

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

REQUEST FOR PROPOSALS #C000PSA4

**CONSULTANT PLANNING SERVICE AGREEMENTS
(PSA4) for NYMTC**

November 23, 2016

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 RFP or proposal should be directed to Ismet Apdiroglu (ismet.apdiroglu@dot.ny.gov) of the New York Metropolitan Transportation Council (NYMTC) and to Al Hasenkopf (alfred.hasenkopf@dot.ny.gov) of NYSDOT Contract Management.

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

- December 8, 2016: Pre-Proposal Webinar/Conference
- December 19, 2016 COB: Deadline for questions about the RFP
- December 27, 2016: Date when answers to questions will be released
- January 18, 2017: Deadline for the submission of proposals on 2 PM (Eastern Time)
- Contract Award: June 1, 2017 (estimated)
- To ensure adequate transition between PSA3 and PSA4, assume new PSA4 task assignment requests starting on June 1, 2017 if not sooner. PSA3 agreements expire July 31, 2017.

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

The RFP contains instructions for complying with NYS's mandatory 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.

We look forward to the receipt of your proposal.

Sincerely,

Jose Rivera
Executive Director,
NYMTC

Enclosures

PSA4 RFP RESPONSE FORM

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 RFP **Attachment 3**) 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: ismet.apdiroglu@dot.ny.gov

Copy: alfred.hasenkopf@dot.ny.gov

* Regular Mail:

NEW YORK METROPOLITAN TRANSPORTATION COUNCIL (NYMTC)

25 Beaver Street, Suite 201, ATTN: Ismet Apdiroglu, PSA4

New York, NY 10004

* Fax: 212-383-7244

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

**REQUEST FOR PROPOSALS
CONSULTANT PLANNING SERVICE AGREEMENTS
(PSA4) FOR NYMTC**



Request for Proposals Release Date: November 23, 2016
Proposal Due Date: January 18, 2017

Proposal Delivery Location:

**New York Metropolitan Transportation Council
25 Beaver Street, Suite 201
New York, NY 10004
Attention: Mr. Ismet Apdiroglu
Email: ismet.apdiroglu@dot.ny.gov**

Second Delivery Location:

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

REQUEST FOR PROPOSALS
NEW YORK STATE DEPARTMENT OF TRANSPORTATION (on behalf of the)
NEW YORK METROPOLITAN TRANSPORTATION COUNCIL
CONSULTANT PLANNING SERVICE AGREEMENTS (PSA4) FOR NYMTC
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NEW YORK METROPOLITAN TRANSPORTATION COUNCIL

REQUEST FOR PROPOSALS #C000PSA4

**CONSULTANT PLANNING SERVICE AGREEMENTS (PSA4)
FOR NYMTC**

1. INTRODUCTION

1.1 RFP 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 the top three responsive, responsible and fully qualified Planning Service Consultants (or three Teams of Planning Service Consultants) under an FHWA-funded, FTA-funded and potentially New York State-funded planning services term agreements.

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.

1.2 Background

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 consultants to provide 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.

1.3 RFP Objectives

TIER I CONSULTANT SELECTION: To select the top three responsive, responsible and fully qualified teams of professional planning service consultants (via this RFP's Tier I consultant selection method) providing NYSDOT/NYMTC with the best value.

TIER II CONSULTANT SELECTION: To establish a pool of three Tier I consultants from

which NYMTC will request planning service mini-bids via task assignment requests and select one consultant (Tier II consultant) using a best value method to provide the requested services. Tier I consultants shall competitively respond to these requests with a proposed scope of services, a task assignment schedule and proposed labor and other costs (labor based on personnel titles and not-to-exceed fully-loaded labor rates proposed in response to this RFP). NYMTC/NYS DOT 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 PSA4 term agreements via sideletters. For all tasks assignment requests, Consultants must provide requested planning services and task assignment management with not-to-exceed rates from the term 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.

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 one 12-month term extension ('shadow term' to complete any unfinished PSA4 work with no new work started. NYSDOT and NYMTC anticipate advertising for PSA5 RFP services before PSA4 ends.) PSA4's estimated start date is June 1, 2017.

MULTIPLE AWARDS. Multiple awards shall be made, one for each of the top three best value Consultants. Initial total contract value (or maximum amount payable/MAP) for each resulting PSA4 term agreement shall initially be set at \$750,000. Total contract value may be increased thereafter via contract amendment should any Tier II Consultant be competitively awarded more task assignments than the initial MAP can hold.

PAYMENT METHOD: Task Assignments via mini-bid requests with lump-sum budgets with fixed cost 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 PSA4 term agreement. Rates shall be proposed each year of the resulting contract's five year term with a year-to-year rate adjustment allowance of no more than two percent (2%). For any PSA4 work extended beyond the term agreement's 5-year term, the sixth and seventh year rates shall also be limited to no more than a two percent (2%) increase.

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

OTHER RFP OBJECTIVES:

- 10% or more total DBE subconsultant participation over the life of the contract by each firm being awarded a term agreement via this RFP via a 10% DBE goal applied to each task assignment request. DBE participation percentages are based on total dollars spent
- Fair and equitable treatment of all firms participating in the competitive consultant selection process.

2. MINIMUM RFP RESPONSIVENESS REQUIREMENTS

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

1. Complete Technical Proposal – See RFP Section 4, Table 1.
2. Complete Cost Proposal – See RFP Section 4, Table 2.
3. Submission of completed Procurement Lobbying Forms (**Attachment 3**).

4. **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.**

3. SCOPE OF SERVICES & TASK ASSIGNMENT ROLES

3.1 Introduction/General:

TASK ASSIGNMENT TYPES: NYMTC anticipates that mini-bid task assignment requests will either be complete planning studies or staff augmentation at NYMTC's offices, with emphasis on the latter. No guarantee of task assignment work can be made. It is expected that the Consultant will be able to provide planning services under task assignments 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. All of the work to be advertised under PSA4 task assignment requests shall be per **Attachment 14**, which contains a compilation of all advertised PSA4 scopes of services. For all task assignment work whose scope of services is not specifically included in **Attachment 14** yet authorized under NYMTC's annual Unified Planning Work Program (UPWP) shall be separately advertised via open market requests for proposals with resulting separate agreements.

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 future contracts if their staff becomes privy to confidential information regarding a new solicitation. The sample NYMTC NDA is contained in RFP **Attachment 15**.

3.2 NYSDOT Oversight

NYSDOT Contract Management Bureau will provide overall PSA4 term agreement and task assignment process oversight, be available to assist with any PSA4 contractual matters, and assist to process original term agreements as well as all necessary term agreement amendments (NYMTC conducts the initial set-up steps and NYSDOT performs the execution steps). Selected Consultants are expected to bring day-to-day matters to NYMTC's PSA4 Consultant Manager; however, selected Consultants can always contact NYSDOT directly regarding more important or sensitive matters.

3.3 NYMTC PSA4 Consultant Manager

NYMTC shall designate a Consultant Manager(s) to administer each resulting PSA4 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 PSA4 term 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 shall track all PSA4 task assignments from initiation to advertising to award to closeout. NYMTC may designate an assistant Consultant Manager.

NYMTC's PSA4 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.

3.4 Consultant Project Manager

Each selected Consultant shall designate a qualified Consultant Project Manager to manage their respective PSA4 term agreement. This person shall serve as the primary contact between each PSA4 firm and NYMTC, and with NYSDOT as needed. 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 term agreement.

3.5 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 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's consultant performance evaluation system (PERF). 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 assignment. In the event that a task assignment 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.

3.6 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 assignment. 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.

3.7 Task Assignment Locations

The location of all NYMTC work under the resulting PSA4 term agreement is primarily the Metropolitan Planning Area designated by NYMTC. 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).

3.8 Term Agreement Maintenance

Each PSA4 term agreement shall have an initial total contract value of \$3,000,000 to be updated on an as-needed basis. Possible updates could be to increase the applicable term agreement's total value (should the cumulative total of all awarded PSA4 task assignments approaches exceeding \$3M). Updates to New York State's standard contract clauses (Appendix A, etc), shall be administered on an as-needed basis. For any NYMTC planning work not specifically advertised in this RFP but authorized per NYMTC's annual Unified Planning Work Program (UPWP) shall be advertised via open market request for proposals (resulting in separate contracts).

