shall be consistent with the scope of services in this RFP, and with NYMTC's current and future UPWPs. Before release to the Tier II consultants, all task assignments will be developed internally within NYMTC, in writing by NYMTC's Consultant Manager, as tasks become ready for assignment. All task assignments shall be approved by NYMTC's Executive Director before being advertised to the Tier II consultants.

The need for task assignments can be unanticipated and may sometimes require Consultant attention in less than 10 days. If such assignments and the need for expert services to perform them, as determined by NYMTC, require immediate attention, the Consultant will commence work within the shortest lead time possible after receiving, being awarded; negotiating and agreeing to the assignment (such turn around time shall be negotiated between the NYMTC Contract Manager and the Consultant).

For all other NYMTC-issued task assignments, the Consultant must commence work within 10 business days of coming to agreement with the NYMTC Consultant Manager for each assignment.

It is expected that the Consultant will be able to perform a wide variety of tasks and work simultaneously on different tasks for the different Groups within NYMTC (Planning Group, Technical Group, and Administrative Group) as well as with NYMTC's three Transportation Coordinating Committees (MHS TCC, NS TCC, and NYC TCC), and potentially relevant Program Areas/Regional Groups within the various offices of the New York State Department of Transportation. The depth of available Consultant staff is important to NYMTC. The level of detail and the expected deliverables for each task will vary, will be specified and depend on the specific assignment and the individual needs of each task.

No commuting expenses are eligible under task assignment work, only travel as directed in task assignment requests is eligible.

Consultant shall propose personnel with titles and qualifications consistent with what is listed in their respective master contracts. Consultants require prior NYMTC/NYS DOT approval to propose personnel not listed in their master contracts. Consultants selected during Tier I selection may offer an array of subconsultants to be able to respond to the variety of potential NYMTC/NYS DOT planning tasks. However, should a mini-bid request require the additional of a subconsultant not originally designated, then the prime consultant must obtain permission from NYSDOT/NYMTC to add the non-designated, new subconsultant to the master contract, wherein the new non-designated subconsultant titles must be consistent with the titles contained within master contract and the rates cannot exceed the rates for those titles contained in the master contract.

Negotiation of task assignment scopes, schedules and budgets shall be consistent with the advertised mini-bid request and the selected consultant's mini-bid response. Minor changes to scopes and budget after work begins are permissible. Major changes in the scope of service (such as an increase in the budget of 25% or more, or a material change to the originally advertised task assignment scope of service) shall require bidding out among the three-consultant pool for additional task work.

The Consultant shall prepare and maintain task assignment-related work schedules as appropriate and be responsible for the preparation of necessary task assignment-based

deliverables. The Consultant shall be responsible for revising draft deliverables to the satisfaction of each Task Manager, as well as the Consultant Manager before the Consultant will be reimbursed for each task. The Consultant shall only be reimbursed for deliverables acceptable to NYMTC's Task Manager.

6. Contract Maintenance

Once approved by OSC, the contracts resulting from this RFP will require maintenance via:

1. Award of task assignments which are added to the master contract via supplemental agreements,
2. Updates to New York state's standard contract clauses (Appendix A),
3. Updates to NYSDOT standard clauses (Appendices A-1, B, C),
4. Updates to the NYSDOT/NYMTC's project terms and conditions, and
5. Adjustments to Consultant personnel rates for contract years two through five.

These contract maintenance items may occur on different schedules.

C. Task Assignment Request: Mini-Bid Process (Tier II)

1 Task Assignment Approval

NYMTC's task assignments will have their origins in NYMTC's approved annual Unified Planning Work Program. Once the NYMTC Executive Director has approved a task assignment and its estimated budget and schedule, the Task Manager will prepare a scope of service for the task and provide it to the Consultant Manager. The Consultant Manager will also prepare a Tier II task evaluation process based on the procedure outlined below, before task assignment mini-bids are solicited (subject to NYSDOT review). A technical proposal evaluation committee shall be staffed by appropriate subject matter experts. NYSDOT-funded scopes of services, consistent with the statewide planning process, may be advertised with permission of NYMTC. NYSDOT-funded work shall be managed separately by a NYSDOT Project Manager.

2. Setting the Task Assignment Scope of Services

For complicated tasks, the Consultant Manager shall arrange a task solicitation scope meeting which will be attended by NYMTC personnel and the three prime Consultants. In the case of less complicated tasks, based upon NYMTC staff judgment, the Consultant Manager shall send the scope of services to the Consultant Teams and request a task mini-bid within approximately three weeks (may be longer for more complicated or unique tasks). If one of the Teams requests a scope meeting to clarify some points in the prospective task assignment within 5 business days, then all Consultant Teams will be invited to a task assignment clarification meeting. The Consultant Teams shall use the information from the approved, advertised task assignment scope of service and the scope meeting (if applicable) to develop their competing task mini-bids.

If there is a major change in a task assignment's scope of service (such as an increase in the budget of 25% or more, or a material change to the scope of service), then there will be a re-bidding of the additional task work.

3. Task Assignment Mini-Bid Requests and Responses

NYMTC will issue task assignment requests via e-mail to the Tier I selected Consultants.

NYSDOT Contract Management will issue any NYSDOT-funded task assignment requests. Only those firms preselected through this RFP's Tier I selection process are eligible to receive task assignment mini-bid requests. Mini-bid task assignments shall not be publically advertised (ie, advertised in the NYS Contract Reporter).

Firms are required to acknowledge receipt of task assignment mini-bid requests in writing. Not all Consultants are required to offer task mini-bids. Those firms who choose not to respond are required to offer written reason(s) for declining to bid.

One part of the task assignment mini-bid, the Task Assignment Part A Technical Mini-Bid, shall be solely related to the proposed technical approach, staffing resources and task schedule. It shall present the technical quality and credentials of proposed personnel, and shall not include any cost or rate information. Proposed rates and task assignment budget information shall be provided in a separate submission, in a Task Assignment Part B Cost Mini-Bid. The budgets for all task assignments shall be on a lump sum milestone payment basis (with labor details as per RFP **Attachment 5**). Milestones may be divided into partial payments but only if proposed in a firm's mini-bid. Separate organization charts showing the names of the task project manager and key personnel and resumes shall be provided in Part A (Task Technical Mini-Bid) of the submittal, excluding salary rate information.

Proposed rates cannot exceed the rates contained in the master agreements. Proposing rates which are higher than the master contract is immediate grounds for dismissal. Firms may propose lower rates in their mini-bid responses (the Master contract rates are not to exceed rates).

Consultants shall propose a schedule with deadlines for deliverable/service completion, which will first be reviewed by the Technical Evaluation Committee for adherence to task assignment mini-bid requirements and reasonableness, then be subject to the negotiation process after task assignment award. It is recommended that Consultants propose a milestone payment schedule which includes partial payments for draft and final products and interim milestone payments for subtasks of significant duration. For each task, the Consultant shall select resources from the list of titles and proposed personnel in the approved Agreement. All non-named personnel must have qualifications consistent with RFP requirements as well as consistent with proposed, named personnel. Qualifications of non-named personnel shall be included in Part A Technical Mini-bid responses.

To assist in distribution, copies of proposals may be requested to be sent electronically to the NYMTC Consultant Manager in PDF, MS Word, Excel or other mutually acceptable formats, with a copy to the designated NYSDOT personnel after the bid due date.

Consultant shall propose personnel listed in their respective master contracts. Consultants require prior NYMTC/NYSDOT approval to propose personnel not listed in their master contracts. Consultants selected during Tier I selection shall offer an array of subconsultants to be able to respond to the variety of potential NYMTC/NYSDOT planning tasks. However, should a mini-bid request require the additional of a subconsultant not originally designated, then the prime consultant must obtain permission from NYSDOT/NYMTC to add the non-designated, new subconsultant to the master contract, wherein the new non-designated subconsultant titles must be consistent with the master contract and the rates cannot exceed the rates for those titles contained in the master contract.

No commuting expenses are eligible under task assignment work, only travel as directed in task assignment requests is eligible.

Each task assignment mini-bid request shall include an optional Question and Answer period (significant questions may lead to the granting of additional time to prepare task mini-bids). Tier II firms are encouraged to ask questions.

Not all Consultants are required to offer task mini-bids. However, each non-response must be formally submitted in writing expressing the reason(s) for non bidding.

After task assignment award, in the event that the Consultant desires to replace staff on a task assignment or in the master contract, they shall inform the NYMTC Consultant Manager, Task Manager and NYSDOT Contract Management in writing, ten business days in advance, where possible, and request permission to replace. All replacements shall be of comparable technical capability with rates not to exceed the title/person they are replacing.

4. Task Assignment Mini-Bid Evaluation Criteria & Process

a. General

All task mini-bids received will be evaluated on a best-value basis, where technical quality of the proposal will be at least if not more than 50 percent of total rating weight and where total proposed cost will be less than but no more than 50 percent of total rating weight. The actual percentages can vary from task assignment request to request, based upon the nature of the work being requested and the value of cost. Weighting for NYMTC task assignments shall be approved by the NYMTC Executive Director.

A generic set of evaluation criteria are presented below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in NYMTC's/NYS DOT's evaluation of mini-bids. Most best-value ratios shall be 70% technical and 30% cost (however, this percentage shall vary depending upon the relative importance of these two major factors). Part A Technical Mini-Bids shall be evaluated and scored based on criteria similar to those listed below. The Part B C Mini-Bids shall be point scored in accordance with the pre-established criteria listed below.

The task assignment mini-bids received from the interested Consultant Teams shall be opened, logged in and certified by two NYMTC staff members. Proposed DBE participation shall be verified. An expeditious evaluation will be made of min-bids received. Technical proposals shall be reviewed against the mini-bid request by a Technical Evaluation Committee, consisting of NYMTC and or NYSDOT subject matter experts. Cost proposals shall be evaluated by NYMTC staff, with as needed assistance from NYSDOT Contract Management. NYMTC/NYS DOT reserve the right to ask clarification questions on both Part A and B submissions, as well as on proposed DBE participation.

b. Technical Considerations

The Part A Technical portion of mini-bids shall be evaluated by a representative

Technical Evaluation Committee comprised, as appropriate, of technical, program and management subject matter experts chosen from the members of NYMTC (non-NYMTC member non-voting advisors may be included). Committee members will evaluate the degree of responsiveness of each mini-bid against the appropriate task assignment request specification and assign a numerical score using a zero-to-ten point scale. Each Mini-bid will be first evaluated individually by TEC members. Then the TEC will meet as a group to discuss and confirm their findings and scores, and determine the need to ask clarifying technical questions. Evaluators will be allowed to revise scores on the basis of the committee discussions as well as the answers received from any technical questions generated. Reasons for any score changes shall be documented. Technical mini-bids are subject to clarification questions.