4. PROPOSAL FORMAT AND CONTENTS

4.1 General

Proposals must be received in the specified locations before the proposal due date/time specified in the RFP.

For the purpose of evaluation, each proposal must be submitted in two sealed, bound parts with one part being of the Technical and Management proposal and the other part being the Cost and Contract proposal. 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 your technical proposal and technical information is **not** to be included in your cost proposal, or your proposal could be deemed unresponsive.

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 be submitted per the RFP proposal formatting requirements listed below.

4.2 Technical and Management Proposal Submission Requirements

TABLE 1

□□	Fourteen (14) Bound Hard Copies of Technical Proposal. Send 11 copies to NYMTC; send 3 approximately contemporaneous copies to NYSDOT.
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	3-ring binders. Labeled divided sections. 12 point font is requested. Keep proposals concise. No more than 250 total pages. Cover shall indicate name, mailing and e-mail addresses and phone number of proposer, including a contact person, and name of the person(s) who prepared the proposal. Title Page: shall read: 'PSA4 Consultant Planning Services for NYMTC, Technical & Management Proposal'.
☐	Two (2) read-only complete softcopies on CD in MS Office 2007 Word/Excel compatible format and Adobe pdf format (1 to NYMTC and 1 to NYSDOT).
☐	Signed Cover Letter on official business letterhead. Signature must be from an official authorized to bind the offeror to all of the RFP's provisions. Name, mailing and e-mail address and telephone number of proposer. Name of person(s) who prepared proposal. Contact person(s), e-mail address and telephone number. Identify and address any confidential and proprietary information in this section. 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. Full legal names of all Subconsultants/DBEs.
☐	Table of Contents. Cite any offered separate work samples.
☐	Describe the approach for performing the work and accomplishing the RFP's 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. 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 metropolitan planning objectives, understanding of NYSDOT's contract objectives and familiarity with applicable laws, rules, etc.
☐	Provide an organizational chart showing the names of proposed Key Personnel (Consultant Project Manager and Consultant Task Manager). Discuss your plan for maintaining quality personnel over the contract's five year term.
☐	Experience and Staffing. Provide relevant firm and key personnel experience and expertise. Present prior relevant experience providing similar services as described in Attachment 14. Provide a list of relevant past and projects. Include name, location address, e-mail address and phone numbers for all reference contact persons (previous clients). NYMTC/NYSDOT reserves the right to request information from any reference check source so named, as well as to contact additional relevant references.
☐	Complete and submit Attachment 7 Proposed Consultant Key Personnel Resumes and References .
☐	Complete and submit Attachment 8 Proposed Consultant Personnel .

☐	Submit Scenario Response(s) per Attachment 9 Hypothetical Scenario.
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4.3 Cost and Administrative Proposal Submission Requirements

TABLE 2

☐	Three (3) Bound Hard Complete copies of Cost proposal. Send 1 copy to NYMTC; 2 copies to NYSDOT. 3-ring binders. Labeled divided sections. 12 point font is requested. Title Page: shall read: 'PSA4 Consultant Planning Services for NYMTC, Cost & Administrative Proposal'.
☐	Three (3) COMPLETE Soft Copies. Send 1 copy to NYMTC; send 2 copies to NYSDOT. Separate file in CD containing unprotected Excel table showing the calculation of the average firm hourly rate.
☐	Signed Cover Letter on official business letterhead (copy of Technical proposal letter).
COST SECTION:	
☐	Complete and submit Attachment 1 Specific Hourly Rates.
ADMINISTRATIVE SECTION:	
☐	Complete and submit Attachment 2 Consultant Information and Certifications (sign both Sections II and III).
☐	Complete and submit Attachment 3 Procurement Lobbying Law Compliance Forms. These forms are REQUIRED either with the RFP Response Form. Submission of completed PLL forms is a MANDATORY requirement for Proposal submission.
☐	Complete and submit Attachment 4 DBE Subconsultant Registration Information.
☐	Complete and submit Attachment 5 Non-Collusive Bidding Certification.
☐	Complete and submit Attachment 6 Acknowledgement of Receipt of RFP and RFP Modifications as instructed.

Additional cost proposal instructions:

COST SECTION: Attachment 1: Not To Exceed Fully-Loaded Specific Hourly Rates.

Include completed **Attachment 1**, which shall set forth the proposed fully loaded annual specific hourly rates with field and consultant-home overheads for all five year of the resulting contract's five-year base term with a year-to-year rate adjustment allowance of no more than two percent (2%). For any PSA4 work extended beyond the term agreement's 5-year term, the sixth and seventh year rates shall also be limited to no more than a two percent (2%) increase. Explain all assumptions.

The offered salary schedule shall list one not-to-exceed rate for each proposed job title for consultant staff by firm to be assigned to future task assignment requests. Two sets of schedules are to be presented: one for Field Work and one for Consultant Home Based Work. Present each

fully loaded hourly rate per the provided instructions. If additional titles are used but are not assigned, they should be listed. It is the firm's option to provide names for particular non-key Consultant personnel (doing such is not an RFP requirement). Experience divisions within titles are allowed (ie, Planner 1, Planner 2, Planner 3, etc).

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. Consultant Home-Based Overhead: Present an appropriate overhead rate for each title. NYSDOT reserves the right to audit a firm's proposed field and home-based overhead rates, which may be subject to negotiation. Fee: Per NYSDOT policy, a firm's fee cannot exceed 10%.

Non-Salary Costs. NYSDOT and NYMTC acknowledge that all direct non-salary costs associated with submitting a proposal cannot be estimated at this time, and are to be proposed at the time of mini-bid submission. Other direct costs shall be reasonably 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 proposed and negotiated via task assignment mini-bids requests. Once a Part B cost mini-bid has been submitted, costs cannot be increased and reimbursement rates for labor and/or DNSC cannot be increased.

Please Note: Reasonable reimbursement for travel, meals, and lodging 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>.

ADMINISTRATIVE SECTION. Submit an Administrative Section which shall include the following:

1. Completed **Attachment 2**, which shall specify the proposer's acceptance of all of the RFP's terms and conditions including the RFP's draft Contract (**Attachment 10**). Complete and submit the 1st page of **Attachment 2** one for each proposed subconsultant. The Prime Consultant shall specifically state its acceptance of all Terms and Conditions of the RFP's draft contract. Offerors should complete and submit the "Consultant Information and Certifications Form," included as RFP **Attachment 2**, to indicate their **acceptance of all** of the RFP's terms and conditions including the RFP's 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. **NYSDOT shall not take any exceptions to any of the draft contract's terms and conditions. The proper manner to address issues with the RFP's draft contract is via the Q&A period prior to proposal submission. NYSDOT will not entertain exceptions brought to its attention after the proposal due date or during contract negotiations.** Attachment 2 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.

2. Consultant Identification Number (CIN; **Attachment 2**). All respondents to this solicitation must reference their NYSDOT issued Consultant Identification Number (CIN) and

SFS Vendor ID Number (new) in **Attachment 2**. 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>

3. Completed Procurement Lobbying Law Compliance forms (**Attachment 3**). 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. ***NOTE: Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.*** Use Contract Number C000PSA4 wherever requested in the forms. Please e-mail the RFP contact person (identified in RFP Section 6) 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 RFP during the restricted period (i.e. from advertisement through designation), may only contact the person noted in the cover letter to this solicitation.

4. Disadvantaged Business Enterprise Subconsultant Registration Information (**Attachment 4**). Complete and submit **Attachment 4** to register all proposed DBE subconsultants with NYSDOT to participate in future task assignment requests. Please visit the New York State Unified Certification Program (NYSUCP) DBE Directory to find certified Disadvantaged Business Enterprises via: <http://biznet.nysucp.net/>. Please ensure the complete legal name of each DBE is listed (including any ‘d/b/a’). Firms are advised to refer to Proposal Pre-Screening (RFP Section 5.1) for the procedure NYSDOT will follow in evaluating a firm’s proposed DBEs.