The Tier II evaluative score for the Part A technical portion of task mini-bids will be based on the proposed work plans, schedules and approaches, and proposed task personnel organization and resources allocated to technically complete the requested task assignment. Generic major technical criteria to evaluate task mini-bids are presented below for illustrative purposes. These are presented to give Consultants a sense of how task mini-bids could be evaluated. This set of criteria is listed in descending order of importance, with sub-criteria within major evaluation factors also listed in descending order of importance. However, individual task assignments will state the criteria in order of importance and may differ from that listed below.

For Staff Augmentation Task Assignment Requests:

- i. Experience of key staff - quality, extent and relevance of experience, education and training of key personnel to be assigned to the task, (for the convenience of the selection committee, please provide excerpts from the resumes of key staff highlighting the directly relevant experience);
- ii. Experience of firm - quality, extent and relevance of current and prior experience of the firm applicable to the specified task assignment;
- iii. Quality and extent of proposer's resources relative to the needs of the specified task assignment;
- iv. Quality of approach, scope and schedule;
- v. Reasonableness of staff allocations;

For Planning Study Task Assignment Requests:

- i. Experience of key staff - quality, extent and relevance of experience, education and training of key personnel to be assigned to the task, (for the convenience of the selection committee, please provide excerpts from the resumes of key staff highlighting the directly relevant experience);
- ii. Quality of approach, scope and schedule;
- iii. Quality and extent of proposer's resources relative to the needs of the specified task assignment;
- iv. Reasonableness of staff allocations;
- v. Experience of firm - quality, extent and relevance of current and prior experience of the firm applicable to the specified task assignment;

c. Cost

The Part B cost portion of the task assignment mini-bids will be point scored and may represent a significant portion of the total score for each task mini-bid. The calculation of a cost score will be determined by comparing the proposed total lump-

sum task assignment cost of each responding Consultant. The Consultant offering the lowest total task assignment cost will receive the maximum score allowable. Higher cost task assignment budgets will receive proportionally lower scores. Cost proposals are subject to clarification questions.

For consulting services provided in NYMTC's offices by consultant staff on an assigned basis (staff augmentation), it is expected that the consultant will offer a reduced field overhead rate which will enter into the cost scoring.

d. Consultant Selection

Selection shall be made by NYMTC/NYS DOT to the Consultant whose task assignment mini-bid received the highest total best value score after considering all technical and cost/price evaluation factors. A summary mini-bid evaluation process results report with recommendation for consultant selection/task assignment award will be prepared for, and the selection of the winning task assignment mini-bid recommended to NYSDOT via an approval from the NYMTC Executive Director. NYSDOT will make a designation decision.

All Tier II firms shall be notified of the task assignment request result shortly after task assignment award/consultant designation. All non-selected, participating Tier II Consultants may request a debriefing. Non-selected Teams will be afforded a debriefing opportunity to discuss their mini-bids via telephone (unless the proposer specifically requests a formal meeting), for requests made within thirty days of the notice of the selection.

5. Task Assignment Mini-Bid Negotiations

After selection, the NYMTC Project Manager shall negotiate the final task assignment scope of services, milestone payment schedule and total budget with the designated firm. Labor costs shall be based on salaries of key personnel selected from the master contract. Hours of service shall be based upon a firm's winning mini-bid (hours estimated by the Consultant to accomplish each task assignment work item). Final budget can not exceed what was proposed but may be less.

Once negotiations are complete, the Selected Consultant shall prepare a draft final task assignment based upon the agreed upon scope of services, budget and schedule for NYMTC/NYS DOT review. The Consultant Manager, with assistance from NYSDOT Contract Management and NYMTC Contract Liaison, shall prepare a supplemental agreement to add each task assignment awarded to each firm to their respective master contract. Each supplemental agreement requires signature by all parties, including the Consultant, NYSDOT and NYMTC's recommendation. NYSDOT will request funding and request the review and approval of the supplemental agreement by the NYS Attorney General's office and the NYS Office of the State Comptroller. NYSDOT will let all parties know of any review questions as well as of OSC approval, and will distribute the approved task assignment/supplemental agreement.

III. SCOPE OF SERVICES

A. Tasks

The three to five selected Consultants shall be required to provide professional planning services and perform work consistent with the general NYMTC UPWP tasks listed below. NYMTC/NYS DOT reserves the right to require the Consultants to bid on performing additional tasks consistent with NYMTC's 2012-13 and 2013-14 Unified Planning Work Programs (UPWP), the 2011-2015 NYMTC TIP, the 2010-2035 NYMTC RTP, as well as from future UPWPs approved by NYMTC during the five-year term covered by the contracts resulting from this RFP. Prospective Consultants are encouraged to focus their review of the task descriptions contained within the NYMTC Central Staff, the MHSTCC Staff, the N/STCC staff and NYCTCC Staff portions of the overall NYMTC UPWP (these portions are distinguishable based upon Task Numbers and/or Task Titles). Consultants shall not be asked to perform tasks sponsored by the members of NYMTC, but should become familiar with them as they form the overall NYMTC transportation planning process. NYMTC's UPWP is downloadable from NYMTC's website: www.nymtc.org, the current 2011-12 UPWP's specific link is: http://www.nymtc.org/files/UPWP2011-2012/UPWP2011-12_RevisedForAction_%2042111.pdf It is expected that the 2012-13 UPWP will become available during late March, 2012 – please visit NYMTC's website for updates.

During the term of this Contract, NYMTC will request task assignments consistent with those tasks listed within the RFP's Scope of Services and called for herein for the Consultant to carry out. No guarantee of work assignments can be made; the need for assigning these tasks is based upon NYMTC's projected workload in the approved, annual Unified Planning Work Program (UPWP). NYSDOT and NYMTC make no guarantee that this Contract will be awarded or that all allocated funds will be spent to the maximum amounts. The results of the assigned tasks may be used individually or as part of a larger current or future study, study document, or Regional Transportation Plan (RTP). Work may also be assigned from the New York State Department of Transportation, once approved by NYMTC's Executive Director. Some of these task assignments may require presentations to NYMTC's Program, Finance and Administration Committee (PFAC), Council members and the general public.

NYMTC UPWP-Based General Task List:

1. Traffic and Transportation Data Collection and Analysis
2. Regional Transportation Plan Update Elements
3. Air Quality Conformity Analysis
4. Geographic Information Systems (GIS) Analysis
5. Analysis Related to Environmental Justice and Title VI
6. Other Transportation Planning-Related Work:
 - A. Airport Access Planning
 - B. Transportation Financing
 - C. Freight Transportation Planning
 - D. Infrastructure Planning and Analysis
 - E. Land Use/Transportation Connection:
 - F. Mobility Planning
 - G. Transportation Program Development & Management
 - H. Quality of Life
 - I. Transportation Safety Planning
 - J. Regional Decision Making
 - K. Best Practice Modeling
 - L. Website Applications Support
 - M. Administrative Support

Some examples of the work requested include but are not limited to:

1. Planning

- A. Support of major products (UPWP, Transportation Improvement Program (TIP) and RTP).
 - B. Support of mandated analyses (e.g., Congestion Management Process, Air Quality Conformity).
 - C. Support for community education efforts such as: Safe Routes to Schools, Parking Management and Walkable Community Workshops.
 - D. Support for specific subarea, corridor or feasibility studies (e.g., Canal Area Transportation Study (CATS), emissions reduction planning).
 - E. Support for NYMTC sponsored conferences.
2. Technical
- A. Maintenance of analysis tools (Best Practice Modeling, post-processors, Land Use Model, Freight Model, GIS).
 - B. Support of staff in operating analysis tools.
 - C. Support of the development of new analysis tools.
 - D. Support of data collection efforts and programs.
 - E. Administer NYMTC's data bases
 - F. Support of Website-based information systems.
3. Professional Staff Support
- A. Consulting services to assist and support NYMTC's Professional Staff on an as-assigned basis. Staff assigned to NYMTC's offices shall be provided at a reduced field overhead rate.

B. Deliverables

For each requested task assignment, the selected Consultant shall prepare and submit to the NYMTC Consultant Manager a task assignment scope of services, work plan, budget, milestone payment schedule and project schedule, identifying discrete deliverables. The consultant shall be responsible for the preparation and acceptable delivery of specified deliverables. For awarded task assignments, the Consultant and the NYMTC Consultant Manager shall negotiate lump-sum amounts and milestone deliverable payment schedules based upon the selected mini-bid submission. The Consultant shall be responsible for preparing and revising draft deliverables in the format specified in the task assignment request to the satisfaction of each Task Manager as well as the Consultant Manager. Draft deliverables also might be reviewed by NYMTC's various Working Groups, Committees and member agencies. The Consultant shall be responsible for preparing final deliverables to the satisfaction of each Task Manager as well as the Consultant Manager. Deliverables may be posted for downloading onto NYMTC's website or for presentation at public meetings.

Accomplishment of deliverables may also include preparing for and attending meetings, delivery of presentations at meetings and delivery of post-meeting documentation. Such may also require the utilization of specialized planning tools, software and hardware. Prospective Consultants are instructed to carefully read the draft Contract's terms & conditions contained in RFP **Attachment 3** as several of these govern the use, purchase and disposition of resources paid for to complete tasks.

IV. PROPOSAL FORMAT AND CONTENTS

A. General

Part I and Part II submissions must be received before the proposal due date/time specified in the RFP. Proposals must be delivered in sealed packages and labeled: PSA3 C000785. Submitting firm’s name must be on the package. It is requested that all proposals be concise, in 12 font and no more than 250 pages.

For the purpose of evaluation, each proposal must be submitted in two sealed, bound parts. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Contract submittal. Sections within each Part shall be divided by labeled section dividers. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Proposers are requested to keep their proposals concise and relevant. Unrelated experience, company history or projects should not be included. Cost information is **not** to be included in the Part I submittal and technical information is **not** to be included in the Part II submittal, or your proposal could be deemed unresponsive.

A Table of Contents shall be presented for both Part I and Part II. Sections with Part I and Part II shall be divided by labeled tabs. Part I and Part II submissions must be bound in 3-ring binders.