NYSDOT has established a **10% DBE participation goal** applicable to each task assignment request. The 10% goal relates to total dollar or total budget value of each proposed/selected mini-bid, to be credited towards the term agreement’s total accumulated value over its five year term. Staff augmentation task assignment requests shall either have zero DBE participation (ie, proposed candidate comes from the prime firm) or shall have very high DBE participation (ie, proposed candidate comes from a DBE subconsultant).

Meaningful participation by subconsultants **who are certified** as a NYSUCP DBE at the time of min-bid submission cumulatively count toward the overall 10% DBE participation goal established for each resulting term agreement. Subconsultants with pending DBE certification at the time of mini-bid submission are not allowed. 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.

Participation by prime consultants who are certified as DBEs do not count towards the 10% DBE goal.

5. Complete and submit **Attachment 5** Non-Collusive Bidding Certification.

6. Acknowledgement of Receipt of RFP and RFP Modifications (Attachment 6). All proposers are required to acknowledge receipt of this RFP. In addition and if necessary, NYSDOT will issue one or more RFP Modifications to modify conditions or requirements of this RFP. Parties who express interest in this RFP shall receive an e-mail alerting them to the release of an RFP Modification. Otherwise, proposers are advised to visit the NYSDOT web site (<https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities>) regularly to check for RFP Modifications. The final Modification will be posted on NYSDOT's web site not later than seven calendar days prior to the Proposal due date. If an additional Modification is required within seven days of the Proposal due date, the Proposal due date shall be revised such that there will be seven days from the final Modification to the Proposal due date. All respondents must have an authorized representative of the firm acknowledge receipt and acceptance of each RFP Modifications by completing, signing and including **Attachment 6** within the Administrative Section of your Cost proposal.

5. *PROPOSAL EVALUATION PROCESS*

5.1 Receipt of Proposals/Pre-Screening

It is NYSDOT's sole discretionary determination as to whether a proposal is complete. Proposals which do not meet the RFP's Minimum Responsiveness requirements (RFP Section 2) may be deemed incomplete and non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration.

Proposal Due Date. All proposals must be delivered to NYSDOT's Contract Management Bureau's office by 2:00 PM on November 6, 2014; proposals also need to be delivered to NYMTC's office by the same due date. Any proposals received after that time/date shall not be evaluated further but shall become NYSDOT property.

Proposal Opening, Log-in and Certification. Proposals received on or prior to the proposal due date and time will be opened, inventoried for completeness, certified, and logged-in (per criteria listed in RFP Section 4). For proposals received before/on the due date, firms may receive clarification questions/requests based upon the response completeness checks, with any requested clarification information due back to NYSDOT by COB that same day.

Proposals received on or before the RFP's published proposal due date shall be opened and logged-in. Logged in proposals shall be certified as being received.

PreScreening (DBE Review). Once logged in, 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. It is NYSDOT's sole discretionary determination as to whether a proposal is complete. Proposals which meet the RFP responsiveness requirements shall be considered further; proposals which do not meet the RFP responsiveness requirements may be deemed non-responsive. Proposals deemed to be non-responsive shall be removed from further consideration. DBE submissions shall be checked, wherein the certification registration status of all offered DBE subconsultants will be verified by NYSDOT Contract Management, and if certified, accepted. Proposers with non-certified DBEs will receive a clarification response and be given one opportunity to clarify their proposal (per USDOT/FHWA's Administrative reconsideration' process). Offered clarifications will be considered by NYSDOT. Offerors with acceptable DBE submissions will receive a recommendation to have their full proposals proceed further in the evaluation process.

Proposals passing pre-screening shall then be evaluated by NYSDOT/NYMTC using a Best Value Method which considers a combination of technical and cost criteria as described below. Technical considerations are of greater importance than cost considerations; however, cost is a

significant factor in NYSDOT's evaluation of proposals.

5.2 Evaluation Category Weight Distribution

Proposals will be evaluated using the NYSDOT's Best Value method based upon a 100 total point scale. The Technical and Management portion will be point scored and will represent 70 points of the total Best Value score for the proposal. The cost portion of the Cost and Administrative portion will be point scored and will represent 30 points of the total Best Value score for the proposal. Technical evaluation is further divided into 60 points for written technical proposal evaluation with 10 points for technical interview evaluation. Only shortlisted firms will be interviewed. A more detailed breakdown of the RFP's proposal evaluation category weights follows.

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

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

Members of the Technical Evaluation Committee will evaluate and score each technical proposal individually (may ask initial clarification questions). Each evaluator shall measure the degree of responsiveness of each proposal's responses to the specifications and requirements contained in the RFP against the RFP's evaluation factors. Responses will be evaluated according to the respondent's ability to best satisfy the RFP's technical requirements. Members of the TEC shall document their responsiveness findings (using the provided scoring instrument), and record a whole number numerical score (using the zero-to-ten scoring instrument with grade definitions). The TEC shall convene as a group to discuss the proposals, firm by firm, factor by factor. Evaluators will be allowed to revise scores on the basis of the committee discussions. Reasons for score changes will be documented on the TEC member's scoresheet as well as electronically by NYMTC/NYSDOT.

Scores after initial written 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 shall only be required to complete the technical evaluation of proposals should more than three viable proposals be received. With the optional interview: There are up to 60 points available for the initial evaluation of written technical proposals and there are up to 10 points available for the in-person technical interview. Without the optional interview: There are up to 70 points available for the initial evaluation of written technical proposals. Cost proposal evaluation results (up to 30 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, publically 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; the cut-off line shall be based on up to 90 total available points [up to 60 points for the written technical proposal and up to 30 points for a cost proposal]). NYSDOT will only publish

the short list of firms on its website under this solicitation should more than three viable proposals be received. Technical interviews, if held will be held at NYMTC's offices located in Manhattan (25 Beaver Street, Suite 201, New York, NY 10004) at a date and time to be determined.

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

WITH INTERVIEWS:

Technical and Management Written Proposal Evaluation (up to 60 Points). The Technical and Management proposal will be evaluated and point scored, and, when perfected, will represent 70 points of the total 100 point best value score. The initial evaluation of the written Technical and Management proposal will account for up to 60 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, which shall be used by the TEC, identify the respective weights in parenthesis which add up to 60 written technical proposal scoring points:

1. Experience (Up to 25 points)
 - a. Key Personnel: 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 8 Points)
 - b. Non- Key Personnel: Quality, extent and relevance of project-relevant experience, education and training of any named non-key personnel per the specifications contained in the RFP. Qualifications of titles for which the firm has yet to offer named personnel. (Up to 12 Points)
 - c. Firm: Quality, extent and relevance of current and prior relevant experience of the firm and the assigned key personnel. (Up to 6 Points)
2. Organization and Staffing (Up to 10 points)
 - a. Quality of proposer's resources relative to the needs of the RFP. (Up to 4 Points)
 - b. Quality of organization; quality of DBE participation plan. (Up to 3 Points)
 - c. Quality of plan for maintaining availability of qualified personnel over life of contract. (Up to 3 Points)
3. Quality of Proposal; Initiative and creativity of proposer (Up to 8 points)
4. Degree to which proposal reflects understanding and comprehension of the RFP's scope and objectives; Quality of approach to accomplish the RFP's objectives. (Up to 7 Points)
5. Hypothetical Scenario Scoring (Up to 10 points). Proposals will be evaluated by NYMTC/NYSDOT in part based on the technical responses to the specifications contained in the scenario contained in **Attachment 9**. 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 RFP.
- 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)

WITHOUT INTERVIEWS:

Technical and Management Written Proposal Evaluation (up to 70 Points). The written Technical and Management proposal will be evaluated and point scored, and, when perfected, will represent 70 points of the total 100 point best value score.

The technical evaluation criteria listed below, which shall be used by the TEC, identify the respective weights in parenthesis which add up to 70 written technical proposal scoring points:

1. Experience (Up to 28 points)
 - d. Key Personnel: Quality, extent and relevance of task assignment-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 8 Points)
 - e. Non- Key Personnel: Quality, extent and relevance of task assignment-relevant experience, education and training of any named non-key personnel per the specifications contained in the RFP. Qualifications of titles for which the firm has yet to offer named personnel. (Up to 15 Points)
 - f. Firm: Quality, extent and relevance of current and prior relevant experience of the firm and the assigned key personnel. (Up to 6 Points)
2. Organization and Staffing (Up to 12 points)
 - d. Quality of proposer's resources relative to the needs of the RFP. (Up to 4 Points)
 - e. Quality of organization; quality of DBE participation plan. (Up to 4 Points)

- f. Quality of plan for maintaining availability of qualified personnel over life of contract. (Up to 4 Points)
- 3. Quality of Proposal; Initiative and creativity of proposer (Up to 8 points)
- 5. Degree to which proposal reflects understanding and comprehension of the RFP's scope and objectives; Quality of approach to accomplish the RFP's objectives. (Up to 7 Points)
- 5. Hypothetical Scenario Scoring (Up to 15 points). 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 9**. 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 6 Points)
- b. Proposed Resources: (Up to 3 Points)
 - iv. Reasonableness of staff allocations.
 - v. Reasonableness of hours proposed.
 - vi. Quality and extent of proposer's resources relative to the needs of the RFP.
- c. Approach and Scope: (Up to 3 Points)
 - iii. Quality of approach, scope and schedule.
 - iv. 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)

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

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

5.4 Cost Proposal Evaluation (Up to 30 Points)

Cost proposals will be evaluated and point scored to account for up to 30 points of a total best value score for each proposal. Cost proposals will be evaluated for

- Cost impact after applying a consistently-applied use factor
- Reasonableness of salary rates as compared to comparable NYS Labor categories and past work for NYMTC under a NYSDOT contract
- Reasonableness of field overheads and reasonableness of home-based overheads
- Reasonableness of fee

The calculation of a cost score will be determined via the following method which uses an assumed hour factor applied differently to key personnel (assumed to work less) then to non-key personnel (assumed to work more):

1. Multiply rates for Key Personnel titles (Consultant Project Manager and Consultant Task Manager), for both field and consultant home-based overheads, by a factor of 10 hours to generate total labor cost for Key Personnel titles
2. Multiply all Non-Key Personnel titles, for both field and consultant home-based overheads, by a factor of 100 hours to generate total labor cost for all proposed generic Non-Key Personnel
3. Add the total labor cost for Key Personnel titles to the total labor cost for Non-Key Personnel titles to generate total labor cost
4. Lowest total labor cost received a perfected cost proposal score of 30.00 points. All other higher total labor cost proposals will receive proportionally lower cost proposal scores.

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

5.5 Initial Best Value Determination

Perfected cost scoring results will be added to the initial average raw written technical proposal scores (assuming an interview; that is more than three viable proposal have been received), generating an initial best value score by firm. Firms shall be ranked in initial best value score order (highest to lowest).

Should any firm withdraw their proposal during the proposal evaluation process, NYSDOT will

remove that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information).

5.6 Proposal Shortlisting

Should three or fewer than three viable proposals be received, the RFP's shortlisting rule shall not be exercised.

Should more than three viable proposals be received, the shortlisting rule for this solicitation shall be any proposal within 10 points of the top initial Best Value ranked proposal, plus any initial best value proposal 'tie' scores (within 1.5 total points of each other). Cost evaluation results shall be considered along with the initial average raw after-group discussion written technical proposal score results to determine initial offered Best Value, which shall lead to an initial Best Value-determined shortlisting of firms (determined to be mathematically susceptible for contract award). Should only three firms make the shortlist, NYSDOT shall not publically announce the list of firms who made the shortlist; should more than three firms make the shortlist, NYSDOT shall publically announce the list of firms who made the shortlist.

Firms submitting proposals which do not make the shortlist shall not be included in the remaining best value evaluation process steps (not included in subsequent proposal scoring process).

5.7 Technical Interview Evaluation (Optional; Up to 10 points)

Should more than three viable proposals be received, the Technical Interview portion 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 'tied' proposal(s) surrounding the cut-off line. Proposals subject to contract award will make the shortlist. Proposals which fail to make the shortlist have been removed from further consideration in the RFP's proposal evaluation process and will not be invited to the interview. 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.

Short-listed firms shall receive a Technical Interview invitation package, which shall include instructions, areas in which NYSDOT is seeking further clarifications, and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend Technical Interviews shall present a brief overview of key personnel present, and make brief opening presentation (limited to 10 minutes). Firms shall then present their hypothetical scenario response to the TEC. The firm shall respond to clarification questions from the TEC. Preparation for and participation in the interviews by prospective Consultants shall be at no cost to the State of New York.

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.

TEC members will evaluate Technical Interviews using the RFP's evaluation criteria and weights listed below. A separate score sheet shall be used to record TEC Technical Interview findings and scores. TEC members shall score the technical interview independently first, then meet as a group to discuss their findings and scores. Members of the TEC may revise their

technical interview scores as a result of group discussions. Reasons for score changes shall be recorded on the applicable TEC member's hardcopy scoresheet as well as in Contract Management's electronic composite scoresheet. Once scoring of each Technical Interview has concluded, TEC members shall sign/date and surrender their scoresheets to Contract Management. 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. Quality of hypothetical scenario presentation. (Up to 5 Points)
2. Ability of the presenting consultant team to address and answer the Technical Evaluation Committee's clarifying questions; Consultant's team chemistry; Consultant the team's coordination. (Up to 3 Points)
3. Additional insights and understanding into all technical aspects of the firm's proposal. (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.

5.8 Final Written Technical Proposal Evaluation (Optional Re-Scoring)

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

5.9 Best and Final Offers (BAFO; Optional) & Proposal Withdrawal

NYSDOT reserves the right to request Best and Final Offers (BAFO) from firms which make the shortlist. NYSDOT may recommend award the three-to-five PSA4 contracts without requesting a BAFO. Any Best and Final Offer request may ask additional further clarifying technical and/or cost proposal questions of firms to further clarify their submitted proposals. NYSDOT also may request a cost only BAFO. Should NYSDOT opt to request BAFOs, all shortlisted firms will receive a BAFO request. Non-shortlisted firms shall not receive a BAFO request. Responding firms will be allowed to submit a Best and Final Offer response (technical and/or cost) with cover letter; firms may opt to not submit a BAFO. Evaluators will be allowed to revise their technical scores for the written proposal based on their consideration of any new or changed Technical proposal information contained in any Best and Final Offer (will re-sign/re-date the applicable hardcopy scoresheets). If changes to a firm's Technical Proposal lead to corresponding, necessary revisions to their Cost Proposal (or should a firm opt to clarify their cost proposal) or should the Department opt to request cost-only BAFOs, NYSDOT's Contract Management representative shall make the necessary, appropriate adjustments to that firm's cost proposal evaluation.

Should any firm withdraw their proposal after a possible BAFO request, NYSDOT will remove

that firm's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn firm's information, which could impact and lead to revisiting initial best value determination).

5.10 Final Best Value Determination

After evaluation of all technical information submitted by competing consultants (i.e. initial written proposals, written clarifications, with no interviews, and possible Best and Final Offers), NYSDOT will perfect (curve) the written technical proposal scores so that the highest-rated raw written technical proposal score gets changed and assigned a perfect score of **70** points for this solicitation with the other technical scores adjusted proportionately upward. (Should interviews be held, NYSDOT will also perfect (curve) the Technical Interview scores so that the highest-rated raw Technical Interview score gets changed and assigned a perfect score of **10** points for this solicitation with the other Technical Interview scores adjusted proportionately upward and NYSDOT will perfect (curve) the written technical proposal scores so that the highest-rated raw written technical proposal score gets changed and assigned a perfect score of **60** points for this solicitation with the other technical scores adjusted proportionately upward.) Cost proposals have previously been evaluated and the resulting cost scores perfected by cost proposal scoring rule. Perfected cost scoring results will be added to the perfected written technical proposal score plus the perfected Technical Interview score to generate tentative final best value scores. Firms shall be ranked in Final Best Value score order (highest to lowest).