NOTE: NYSDOT may 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, provided that NYSDOT agrees beforehand to shield the release of proposed information. 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”. **Labeling all pages as “confidential” or “proprietary” is unacceptable – such proposals will not be accepted** unless the proposer re-labels their proposal to only identify what specific material to shield from public scrutiny. All offerors shall explain the material and substantive reason(s) why this information should be considered exempt from public disclosure under FOIL. The identification of pages and the reasons for exemption should be included in the Executive Summary of your proposal (see A.4. below). NYSDOT reserves the right to only consider those FOIL exemption requests for which public release of such information would truly be injurious to a firm.

Your proposal should follow the format listed below.

B. Part I: Technical and Management Submittal

<input type="checkbox"/>	Fourteen (14) Bound Hard Copies of Part I (Send 11 copies to NYMTC; send 3 approximately contemporaneous copies to NYSDOT Contract Management); in addition, submit two read-only softcopies on CD in MS Office 2003 compatible format or Adobe pdf format (1 each to NYMTC and NYSDOT Contract Management). 12 point font is requested. Keep proposals concise.
<input type="checkbox"/>	Name, mailing and e-mail address and telephone number of proposer on cover page
<input type="checkbox"/>	Name of person(s) who prepared proposal
<input type="checkbox"/>	Contact person(s), e-mail address and telephone number
<input type="checkbox"/>	Attachment 6 Proposed Consultant Personnel

Required Part I sections:

1. **Cover Letter.** The Cover Letter must include the following:
 - Present a Signed Cover Letter on official business letterhead.
 - Identify and address any confidential and proprietary information in this section.
 - The signature of an official authorized to bind the offeror to all of the RFP's provisions.
 - A statement that the offered named key personnel will be provided once NYSDOT/NYMTC issues a notice to proceed. NYSDOT/NYMTC do not allow unapproved substitutes.
 - Identify any exceptions taken by the offeror on NYSDOT's draft contract. Note that NYSDOT will only consider exceptions if in the state's best interest.
 - Name of offeror's official representative(s), including: Title, Name of company, mailing address, telephone number, FAX number; and E-mail address of the offeror's representative(s).
 - If there are multiple offices of the Consultant, indicate which one will be primarily responsible for the contract. Indicate which other offices are also involved.
 - The legal names of all Subconsultants involved in the offeror's response.
2. **Title page,** indicating the name, mailing and e-mail addresses and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal. Title shall be: Consultant Planning Services for NYMTC, PSA3, Contract #C000785, Part I Technical & Management Submittal.
3. **A Table of Contents (for each Part).** Part I and Part II sections shall be divided by labeled tabs.
4. **Executive Summary.** Provide a brief description of the proposed approach and work effort (not more than 2 pages).
5. **Narrative Description.** Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYMTC's /NYSDOT's project objectives and familiarity with applicable laws, rules, etc.
6. **Approach.** Describe the approach for performing the work and accomplishing project objectives. Provide brief, concise descriptions of relevant, similar work done to support NYMTC's metropolitan transportation planning work (per its annual UPWP) or other relevant, related transportation planning work. A general scope of services is outlined under Section III. Specific scopes of services will be released via mini-bid request for selected Tier II consultants. Familiarity with NYMTC's 3C work is important.
7. **Organization.** Provide an organizational chart for the project showing the names of the project manager and all proposed named personnel/offered titles. Provide **Attachment 6, Proposed Consultant Personnel.** If subconsultants are to be used, explain the specific need for the expertise and describe the planning service arrangements. Discuss your plan for maintaining quality personnel over the contract's five year term. Describe the level of interaction contemplated with NYMTC and NYSDOT.
8. **Experience and Staffing.** The qualifications and prior experience of the proposer are of great importance to NYMTC/NYSDOT. Direct, prior experience in developing similar applications described in this RFP is highly desirable. Provide a list of projects currently in progress and those completed within the last three to five years which are relevant to

NYMTC’s planning work. Describe in detail offered personnel assigned to those accounts. Include resumes for all proposed named personnel (including any subconsultants). List all offered titles and present detailed qualifications for each. Include names, addresses and phone numbers of contact points (references) with the listed clients. NYMTC/NYS DOT reserves the right to request information from any reference check source so named, as well as to contact additional relevant references.

C. Part II: Cost and Contract Submittal

<input type="checkbox"/>	Three (3) Bound Hard Copies of Part II (send 1 copy to NYMTC; 2 copies to NYSDOT Contract Management) Separate file in CD containing unprotected Excel table showing the calculation of the average firm hourly rate.
<input type="checkbox"/>	Required rate information (complete and submit Attachment 5)
<input type="checkbox"/>	Name, title, address and telephone number of person(s) with authority to negotiate, and who may be contacted during proposal evaluation
<input type="checkbox"/>	Complete and submit Attachment 1 Consultant Information and Certifications (sign both Sections II and III)
<input type="checkbox"/>	Complete and submit Attachment 2 Procurement Lobbying Law Compliance Forms (see below *) – These forms are required either with the RFP Response Form or if you do not submit an RFP Response Form than the PLL forms are required with the Proposal
<input type="checkbox"/>	Complete and submit Attachment 8 DBE Participation Information Form
<input type="checkbox"/>	Complete and submit (if applicable) Attachment 9 DBE Subconsultant Participation Solicitation Log AND Letter of Explanation of Non or Partial DBE Goal Attainment
<input type="checkbox"/>	Complete and submit all future RFP Modification Acknowledgement Forms as instructed.

Required Part II sections:

1. **Cover Letter.** (copy of Part I Letter)
2. **Title page.** Indicate the name, mailing and e-mail addresses and phone number of the proposer, including a contact person, and name of the person(s) who prepared the proposal. Title shall be: Consultant Planning Services for NYMTC, PSA3, Contract #C000785, Part II: Cost & Contract Submittal
3. **Cost Proposal.** Include completed **Attachment 5**, which shall set forth the fully loaded specific hourly rates with field and consultant-home overheads for the first year of the contract. Explain all assumptions.

The offered salary schedule shall list all proposed job titles for consultant staff to be assigned to this project and their present fully loaded hourly rate (follow all instructions contained in **Attachment 5**). If additional titles are used but are not assigned, they should be listed. The schedule shall be prepared to distinguish anticipated assignment by project section/task.

Field Overhead: It is expected that Consultants shall offer a reduced field Overhead rate for Consultant staff assigned to provide services in NYMTC’s offices. NYMTC will support field staff operations, providing desk space, computer, and telephone and internet access, among other items. The requirement of and the cost for additional supporting items shall be negotiated with the Consultant selected to accomplish a task.

Non-Salary Costs. NYSDOT and NYMTC acknowledge that most direct non-salary

costs associated with this project cannot be estimated at this time, and are in essence, pass-through expenditures reimbursed by the State. **Please do not present Direct Non-Salary Costs in your Part II submission.** Actual Direct Non-Salary Cost budgets shall be identified and negotiated after task mini-bids are selected.

The budget proposed for task mini-bids shall include estimates of direct non-salary expenses based upon information given in the task assignment request released by NYMTC. Such information shall be listed by task number by UPWP general planning area for the expected items of direct non-salary costs (out-of-pocket expenses) expected to be incurred in the performance of task assignments. On separate sheets, explain each cost item with all factors leading to the derivations of the cost Subconsultant Direct Non-Salary costs (if any) should separately be shown in the schedule.

Please Note: Travel, meals, and lodging reimbursements shall be limited to the prevailing maximum rates established by the State Comptroller. The latest state and nationwide rates are available at the following Web site: <http://www.gsa.gov>

4. **Contract Section.** Submit a contract Section which shall include the following:
 - a. Completed **Attachment 1**, which shall specify the proposer's acceptance of the terms and conditions contained in the draft Contract enclosed as **Attachment 3** to this solicitation (Prime Consultant only). The Prime 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 may lead to the proposal being deemed non-responsive and subsequently dismissed. **Should any firm take an exception to any of the draft contract's terms and conditions, the proper placement of such is in the firm's cover letter. NYSDOT will not entertain exceptions brought to its attention after the proposal due date or during contract negotiations.** **Attachment 1** also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 365 days, and a statement that, if awarded the contract, the offeror will comply with all the requirements set forth in the RFP, including the contract terms and conditions in the Contract Provisions section, the New York State and Federal Required Contract Clauses, Proposer Responsibility reporting and filing requirements, Procurement Lobbying Law requirements, and Consultant Disclosure Legislation reporting and filing requirements, except as may be hereinafter modified and accepted by NYSDOT.
 - b. **DBE Participation**

Interested proposers should verify their attainment of the above established DBE subconsulting participation goal by completing **Attachment 8 DBE Participation Information**. For participation to count towards NYSDOT's DBE contract goal set for this solicitation, the offered DBE participating firm must be currently certified and listed on the NYSUCP DBE Directory (Biznet website). If the proposal does not meet the 10 percent DBE participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 9 DBE Participation Solicitation Log**.

The goal relates to total cumulative contract amount. The contract starts out with a zero dollar total value and gets increased as each task assignment gets competitively awarded over the life of the contract. Only Biznet certified DBEs are acceptable. Pending DBEs are not to be offered. Participation by Prime Consultants who are certified as DBEs may count toward the contract DBE goal, but such Prime Consultants are not relieved from their regulatory obligation to seek up to 10 percent participation by certified, qualified DBEs

Additionally, if the proposing prime firm does not meet the contract's DBE goal, the firm must include in its submission a DBE Goal Attainment Explanation Letter explaining why the firm was unable to meet the DBE goal (in full or if partially), which serves to substantiate the firm's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

Additionally, Prime Consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation are not relieved from seeking participation of certified Disadvantaged Business Enterprises (DBEs) for subcontractable services in this solicitation. In these situations, it is expected that unless DBE outreach efforts by the prime result in proposed DBE subconsultants, that the prime consultant provide evidence of a good faith effort by completing **Attachment 9 DBE Subconsultant Participation Solicitation Log**.

Firms are advised to refer to Proposal Pre-Screening section of the RFP for the procedure NYSDOT will follow in evaluating a firm's proposed DBE participation.

c. RFP Modification Acknowledgement Forms

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

d. Consultant Identification Number (CIN)

All respondents to this solicitation must reference their NYSDOT issued Consultant Identification Number (CIN) and SFS Vendor ID Number (new) in their Part II proposal.