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

Once all possible score ties have cleared, NYSDOT will determine the Final Best Value Score, where after the proposal with the highest Final Best Value score shall be recommended to NYSDOT Executive Management for contract award.

5.11 Consultant Selection Recommendation & Tentative Contract Award

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

Should negotiations with any of the three top-ranked Best Value Consultants fail to produce agreed-upon contracts, then NYSDOT Executive Management will designate and award a contract to the next highest-ranked Best Value Consultant (should such a firm be listed on the final best value listing). The Department will then enter into negotiations with the next available highest-ranked Best Value Consultant. This process may repeat itself until acceptable contracts are consummated. The consultant designation becomes final after the NYS Office of the State Comptroller approves the resulting contracts.

The multiple designations shall be publically posted. Once the public has been notified of the solicitation's results, negotiations with the selected Consultants can commence. Each resulting final contract is subject to approval by NYSDOT, the Attorney General, and the Office of the State Comptroller, and is not binding until such approvals are received.

At the conclusion of the proposal evaluation process, an announcement of NYSDOT's designation(s) will be posted the 'Consulting Services' listing on NYSDOT's website via: <https://www.dot.ny.gov/business>. All proposers will be notified in writing regarding the results from the solicitation. All non-designated firms will be offered an opportunity to request a debriefing. A debriefing is limited to a review of how your proposal fared against the RFP's requirements.

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

6. ADMINISTRATIVE INFORMATION

6.1 Proposal Due Date

All proposal submitted in response to this RFP must be received by NYMTC by 2:00 PM on January 11, 2017. The proposal must be addressed to **both parties** listed below:

New York Metropolitan Transportation Council (NYMTC)
25 Beaver Street, Suite 201
New York, NY 10004
ATTN: Mr. Ismet Apdiroglu, PSA4

NYSDOT Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232
ATN: Mr. Al Hasenkopf, PSA4

6.2 Pre-Proposal Webinar/Conference

To assist firms in preparing proposals in response to this solicitation, a pre-proposal conference will be held on December 8, 2016 in NYMTC's Office at 25 Beaver Street, Suite 201, New York, NY. Any additional questions should be submitted by email by December 6, 2016 to Mr. Ismet Apdiroglu via e-mail (ismet.apdiroglu@dot.ny.gov) and to Al Hasenkopf, NYSDOT Contract Management via e-mail (alfred.hasenkopf@dot.ny.gov).

Participation via teleconference is possible – anyone who wants to participate via teleconference and/or webinar must contact Al Hasenkopf, NYSDOT via e-mail (alfred.hasenkopf@dot.ny.gov) before C.O.B. December 6, 2016. 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 (ismet.apdiroglu@dot.ny.gov) by 2:00 PM on December 6, 2016. 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 December 6, 2016.

6.3 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/NYS DOT has the following prerogatives with regard to proposals submitted:

1. To accept or reject any or all proposals;
2. To correct any arithmetic errors in any or all proposals;
3. To change the proposal's due date upon appropriate notification to interested firms;
4. To eliminate any mandatory RFP specification unmet by all offerors in the evaluation of received proposals;
5. To adopt any or all of a successful offeror's proposal;
6. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
7. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
8. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
9. To eliminate any requirement that is found to be unmet by all offerors;
10. To make inquiries, by means it may choose, into the offeror's background or statements made in the proposal to determine the truth and accuracy of all statements made therein;
11. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
12. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;
13. If NYSDOT terminates the contract — without again requesting proposals, to begin contract negotiations with the next-best-value offeror; and
14. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

6.4 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.

6.5 Consultant Responsibility When Proposing A Former NYSDOT Employee

It is the proposing consultant's responsibility to ensure they propose staff that is eligible to work under the resulting term agreements. 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 any NYMTC task assignment, contract or other NYSDOT contract 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 (<http://www.jcope.ny.gov/>) that approves their participation in the resulting term agreements 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 Joint Commission on Public Ethics approval for an individual's participation in the resulting term agreements may jeopardize the firm's designation for any future task assignment request under the resulting PSA4 term agreements.

6.6 Insurance Requirements

Please carefully read the terms and conditions of the RFP's draft contract (**Attachment 10**). Your attention is drawn to the insurance requirements for the resulting term agreements that are contained in Article 12 of the draft contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

6.7 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.

6.8 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

6.9 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: December 19, 2016. All inquiries must be in writing and e-mailed to:

NYMTC: Mr. Ismet Apdiroglu – ismet.apdiroglu@dot.ny.gov

NYSDOT: Mr. Al Hasenkopf – Alfred.hasenkopf@dot.ny.gov

FAX: NYMTC: 212 383-2418; NYSDOT: 518-457-1560

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

6.10 NYSDOT 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

6.11 Tentative Schedule of Key Events

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

RFP Release Date:	November 23, 2016
Pre-Proposal Conference	December 8, 2016
Question Submittal Deadline:	December 19, 2016
Answers Due:	December 27, 2016
Proposals Due:	January 18, 2017
Technical Interviews – Tentative	January 2017
Complete Proposal Evaluation:	January 2017
Recommendation & Designation:	January-February 2017
Contract Negotiations:	February 2017
Contract Award:	March-April 2017

7. ATTACHMENTS

Cost Proposal Submittal Attachments:

1. Specific Hourly Rates
2. Consultant Information and Certifications
3. Procurement Lobbying Law Compliance

4. DBE Subconsultant Registration Information
5. Non-Collusion Bidding Certification
6. Acknowledgement of Receipt of RFP Modifications

Technical Proposal Submittal Attachments:

7. Key Personnel Resumes & References
8. Proposed Consultant Personnel
9. Hypothetical Scenario

RFP Information:

10. Draft Contract, including Schedule A Scope of Services/Competitive Task Assignment Process
11. Consultant Disclosure Legislation Forms

Task Assignment Request Information:

12. Sample Request
13. Sample Evaluation Process
14. Scope of Services Compendium
15. NYMTC Non-Disclosure Agreement

Attachment 1

PSA4 RFP COST PROPOSAL FULLY LOADED SPECIFIC HOURLY RATES

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

Consultant Name _____

TITLE	NAME	(a) YEAR 1 DIRECT LABOR (Salary)	(b) OVERHEAD (__%) Type: _____	(c) FEE (__%)	(a)+(b)+(c) YEAR 1 BILLING RATE	YEAR 2 BILLING RATE	YEAR 3 BILLING RATE	YEAR 4 BILLING RATE	YEAR 5 BILLING RATE
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									

Notes:

1. Rates shall be proposed each year of the resulting contract's five year term with a year-to-year rate adjustment allowance of no more than two percent (2%).
2. For any PSA4 work extended beyond the term agreement's 5-year term, the sixth and seventh year rates shall also be limited to no more than a two percent (2%) increase.
3. For the purposes of this RFP, the a contract year shall be July 1st to June 30th.

Attachment 1 Instructions:

Each descriptive job title presented in **Attachment 8** must have an associated fully-loaded not-to-exceed hourly billing rate listed in **Attachment 1**. **Attachment 1** shall list all proposed descriptive job titles for Consultant staff to be assigned to your term agreement and their proposed fully-loaded specific hourly rate for all five contract years (a contract year runs from July 1st to June 30th). 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 1**'s: one for all field work and one for all consultant-home based work, plus matching sets for each proposed subconsultant.

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 1**'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 1** per Consultant in its team (prime consultant plus any subconsultants that are being proposed).

Attachments 1 and 5 can be amended via future Supplemental Agreements to add titles/job descriptions currently not currently included.

Attachment 2

Consultant Information And Certifications

(Submit Completed Section I for the Prime Consultant and Submit Completed Section II only for Prime Consultant)
(Submit Completed Section I for each Subconsultant)

CONTRACT NUMBER: C000PSA4

RFP TITLE: CONSULTANT PLANNING SERVICE AGREEMENTS (PSA4) 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:

- Agree not to bid on an RFP resulting from PSA4 task assignment work.
- 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 10** correspond accordingly to this Request for Proposals.

Signature: _____
(Name of Acceptor)

Attachment 3

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 Designated 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 Designated 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 Bur
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Alfred.hasenkopf@dot.ny.gov
Tele: 518 457-1560

For NYMTC:

Mr. Ismet Apdiroglu
NYMTC Admin Group
25 Beaver Street, Suite 201
New York, NY 10004
E-mail: ismet.apdiroglu@dot.ny.gov
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 #C000PSA4__

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: C000PSA4_____

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 4

DBE Consultant Registration Information

Please complete the following table for the prime firm and all proposed subconsultants (consultant team composition). All proposed DBE Subconsultants must be identified and currently certified/listed in New York State's NYSUCP DBE Directory <http://www.nysucp.net/>. Please keep in mind that only participation of NYSUCP-certified DBEs are eligible to count toward attainment of each task assignment request's **10% DBE participation goal**.

Firm Legal Name	NYSUCP Certified DBE	
	DBE	None
A. Prime Consultant		
B. Sub-Consultants		

ATTACHMENT 5

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

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

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

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

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

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

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

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

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

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

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:
NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME LEGAL RESIDENCE

President: _____	_____
Secretary: _____	_____
Treasurer: _____	_____
President: _____	_____
Secretary: _____	_____
Treasurer: _____	_____

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

Identifying Data

Potential Contractor: _____

Address: _____
Street

City, Town, etc.

Telephone: _____ Title _____

If applicable, Responsible Corporate Officer

Name: _____ Title _____

Signature: _____

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

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____
Name

Name

Title

Title

Address: _____
Street

Address: _____
Street

City State

City State

ATTACHMENT 6

ACKNOWLEDGMENT OF RECEIPT OF RFP & RFP MODIFICATIONS

NAME OF PROPOSER

We hereby acknowledge receipt of the NYMTC PSA4 Request for Proposals, dated November 16, 2017 and subsequent RFP Modifications issued by NYSDOT, as listed below.

Add additional lines in tables below, if needed.

Modification number:	Date issued by Department:

SIGNED	
DATE	
NAME (printed or typed)	
TITLE	

ATTACHMENT 7

KEY PERSONNEL RESUMES AND REFERENCES

Instructions:

- Complete for each Key Personnel identified in your Proposal.
- Cannot not exceed three pages in length.
- Proposer's may expand the boxes as necessary.
- The term "Client" below refers to the past project owner. "Client" is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

1. Personnel Name and Title:	
2. Title Assigned for this RFP:	
3. Firm working for on this RFP:	
4. Current Employment Status:	[☐] Employed by Firm identified #3 above [☐] Employed by a different Firm [☐] Unemployed
5 Years of Relevant Experience	
6. Description of Relevant Experience:	
7. Certifications/Licenses:	
8. Education:	
Past Project Experience	Complete below for a maximum of five past projects
9.1 Project Description (include contract number where appropriate):	
9.2 Client Name:	
9.3 Client Contact Information (including contact name, phone number, and e-mail address):	
9.4 Description of person's role and responsibilities during project:	
10.1 Project Description (include contract number where appropriate):	
10.2 Client Name:	
10.3 Client Contact Information (including contact name, phone number, and e-mail address):	
10.4 Description of person's role and responsibilities during project:	
11.1 Project Description (include contract number where appropriate):	
11.2 Client Name:	
11.3 Client Contact Information (including contact name, phone number, and e-mail address):	
11.4 Description of person's role and responsibilities during project:	
12.1 Project Description (include contract number where appropriate):	
12.2 Client Name:	
12.3 Client Contact Information (including contact name, phone number, and e-mail address):	
12.4 Description of person's role and responsibilities during project:	
13.1 Project Description (include contract number where appropriate):	
13.2 Client Name:	
13.3 Client Contact Information (including contact name, phone number, and e-mail address):	
13.4 Description of person's role and responsibilities during project:	

Attachment 8

PSA4 RFP TECHNICAL PROPOSAL

PROPOSED CONSULTANT PERSONNEL

Consultant Name _____

TITLE	NAME
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: Identify which are proposed Key Personnel

Instructions

Propose your job titles consistent with the equivalent descriptive job title defined below. Use **Attachment 8** to present your proposed staffing/staff qualifications for the RFP's 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.).

Make sure all proposed Consultant personnel titles have a not-to-exceed fully-loaded rate included in your Cost Proposal (**Attachment 1**).

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 1** and **Attachment 8**. If additional titles are used but are not assigned, they should be listed. The schedule should be prepared to distinguish anticipated assignment by task assignment section/task.

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.

Attachments 1 and 5 can be amended via future Supplemental Agreements to add titles/job descriptions currently not currently included.

The descriptive job titles are as follows:

KEY PERSONNEL:

1. Consultant Project Manager

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

Supervises and coordinates activities of personnel involved in the task assignment 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.

2. Consultant Task Administrator

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

NON-KEY PERSONNEL:

3. Transportation Planner

4. 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)

The following are brief descriptions of various specialty planners required to work in specific transportation-related fields:

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 9

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 via a competitive task assignment request.

Instructions

Provide a mini-bid proposal to provide staff support and assistance for NYMTC's Regional Transportation Plan (RTP) Update (Task Assignment ‘RTP Update Assistance in Attachment 14).

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 task assignment. Use no more than two (2) pages.

Scope of Work

This task assignment 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 Task Assignment 'RTP Update Assistance (Attachment 14).** The actual tasks to be performed will be determined after full staff and RTP Committee consultation.

Task assignment 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		

Attachment 10

DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F. A. NO.:

P.I.N.:

COMPTROLLER'S CONTRACT NO. C000____

PROJECT: CONSULTANT PLANNING SERVICES AGREEMENT (PSA4) FOR NYMTC

This Agreement made this _____ day of _____, 201_ 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 (including EXHIBITS), the provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A, APPENDIX A-1, APPENDIX B, Appendix B-1, APPENDIX C and Exhibit B, SCHEDULE A, SCHEDULE B (including EXHIBITS), the STATE's Request for Proposals (RFP; dated ____) incorporated by reference, and the Consultant Proposal (dated ____) incorporated by reference.

ARTICLE 3. INSPECTION.

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

ARTICLE 4. TERM OF THE AGREEMENT.

The CONSULTANT agrees to complete all the work of this AGREEMENT as required by this AGREEMENT within a sixty (60)-month base term for this AGREEMENT, which shall commence on _____ and end on _____. The AGREEMENT may be extended for up to one (1) additional twelve month period as agreed upon by the parties to the AGREEMENT and as approved by the Office of the State Comptroller to complete any task assignment work not completed by the Agreement's 60-month end date with no new task assignment work allowed to start or no new funds allowed to be added after the Agreement's 60-month term ends.

ARTICLE 5. PROVISION FOR PAYMENT.

Item I. The total maximum amount payable to the Consultant anticipated for the performance of authorized task assignment services provided in accordance with Schedule A over the term of the Agreement is **\$750,000** unless increased by a Supplemental Agreement agreed to by both parties and approved by the NYS Attorney General and the Office of the State Comptroller..

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) Fixed 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. Should this Agreement be extended beyond its five year base term, the annual rates shown in SCHEDULE B, EXHIBIT ___ may be adjusted annually by no more than two percent (2%).

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 CONSULTANT is required, if it is a "foreign" (Out of State) corporation or entity, to obtain and submit the required "Tax Clearance" certificate to the STATE at the time of contract signing and again before processing the final payment. It should be noted that any time taken to satisfy or furnish this Tax Clearance certificate shall extend the required payment date by an equal period of time. The Tax Clearance certificate can be obtained by mailing a request to:

New York State Department of Taxation and Finance
Tax Status Unit
Building 8, Room 938
State Office Building Campus
Albany, NY 12227

Alternatively, it may be obtained by phoning the Corporation Tax Information Center at 1-888-698-2908 and making the request there. The certificate content is public information and the certificate is free of charge.

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 RESPONSIBILITY.