If an offeror does not have a CIN and they are selected for contract award, they will be required to obtain one through the following NYSDOT Web site prior to negotiation of the contract: "How to Register a New Consultant Firm with NYSDOT" at: <https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>

e. 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.nysdot.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 C000785 wherever requested in the forms. Please e-mail the person identified as the contact in the RFP's Administrative Specifications section 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. Future RFP Development

All Consultants selected under this solicitation shall agree that if it accepts a Tier II assignment that includes the development of a Request for Proposals (RFP), the Consultant, each officer, agent or employee of the Consultant, and each employee of any subcontractor or subconsultant of the Consultant, will personally acknowledge and agree, in writing, on forms provided by NYSDOT (See **Attachment 10**), that they will not bid on or respond to, and will not be part of any team that bids on or responds to, any subsequent NYSDOT/NYMTC Request for Proposal (RFP) developed from a task assignment required under this Contract.

NYSDOT and NYMTC may, at its option, allow a Tier II winner to bid upon a RFP which has a related subject where in NYSDOT's judgment it is in the best interests of the State and all information is appropriately disclosed.

In the alternative, Consultant has the right to decline to bid on a Tier II task assignment in order to remain eligible to bid on future NYSDOT/NYMTC Requests for Proposals (RFP) developed from a task assignment required under this Contract. Such declination will not impact in any way on the Consultant's performance review.

This is being presented for informational purposes only – Consultants responding to this RFP will not be instructed to submit signed supplemental agreement forms in their proposals; they are being asked to be aware of this potential requirement.

All Consultant personnel and any subconsultant personnel assigned to assist with RFP development work must also sign a separate supplemental agreement form. Any Consultant signing the supplemental agreement form is precluded from bidding on any future NYSDOT/NYMTC Request for Proposals which was developed using Consultant personnel under this Contract. A Consultant has the option to agree not to bid on a Tier II task assignment should they prefer to remain eligible to bid on future NYSDOT/NYMTC Request for Proposals which will be developed using Consultant personnel under this Contract. Such refusal will not affect the Consultant's

performance review.

V. CRITERIA FOR EVALUATION OF PROPOSALS

A. Overview of Evaluation of Proposals

Proposals received on or before the RFP's published proposal due date shall be opened, logged-in, and examined for completeness and adherence to the RFP's response requirements. Logged in proposals shall be certified as being received.

Once logged in, proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness requirements. Proposals which meet minimum RFP responsiveness requirements shall be considered further; proposals which do not meet minimum RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

Proposals passing pre-screening shall then be evaluated by NYSDOT/NYMTC using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical considerations are of greater importance than pricing considerations; however, price is a significant factor in NYSDOT's evaluation of proposals.

Technical and Management proposal evaluation will be accomplished by a representative Technical Evaluation Committee comprised, as appropriate, of technical, program and management subject experts. Technical Evaluation Committee members will be given technical proposals with instructions and score sheets. Committee members, working as individuals, shall compare each proposal against the RFP, measuring the degree of responsiveness to the RFP's specifications and requirements. Committee members will document their findings, and assign a numerical score for each of the RFP's evaluation criteria using a zero-to-ten point scale. Evaluators may identify clarification questions along the way.

Once independent evaluation of proposals is complete, the committee shall meet as a group to collectively discuss their findings with possible score changes. Reason(s) for score changes shall be documented. Offered experience may be verified by contacting references provided by proposers.

Proposers responding to this RFP are not allowed to change their technical proposal. However, proposers may be requested to clarify issues or to provide additional insights into their proposal through written clarifications and/or technical interviews. If written clarifications are required to complete the technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this additional information. Scores after initial technical proposal review shall remain open and are subject to change as a result of completing technical interviews; initial written proposal scores may be changed due to further clarification and insights gained from shortlisted firms which go through technical interviews. Final written proposal scores will be generated at the conclusion of the technical interviews. For those firms which do not make the shortlist, their final written technical scores will be produced after group discussion and final clarifications have concluded.

Technical interviews are required to complete the technical evaluation of proposals. There are up to 65 points available for the initial evaluation of written technical proposals and there are up to 10 points available for the in-person technical interview. Cost proposal evaluation

results (up to 25 points) shall be considered with initial raw technical results to determine initial offered Best Value, which shall lead to a shortlist of firms determined to be susceptible for contract award. NYSDOT/NYMTC will short list the field of proposals, identifying those proposals subject to contract award (any proposal within 10 points of the top initial best value ranked proposal plus any ‘cluster’ of proposal surrounding the cut-off line). NYSDOT will publish the short list of firms on its website under this solicitation. Technical interviews are required to complete the technical evaluation of proposals and will be held at NYMTC’s offices located on the 22nd floor of 199 Water Street, Manhattan, New York at a date and time to be determined.

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

An award shall be made to the offeror whose proposal receives the highest total Best Value score after considering all technical and cost/price evaluation factors.

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

At the conclusion of the proposal evaluation process, an announcement of NYSDOT’s designation will be posted on the NYSDOT Web site (<https://www.nysdot.gov/business> select ‘Consulting Service Opportunities’). NYMTC may post similar information to its website. All firms shall be notified in writing regarding the results from the solicitation. All non-selected firms will be offered an opportunity to hold a debriefing.

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

B. Pre-Screening of Proposals - Including Participation in Contract’s DBE Goal

NYSDOT/NYMTC will pre-screen each proposal to ensure all contents have been submitted in accordance with the minimum proposal requirements as specified in the RFP. RFP specifications include that it is NYSDOT’s sole discretionary determination as to whether a proposal is complete (reference RFP’s Minimum RFP Responsiveness Requirements). Proposals which meet minimum RFP responsiveness requirements shall be considered further; proposals which do not meet minimum RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

As part of the pre-screening process, the proposed DBE participation percentages offered for certified DBE prime consultants and/or certified DBE subconsultants will be reviewed (**Attachment 8 DBE Participation Information**). To count towards NYSDOT’s DBE participation goals, each firm must be currently listed in the Biznet DBE Directory (: <http://biznet.nysucp.net/>). If the proposed DBE participation is less than the established 10 percent DBE goal, then the firm’s evidence of a Good Faith Effort (**Attachment 9 MBE and WBE Participation Solicitation Log**) to achieve participation in the goal will be reviewed,

along with the firm's **DBE Goal Attainment Explanation Letter** as to why it was unable to meet the goal. During the review process, which will include verification of a firm's good faith effort evidence, if it is determined by NYSDOT that the firm did not provide an acceptable good faith effort, then the proposal will be deemed non-responsive and will be removed from further consideration.

C. Technical and Management Proposal Evaluation (Up to 75 Points)

The Technical and Management proposal will be evaluated and point scored, and, when perfected, will represent 65% of the total score. The initial evaluation of the written Technical and Management proposal will account for up to 65 points of the total score while the technical interview will account for up to 10 points of the total score. Technical interview scores will be separately perfected.

The technical evaluation criteria listed below identify their respective weights in parenthesis (excluding scenario scores which add up to 10 points). There are up to 55 General Proposal points available plus up to 10 points available for Scenario scoring.

1. Experience (Up to 28 points)
 - a. Quality, extent and relevance of project-relevant experience, education and training of named personnel per the specifications contained in the RFP. Qualifications of titles for which the firm has yet to offer named personnel. (Up to 18 Points)
 - b. Quality, extent and relevance of current and prior relevant experience of the firm and the assigned key personnel. (Up to 10 Points)
2. Quality of Proposal (Up to 12 points)
 - a. Degree to which proposal reflects understanding and comprehension of the RFP's scope and objectives. (Up to 7 Points)
 - b. Quality of proposer's resources relative to the needs of the project and the RFP's specifications. (Up to 5 Points)
3. Approach (Up to 10 points)
 - a. Quality of approach to accomplish the RFP's objectives; initiative and creativity of proposer. (Up to 6 Points)
 - b. Relevancy of past work to accomplish the RFP's objectives. (Up to 4 Points)
4. Organization and Staffing (Up to 5 points)
 - a. Quality of project organization, including DBE participation management plan. (Up to 2 Points)
 - b. Quality of plan for maintaining personnel over life of contract. (Up to 2 Points)
 - c. Extent and quality of interaction with key participants. (Up to 1 Point)
5. Hypothetical Scenario Scoring (Up to 10 points; See **Attachment 11**)

Proposals will be evaluated by NYMTC/NYS DOT in part based on the technical responses to the specifications contained in the scenario contained in **Attachment 11**. The technical response for the scenario will be evaluated using the same method to evaluate the rest of a firm's technical proposal. Up to 10 separately perfected points are available. Evaluation of your scenario response will be based on the specific offered work plans, proposed organization and resources allocated to the task assignment. Resulting scenario scores will be separately perfected and added to the separately perfected technical scores to generate total written proposal technical score.

The major evaluation criteria for the scenario response are listed below in descending order of importance.

- a. Experience of Proposed Personnel: Quality, extent and relevance of experience, education and training of key personnel to be assigned to the task, (for the convenience of the Technical Evaluation Committee, please provide excerpts from the resumes of key staff highlighting the directly relevant experience). (Up to 3 Points)
- b. Proposed Resources: (Up to 2 Points)
 - i. Reasonableness of staff allocations.
 - ii. Reasonableness of hours proposed.
 - iii. Quality and extent of proposer's resources relative to the needs of the project.
- c. Approach and Scope: (Up to 2 Points)
 - i. Quality of approach, scope and schedule.
 - ii. Understanding of the significant issues.
- d. Experience of Firm: Quality, extent and relevance of current and prior experience of the firm applicable to the scenario. (Up to 2 Points)
- e. Budget: Accuracy and reasonableness of budget and cost information presented. (Up to 1 Point)

D. Cost and Contract (Up to 25 Points)

Cost proposals will be evaluated for reasonable rates, overhead rates and fees, will be point scored, and will account up to 25 points of the total best value score for a proposal.

The calculation of a cost score will be determined by taking into consideration all proposed fully loaded field specific hourly rates plus all proposed fully loaded home office specific hourly rates. The proposer with the lowest average firm rates will receive a perfected cost score of 25 points. Proposals with higher overall average firm rates will receive proportionally lower cost scores.

An overall average firm hourly rate shall be derived by calculating an average rate for all RFP-specified and firm-offered titles.

Firms are allowed to propose a job title series of I, II and III i.e., Transportation Planner I, Transportation Planner II, and Transportation Planner III) to distinguish between entry level, intermediate level and senior level personnel.