To the fullest extent permitted by law, the Consultant shall indemnify and save harmless the State, and/or any municipality, public benefit corporation, railroad, and/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 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 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, Subcontractor or the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or for any consultants working for the State. It is understood by the State and the Consultant that the Consultant's Professional Liability/Errors and Omissions policy (if applicable) required in the Article of this Contract entitled "Insurance" shall be utilized for claims involving the Consultant's professional negligence.

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 to defend, and the obligation to indemnify in the foregoing paragraph, does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, or the negligence of any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or the negligence of 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 or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the Consultant may elect to join any action or tender their own defense, at their sole expense and discretion.

ARTICLE 12. 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 -) 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. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

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 Paragraph B, *Insurance Requirements*, below. General liability 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. ***Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the "insured contract" exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable.*** Policy forms must be provided to the Department upon request.

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 Number. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing the Contract Number and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov

Certificates may be mailed to the:

**New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, Sixth Floor
Albany, NY 12232**

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon ten (10) days' prior written notice to the Department by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the Department, the Consultant shall deliver to the Department within ten (10) work 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 a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 "New York Construction Addendum" completed to indicate information about the liability insurance.
- b. Be signed and dated by an authorized representative of the insurance carrier or producer.

- c. Disclose any deductible, self-insured retention, aggregate limit.
- d. Refer to this Contract by number on the face of the certificate.

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:

- a. 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
- b. May withhold further contract payments in accordance with Article 8 *No Payment Due to Consultant's Non-Compliance* of the contract agreement, or
- c. 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(s) that provides equivalent coverage.

5. Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage 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 ten (10) calendar 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 Paragraph A.3. *Certificates of Insurance/Notices* 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, the Consultant or third-party-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 -) or better. 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.

10. Subconsultant's Liability Insurance. In the event that any portion of the work described in this contract is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, Commercial General Liability, and, if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. Consultant shall require that Certificates of Insurance, meeting the requirements of the Department are provided to the Department documenting the insurance coverage for each and every subconsultant employed by them to do work under this contract.

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, the 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. The 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:

- a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).
- b. 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, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees"** 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.
- c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
- d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.
- e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- f. Explosion, Collapse and Underground Hazards coverage ("XCU") (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

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, the 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 may 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 each accident.

4. Umbrella or Excess Liability Insurance. The Consultant shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Consultants, products-completed operations, personal injury and advertising injury, and 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 or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.

5. Consultant's Risks. The Consultant shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

ARTICLE 12. INTERCHANGE OF DATA.

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

ARTICLE 13. DISPOSITION OF DATA.

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

ARTICLE 14. DAMAGES AND DELAYS.

The CONSULTANT agrees that no charges or claim for damages shall be made by them for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this AGREEMENT. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the STATE may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the STATE

of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising its rights under ARTICLE 8 of this AGREEMENT.

ARTICLE 15. NOTICE OF BANKRUPTCY, VENUE, AUDITS.

If, prior to final audit, CONSULTANT files for relief pursuant to Title 11 of the United States Code under the Bankruptcy Laws or a successor statute, this AGREEMENT shall be treated as an executory contract under 11 USC §365 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 §362 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. APPENDIX A,
2. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, APPENDIX B, Appendix B-1, and APPENDIX C;
2. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
3. SCHEDULE A;
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 State designee. Neither shall the CONSULTANT disclose information deemed confidential by the State nor shall the CONSULTANT disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this AGREEMENT.

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

ARTICLE 29. VENDOR RESPONSIBILITY.

The Department of Transportation has undertaken an affirmative review of the proposed consultant's responsibility in accordance with the applicable standards outlined in Comptroller's 'Guide to Financial Operations', and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

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

b). Suspension of Work (for Non-Responsibility). The Commissioner of NYSDOT (or his or her designee), in his or

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

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

ARTICLE 30. CONSULTANT DISCLOSURE LEGISLATION.

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

By mail:

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

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

NYS Department of Transportation:

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

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 #C000_____

Title: Director

Address: NYSDOT Contract Management Bur., 6th Fl., 50 Wolf Road, Albany, NY 12232

Telephone Number: 518-457-2600

Facsimile Number: 518-457-2874

E-Mail Address: Bill.Howe@dot.ny.gov

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.

IN WITNESS WHEREOF, this Contract No. C000 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the CONSULTANT has duly executed this Agreement effective the day and year first above written.

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

RECOMMENDED BY

FOR THE PEOPLE OF THE STATE OF NEW YORK

New York Metropolitan Transportation Council Date

NYSDOT CONTRACT MANAGEMENT DATE

By: _____
DEPARTMENT OF TRANSPORTATION DATE

CONSULTANT Certifications: I certify that all the information with respect to the "Vendor Responsibility Questionnaire" submitted by (**CONSULTANT FIRM NAME**) _____ on the _____ day of _____, 201__ pursuant to the requirements set forth in OSC's 'Guide to Financial Operations' is complete true and accurate. I additionally certify nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the "Vendor Responsibility Questionnaire" submitted that date.

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

By _____ Date: _____
FIRM

----- CONSULTANT PLANNING SERVICE AGREEMENTS (PSA4) for NYMTC -----

APPROVALS

ATTORNEY GENERAL

THOMAS P. DiNAPOLI

STATE COMPTROLLER

By _____
Date _____

Acknowledgement for Contract # _____

For contracts signed in New York State

State of New York)

County of) ss.:

On the _____ day of _____ in the year 201____, 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 201____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in

_____ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

NOTARY PUBLIC

(Signature and office of individual taking acknowledgement.)

My Commission Expires: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this

contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize

minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

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

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

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

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

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

Updated January 2014

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

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

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

(April 2016)

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

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

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

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

THE CFDA IDENTIFICATION NUMBER

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

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

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

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

PROMPT PAYMENT MECHANISMS

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

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

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

- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.
- (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the

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

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

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

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

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

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

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

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

(a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Updated April 2016

APPENDIX B-1

U.S. GOVERNMENT REQUIRED CLAUSES

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

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

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

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

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

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

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

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

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

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

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

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

Energy Conservation – Applicability – All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$100,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Bus Testing – Applicability – Rolling Stock/Turnkey.

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

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

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

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

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that

Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the municipal corporation, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

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

Federal Changes – Applicability – All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the municipal corporation and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors

are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

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

Bid Bond Requirements (Construction)

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

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

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

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

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

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

(b) Payment bonds

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

Performance and Payment Bonding Requirements (Non-Construction)

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

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

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

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

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

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

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

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

1. The penal amount of payment bonds shall equal:

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

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

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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

(1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the municipal corporation and understands and agrees that the municipal corporation will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. (2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

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

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

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

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash

equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional

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

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

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

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

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or

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

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

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

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

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

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

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

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

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

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

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

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

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

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

If contractor fails to remedy to the municipal corporation's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the municipal corporation setting forth the nature of said breach or default, the municipal corporation shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the municipal corporation from also pursuing all available remedies against contractor and its sureties for said breach or default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the municipal corporation's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

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

Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

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

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

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

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

Civil Rights Requirements– Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment,

without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor shall comply with any implementing requirements FTA may issue.

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

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

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

Breaches and Dispute Resolution – Applicability – All contracts over \$100,000

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

Performance During Dispute - Unless otherwise directed by the municipal corporation, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the municipal corporation and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within New York State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the municipal corporation or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

Contracts Involving Experimental, Developmental, Or Research Work.

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

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution. (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R.

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

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

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified. (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401. (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(\$3,000 or less, except for construction contracts over \$2,000)

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

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

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

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

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The New York State goal is available by contacting the Department. The municipal corporation's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere. b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the municipal corporation. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the municipal corporation and contractor's receipt of the partial retainage payment related to the subcontractor's work. e. The contractor must promptly notify the municipal corporation whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the municipal corporation.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

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

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

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

Other Federal Requirements

Full and Open Competition – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be

conducted in a manner that provides full and open competition.

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

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

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

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

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

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

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

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

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited

English Proficient (LEP) Beneficiaries,” 70 Fed. Reg. 74087, December 14, 2005.