Proposers shall complete **Attachment 5** and submit both hardcopy and an unprotected Excel table as a separate file on CD in their Cost proposal.

E. Technical Interviews (Up to 10 Points)

The Technical Interview portion (only available for firms mathematically subject to contract award) of the Technical and Management proposal will be point scored and will account for a separate block of up to 10 points of the total best value score for a proposal. Technical Interviews will be held for firms offering proposals which are deemed to be susceptible to contract award (short-listed) after completion of initial best value considerations. Those proposals subject to contract award are any proposals within 10 points of the top initial best value ranked proposal plus any 'cluster' of proposal surrounding the cut-off line. Proposals subject to contract award will make the short-list. Firms offering proposals which make the shortlist shall be invited to attend Technical Interviews. NYSDOT will publish the shortlist of firms mathematically susceptible to contract award on its website.

Up to **10 points** of the overall final score are available from the Technical Interview; these 10 points will be separately perfected then added to generate the final written technical proposal score.

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

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

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

VI. ADMINISTRATIVE SPECIFICATIONS

A. Proposal Due Date

All proposal submitted in response to this RFP must be received by NYMTC by 2:00 PM on February 2, 2012. The proposal must be addressed to **both parties** listed below:

New York Metropolitan Transportation Council (NYMTC)
199 Water Street, 22nd Floor
New York, NY 10038
ATTN: Mr. Ismet Apdiroglu C000785

NYSDOT Contract Management
50 Wolf Road, Suite 1CM

B. Pre-Proposal Conference

To assist firms in preparing proposals in response to this solicitation, a pre-proposal conference will be held on January 18, 2012 in NYMTC's Office at 199 Water Street, 22nd Fl., New York, NY . Any additional questions should be submitted by email by January 17, 2012 to Mr. Ismet Apdiroglu via e-mail (iapdiroglu@dot.state.ny.us) and to Al Hasenkopf, NYSDOT Contract Management via e-mail (ahasenkopf@dot.state.ny.us).

Participation via teleconference is possible – anyone who wants to participate via teleconference must contact Mr. Ismet Apdiroglu via e-mail (iapdiroglu@dot.state.ny.us) before C.O.B. January 17, 2012. A general review of the solicitation will occur and specific questions regarding the solicitation may be answered. Interested firms are encouraged to attend and ask questions.

For security control purposes, if you plan to attend, please e-mail the names of all attendees to Mr. Ismet Apdiroglu via e-mail (iapdiroglu@dot.state.ny.us) by 2:00 PM on January 17, 2012. Each proposer is requested to send no more than five representatives to the conference (if more are needed, please ask). An opportunity will be afforded for questions and answers during the conference. However, to assist us in preparing for the meeting, we wish to receive any questions you may have, in writing, by the close of business on January 17, 2012.

C. State's Rights to Proposals

All proposals, upon submission to NYMTC/NYSDOT 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/NYSDOT 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.

D. Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All selected offerors of contracts valued at \$100,000 or more will be required to provide vendor responsibility information through the Office of the State Comptroller 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. Interested parties are encouraged to become familiar with the state's vendor responsibility requirements before being notified of selection for contract award.

E. Registration with NYSDOT

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

Consultant Firm Registration instructions are available at:

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

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

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

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

F. Contractor Tax Certification

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

http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf
http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf

G. Inquiries and Information

All questions concerning this solicitation must be directed *only* to Mr. Ismet Apdiroglu of NYMTC and Mr. Al Hasenkopf of NYSDOT. The last date to submit questions for this solicitation is: January 20, 2012. All inquiries must be in writing and e-mailed to:

NYMTC: Mr. Ismet Apdiroglu - iapdiroglu@dot.state.ny.us

NYSDOT: Mr. Al Hasenkopf - ahasenkopf@dot.state.ny.us

FAX: NYMTC: 212 383-2418; NYSDOT: 518-457-2875

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

H. Protest Procedure

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via:

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

I. Tentative Schedule of Key Events

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

RFP Release Date:	December 29, 2011
Pre-Proposal Conference	January 18, 2012
Question Submittal Deadline:	January 20, 2012
Answers Due:	January 24, 2012
Proposals Due:	February 2, 2012
Technical Interviews – Tentative	March, 2012
Complete Proposal Evaluation:	March, 2012
Recommendation & Designation:	1–2 months after proposal evaluation concludes
Contract Negotiations:	One month or less
Contract Award:	6-8 weeks after completion of contract negotiations

VII. ATTACHMENTS

- Attachment 1 Consultant Information And Certifications
- Attachment 2 Procurement Lobbying Law Compliance
- Attachment 3 Draft Contract, including Appendix A

Attachment 4 Consultant Employment Disclosure Legislation Form
Attachment 5 Sample Budget Schedule (Cost Submission)
Attachment 6 Proposed Consultant Personnel
Attachment 7 Consultant's Responsibility when Proposing Former NYSDOT Employees
Attachment 8 DBE Participation Information
Attachment 9 DBE Participation Solicitation Log (Good Faith Effort Documentation)
Attachment 10 Supplemental Agreement Assistance with Future RFP Development
Attachment 11 Hypothetical Scenario

Attachment 1

Consultant Information And Certifications

CONSULTANT INFORMATION AND CERTIFICATIONS

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

CONTRACT NUMBER: C000785

PROJECT TITLE: CONSULTANT PLANNING SERVICES FOR NYMTC

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 7** if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility forms to NYSDOT within 10 days of notification of designation both electronically and in hard copy per the NYSDOT Web site.
(<https://www.nysdot.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions>)
- ST-220: If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf (Form ST-220-CA)
http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf (Form ST-220-TD)
- The firm is in compliance with the requirements of the Omnibus Procurement Act as described in EXHIBIT A which is found 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) **“Offeror’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)”**
 - b) **“Offeror 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 Contract Management (*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to “NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES” – see the Consultant’s page at NYSDOT’s “Doing Business With DOT” web site:

<https://www.nysdot.gov/main/business-center/consultants/forms-publications-and-instructions>

3. **Summary of the policy and prohibitions regarding permissible contacts**

- a) **Contacts prior to designation:**

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

- The NYMTC Designed Contact Person
- The NYSDOT Contract Management Designation Contract Analyst
- The NYSDOT Contract Management Designation Analyst Supervisor
- The NYSDOT Contract Management Civil Rights Unit Supervisor
- The NYSDOT Contract Management Assistant Directors
- The NYSDOT Contract Management Director

These are some communications exempted from this restriction:

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

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, that offeror cannot be awarded the contract. A second violation would lead to a four year bar on the award of public contracts to the offeror.

- b) **Contacts after designation**

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

- The NYMTC Designed Contact Person
- The NYSDOT Contract Management Designation Contract Analyst
- The NYSDOT Contract Management Designation Analyst Supervisor
- The NYSDOT Contract Management Civil Rights Unit Supervisor
- The NYSDOT Contract Management Assistant Directors
- The NYSDOT Contract Management Director
- The NYMTC Consultant Project Manager

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 Offerors 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 offeror. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

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

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

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

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

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

Designated Contact Persons:

For NYSDOT:

Mr. Al Hasenkopf
NYSDOT Contract Management
50 Wolf Road, 1CM
Albany, New York 12232
E-mail: [ahasenkopf@ dot.state.ny.us](mailto:ahasenkopf@dot.state.ny.us)
Tele: 518 457-1560

For NYMTC:

Mr. Ismet Apdiroglu
NYMTC Admin Group
199 Water Street, 22nd Floor
New York, NY 10038
E-mail: [iapdiroglu@ dot.state.ny.us](mailto:iapdiroglu@dot.state.ny.us)
Tele: 212-283-2414

**Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)
Contract #C000785**

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).

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: _____ C000785 _____

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.:

COMPTROLLER'S CONTRACT NO. C000785

PROJECT: CONSULTANT PLANNING SERVICES FOR NYMTC

This Agreement made this _____ day of _____, 2012 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

CONSULTANT FIRM NAME
CONSULTANT FIRM ADDRESS

(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 AGREEMENT. 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 AGREEMENT 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 AGREEMENT.

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 and APPENDIX B, SCHEDULE A (including EXHIBITS), SCHEDULE B (including EXHIBITS), the STATE's Request for Proposals (RFP), and the CONSULTANT's Proposal.

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 AGREEMENT within a sixty (60)-month base term for this AGREEMENT, which shall commence on _____, _____ and end on _____, _____. Further, this AGREEMENT may be extended for such additional periods as are agreed to by the STATE and approved by the Office of the State Comptroller and within the Lump Sum as shown in Item I, ARTICLE 5.

ARTICLE 5. PROVISION FOR PAYMENT.

Item I The STATE shall pay to the CONSULTANT and the CONSULTANT agrees that the total contract value for this Agreement is \$0.

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 16 hereof, entitled Termination.

Item III The STATE shall pay to the CONSULTANT, and the CONSULTANT agrees to accept as full compensation for his services under this Agreement:

a) Lump-sum, milestone schedule-based payments per Tier II selected assignment(s), based upon the agreed-upon the not-to-exceed Specific Hourly Rates of pay shown in SCHEDULE B for CONSULTANT personnel assigned to this PROJECT. The Specific Hourly rates are not subject to audit, however, the number of hours charged is subject to audit.

b) Actual Direct Non-Salary Costs incurred in fulfilling the terms of this AGREEMENT are subject to audit. Such costs may include, but are not necessarily limited to those shown in the applicable SCHEDULE B of each awarded task assignment. All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller. 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.

Item IV The agreed-upon rates for the first contract year of this AGREEMENT may be adjusted for the second, third, fourth and fifth contract years. Rates for the second, third, fourth and fifth contract

years may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.

ARTICLE 6. MILESTONE PAYMENTS.

The CONSULTANT shall be paid in milestone progress payments based on a payment schedules established by the Project Director and the CONSULTANT via competitively awarded task assignments amended into this Agreement via Supplemental Agreements, which shall contain task assignment-specific Schedule Bs, which shall include the schedule of agreed-upon milestone payments.

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

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.

The CONSULTANT shall inform the STATE and all Subcontractors and Subconsultants of the Consultants schedule for submitting monthly vouchers to the STATE, said schedule shall be strictly adhered to by the CONSULTANT.

All Subcontractor and Subconsultant vouchers received by the CONSULTANT at least ten (10) calendar days prior to a scheduled billing, shall be included in that billing, even if the CONSULTANT does not have other costs to be billed for that period. The CONSULTANT shall inform the Subcontractor or Subconsultant of the date the voucher was submitted to the STATE and the amount included for the Subcontractor or Subconsultant.

Accounts of the CONSULTANT shall clearly identify the costs of the work performed under this AGREEMENT and shall be subject to periodic and final audit by the STATE and, on Federally aided Projects, by the Federal Highway Administration. Such audit shall not be a condition of partial payment.

ARTICLE 7. CONTRACT PAYMENT.

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

ARTICLE 8. FINAL PAYMENT.

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

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

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

ARTICLE 9. EXTRA WORK.

a) If the CONSULTANT believes that any work is or may be beyond the scope of the Agreement (extra work), or that additional work is necessary, the CONSULTANT shall notify the STATE, in writing, of this fact prior to beginning any of the work. The notification shall include all information required by the Department. The STATE shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. No extra or additional work shall be started prior to written authorization from the STATE. The STATE shall be under no obligation to reimburse the CONSULTANT for any extra or additional work performed without the prescribed notification and authorization. The STATE will not allow fixed fee for any extra work undertaken without prescribed notification and authorization. In the event that the STATE determines that such work does constitute extra work, the STATE shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the STATE to the CONSULTANT for execution after approvals have been obtained from necessary State officials and, if required, from the Federal Highway Administration.

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

ARTICLE 10. CONSULTANT LIABILITY.

To the fullest extent permitted by law, the CONSULTANT shall indemnify and save harmless the State, any municipality in which the work is being performed, and/or any public benefit corporation,

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

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

ARTICLE 11. INSURANCE.

The CONSULTANT shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of A minus or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §27.0 *et seq.*; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The CONSULTANT shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect.

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

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONSULTANT are specified in subsection "B," below. Insurance shall apply separately on a per-job or per-project basis.

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

Contract Management
New York State Department of Transportation
50 Wolf Rd, Suite 1CM.
Albany, NY 12232

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

- a. Be in the form provided by the Department (C218 or successor) unless the Department specifically approves a different form. The ACORD forms of Certificate of Insurance are not acceptable.
 - b. Be signed by an authorized representative of the insurance carrier or producer and be acknowledged before a notary public.
 - c. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
 - d. Specify the Additional Insureds and Named Insureds as required herein.
 - e. Refer to this Contract by number on the face of the certificate, and
 - f. Expressly reference the inclusion of all required endorsements.
 - g. If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:
 - (1) Direct the CONSULTANT to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
 - (2) May withhold further contract payments in accordance with Article 8, or
 - (3) Treat such failure as a breach or default of the contract.
4. **Additional Insureds.** All insurance policies required, by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and**

their agents or employees” with respect to any claim arising from the CONSULTANT’s Work under this contract or as a result of the CONSULTANT’s activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form (or forms) that provides equivalent coverage.

5. **Primary Coverage.** All insurance policies, excepting workers’ compensation, shall provide that the required coverage shall be primary as to any other insurance that may be available to the Department for any claim arising from the CONSULTANT’s Work under this contract, or as a result of the CONSULTANT’s activities.
6. **Waiver of Subrogation.** As to every type and form of insurance coverage required from the CONSULTANT, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees.** To the extent that any of CONSULTANT’s policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.
7. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in subdivision (A)(3) above.
8. **Self-Insured Retention/Deductibles.** Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, CONSULTANT-administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT’s deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of “A minus” or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the CONSULTANT.
9. **Waiver of Indemnities.** The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The CONSULTANT waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

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

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

omissions malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than \$250,000 subject to approval by Department, such approval not to be unreasonably withheld, except that it is also agreed that Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on an ISO claims made basis (or a policy form providing equivalent coverage) in an amount of no less than \$5,000,000.00 per claim and not less than \$5,000,000.00 in the aggregate.

ARTICLE 12. INTERCHANGE OF DATA.

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

ARTICLE 13. DISPOSITION OF DATA.

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

ARTICLE 14. DAMAGES AND DELAYS.

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

ARTICLE 15. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

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

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

The determination of any rights under this AGREEMENT shall be adjudicated in a State or

Federal Court with jurisdiction over the matter, and venue for the determination of such rights shall be in Albany, New York.

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

ARTICLE 16. TERMINATION.

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

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

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

(c) The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §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. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A and APPENDIX B;
2. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
3. SCHEDULE A (including Exhibits);
4. SCHEDULE B (including Exhibits);
5. The STATE's Request for Proposals; and
6. The CONSULTANT's Proposal.

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: -

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 States designee. Neither shall the CONSULTANT disclose information deemed confidential by the State nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this AGREEMENT.

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

ARTICLE 29. VENDOR RESPONSIBILITY.

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

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.

In accordance with Chapter 10 of the Laws of 2006, the CONSULTANT shall complete the "State Consultant Services Contractor's Annual Employment Report" (Form B, **Exhibit ___**) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May15th 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: tameche@dot.state.ny.us 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 #C000785







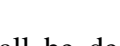
Title: Director

Address: NYSDOT Contract Management, Suite 1CM, 50 Wolf Road, Albany, NY 12232

Telephone Number: 518-457-2600

Facsimile Number: 518-457-2874

E-Mail Address: whowe@dot.state.ny.us

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

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

Item 3. The parties may, from time to time, specify any new or different address in the United

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

ARTICLE 32. TITLE VI ASSURANCE.

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

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

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

(3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

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

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

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless

exempt by the Regulations, or directives issued pursuant thereto.

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

Acknowledgement for Contract #C000785

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:

EXHIBIT A

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 proposers, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

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

Proposers located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The Omnibus Procurement Act requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The successful contractor shall document efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.
2. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:
 - a. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned business, or
 - b. Contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or
 - c. Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or
 - d. Participated in bidder outreach conferences.
 - e. If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.
 - f. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.

3. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
4. 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 Community Services 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.

Bidders are hereby notified that if their principal place of business is located in a state 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 amendments (Chapter 684, Laws of 1994) require that they be denied placement on bidders mailing lists and contracts for which they would otherwise obtain. Bidders of construction services must be denied the award of a contract if their principal place of business is located in a state that discriminates or imposes a preference against New York State firms.

A current list of states which penalize New York State firms is available from the office letting this contract, or from the Procurement Assistance Unit, NYS Department of Economic Development, Albany NY (518-292-5224).

Last Updated: Monday, April 27, 2010

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).

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- (a) 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, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement

that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

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

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

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

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

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

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

APPENDIX B

REQUIREMENTS FOR FEDERALLY AIDED TRANSPORTATION PROJECTS

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, 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 undertakes to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT has, in cooperation with FHWA, assembled the body of Federal-aid requirements, together with information, NYSDOT procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: <https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration that enters 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: <http://www.fhwa.dot.gov/programadmin/contracts/index.cfm>).

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 Department of Transportation regulations (49CFR 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 Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49CFR Part 26.

FEDERAL SINGLE AUDIT REQUIREMENTS

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

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA), 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 database is accessible at <http://www.cfda.gov/>.

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:

20.215, Highway Training and Education

20.219, Recreational Trails Program

20.XXX, Highway Planning and Construction - Highways for LIFE;

20.XXX, Surface Transportation Research and Development;

20.500, Federal Transit-Capital Investment Grants

20.505, Federal Transit-Metropolitan Planning Grants

20.507, Federal Transit-Formula Grants

20.509, Formula Grants for Other Than Urbanized Areas

20.600, State and Community Highway Safety

23.003, Appalachian Development Highway System

23.008, Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

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

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

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

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

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

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

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

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

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

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

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

APPENDIX 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) The CONSULTANT will submit to the New York State Department of Transportation, a monthly report Form (AAP-46) for the first three months after beginning work, thereafter upon request, indicating the number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work.

(d) 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:

- (a) The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.
- (b) The number of months of training to be provided under these special provisions is previously stated in the Agreement.
- (c) 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.
- (d) 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.

Attachment 4

Consultant Employment Disclosure Legislation Forms A & B

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

FORM A

State Consultant Services – Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term
--

State Agency Name: Transportation Contractor Name: Contract Start Date: / /	Agency Code: 17000 Contract Number: C000785 Contract End Date: / /
---	--

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

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

OSC Use Only:
 Reporting Code:
 Category Code:

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

Contracting State Agency Name: Transportation Agency Code: 17000
 Contract Number: C000785
 Contract Term: / / to / /
 Contractor Name:
 Contractor Address:
 Description of Services Being Provided: Consultant Planning Services for NYMTC

Scope of Contract (Choose one that best fits):
 Analysis Evaluation Research Training
 Data Processing Computer Programming Other IT consulting
 Engineering Architect Services Surveying Environmental Services
 Health Services Mental Health Services
 Accounting Auditing Paralegal Legal Other Consulting

O*Net Employment Category and O*NET Employment Title	Number of Employees	Number of Hours 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: / /

Attachment 5

COST PROPOSAL

Instructions

Propose your job titles consistent with the equivalent descriptive job title defined below and listed in **Attachment 5**. You must complete and use **Attachment 6** to present your staffing solution for the RFP's Part I Technical Proposal. List all offered titles and present detailed qualifications for each. For all job titles EXCEPT Consultant Project Manager and Consultant Task Administrator, a job title series of I, II and III is allowed (i.e., Transportation Planner I, Transportation Planner II, and Transportation Planner III) to distinguish between entry level, intermediate level and senior level personnel (in terms of education, work experience, supervision, etc.).

You must use **Attachment 5** to complete and present your entire proposed staffing portion of your Part II Cost Proposal. All Consultant personnel titles and not-to-exceed fully-loaded rates must come from **Attachment 5**.

The offeror's Salary Schedule (**Attachment 5**) shall list all proposed descriptive job titles for the staff to be assigned to this project and their current and projected loaded specific hourly rate for the first contract year (July 1, 2012 to June 30, 2013). The rates proposed shall be not-to-be-exceeded rates. In addition to salary rates, your Salary Schedule shall also identify the associated overhead with each title (office vs. field) and your firm's fee. Submit separate Attachment 5's: one for all field work and one for all consultant-home based work.