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

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

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

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

Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. General Accounting Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Rd, Albany, NY 12232.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

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

The CFDA number for the Federal Transit Statewide/Metropolitan Transportation Planning (Section 5304) is 20.505. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Updated July 2013

APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

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

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

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

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

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

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

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

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

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

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

placement officers, etc., the CONSULTANT will take the following actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities

and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).

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

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

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

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

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

(1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or

(2) cancellation, termination or suspensions of the agreement in whole or in part.

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

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

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

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

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

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

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

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of

the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

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

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

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

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

Updated December 2012

Schedule A

Consultant Planning Services Agreements (PSA4) for NYMTC

Contract # C000_____

Scope of Services

Firm Name

Consultant Project Manager

Each selected Consultant shall designate a qualified Consultant Project Manager to manage their respective PSA4 term agreement. This person shall serve as the primary contact between each PSA4 firm and NYMTC, and with NYSDOT as needed. 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 term agreement.

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 assignment. 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.

Task Assignment Locations

The location of all NYMTC work under the resulting PSA4 term agreement is primarily the Metropolitan Planning Area designated by NYMTC. 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).

Consultant Planning Service Staff

Each PSA4 firm shall provide qualified, available consultant planning resources for each task assignment request. NYMTC/NYS DOT will allow additional mini-bid response time to allow PSA4 firms more time to find qualified staff.

Competitive Task Assignment Process

Selected Consultants from the resulting PSA4 agreements shall be requested to provide planning support to NYMTC on an as-needed task assignment basis, to augment 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) per NYMTC's approved annual Unified Planning Work Program (UPWP). NYMTC's UPWP is downloadable from NYMTC's website: www.nymtc.org. Task assignment requests may also come from NYSDOT. By signing a PSA4 agreement, the firm agrees to provide qualified, available candidates for each task assignment request (with requests for additional mini-bid response time possible).

1. Advertisement

NYMTC will issue task assignment requests via e-mail to each selected PSA4 Consultant. NYSDOT Contract Management will similarly 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 as PSA4 mini-bid task assignment requests shall not be publically advertised (ie, shall not be advertised in the NYS Contract Reporter). Each task assignment request shall contain all of the job requirements in terms of technical requirements (scope, experience, qualifications, schedules, etc), cost requirements, and mini-bid process requirements. While each request will have its own purpose and need, most requirements of each request tends to repeat, reflective of a simplified process. A sample task assignment request is contained in **Attachment 12**.

2 Acknowledgement

Each firm receiving a PSA4 task assignment request is required to acknowledge receipt of task assignment mini-bid requests in writing/email reply. Not all Consultants are required to offer task mini-bids but those firms who choose not to respond are required to offer written reason(s) for declining to bid (no-bid letter).

3. Q&A

Each task assignment request will contain an optional 5 business day window in which to submit questions. NYMTC/NYS DOT have 3 business days to release answers to all PSA4 firms. Receipt of significant questions may lead to the granting of additional time to respond. Tier II firms are encouraged to ask questions.

4. Clarification Meeting

Each task assignment request will contain a 5 business day window in which to request a pre-bid Clarification Meeting. NYMTC/NYS DOT have 3 business days to set up and hold the Clarification meeting, thereafter NYMTC has 3 business days to release the meeting's write-up to all PSA4 firms

5. Mini-Bid Request Modification

Should there be a need to amend a task assignment request, all firms will receive a modified task assignment request with the preceding schedule repeated and due date extended. Each firm must acknowledge receipt of the modified task assignment mini-bid request in writing/email reply.

6. Mini-Bid Submission

Each responding PSA4 firm must submit a two-part mini-bid per **Attachment 12's** formatting requirements. To be valid, mini-bids must be submitted on or before the due date. Late submissions shall not be considered for task assignment award.

One part of the task assignment mini-bid, the Task Assignment Part A Technical Mini-Bid, shall be solely related to the advertised 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 proposed hours by title, with not-to-exceed rates as per RFP **Attachment 1**). Milestones may be divided into partial payments but only if proposed in a firm's mini-bid and if NYMTC allows, during negotiations, to divide proposed milestones into smaller partial payments. Separate organization charts showing the names of the task project manager and key personnel and resumes shall be provided in Part A (Technical Mini-Bid) of the submittal, excluding salary rate information.

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 task assignment 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.

Proposed rates cannot exceed the rates contained in the term agreements. Proposing rates which are higher than the term contract is immediate grounds for dismissal. Firms may propose lower rates in their mini-bid responses (term agreement rates are not to exceed rates). No commuting expenses are eligible under task assignment work, only travel as directed in task assignment requests is eligible.

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.

Consultant shall propose personnel with titles and qualifications consistent with what is listed in their respective PSA4 term agreements. Consultants require prior NYMTC/NYS DOT approval to propose personnel not listed in their PSA4 term agreements. Consultants selected during Tier I selection shall 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 PSA4 term agreements, wherein the new non-designated subconsultant titles must be consistent with the PSA4 term agreements and the rates cannot exceed the rates for those titles contained in the term agreement.

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

After task assignment award, in the event that the Consultant desires to replace staff on a task assignment or in the term agreement, 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.

7. Mini-Bid Pre-Screening

Each submitted mini-bid shall be opened and checked for completeness as well as following the mini-bid submission formatting requirements (pre-screening). A firm has until COB on the due date to submit any missing or incorrect mini-bid submission documentation. Proposed DBE participation shall be verified.

8. Mini-Bid Evaluation

Unless changed, all mini-bids which pass pre-screening shall be evaluated per the criteria contained in **Attachment 13**. Optional features are: clarification questions and responses; interviews; best and final offer requests. All bids received will be evaluated on a best-value basis, with Tier II consultant selection made by NYMTC/NYS DOT based on which submitted mini-bid received the highest total best value score after considering all technical and cost/price evaluation factors. 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. Evaluation of Part A technical 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.

9. Tier II Consultant Selection/Designation, Notices & Debriefings

After completion of all necessary evaluation steps, NYMTC management will review/approve the mini-bid evaluation result and make a recommendation to NYSDOT for task assignment award. NYSDOT will review NYMTC's request and act to either designate the selected PSA4 firm or force a re-bid due to an incurable flaw. NYSDOT's designation shall be sent to NYMTC. NYMTC will via e-mail notify all PSA4 firms regarding the result of the mini-bid evaluation process. All participating and non-selected firms shall be given 10 business days to request a debriefing. All firms requesting will receive a debriefing regarding how their mini-bid fared against the task assignment request.

10. Task Assignment Scope/Budget Negotiation

NYMTC will work with the selected firm to confirm and negotiate the final task assignment scope of services, milestone payment schedule and total budget with the designated firm for the requested task assignment. It is possible, due to NYMTC UPWP budget limitations, that a bid scope/budget has to be adjusted to fit the available dollars (firms will be required to prepare 'cross-walk' scope/budget tables). Final budget can not exceed what was proposed but may be less.

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.

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.

11. Task Assignment Approval & Notice to Proceed

Once the scope and budget have been agreed to in writing between NYMTC and the selected PSA4 firm, NYMTC will request funding execution from NYSDOT. Once funds have been set up, a notice to proceed letter (with final scope, schedule and budget attached) will be issued by NYMTC. Funds shall be encumbered to either set up the entire task assignment or the first year of a multi-year staff augmentation task assignment request. Multi-year work will require additional funds be encumbered for each additional year of work as advertised per the task assignment request. 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. 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 Task Manager and the Consultant).

12. Task Assignment Billings

All billings shall be submitted per the agreed-upon task assignment's milestone payment schedule. **Form of billing shall be ____.** 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

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.

Attachment 11

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		Agency Code: 3900283	
Contractor Name:		Contract Number: C000____	
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

FORM B

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: 3900283

Contract Number: C000

Contract Term: / / to / /

Contractor Name:

Contractor Address:

Description of Services Being Provided: Consultant Planning Service Agreements (PSA4) 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: / /

Use additional pages if necessary)

Page of

Task Assignment Request Information Attachments (On-Line):

- 12. Sample Request
- 13. Sample Evaluation Process
- 14. Scope of Services Compendium
- 15. NYMTC Non-Disclosure Agreement