Generic job titles with descriptions appropriate to the work of NYMTC are given to ensure comparability across respondents. All substitute or equivalent titles proposed must be linked to these titles by all respondents with ample explanations provided. Should the offeror decide that not all job titles are necessary, the offeror must provide an explanation of how the "unnecessary" job title(s) and duties are re-distributed among the remaining job titles. An offeror electing to use company-specific job titles must clearly explain how the company-specific job titles (in both title and duties) compare to the identified job titles in this RFP. If the offeror uses company-specific job titles rather than those provided, the offeror must insert the company-specific job title under the job title being designated as equivalent into **Attachment 5** and **Attachment 6**. If additional titles are used but are not assigned, they should be listed. The schedule should be prepared to distinguish anticipated assignment by project section/task.

If more than one of the offeror's descriptive job titles can be included under each generic job title, each descriptive job title should be separately shown with associated hourly billing rates along with a composite hourly billing rate for the descriptive job title.

It is expected that a reduced field Overhead rate will be provided for Consultant staff assigned to NYMTC's offices. NYMTC will support field staff operations, providing desk space, computer, and telephone and internet access, among other items. The requirement of and the cost for additional supporting items shall be negotiated with the Consultant selected to accomplish a task. Offers must also submit separate **Attachment 5**'s for personnel assigned to work in the field (NYMTC's offices) as well as work in the Consultant's home office.

Offerors must fill out one **Attachment 5** per Consultant in its team (prime consultant plus any subconsultants that are being proposed), making multiple copies of **Attachment 5**, as needed. Specific hourly rates for subconsultants should also be shown in **Attachment 5**.

Further, for all job titles EXCEPT Consultant Project Manager and Consultant Task Administrator, a job title series of I, II and III is allowed (i.e., Transportation Planner I, Transportation Planner II, and Transportation Planner III) to distinguish between entry level, intermediate level and senior level personnel (in terms of education, work experience, supervision, etc.). Furthermore, should a Consultant **NOT** propose a rate for any of the job titles listed in **Attachment 5**, to maintain a level evaluative field, the highest job title rate shall be assumed when evaluating your cost proposal.

Attachment 5 can be amended via future Supplemental Agreements to add titles/job descriptions currently not currently included.

The descriptive job titles are as follows:

1. Project Director, and

2. Consultant Project Manager - Project Director and/or Consultant Project Manager Plans, directs, and coordinates activities of designated project to ensure that goals or objectives of project are accomplished within prescribed time frame and funding parameters. Reviews project proposal or plan to determine time frame, funding limitations, procedures for accomplishing project, staffing requirements, and allotment of available resources to various phases of project. Establishes work plan and staffing for each phase of project, and arranges for recruitment or assignment of project personnel. Directs and coordinates activities of project personnel to ensure project progresses on schedule and within prescribed budget. Reviews status reports prepared by project personnel and modifies schedules or plans as required. Prepares project reports for management, client, or others. Confers with project personnel to provide technical advice and to resolve problems.

Supervises and coordinates activities of personnel involved in the project and shall serve as the primary contact with NYMTC through the Consultant Manager. The Consultant Project Manager is responsible for the performance of all tasks assigned to and agreed by the Consultant, as well as all contractual matters. Please see RFP page 6, B. Project Roles - Consultant Project Manager for more details.

3. Consultant Task Administrator - This person shall serve as the primary contact with the NYMTC Task Manager to execute and deliver the assigned task order. The Consultant Task Administrator is responsible for the performance of all work components and elements assigned to each task order agreed to by the Consultant. In the case of some projects deemed not complex, with NYMTC's agreement, the Consultant Project Manager may fill both roles.

4. Transportation Planner and/or

5. Transportation Analyst - Transportation Planners and/or Analysts design, direct and conduct transportation systems planning, program planning, and project development and review activities in support of transportation planning. Directs project and program development, analyses, and review activities, developing and implementing planning programs, designing and implementing major surveys and studies, developing and testing new methods for studies, planning, and project accomplishment. Develops and applies procedures and methods to identify and quantify impact of transportation alternatives on economic, social, environmental, and other factors. Analyzes projects in regards to their

size, relationship to existing and proposed transportation facilities, feasibility, impact, cost, possible alternatives, compliance with regional and statewide planning goals, legal and funding constraints, environmental, social, and economic impact, etc. Works and consults with agency staff and representatives of State and local governments and regulatory authorities about projects. Knowledge of compliance of State and Regional transportation planning with State and Federal regulations.

6. Technical Analyst - Please use ONET title 15-2031 Operations Research Analysts

(NOTE: The ONET is the supplemental reference being used in this RFP to provide equitable job titles and duties corresponding to the work of NYMTC. Please visit the ONET resource via the following link:

<http://online.onetcenter.org/find/family/title?s=00&g=Go>

7. Administrative Analyst - Please use ONET title 11-3011 Administrative Services Managers, or use: Aids managers by coordinating office services, such as personnel, budget preparation and control, housekeeping, records control, and special management studies: Studies management methods in order to improve workflow, simplify reporting procedures, or implement cost reductions. Analyzes unit operating practices, such as recordkeeping systems, forms control, office layout, suggestion systems, personnel and budgetary requirements, and performance standards to create new systems or revise established procedures. Analyzes jobs to delimit position responsibilities for use in wage and salary adjustments, promotions, and evaluation of workflow. Studies methods of improving work measurements or performance standards. Coordinates collection and preparation of operating reports, such as time-and-attendance records, terminations, new hires, transfers, budget expenditures, and statistical records of performance data. Prepares reports including conclusions and recommendations for solution of administrative problems. Issues and interprets operating policies. Reviews and answers correspondence. May assist in preparation of budget needs and annual reports of organization. May interview job applicants, conduct orientation of new employees, and plan training programs. May direct services, such as maintenance, repair, supplies, mail, and files. May compile, store, and retrieve management data, using computer.

8. Administrative Assistant Assists with the conduct of studies. Assists with the analysis and evaluation of organizations and their work. Assists with the evaluation and preparation of procedures and work methods, and develop recommendations for organizational and work improvements. Assists in preparing and administering the annual budget and financial plan and may prepare and manage the plan for a program. Assists with the maintenance of financial records to monitor and control expenditures. Prepares and evaluates expenditure and other financial reports. Assists with the preparation of grant applications and administers approved grants. Assists with the purchase of goods and services. Assists with personnel activities. Assists with office support activities. Assists with secretarial duties as required. Assists with staff support services for executive staff and program managers.

9. Public Information Specialist - Please use ONET title 11-2031 Public Relations Manager

10. Economist - Please use ONET title 19-3011 Economists

11. Demographer - Please use ONET title 19-3011 Economists

12. Statistician - Please use ONET title 15-2041 Statistician

13. Specialty Planner (Freight, Land-Use, Regulatory, Federal Funding Program Coordinator,

Legislative and Regulatory Specialist)

Various specialty planners to work in specific transportation-related fields (please examine NYMTC's Unified Planning work Program – UPWP – to gain a firmer sense of what duties, skills, etc., are involved. The following are brief descriptions:

Freight: To work with staff and the members on the regional freight planning process, including advancing follow-up studies from the Regional Freight Plan and waterborne freight assessments, assisting in freight data collection and the operation of the Freight Transportation Working Group, updating the Regional Freight Plan as needed and supporting the activities of the PFAC Freight Subcommittee.

Land Use: To work to integrate NYMTC's land use model with the rest of the Best Practice Model. The land use model needs to be reactivated with the 2040 forecasting contract.

Legislative and Regulatory Specialist: To review the new SAFETEA-LU legislation and associated notices of proposed rule making (NPRMs), assist in the drafting of NYMTC comments on the NPRMs, develop summaries and guidance for NYMTC's members. The specialist would also review and summarize relevant legislative and regulatory developments at the State and local levels and provide legislative/regulatory research in support of other NYMTC planning initiatives.

Federal Funding Programs: To support the administration of Federal funding programs for which NYMTC has mandated responsibility, including the Congestion Mitigation air Quality Program, Surface Transportation Program, Transportation Enhancement Program, the Job Access and Reverse Commute Grant Program, the Section 5307 formula funding program and the Safe Routes to Schools Program. Support would include maintaining relevant committees and working groups, analysis related to prioritization and ranking, and preparation of materials for review by the members

14. IT Specialist - Please use ONET titles 15-1071 Network and Computer System Administrator or 15-1081 Network Systems and Data Communication Analyst; or use the following:

Systems Analyst: Analyzes user requirements, procedures, and problems to automate processing or to improve existing computer system: Confers with personnel of organizational units involved to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as forms of data input, how data is to be summarized, and formats for reports. Writes detailed description of user needs, program functions, and steps required to develop or modify computer program. Reviews computer system capabilities, workflow, and scheduling limitations to determine if requested program or program change is possible within existing system. Studies existing information processing systems to evaluate effectiveness and develops new systems to improve production or workflow as required. Prepares workflow charts and diagrams to specify in detail operations to be performed by equipment and computer programs and operations to be performed by personnel in system. Conducts studies pertaining to development of new information systems to meet current and projected needs. Plans and prepares technical reports, memoranda, and instructional manuals as documentation of program development. Upgrades system and corrects errors to maintain system after implementation. May assist Computer Programmer in resolution of work problems related to flow charts, project specifications, or programming. May prepare time and cost estimates for completing projects. May direct and coordinate work of others to develop, test, install, and modify programs.

Systems Administrator: Coordinates installation of computer operating system software and tests, maintains, and modifies software, using computer terminal: Reads loading and running instructions for system software, such as task scheduling, memory management, computer file system, or controlling computer input and output, and loads tape into tape drive or transfers software to magnetic disk. Initiates

test of system program and observes readout on monitor of computer system to detect errors or work stoppage. Enters code changes into computer system to correct errors. Analyzes performance indicators, such as system's response time, number of transactions per second, and number of programs being processed at once, to ensure that system is operating efficiently. Changes system software so that system performance will meet objectives. Reviews computer system capabilities, workflow, and scheduling limitations to determine if requested changes to operating system are possible. Writes description of steps taken to modify system and procedures required to implement new software. Assists users having problems with use of system software. May train Systems Operators and/or Computer Programmer to use system software. May prepare workflow charts and diagrams to modify system software. May visit vendors to observe demonstration of systems software. May administer and monitor computer program that controls user access to system. May review productivity reports and problem records to evaluate performance of computer system.

Computer Programmer: Converts data from project specifications and statements of problems and procedures to create or modify computer programs: Prepares, or receives from Systems Analyst, detailed workflow chart and diagram to illustrate sequence of steps that program must follow and to describe input, output, and logical operations involved. Analyzes workflow chart and diagram, applying knowledge of computer capabilities, subject matter, and symbolic logic. Confers with supervisor and representatives of NYSDOT and NYSP concerned with program to resolve questions of program intent, data input, output requirements, and inclusion of internal checks and controls. Converts detailed logical flow chart to language processable by computer. Enters program codes into computer system. Inputs test data into computer. Observes computer monitor screen to interpret program operating codes. Corrects program errors, using methods such as modifying program or altering sequence of program steps. Writes instructions to guide operating personnel during production runs. Analyzes, reviews, and rewrites programs to increase operating efficiency or to adapt program to new requirements. Compiles and writes documentation of program development and subsequent revisions. May train workers to use program. May assist Systems Operators to resolve problems in running computer program. May work with Systems Analyst to obtain and analyze project specifications and flow charts. May direct and coordinate work of others to write, test, and modify computer programs.

15. Transportation Modeler - Please use ONET title 15-2091 Mathematical Technicians

16. GIS Specialist - Please use ONET title 17-1021 Cartographers and Photogrammetrists

17. Database Administrator (DBA) - Responsible for the design, implementation, maintenance and repair of an organization's database. The role includes the development and design of database strategies, monitoring and improving database performance and capacity, and planning for future expansion requirements. They may also plan, co-ordinate and implement security measures to safeguard the database. Requires a certification or degree for database systems (for example, the Microsoft Certified Database Administrator). Strong organizational skills; strong logical and analytical thinker; ability to concentrate and pay close attention to detail; ability to think broadly and consider impacts across systems and within the organization. Duties: Transferring Data; Replicating Data; Maintaining database and ensuring its availability to users; Maintaining the data dictionary; Controlling privileges and permissions to database users; Monitoring database performance; Database security Stop; Data fragmentation; Gives authority to access data base to the authorized person.

Attachment 5
C000785
COST PROPOSAL
PROPOSED SPECIFIC HOURLY RATES: CONTRACT YEAR ONE

OVERHEAD: NYMTC Office/Consultant Office
(Circle one, submit one form for each overhead type)

Consultant Name _____

TITLE	NAME	(a) YEAR ONE DIRECT LABOR (Salary)	(b) OVERHEAD (__%) OH Type: _____	(c) FEE (__%)	(a)+(b)+(c) YEAR ONE BILLING RATE
Project Director					
Consultant Project Manager					
Consultant Task Administrator					
Transportation Planner					
Transportation Analyst					
Technical Analyst					
Administrative Analyst					
Administrative Assistant					
Public Involvement Specialist					
Economist					
Demographer					
Statistician					
Specialty Planner (Freight/Land-Use)					
IT Specialist					
Transportation Modeler					
GIS Specialist					
Data Base Administrator					

Note: The agreed-upon rates for the first contract year of this AGREEMENT may be adjusted for the second, third, fourth and fifth contract years. Rates for the second, third, fourth and fifth contract years may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering and Related Services (Series ID: PCU5413-5413--) for the most recent 12 month period as calculated by the U.S. Department of Labor – Bureau of Labor Statistics, or 1.5 percent, subject to current market conditions. If at any time the above Index Series ID is discontinued or becomes unavailable, the STATE reserves the right to implement a comparable Index.).

Note: For the purposes of this RFP, the first contract year shall be July 1, 2012 to June 30, 2013.

Attachment 6
C000785
TECHNICAL PROPOSAL

PROPOSED CONSULTANT PERSONNEL

Consultant Name _____

TITLE	NAME
Project Director	
Consultant Project Manager	
Consultant Task Administrator	
Transportation Planner	
Transportation Analyst	
Technical Analyst	
Administrative Analyst	
Administrative Assistant	
Public Involvement Specialist	
Economist	
Demographer	
Statistician	
Specialty Planner (Freight/Land-Use)	
IT Specialist	
Transportation Modeler	
GIS Specialist	
Data Base Administrator	

NOTE: Provide each titles' supporting qualifications in a concise and efficient manner.

Attachment 7

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 Joint Commission on Public Ethics 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 8

DBE Participation Information

Please complete the following table for the prime firm and all subconsultants (consultant team composition): Please identify each firm’s legal name, checking if they are a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm’s percentage of the total salary 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. Use additional pages as needed.

Further, participation by a certified DBE prime consultant will count toward DBE participation goal attainment (10 %)

If the combined percentage of total salary for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the **DBE Participation Solicitation Log (Attachment 9)**, and the **DBE Goal Attainment Explanation Letter**. Further, prime consultants certified as a DBE who propose to meet the Department’s DBE participation goal via their meaningful participation, are required to fill out and submit the **DBE Participation Solicitation Log (Attachment 9)** unless their outreach efforts results in proposed DBE subconsultant.

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

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

Attachment 9

DBE Participation Solicitation Log (Good Faith Effort Documentation if Less Than 10% DBE Participation)

CONTRACT NO. ___C000785_____		DBE PARTICIPATION GOAL DBE _10%__		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)

Attachment 9 (Continued)

INSTRUCTIONS FOR COMPLETING Attachment 9 DBE 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. Use as many pages as needed in your submission.

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

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

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

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

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

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

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

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

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

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

DBE CONSULTANTS SOLICITED:

SOLICITED COMPANY NAME AND CONTACT PERSON: Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

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

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

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

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

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

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

A description of the codes to use is as follows:

CODE DESCRIPTION:

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

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

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – <http://biznt.nysucp.net>) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested DBEs – it is the bidder’s responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm’s price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a DBEs is not in itself sufficient reason for failure to meet the contract DBE goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.

Do not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor’s efforts to meet the project goal.

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

Attachment 10

SUPPLEMENTAL AGREEMENT ASSISTANCE WITH FUTURE RFP DEVELOPMENT

In a case where _____ provides employees, agents, officers,
Consultant Name
subcontractors and/or subconsultants to work on a NYMTC assignment that includes the preparation of a future RFP scope of services, then, by signing this agreement, I hereby agree that I will not offer, bid on, respond to, or team with, any other consultant on the contract that results from a future RFP prepared under this assignment.

In addition, signers are reminded of **Article 28 ‘Security and Confidentiality of Information’** contained in Contract C000785

Contact number: _____

Contract Title: _____

Prime Firm Name: _____

Subconsultant Name: _____

Employee’s Name: _____

Task Assignment: _____ (Optional)

Signature of Consultant Date

Signature of Employee Date

Signature of Subconsultant Date

ATTACHMENT 11

HYPOTHETICAL SCENARIO

STAFF AUGMENTATION FOR REGIONAL TRANSPORTATION PLAN UPDATE

NOTE: The scenario included here is a hypothetical “what if” paper task assignment exercise for the purpose of evaluating proposals. NYMTC/NYS DOT does not intend for any proposer to undertake any actual work until a Consultant has been selected and a contract has been signed and executed.

Instructions

Provide a mini-bid proposal to provide staff support and assistance for NYMTC's Regional Transportation Plan (RTP) Update for Tasks 3, 5, 6, 7 and 8.

Consultants shall prepare and submit a response to the requested hypothetical task assignments listed below. Responding Consultants shall propose discrete Task Implementation Teams and identify the proposed experience and qualifications to deliver the requested work. Only those personnel contained in your **Attachment 5** proposal can be used to staff each team.

The response must be in the form of a complete Part A Technical Mini-Bid, which shall include the following sections:

1. Cover Letter, indicating name, address and phone number of the proposer, including a contact person, and name of the person(s) who prepared the mini-bid. Confidential and proprietary information should also be identified and addressed in this section
2. Title page.
3. Table of Contents.
4. Executive Summary, which provides a brief description of the proposed approach and work effort to performing the hypothetical task assignment. .
5. A brief but substantive discussion of the significant issues involved in the task assignment.
6. A concise, inclusive scope of work.
7. A schedule for completion of the hypothetical scenario task assignment showing the duration of subtasks and all major milestones.
8. A budget, based upon the selected resources (personnel selected from **Attachment 5** plus estimated direct non-salary expenses).
9. An organizational chart, with supporting narrative, which describes each scenario team responsible for implementing the hypothetical task. If subcontractors are to be used, explain the need and how they will be incorporated into the hypothetical effort and describe the arrangements. Discuss your plan for phasing project personnel into the scenarios. Discuss the extent and quality of interaction with key participants.
10. For the scenario team assembled, select the resources proposed in **Attachment 5**, indicate the titles and hours of all key personnel assigned, indicating any proposed subcontractor(s) using Attachment 5/Table 5-A. For each proposed implementation team, to the degree possible, provide names of individual team members having a major role. For each key personnel assigned to each hypothetical task, indicate the level of effort contributed and an estimate of total person hours for each task and the total project. Use no more than two (2) pages.

Scope of Work

This project has two phases which will run concurrently: Phase 1 - Addressing the requirements of SAFETEA-LU, due July 2007; and Phase 2 - The next full update of the RTP, due in October 2013. Both of these will be achieved by working with NYMTC member agencies through NYMTC's RTP Committee. The consultant will be requested to provide assistance with required public outreach while NYMTC member-level agency planning continues. Additionally, efforts will be made to collaborate with other MPOs and integrate NYMTC's RTP with their Plans as far as possible. **Consultant assistance would be needed for Tasks 3, 5, 6, 7 and 8.** The actual tasks to be performed will be determined after full staff and RTP Committee consultation.

Project Tasks

1. Facilitate monthly and other periodic meetings of the RTP Committee.
2. Develop and finalize addendum to the current RTP to address SAFETEA-LU requirements.
3. Work with Technical Group to develop the updated Infrastructure Needs Assessment for the full update.
4. Review all sections of the current RTP.
5. Develop financial resources section for the full update.
6. Collect data for conformity analysis for full update.
7. Begin public outreach and agency planning.
8. Integrate the RTP with other MPOs' Plans.

Hypothetical Scenario Deliverables

1. Addendum which addresses SAFETEA-LU gaps - due end of 1st quarter.
2. The Consultant shall assist with drafts of various sections of the 2013 update.
3. Draft infrastructure needs and financial forecasts - ongoing through end of 4th quarter.
4. Technical memoranda at end of 2nd and 4th quarters.

**HYPOTHETICAL SCENARIO TASK ASSIGNMENT STAFFING
STAFF AUGMENTATION FOR REGIONAL TRANSPORTATION PLAN UPDATE**

(Sample)

Consultant Name: ABC Consultants, Inc.

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

Contract #C000785